6 August 2003

Ms Sue Holmes
Productivity Commission
PO Box 80
Belconnen
ACT 2616
AUSTRALIA

Dear Ms Holmes

EVALUATION OF THE MUTUAL RECOGNITION SCHEMES – DRAFT RESEARCH REPORT

Business New Zealand appreciates the opportunity to provide further comment on the Trans Tasman Mutual Recognition Arrangement (TTMRA). This letter provides our comments on the Commission's Draft Research Report.

Before commenting on the substance there is a point of clarification I would like to make under the list of submissions received (pp 187-191). The list shows that Business New Zealand's submission was received on 23 May. This is not correct – our submission was sent to the Commission by e-mail on 9 April and receipt was acknowledged on that date. On 23 May we made a further communication to the Commission on the Australia-New Zealand Joint Standards Issue, and it would appear from the list that this communication has been taken to be Business New Zealand's submission on the TTMRA Review.

Turning now to the substance, Business New Zealand considers the draft report to be comprehensive and the preliminary findings to be solid and robust. Overall, we have found the issues to be well defined and we agree with most of its assessments. The Commission should be congratulated for its efforts in developing a most comprehensive draft report in such good time. We also appreciate the lengths the Commission has gone to seek further views, including meeting again with interested parties on both sides of the Tasman.

I understand that there are some issues of detail that will be taken up directly with the Commission by respective industry groups. While we do not wish to comment in any detail on occupational issues, some brief comments on goods issues and the future development of joint standards follow below.

Gas Appliances

Concern has been expressed by the Gas Appliance Association at the statistics quoted in the draft report for the comparative numbers of deaths related to gas

appliances between Victoria and New Zealand (pg 156). The Association's view is that the statistics quoted do not portray an accurate story, particularly where New Zealand statistics include deaths caused by misuse of appliances rather than fault with the appliances themselves. We are aware of other similar situations where uninformed comparisons with Australian statistics have led to a distorted view of the New Zealand situation (e.g., deaths from hazardous substances). The statistics should compare like with like.

Chemicals and Dangerous Goods

Business New Zealand considers that there are some comments in the draft report that can be taken to infer that the Commission believes that Australia should pursue the HSNO model for chemicals and dangerous goods (pp 128-140). The New Zealand business community has had significant concerns about HSNO, particularly around its high compliance costs and the complexity of the regime. In response, the Government has recently announced a number of significant changes to the way the HSNO regime will operate, which should help (a copy of the Minister for the Environment's media statement of 25 June 2003 is attached for the Commission's information). However, while harmonisation in this area would be welcome, considerable work remains to be done before we would recommend trans-Tasman adoption of HSNO regime.

Road Vehicles

Business New Zealand welcomes the Commission's recognition of adverse affects for New Zealand exporters and consumers if New Zealand was to adopt Australia's approach to motor vehicle regulation (pg 150). New Zealand's approach has resulted in significant gains for the consumer by making newer, safer, more environmentally friendly vehicles much more affordable. We also agree with the finding that options should be explored for reducing or eliminating the difficulties New Zealand manufacturers experience in having the conformance of their products assessed for the Australian market (pg 154).

Regarding the merits of the Australian approach, we accept that there is an international convergence towards UN-ECE standards, but we understand that this is likely to be a slow process. We therefore submit that there could be considerable benefits in the interim to Australian consumers in the Australian approach moving closer to the New Zealand approach.

In our view, the report should provide greater recognition that the Australian approach, combined with very high tariffs on used vehicles, provides a significant protective barrier to Australian vehicle manufacturers and increases costs to consumers. We submit that it is industry protection (rather than safety and environmental considerations) that is the overriding rationale. There may well be legitimate policy reasons for protecting local industry, but this rationale and the implications for Australian consumers should be clearly stated in the report.

Similar sentiments are as applicable across other issues around goods, such as gas appliances and food.

Therapeutic Goods

Regarding therapeutic goods, we wish to restate our earlier comments that while the concept behind such a joint agency might be desirable, we have been advised that additional regulatory costs (largely the regime applied currently in Australia) are likely to be heavy, particularly for what are often low risk products. The Cosmetic Toiletry and Fragrance Association have provided us with a recent example of these costs, where Schwartzkopf had to pay AUS $18,000 to the Australian Therapeutic Goods Authority in order for a sunscreen to be certified as 'compliant'. This is despite the product being compliant with all European standards and being been safely used all over the world. Apparently, much of this cost was for flying Australian officials to Germany. Business New Zealand would be most concerned if such a costly regime were to be adopted by a joint agency.

Exceptions Relating to Goods – Manner of Sale

We note that legislation and regulation around the manner of sale is excluded from coverage of the TTMRA. Business New Zealand considers that jurisdictional differences in this area can have considerable cost implications for Australian businesses exporting to New Zealand and New Zealand businesses exporting into multiple Australian jurisdictions. For example, differing consumer protection laws often result in products requiring different packaging and promotional material depending on the jurisdiction to be sold in – this can be very costly. While we accept that removing differences might be complicated, we disagree that it would generate few benefits (pg 171) and we consider that a move to more closely align such legislation over time should be more actively pursued.

Development of Joint Standards

Business New Zealand made contact with the Commission on 23 May to raise concerns expressed by the construction industry about the future development of Australia-New Zealand Joint Standards. We note that these concerns were mentioned in the draft report (pg 86), although no preliminary findings were made due to the late stage in the drafting of the report that the issue arose.

It has since been confirmed to us, by official contacts and Standards New Zealand (SNZ), that Standards Australia (SA) has pushed for a renegotiation of the existing agreement with SNZ on the development of joint standards, with the intention of 'significantly reducing' the existing work programme.

From this side of the Tasman, no one has been able to explain to us exactly what SA's motivations are. Indeed, there seems to be a high degree of mystification even within SNZ and among officials within the Ministry of Economic Development and the Ministry of Foreign Affairs and Trade. We understand that SA is pressing for a 'fair and equitable sharing of resources' (which indicates that this may be more a commercial dispute), but SNZ has told us that it is complying fully with the existing agreement with SA and that it is still trying to clarify exactly what SA wants.

It is our view that curtailing the development of joint standards would be a retrograde step and that SA's stance is contrary to the spirit of both the TTMRA and CER. It has caused significant concern in many sectors of New Zealand industry, concern that is shared by SNZ, departmental officials, and the Minister responsible for SNZ (the Minister of Commerce, Hon Lianne Dalziel). However, we have been told that SA's ownership structure (a private company as opposed to SNZ, which is a Crown Entity) has complicated the making of official and political representations.

We understand that the chairs and chief executives of the respective standards bodies have recently met and that SA has agreed to extend the present arrangements for a further three months to enable negotiations to take place. Clearly, much will depend on these negotiations. SNZ advises us that in preparation it has consulted widely among its stakeholders and has received 'overwhelming support' for the continuation of the existing joint standards programme.

Business New Zealand has subsequently received further representations from members concerned about the situation. There is very strong support for the continuation of joint standards development and many consider there to have been significant benefits from having joint standards.

A measure of the concern felt by manufacturing members in particular can be illustrated by the comments we received from one manufacturing company. This company has 'detected a growing anti-New Zealand sentiment from some staff within SAI' (the certification business of SA) and has considered SAI to be becoming increasingly inflexible. The company's view is that SAI is 'flexing its muscles' and attempting to become a monopoly certifier for Australia and New Zealand.

The same company also expressed serious concerns about whether New Zealand manufacturers and suppliers will continue to be represented on standards-making committees should joint standards development be curtailed. The company noted that it is one of only three manufacturers of its product line in the world (the other two being American) and that no product is manufactured in Australia. While SA and SNZ co-operate the company does not consider there to be a need for it to establish an Australian operation, but it fears that it could be forced to consider doing so if it becomes harder, as a New Zealand company, to participate in standards development in that market.

Business New Zealand submits that the Commission should further investigate this issue and seek to use what influence it can to ensure that the outcome is fully consistent with the spirit of the TTMRA and its goal of facilitating of trade between our two countries. We hope that the negotiations will result in an agreement that will preserve the development of Joint Standards to the greatest extent possible, but fear that without official approaches from the Australian side that such an outcome will be significantly more difficult to achieve.

Jurisdictional Issues

Business New Zealand agrees with the Commission's preliminary finding 8.5 in relation to fragmentation of responsibilities across agencies in Australia impeding

progress towards mutual recognition and harmonisation. While this recommendation was made specifically in respect to hazardous substances, industrial chemicals, and dangerous goods, we consider that the sentiment is applicable generically (including issues around the manner of sale discussed above).

We are also aware of the highly undesirable situation where sunset clauses in Queensland and Tasmanian TTMRA legislation have inadvertently been allowed to expire. The implication is that there are now almost certainly people practicing occupations unlawfully and goods being sold unlawfully – and not just in Queensland and Tasmania. Although we understand that Queensland at least is moving to remedy their oversight, there are still significant risks arising from brief legislative 'holes' that are not easily remedied even when legislating retrospectively. We are aware of an opinion suggesting that at least in theory all jurisdictions (including New Zealand) might need to legislate to fully address the oversights made by the two states. If a lesson can be learnt from this debacle, it is that sunset clauses are inappropriate for legislation governing ongoing obligations between jurisdictions.

We would be happy to discuss the points raised in this letter.

Yours sincerely

Simon Carlaw
Chief Executive

25 June 2003

Media Statement

Strategy to improve hazardous substances work

The government has released a plan to reduce the cost of complying with the Hazardous Substances and New Organisms Act without compromising safety and the environment.

Environment Minister, Marian Hobbs said the HSNO Act was an innovative way of regulating hazardous substances. The hazardous substances part of the act came into force in July 2001, replacing a variety of laws regulating dangerous chemical goods.

"But because it was a new approach there have been some areas where it doesn't work as well as it should," Marian Hobbs said. "The Hazardous Substances Strategy released today will put that right."

The strategy is a comprehensive package to simplify the transfer process for existing substances, reduce application costs for new substances and improve the compliance and enforcement of HSNO.

"The strategy will directly address the concerns raised in a HSNO costs survey of businesses and research groups released today by my colleague John Tamihere," Marian Hobbs said.

The main change is that the Environmental Risk Management Authority (ERMA) – the agency that decides on applications to import, develop, or manufacture hazardous substances in New Zealand – will have more flexibility to base its decisions on the actual risk posed by a particular substance or group of substances.

"ERMA will have the means to assess low-risk applications more quickly and efficiently than currently," the minister said. "As a result, costs to applicants will be reduced substantially. These changes will encourage newer, safer chemicals into New Zealand – tilting the playing field in favour of cleaner and greener substances."

Changes are also proposed to speed up the transfer of hazardous substances from controls made under old legislation to controls made under HSNO.

"Simplifying the transfer process is a key element of the strategy," the minister said. "The sooner substances are transferred, the simpler it will be for people. We intend to implement these changes to HSNO by early next year."

The strategy also proposes to strengthen the enforcement role of ERMA, and changes to the Act clarify the part played by territorial authorities and regional

councils, in monitoring compliance with the law and enforcement where there have been breaches.

Major changes to the hazardous substance approval process will be the subject of a public discussion document due to be released in November.

The proposals are quite separate from amendments, currently before Parliament, to the way HSNO operates for new organisms, including genetically modified organisms.

Copies of the Hazardous Substances strategy can be viewed on: www.mfe.govt.nz

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