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Mr T Hinton
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Attention: Ms S Holmes

Dear Mr Hinton

EVALUATION OF THE MUTUAL RECOGNITION SCHEMES
DRAFT RESEARCH REPORT

Thank you for the telephone briefing of 25 June 2003 to Ms Amelia Jones of this Department regarding the Productivity Commission's *Evaluation of the Mutual Recognition Schemes Draft Research Report* and the invitation to make a submission in response to the draft report. Your letter of 8 August 2003 also refers to this issue.

At the outset, I should confirm that the Tasmanian Government agrees with the principles of mutual recognition and recognises the substantial benefits to participating jurisdictions of improving the mobility of goods and labour. The Government therefore supports the overall thrust of the draft report and the majority of the preliminary findings.

However, I provide the following comments regarding issues of concern for Tasmania.

Processes for applying mutual recognition obligations

Preliminary Finding 5.1: Enhancing knowledge and awareness of mutual recognition

The draft report contains various proposals for improving awareness of the benefits of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) and ensuring that policy makers take these schemes into account when developing regulations.

The Tasmanian Government agrees that these recommendations should be implemented if the schemes are to be effective, but considers that an awareness programme is unlikely to have the desired effect unless the process for the harmonisation of regulations and standards is simplified.

This issue is discussed in the context of the proposals for reform of Part V of the MRA.

Teacher registration

Preliminary Findings 5.2 – 5.7: Occupational registration

The deemed registration of teachers is a key area of concern for the Tasmanian Government as it is inconsistent with the Government's policy, reflected in Tasmania's *Teachers Registration Act 2000,* that there be sufficient checks as to whether a person is fit and proper, and qualified to teach, before that person is entitled to commence teaching. The draft report fails to recognise the importance of a full and proper process of teacher registration in meeting community expectations in relation to child safety. The Tasmanian Government therefore cannot support Preliminary Findings 5.2 – 5.7 in the draft report.

The Teachers Registration Act was introduced to:

- raise the status and desirability of teaching as a profession in Tasmania;
- optimise the educational outcomes of students by ensuring that teachers possess minimum qualifications and a minimum level of competence; and
- prevent persons who are not of good character being employed in schools.

As a regulatory body, the Teachers Registration Board enables schools in Tasmania to employ registered teachers in the knowledge that they have already been assessed as satisfactorily meeting certain standards of qualifications, competence and good character.

One of the prime reasons for the Board's existence is to ensure that a teacher is a 'fit and proper person' **before** that teacher can be employed in a school. To suggest that concerns about 'fit and proper person' checks and deemed registration would be best addressed at the employment level undermines both the provisions and the intent of the Teachers Registration Act.

While it is acknowledged that some states and territories may undertake good character checks, as yet there is no agreed standard in relation to these checks. In addition, some states with teacher registration systems have not checked their existing stock of teachers, who were automatically registered when the systems were introduced. This is in contrast to the process in Tasmania, where all teachers are subject to the full check, including a police check.

Until there is agreement on the standards relating to character checks it is clearly in the interests of students and the community that all teachers undergo a thorough character check, including a police check, or provide evidence that they have satisfactorily undergone a recent check in another jurisdiction, before they are permitted to be employed as a teacher in a new jurisdiction.

The importance of this issue was recognised at the meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) in July 2003. MCEETYA requested the preparation of 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. MCEETYA also agreed to advise the Standing Committee of Attorneys-General of its intention to consider model uniform legislation that would affect the operation of spent conviction legislation throughout Australia.

The Tasmanian Government offers two suggested solutions to this issue:

1. Temporary exemption for teachers

   Most Australian jurisdictions have introduced, or are progressing the introduction of, teacher registration. The temporary exemption of teachers would provide an opportunity for the development of uniform legislation relating to character checks arising from the request by MCEETYA. Once standards are harmonized across all jurisdictions, including New Zealand, and the necessary checks have been completed, teachers could again be subject to mutual recognition.

