DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES

File Reference: L2003/0251

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Subject: **Submission on the Mutual Recognition Schemes**

Dear Sue

Thank you for your letter of 26 August 2003 in which you raised a number of issues where you sought clarification. I regret the delay in responding but I have been out of the office for the last three weeks.

Taking each of the issues in turn our responses are as follows:-

whether, in every case, Australia recognises conformity assessments to UN-ECE technical regulations subject to accreditation by the Australian inspection services.

There are two phases to the conformity assessment requirements under both the UN-ECE and Australian arrangements. In Australia and other developed countries, with the exception of the USA, a manufacturer is required to demonstrate that it has conforming designs prior to supply to the market. This involves testing the vehicle or component in a laboratory where confirmation is necessary that the laboratory is capable of conducting the necessary tests. The second phase involves confirmation that the manufacturer is building vehicles or components to the type approved. These conformity assessment phases are known in Australia as Test Facility Inspection and Conformity of Production respectively.

UN-ECE Regulations apply to individual vehicle components such as seat belts, headlamps, exhaust emissions, etc. Where a vehicle manufacturer chooses to claim compliance with the Australian Design Rule requirements by submitting an ECE approval, Australian officials would not conduct conformity assessment at the manufacturer of the vehicle component concerned. This circumstance only applies where there is provision in the Australian Design Rule to accept the particular ECE Regulation.

It is important to note that under the UN-ECE system there are no provisions for whole vehicle type approval and the Australian system, and for that matter the European system, is based on whole vehicle type approval. Consequently, conformity

assessment is still necessary at the vehicle manufacturer irrespective of the number of ECE approvals held by the vehicle manufacturer for the individual components.

whether approvals are withdrawn if Australian inspection service is not satisfied with the competence of the conformity assessment body that undertook those assessments

Outside the ECE arrangements, where non-conforming product is identified either during Test Facility Inspection or Conformity of Production or from field reports, corrective action must be undertaken by the vehicle manufacturer. This normally involves recall of vehicles already supplied to the market and, where necessary, redesign of the vehicle to bring it into conformity. The *Motor Vehicle Standards Act 1989* (the Act) has provisions where approvals issued may be cancelled, suspended or varied. The responsibility for compliance with requirements rests with the holder of the approval – the vehicle manufacturer. There are no provisions under the Act where action may be taken against a conformity assessment body.

In the case of acceptance of ECE approvals there are two circumstances that need to be considered – where Australia accepts an ECE approval unilaterally and where Australia has applied the particular ECE Regulation in question under the provisions of the UN-ECE 1958 Agreement.

In the first instance Australia would take up any non-conformity with the vehicle manufacturer concerned and ensure that future vehicles were brought into conformity and have any non-conforming vehicles already supplied to the market recalled and rectified.

In the second case, similar action would be taken to resolve the immediate issue and at the same time the Designated Administrative Authority of the country that had issued the approval would be advised of the non-conformance. There are dispute settling mechanisms in the 1958 Agreement to resolve contentious issues.

that under the low volme scheme the requirements for compliance with ADRs to be demonstrated are relaxed

Yes. The current arrangement is known as the Specialist and Enthusiast Vehicle Scheme and applies to certain imported used vehicles.

that once a country has applied a regulation under the UN-ECE, it is obliged to accept conformity assessments from all other countries that have also applied the technical regulation

Yes.

that for those countries where Australia requires its own inspections to be done, Australian exports are also required to obtain further conformity assessments that meet the specific requirements of those countries. Or do some or most countries unilaterally recognise Australian conformity assessments? Alternatively, does Australia have bilateral MRAs with some countries?

As far as we are aware Australian exporters are subject to whatever conformity assessment requirements apply in the market countries.
Australia has entered into two bilateral MRAs – the *Agreement on Mutual Recognition in relation to Conformity Assessment, Certificates and Markings between Australia and the European Community* and the *Mutual Recognition Arrangement concerning Technical Regulations for Certain Road Vehicles, Equipment and Parts between the Thai Industrial Standards Institute of the Kingdom of Thailand and the Federal Office of Road Safety (FORS) of Australia.*

The scope of the EU MRA is restricted to a limited number of vehicle regulated design features. Vehicle manufacturers seeking to utilise the MRA are required to make their intentions known to the authorities in the respective countries before commencing any activity because the MRA only covers the acceptance of test reports for automotive product and not the issue of approval certificates.

The Thai MRA has a very restricted scope covering the technical regulations related to automotive glass, exhaust emissions and seat belts. As with the EU MRA, the country where the product is to be marketed issues any approval certificates.

Require conformity assessment bodies to declare in their conformity assessments whether they have also undertaken a consultancy role in respect of the organisation being assessed; and

Permit member countries not to recognise any conformity assessment where the conformity assessment body has also played a consultancy role that may have created a conflict of interest.

This situation does not arise under the provisions of the UN-ECE Agreement. Approvals under the Agreement are signed by and any subsequent conformity assessments are conducted by or on behalf of the sovereign state that is a signatory to the Agreement. It is therefore the responsibility of the signatory state to ensure that any issues such as conflict of interest are properly managed.

As can be seen in our particular field of operation the issues you raise are not applicable. However, the conflict of interest issue does undermine the credibility of accreditation to the ISO 9000 – 2000 standards where the situation you have described occurs. You may wish to seek clarification from JAS-ANZ if it has arrangements in place to ensure conflict of interest issues are appropriately resolved.

Thank you for your explanation of the use of the term ‘standard’. The purpose of our raising this issue is to draw attention to the definitions contained in the World Trade Organisation Agreement on Technical Barriers to Trade to which Australia is a signatory.

It is perhaps worth noting that the UN-ECE 1958 Agreement requires any country that has adopted an ECE Regulation must allow a approved product into its market and not apply any additional requirements. The requirements of a particular ECE Regulation do not need to be made mandatory in domestic law under the provisions of the Agreement only to ensure that the approved product has free access into the market.

Yours sincerely

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9 September 2003