Mr Tony Hinton
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Dear Mr Hinton

REVIEW OF THE MUTUAL RECOGNITION AGREEMENT AND THE TRANS TASMAN MUTUAL RECOGNITION ARRANGEMENT

The South Australian Government welcomes the opportunity to comment on the preliminary findings of the Productivity Commission's Evaluation of the Mutual Recognition Schemes.

In particular, the South Australian Government wishes to respond to the Productivity Commission's preliminary findings relating to Container Deposit Legislation.

Preliminary Finding 7.11

Circumstances have changed and it is not clear that the Container Deposit Legislation is still warranted or cost effective. It would be appropriate for the South Australian Government to undertake a detailed assessment of the scheme.

The South Australian Government contends that there is no evidence in the Productivity Commission's Draft Report to support this finding. Discussions between the SA Government and the Productivity Commission have revealed that no submissions relating to the beverage container recycling system were received in the drafting of the Report.

The SA Government conducted a lengthy review of the beverage container provisions between 2000 and 2003 to identify the need for legislative amendments to the beverage container provisions of the *Environment Protection Act*. Commencing in 2000 with the Hudson report, the review was progressed by a project team comprised of staff from the EPA, the Department for Environment and Heritage and the Crown Solicitor's Office, in addition to an external contractor. Formal and informal industry consultation occurred throughout the review. The review examined a range of issues including:

- the growth of a recycling ethos in the community and policy directions toward extended producer responsibility

- any potential inadequacies of the current provisions in regulating the beverage container recycling industry
- whether a Code of Practice should be developed to facilitate the role and relationships between depots, super collectors, and manufacturers
- the movement of deposit-bearing containers from other States into SA
- the removal of collection areas that are not used
- defining 'classes of containers' and the EPA approval process
- establishing a CDL industry Sub Committee
- reviewing existing definitions and defining new terms where necessary.

Following the review, the EPA has prepared a range of proposed amendments, accompanied by a draft National Competition Policy Review. The proposed amendments seek to produce greater efficiencies within the beverage container recycling system.

The container refund system has demonstrated ongoing success over the past 25 years and is supported overwhelmingly by the SA community. The scope for a national container refund system has also been recently discussed at the Environment Protection and Heritage Council. Accordingly, the South Australian Government remains committed to retaining and improving the CDL system.

The Government offers the following comments in response to the information provided in the Report at pages 116-117.

Under the scheme, a consumer pays a small deposit on the purchase price of certain beverage containers and receives a refund for return of the empty container (most containers are returned to a depot rather than the original retailer).

This information is somewhat inaccurate. Consumers do not pay a "deposit" further to the purchase price of a beverage. Rather, the beverage container provisions of the *Environment Protection Act* require that depots provide consumers with a 5 cent refund on each approved container, with a 10 cent refund available at some point of sale outlets. Beverage prices set by retailers/beverage distributors may include a 5 cent refund that is not advertised separately from the price of the beverage itself, and may also include industry handling charges.

The scheme requires the Environment Protection Authority to approve containers and their refund marking (or labelling) before sale (section 68 of the Environment Protection Act (SA) 1993).

The Productivity Commission's Draft Report fails to mention that, as part of its container approval process, the Environment Protection Authority must also consider the collection or disposal arrangements put in place by manufacturers or distributors as part of the extended producer responsibility ethos. A container deposit system was introduced in South Australia in 1977 via the *Beverage Container Act 1975* because the beverage industry was unwilling to accept responsibility for single-use non-refillable containers first marketed during this period. An industry-imposed voluntary deposit previously existed in South Australia to encourage the return of refillable containers for washing/reuse.

Proposed amendments to the *Environment Protection Act* currently being considered by the Government would recognise policy directions toward extended producer responsibility and incorporate a more holistic approach to recycling.

Consequently, businesses that wish to sell their beverages in South Australia incur additional costs in labelling.

Most beverage containers are marketed nationally and labelled accordingly. That is, a beverage container sold in Queensland (for example) would bear the refund marking, "5 cents refund at collection depots when sold in SA", even though the container would clearly not be eligible for a refund.

The cost of labelling is a "once-off" applicable to all industry stakeholders regardless of their origin. After a label has been produced there is no further need to modify the refund marking.

The Commission notes that other jurisdictions promote recycling and litter management in ways that do not require exemption from the mutual recognition provisions, thus avoiding the costs that the South Australian scheme imposes on producers from outside the state that also supply product to the South Australian market.