2. Deemed registration, but a delay in authorisation to teach for one month

   Teachers with a genuine reason for moving from one jurisdiction to another would usually know more than one month in advance that they are likely to require registration in the second jurisdiction. This ensures that teachers could apply for registration under mutual recognition, but not be authorised to teach for one month, to allow full and proper characters checks to be conducted, without real disruption to their plans to relocate. Again, this may only be needed as a temporary measure if all jurisdictions adopt a uniform approach to this issue.

In order to ensure that the mutual recognition schemes reflect the intent of the Teachers Registration Act in Tasmania it is imperative that the MRA and the TTMRA not obstruct the requirement for the Tasmanian Teachers Registration Board to conduct a good character check on any person **prior** to that person being employed as a teacher, if the Board is not satisfied that the necessary checks have been made.

Racing Services

Preliminary Finding 5.3: Time limits for consideration of applications for registration and periods of postponement

Section 22 of the Commonwealth's *Mutual Recognition Act 1992* only permits an extension of time for considering a licence if false information has been provided in an application, or certain documents have not been provided, or the circumstances of the applicant have materially changed since the application was lodged. There is no power under the Act to extend the period of time to consider whether to licence a person if probity checks have to be undertaken, for example, criminal history checks or audits of a person's business and personal history.

Probity checks are an integral part of racing industry licensing procedures. Under Tasmania's *Racing Act 1983*, occupational licences are required at all levels of the racing industry, including stable hands, jockeys and trainers. This is to ensure integrity controls around the animals are maintained. It is not always possible to complete these checks within one month. For this reason, the legislation needs to have some mechanism to allow extra time for consideration should this be necessary for probity checks to be completed.

Preliminary Finding 5.7: Jurisdictional "shopping and hopping"

The automatic registration of persons who have been licensed in states or territories that have less stringent registration standards creates serious integrity issues for the racing industry. The only realistic solution to this problem is to develop national licensing or registration standards. However, it has not yet been possible to get all states and territories to agree to do this.

While national standards are the ultimate solution, the mutual recognition schemes need to have a system in place that ensures, for example, that the integrity of the Tasmanian racing industry is not affected by the automatic registration of inappropriate persons simply by their having been licensed in another state or territory.

Preliminary Finding 5.9: Current competency

A number of jurisdictions are moving to require the attainment of qualifications or certificates of competency as a pre-requisite to licensing in the racing industry. However, a risk to integrity exists in the absence of uniform national standards. To encourage the development of national standards, it is recommended that this finding not be implemented until July 2005.

The governance of mutual recognition

Preliminary Finding 6.3: Streamlining the temporary exemption process

The Tasmanian Government supports Preliminary Finding 6.3 that states that "there are grounds for examining options to streamline the temporary exemption process".

The lengthy and cumbersome temporary exemption process specified in Part V of the MRA creates a disincentive to the harmonisation of standards. This process also presents significant impediments to the development of necessary new standards, such as environmental standards.

The Part V process has an unrealistic timeframe in view of its complexity, specifically the 12-month limit on temporary exemptions. The current Part V process is likely to take three or four years in total. Various options for improvement of Part V include:

- removal of the requirement to submit the proposed standard to the Head of Government of each participating party for approval. Approval by a Ministerial Council should be sufficient in all cases;

- removal of the requirement for legislation by all jurisdictions after approval by the respective Heads of Government. Legislation by a majority of the jurisdictions should be sufficient; and

- extend the temporary exemption period to three or four years (unless the Part V process is simplified). A more realistic timeframe would encourage greater use of the Part V process.

Exemptions, exclusions and special exemptions

Preliminary Findings 7.1 – 7.18: Permanent Exemptions and Exclusions

Although the Tasmanian Government does not object to the recommendations in Preliminary Findings 7.1 – 7.18, there is some concern that the draft report gives no consideration to possible additional exemptions.

In particular, to address potential problems in the area of environment protection, additional permanent exemptions should be considered for inclusion in legislation used to implement the MRA and TTMRA, including:

- any law of a state/territory which gives effect to a National Environment Protection Measure made under the Commonwealth's *National Environment Protection Council Act 1994*; and

- any provisions of environmental legislation which address regional or local issues not present in every state or territory.

National Environmental Protection Measures (NEPMs) generally provide for states and territories to implement agreed environmental standards, which sometimes necessitates legislation at the state and territory level. These policy instruments will often not be identical because of regional or local environmental factors. If such legislation applied to the sale of particular goods and were to comply with mutual recognition, it would be necessary to undertake the process outlined in Part V of the MRA. This would involve unnecessary duplication as NEPMs are national standards, developed through a national consultative and decision-making process. Furthermore, any regulatory measures taken to ensure that a nationally agreed NEPM standard is adhered to must be subject to a Regulatory Impact Statement within that jurisdiction.

It is not always appropriate to develop national standards and uniform legislation in all states and territories for environmental matters that are not national in nature. However, legislation may nonetheless be justifiable to address those matters in the affected states and territories. A specific air pollution problem is a prime example that necessitates different policy responses and legislation, such as high standards for wood heaters in Tasmania.

It is likely that some existing environmental regulations in Tasmania and elsewhere would be found invalid if legally challenged because of inconsistency with MRA/TTMRA legislation. This has serious implications for environmental protection.

An example is the wood heater type approval and sale provisions in Tasmania's *Environment Protection (Domestic Solid Fuel Burning Appliances) Regulations 1993*. It seems likely that wood heaters may be imported into Tasmania from another state or territory and sold in Tasmania even where they do not comply with the above Regulations, if they may be legally sold in the state or territory of origin. The provisions will be replaced later this year with similar but more stringent provisions in the Environment Protection Policy (Air Quality), which may be inconsistent with the mutual recognition legislation. This is an important regional issue for Tasmania as Launceston has Australia's worst levels of particulate pollution.

To address this issue, the Tasmanian Government recommends that following options should be considered:

- 'grandfather' existing legislation that may be inconsistent with the MRA/TTMRA legislation. In most jurisdictions, subordinate legislation would lapse in due course under regulation review provisions, and national standards could then be made if appropriate through the MRA Part V process; or

- exempt the existing legislation for a specific period of time, say five years, in order to conduct a review of the legislation and make national standards through the MRA process where appropriate.

Preliminary Finding 8.5: Fragmentation of responsibilities in relation to hazardous substances, industrial chemicals and dangerous goods

Workplace Standards Tasmania is working within the frameworks provided by the National Occupational Health and Safety Commission (NOHSC) to reach consistency in national Standards, particularly in the identified national priority Standards.

The existing exemption regime for those areas in the TTMRA that apply to chemicals, dangerous goods, and hazardous substances must be maintained while the complex work of developing and implementing new legislation for the regulation of these goods is undertaken.

Scope of the schemes

Preliminary Findings 9.7, 9.8 and 9.9: Expanding the scope of the schemes

The draft report suggests investigation into expanding the scope of MRA to cover the transport, storage, handling, inspection and usage of goods.

The Tasmanian Government supports in principle the expansion of the objectives of mutual recognition to cover the transport, handling, storage, inspection and usage of goods. However, the Tasmanian Government agrees with Preliminary Finding 9.7 that states "there are areas where jurisdictional differences are warranted in relation to regulations for the use of goods". Some use restrictions are important because of local environmental concerns and any extension would have to ensure jurisdictions can impose restrictions in the public interest. Replacement with national standards and mirror legislation through the process outlined in Part V of the MRA would be an unnecessarily cumbersome and resource intensive task in such cases.

The Tasmanian Government supports the suggestions in Preliminary Finding 9.9 that a single jurisdiction undertakes a pilot evaluation of its regulations in relation to the use of goods.

Preliminary Finding 7.12: Tasmanian law relating to abalone, crayfish and scallops

The MRA and TTMRA both provide the same exemption, as part of the specific laws relating to goods, for those provisions of Tasmania's *Living Marine Resources Management Act 1995* relating to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size.

Tasmania is the only jurisdiction with an exemption in relation to commercially protected fish. The exemption is required in order to protect Tasmanian commercial fish resources from inappropriate fishing and/or overfishing.

Restricting the size of individual abalone, crayfish or scallops taken by commercial and recreational fishing sectors is an essential fisheries management tool to maintain fish stocks at sustainable levels. The Australian abalone, crayfish and scallop fisheries comprise a number of different species. These species have different biological and life history characteristics. In particular, species grow at different rates and become sexually mature at different sizes and ages. Therefore, a size limit, which is applicable to one species, may be inappropriate for others.

The biological characteristics of abalone populations of the same species vary markedly over both large and small temporal scales. Growth rates and the size/age of maturity varies markedly.

Abalone

Blacklip abalone (*Haliotis rubra*) is distributed across southern Australia and forms the majority of the Tasmanian fishery. Growth rates over this area are very different, and management agencies have responded by implementing a range of different size limits. Size limits in Tasmania are very different from those in other states.

Victorian blacklip size limits range from 100 mm to 120 mm. The NSW blacklip size limit is 115 mm while in South Australia blacklip size limits are 125 mm and 130 mm. For greenlip, the South Australian size limits are 130 mm and 145 mm. Blacklip in Tasmania are appreciably bigger and the size limits in Tasmania are generally bigger than those in Victoria.

Within Tasmania, abalone grow slowest and mature at a smaller size in Bass Strait and along the north coast. Growth rates generally increase in a southerly direction, with bigger abalone and the size at maturity increasing. However, significant variation is also found within small distances. Abalone growth rates found on neighbouring reefs can be appreciably different, posing a significant management challenge.

Catch limits (total allowable catches) and size limits are probably the two most important and effective management tools in abalone fisheries across Australia. While management objectives may vary between jurisdictions, the Tasmanian abalone management policy states that abalone should be provided a minimum of two years' protection from harvesting post maturity. This task is difficult, given the variation in growth and size at maturity observed in the abalone population.

Recent refinements in management have seen an increasing level of resolution in management to provide better protection for 'under' protected areas, while allowing areas that have been 'over' protected to be exploited. From an original system of one size limit for all fishing, the commercial fishery now operates with five size limits for blacklip abalone in different areas of Tasmania (114 mm, 127 mm, 132 mm, 136 mm and 140 mm) and two for greenlip abalone (145 mm and 150 mm).

Size limits were first introduced in 1962 when a minimum limit of five inches (127 mm) was implemented for blacklip abalone. In 1987 the size limit was increased to 132 mm. Research showing that such limits were not appropriate on the west coast of Tasmania resulted in a size limit of 140 mm being introduced for that area in 1990. Recent research suggesting that the east coast of Tasmania was not receiving the protection from the size limits that was required resulted in the east coast size limit being raised to 136 mm.

As size limits have been raised in the fishery, the divergence between the slowest growing abalone in the fishery and legal size limits gradually increased. As a result, a size limit of 127 mm was introduced in the north and 114 mm for the small Bass Strait islands and along the central north coast.

Thus management has become more refined to better reflect the biology of abalone in the water. However, even under this quite complex system, some abalone may remain under protected while others may be very highly protected, or indeed may never reach the size limit (and therefore become vulnerable to exploitation). The increasingly complex system of size limits has also seen a complex set of enforcement and operational requirements imposed on industry in order to ensure the integrity of the system.

Imposing 'split' size limits on recreational fishers is more problematic. Enforcement issues, an inability to impose complex operational restrictions and difficulties in education and community awareness all pose problems.

However, even the recreational sector now has two size limits for blacklip (127 mm and 136 mm) and two for greenlip (140 mm and 145 mm). Recreational fishers cannot possess 'small' abalone in the larger size limits areas irrespective of where the abalone was caught.

Thus, only licensed commercial divers may legally take or possess (anywhere) abalone less than 127 mm.

Rock Lobster (Crayfish)

A key objective of the rock lobster management plan is that biomass and egg production do not decrease and that reasonable levels of egg production are maintained in all regions of the fishery. Size limits are used as one of the main strategies to conserve egg production.

The size at which lobsters become mature appears to be related to age rather than size, thus faster growing lobsters mature at a larger size than slow growing lobsters. Research has shown that the growth rates and size at onset of sexual maturity vary significantly around Tasmania. The minimum size limits of 110 mm carapace length for male lobster and 105 mm carapace length for female rock lobster have been set to conserve egg production and to ensure the biomass does not decline when assessing the fishery on a state wide basis.

The Victorian fishery has the same minimum size limits as Tasmania. The South Australian size limit is lower because the growth rates and size at onset of maturity are different to Tasmania.

Scallops

In relation to scallops, size limits are set to allow scallops to have at least two major spawnings, to ensure the sustainability of the scallop fishery in Tasmania. The 80 mm shell width size limit was introduced in the early 1990s and was determined from CSIRO research. The rates of growth of scallops may vary significantly for the same species in different geographic locations and may also be affected by the density of scallops in a particular bed. Growth rates will also vary between species around Australia.

The Commonwealth has the same 80mm shell width size limit as Tasmania. The Victorian fishery does not have a minimum size set in legislation. However, in 2002 Dr Jayson Semmens from the Tasmanian Aquaculture and Fisheries Institute outlined his concern to the Tasmanian Scallop Fishery Advisory Committee regarding the 80 mm size limit. As a result of this research a proposal to increase the size limit to 90 mm in 2004 was put to the industry for comment and was overwhelmingly supported.

Conclusion re abalone, crayfish and scallops

Abalone, crayfish and scallops are highly prized and highly priced commodities. As a result, poaching or stealing is a major issue. Illegal fishers have respect for neither size limits nor the long-term sustainability of the fishery, targeting fish of all sizes.

It is important that the integrity of the size limit systems and the ability to prosecute poachers, commercial and recreational fishers for taking undersized fish is not compromised. The technical reports and papers listed at Attachment A provide supporting scientific information relating to the varying growth rates and size at sexual maturity that has influenced fisheries policy in Tasmania. These papers marked with an asterisk are enclosed and the other papers are available if required.

The Tasmanian Government therefore strongly supports the retention of the permanent exemption of Tasmanian law relating to abalone, crayfish and scallops.

Other issues

General provisions of legislation used to control specific classes of goods

It is not clear whether the MRA/TTMRA may limit the operation of general provisions of legislation that restrict the sale of specific classes of goods. For example, an Environment Protection Notice may be issued under section 44 of Tasmania's *Environmental Management and Pollution Control Act 1994* to prevent the sale of an environmentally damaging product within Tasmania. This is not a 'standard' or 'regulation' in the commonly accepted sense of those words. It would be desirable to ensure that the MRA and TTMRA do not limit the operation of such provisions, as they are designed to enable urgent issues to be addressed rapidly at officer level.

Expiry of the Trans-Tasman Mutual Recognition (Tasmania) Act 1998

As you are aware, the Tasmanian Trans-Tasman Mutual Recognition Act expired on 1 May 2003. The Act had adopted the Commonwealth's *Trans-Tasman Mutual Recognition Act 1997* and, consistent with the agreed approach at the time, contained a sunset clause that ended the adoption of the Commonwealth Act on the fifth anniversary of the commencement of that Act, which occurred on 1 May 2003.

The Tasmanian Government will remake the *Trans-Tasman Mutual Recognition (Tasmania) Act 1998* and a Bill has been prepared and will be introduced in the current Spring Session of Parliament. The House of Assembly reconvenes on 23 September 2003 and Treasury officers will be in a position to report on any relevant developments by Friday 26 September 2003.

Please contact Greg Philp, Assistant Director, on (03) 6233 7214 should any of the above require clarification.

Thank you for the opportunity to comment.

Yours sincerely

D W Challen
SECRETARY

September 2003

Attachment A

Scientific and Technical Reports relating to Abalone, Crayfish and Scallops

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* Department of Primary Industries, Water and Environment, *Explanation of Zones and Size Limits for the 2003 Abalone Year*, December 2002

* Department of Primary Industries, Water and Environment, *The Tasmanian Abalone Fishery, Revised Policy Paper*, July 2000

Tarbath D, Haddon M, Mundy C, *East Coast Abalone Assessment: 2001 Internal Report*, October 2001

Tarbath D, Tasmanian Aquaculture and Fisheries Institute Technical Report Series, *Estimates of Growth and Natural Mortality of the Blacklip Abalone (Haliotis Rubra) in Tasmania,* December 1999

Officer R, Tasmanian Aquaculture and Fisheries Institute Technical Report Series, *Size Limits for Greenlip Abalone in Tasmania,* November 1999

Department of Primary Industries, