Our ref: File 19253

Mr Tony Hinton
Commissioner
MRA
Productivity Commission
PO 80
BELCONNEN ACT 2616

Dear Mr Hinton

EVALUATION OF THE MUTUAL RECOGNITION SCHEMES

Thank you for providing copies of the Productivity Commission's draft research report entitled *Evaluation of the Mutual Recognition Schemes*.

Responses were sought from State Government Departments and agencies and these generally indicated support for the Commission's preliminary findings.

The Department of Consumer and Employment Protection reiterated concerns with processes surrounding dangerous consumer products and suggested that product safety should be the subject of special exemption. The Department acknowledges that in the long term the best solution is for uniform product safety legislation and the Ministerial Council for Consumer Affairs is sponsoring a project to this end.

In relation to preliminary finding 7.4 concerning the restrictions in Australia on the sale of pornographic material, the Department of Justice advised that the restrictions placed upon the advertising, sale and distribution of X films form part of the *Censorship Act 1996* (WA). This legislation is consistent with that of the other States. Given the extant opposing views in the community about this material, the Government is satisfied that the current legislation represents an effective compromise which does not thwart the rights of those who choose to acquire this material for private purposes.

I note that the States and Territories joined with the Commonwealth and New Zealand Governments in submitting a discussion paper to the Commission on expanding areas of the operation of the Trans Tasman Mutual Recognition Arrangement (TTMRA). As you are aware, Western Australia has not yet adopted the TTMRA and has legislation currently before State Parliament. Notwithstanding this, the Office of Federal Affairs contributed to the preparation of the discussion paper with the aim of generating debate on the TTMRA. Some preliminary comments were received on the discussion paper. There was little support for suggestions in the paper concerning processes around automatic registration. It seems the current deemed registration process would be the most appropriate system. It is considered that the period available to determine appropriate "home jurisdiction" registration under the current deemed registration

provisions is more suited to protecting consumers than a system of automatic registration.

The discussion paper raises the issue of cross border service provision in circumstances where service providers undertake temporary work in a jurisdiction without registering or retaining a physical presence. Comments received suggest that in the case of real estate and property settlement services in particular it is difficult to oversee an agent if their office or trust accounts are not physically located in the State. It is noted that issues concerning cross border service provision are considerable, particularly in light of developments in internet technology and access to global markets, and that mutual recognition is just one aspect to be considered.

The discussion paper addresses the possibility of expanding the TTMRA to encompass partially registered occupations or the introduction of special provisions to address impediments to mobility for those engaged in partially registered occupations. Western Australia would be opposed to any expansion of the TTMRA to include partially registered occupations and would reserve the right to require registration of an individual where that person's occupation requires registration in Western Australia. It is important in this situation that protection of consumer interests is upheld over the mobility of unregistered interstate workers.

Finally the discussion paper considers the extent to which TTMRA issues are taken into account in policy development and whether there may be mechanisms or processes which might help in the early identification of TTMRA issues. It is suggested that existing processes such as the *Council of Australian Governments (COAG) Principles and Guidelines for Standard Setting and Regulatory Action* and regulatory impact statements might be appropriate. Western Australia does not use regulatory impact statements and while the *COAG Principles* might prove to be a suitable set of guidelines the preferred position would be that individual jurisdictions undertake to ensure their policy development processes include consideration of TTMRA issues. Western Australia does not see the need for a new tribunal or forum to advise on TTMRA policy issues. Significant TTMRA issues can be dealt with through COAG and its meetings of senior officials.

Thank you for the opportunity to make a response to the Commission's draft research report and I look forward to the final report on evaluation of the mutual recognition schemes.

Yours sincerely

Petrice Judge
DIRECTOR
OFFICE OF FEDERAL AFFAIRS
September 2003