The Productivity Commission declines to acknowledge the following issues:

- Costs imposed on interstate distributors/producers wishing to market beverages in SA are apportioned equally to SA manufacturers. That is, the legislation does not discriminate between producers marketing beverages in SA only and those marketing beverages in more than one State.
- Beverage container refund systems are a matter of ongoing political dispute. Industry lobby groups (particularly those based in the Eastern States with a national marketing profile) continue to proffer alternative schemes with the express aim of denying the introduction of SA's scheme to other States. This is because the beverage container refund system is incorrectly perceived as cost-ineffective.
- A wealth of information exists about the success of the beverage container refund system in South Australia. SA is acknowledged as having the highest return rates (against sales) for beverage containers in Australia. Further, the quality of recyclable materials originating from SA is highly sought after in material markets as it is clean, sorted and uncontaminated. No other jurisdiction can claim to be so successful in achieving the goals of recycling, which are reduction of virgin material use, and reuse of processed materials.
- The recycling and litter management programs promoted by other jurisdictions fail to address the key issue of beverage container litter, particularly where it appears in country areas, roads, parks and beaches. These are sites where kerbside recycling and litter education schemes are ineffective or in-operational.
- Because of the beverage container refund system, community groups and other social organisations can supplement their funding and income.

- South Australia is recognised as more visually attractive than other States simply because there is less beverage container litter in public places. A 'clean and green' environment also contributes to a recycling ethos among the community.
- The 2000 Report on the *Economic and Environmental Impacts of Container Deposit Legislation (CDL) in SA* produced by Hudson Cole Solicitors (the Hudson report) recognises:

"We believe that CDL's unique application in South Australia offers this State a 'point of difference' in its ability to market a more litter free environment associated with positive environmental outcomes. The system itself also has export potential should other States or nations seek similar benefits."

and

"Overall, it is estimated that CDL has a positive direct and follow on (multiplier) employment impact on the State of 1674 full and part time jobs (taking into consideration the negative impacts of handling fees and other costs)."

- The beverage container refund system is strongly supported by Local Government to assist with the costs associated with kerbside collection, which is why interstate Councils and Shires are continually lobbying for its introduction.

There is a case for removal of this permanent exemption.

The South Australian Government strongly contends that there is *not* a case for removing the permanent exemption applying to the beverage containers provisions of the *Environment Protection Act*. The issues discussed in the Productivity Commission's Draft Report demonstrate a limited understanding of the technical issues associated with the system and its benefits for South Australia.

The South Australian Government offers the following additional comments in response to specific preliminary findings contained in the Productivity Commission's Draft Report.

Preliminary Finding 5.1

Achieving MRA and TTMRA objectives (in relation to both goods and occupations) would be assisted by jurisdictions disseminating, in a coordinated manner, information on the obligations and benefits of mutual recognition. This campaign to enhance the knowledge and awareness of mutual recognition would be directed at their own regulators, local governments, relevant industries and professional associations.

Teacher registration authorities continue to work collaboratively to achieve these aims.

Preliminary Finding 5.2

As part of the awareness campaign referred to in preliminary finding 5.1, regulatory authorities could be informed that they have scope to obtain under mutual recognition relevant information about applicants, without contravening privacy laws.

This was a significant issue raised by all teacher registration authorities. Mechanisms to enable the appropriate exchange of information will need to be further developed to achieve consistency. In addition, differences between individual jurisdictions regarding the type and scope of information required on initial registration will need to be addressed.

South Australian legislation significantly restricts the registration authority's ability to collect and therefore exchange information in relation to "fitness and propriety issues".

Preliminary Finding 5.3

Given that there is provision for postponement in certain circumstances, the one-month period for registration boards to check applications under mutual recognition appears appropriate.

There is concern from all participating jurisdictions, including South Australia, that a person is "deemed" to be registered during this time and therefore is eligible for employment. This may be perceived as a public interest and child protection issue.

Whereas all other persons applying for teacher registration must undergo "fitness and propriety" checks and a police check before they are eligible for employment, persons applying under mutual recognition arrangements are treated differently. The South Australian Government considers that the public interest would be better served by an approach that enabled a screening process to occur before a person was eligible for employment.

Preliminary Finding 5.4

Information flows among registration boards across jurisdictions would be enhanced by a greater use of electronic database registration systems with capacity for access by counter-party boards.

The South Australian Government agrees with this finding in principle, however, notes that there may be cost implications for self-funded registration boards.

Preliminary Finding 5.6

Australian occupational registration authorities should continue to consider developing national registration systems where the benefits justify the costs.

This issue was discussed at the recent MCEETYA meeting. As stated in the *draft* Minutes, the Council:

- requested the preparation of model uniform legislation, to be considered by all States and Territories, that provides for nationally consistent procedures and processes for the conduct of criminal record checks of persons seeking to work in educational settings with children
- agreed to advise the Standing Committee of Attorneys-General of its intention to consider model uniform legislation throughout Australia
- endorsed the decision of the Australian Education Systems Officials Committee that Queensland have lead responsibility for progressing this issue, in collaboration with other legislation.

The Council also agreed that the Teacher Quality and Educational Leadership Taskforce prepare a paper for MCEETYA's consideration on arrangements to ensure the effective national interchange of both policy and operational information amongst the authorities responsible for teacher registration in each jurisdiction.

There has already been much work done by the registration authorities to identify and address common issues and develop mechanisms to promote consistency on a national basis.

The South Australian Government supports this recommendation in principle. This is consistent with the screening recommendations proposed in the Layton Review of Child Protection in South Australia and the decision taken at MCEETYA.

Preliminary Finding 5.8

Existing mutual recognition arrangements seem to be sufficiently flexible to address the needs for "local knowledge" requirements to be incorporated into the delivery of professional services and

Preliminary Finding 5.9

The efficacy of professional standards and therefore, confidence in the mutual recognition process, is being enhanced by the trend for jurisdictions to require some degree of "current competency" as a requirement of registration.

Current South Australian legislation restricts the authority's ability to require applicants to demonstrate current competence or "recency of practice".

It is the view of the South Australian Government that it would be in the best interests of the teaching profession and the wider community to achieve a level of consistency in professional standards. A taskforce of MCEETYA is currently developing a National Framework for Standards. This may impact on the teacher registration authorities.

Preliminary Finding 6.3

There are grounds for examining options to streamline the temporary exemption process, especially in cases where there are pressing health, safety or environmental concerns.

The South Australian Government would like to reiterate its view that consideration should be given to the adoption of a mechanism whereby, wherever possible, amendments to the mutual recognition schemes by made by a simple majority of jurisdictions or a two-thirds majority, rather than by unanimous agreement of all 10 jurisdictions as presently required.

Preliminary Finding 6.4

There are grounds for establishing a trans-Tasman electronic list for sharing information on product recalls and bans, as an interim measure before implementing a fully integrated ban system with a uniform limited ban duration. A requirement that all product bans be subject to consideration by the relevant Ministerial Council as per the temporary exemption mechanism would prevent potential abuse of the ban option.

The South Australian Government supports the proposal for improved sharing of information on product recalls and bans and notes that under section 9 of the SA *Electrical Products Act 2000* an electrical product, the sale of which is prohibited under section 8 of the Act, becomes exempt for the purposes of the MRA and TTMRA. Such an exemption applies for 12 months, or until the prohibition is revoked, whichever occurs first. This mechanism is a useful model to clarify the effects of product bans under the TTMRA.

It is recognised that the different effects and lengths of product bans have the potential to undermine the mutual recognition process. Such matters should, as far as possible, be harmonised. Once this has been done, the "abuse of the ban option" is not likely to occur. The more significant issue, which is associated with bans, is that of the uniform prohibition of the use of unsafe products.

The proposal for consideration of all product bans by the relevant Ministerial Council is unclear. If it were to be required before any bans were imposed, it could lead to considerable delays. The South Australian Government believes that the consideration of uniform bans by Regulators, on the basis of shared information, each under their own legislation, may result in less delay.

Preliminary Finding 6.6

The incorporation of mutual recognition considerations into Australia's policy and regulation-making processes would be enhanced by including mutual recognition obligations in the checklist for the current regulatory impact statement requirements or guidelines that apply at each level of government.

This proposal is supported in principle. However, the South Australian Government considers that it would be important that any RIS that is required be more in the form of a requirement to state that mutual recognition issues have been considered, rather than in the form of an inflexible, formalised process with the potential to slow down mutual recognition processes.

Preliminary Finding 7.2

There are grounds, based on differing jurisdictional judgements, for retaining the MRA and TTMRA permanent exemption for the sale of fireworks.

This preliminary finding is consistent with the position put forward by the South Australian Government on previous occasions.

Preliminary Finding 8.3

In aligning State and Territory provisions for inner labelling of packaging, benefits would arise from consultations with relevant authorities in New Zealand.

The Australian Dangerous Goods Code is being revised and it is anticipated that the inner labelling requirements may align with those in New Zealand within two years.

Preliminary Finding 8.5

In Australia, the fragmentation of responsibilities across agencies in relation to hazardous substances, industrial chemicals and dangerous goods impedes progress towards achieving mutual recognition or harmonisation with New Zealand.

To harmonise Australian and New Zealand notification and assessment of industrial chemicals would require either Australia adopting the New Zealand model of assessment and regulation of hazardous substances, or New Zealand fundamentally changing its legislation relating to hazardous substances, which it has just introduced. The South Australian Government does not believe that either option is likely in the foreseeable future. In any case, the move toward a goal of global harmonisation, proposed for 2008, will overtake this consideration.

Preliminary Finding 8.6

A major work program to harmonise classifications of chemicals between Australia and New Zealand would not be warranted, except in relation to Material Safety Data Sheets (MSDSs) and inner labelling, until the Globally Harmonised System for the Classification and Labelling of Chemicals (GHS) is completed and international trends on its implementation can be identified. In the interim, there may be an advantage in NICNAS and ERMA exploring the feasibility of identifying chemicals and products or substances on their registers with low risk profile that could be removed from the scope of the special exemption.

This preliminary finding is consistent with the position put forward by the South Australian Government on previous occasions. New Zealand is expected to approve their Code of Practice for MSDS, which is based on the Australian NOHSC COP and the GHS for chemicals.

Preliminary Finding 8.7

The special exemption on hazardous substances, industrial chemicals and dangerous goods should be extended, without annual rollovers, until 2008, when the GHS is

expected to be implemented worldwide. The scope of the exemption could be reduced as alignment occurs with the emerging GHS and between the States and Territories, the Federal Government and the New Zealand Government. Annual reports on progress could be submitted to the Ministerial Council on Workplace Relations and COAG.

This preliminary finding is consistent with the position put forward by the South Australian Government on previous occasions.

Preliminary Finding 8.8

There appear to be advantages to Australia and New Zealand harmonising their approaches to implementing the GHS, in alignment with the approaches that are taken by their major trading partners, particularly in relation to chemical concentrations and whether classifications should be based on substances or chemicals. However, as there are many regulatory barriers to progressing the Special Exemption on Hazardous Substances, Industrial Chemicals and Dangerous Goods, there are likely to be significant benefits from conducting a joint Australian and New Zealand review to:

- *Identify ways to maximise the potential of the GHS to eliminate unnecessary compliance costs for business and improve the international competitiveness of Australia and New Zealand;*

- *Develop options for coordinating policy between jurisdictions; and*

- *Identify options for streamlining classification and approval processes between jurisdictions and aligning documentation requirements.*

This preliminary finding is consistent with the position put forward by the South Australian Government on previous occasions.

Preliminary Finding 8.15

Administration costs would be reduced by extending the special exemption for gas appliances for a maximum of three years, without annual roll over requirements, to allow time to:

- *assess the effectiveness of the new New Zealand compliance regime*
- *address the issues relating to unflued heaters*
- *explore options to eliminate or reduce duplicate conformity assessment requirements between Australia and New Zealand*
- *examine options for mutual recognition of conformity assessment to international standards carried out in Australia, New Zealand or third countries*
- *identify any products or mandatory requirements that will require a long term exemption.*

The South Australian Government supports the general direction indicated in this section.

The proposed activities listed will, however, require detailed discussions and negotiations. The South Australian Government notes that it has often been difficult to reach agreement on joint Australian and New Zealand Standards. Therefore, it is suggested that the special exemption should be extended for a minimum (rather than a maximum) of three years to allow this to occur.

The South Australian Government further notes that the discussion is focused on energy efficiency and labelling but little is said about differences in safety standards. Differences in this area will also need to be resolved.

Preliminary Finding 8.16

The objectives of mutual recognition would be assisted if trans-Tasman discussions were held on aligning Australian mandatory requirements and New Zealand voluntary standards for energy efficiency and labelling as closely as possible, with the goal of making mutual recognition or harmonisation possible.

The South Australian Government considers that this proposal would probably be unworkable in its present form. Voluntary standards are *voluntary*, and may not be adhered to. It would therefore, be difficult to align voluntary and mandatory Standards.

MIKE RANN
Premier

/ / 2003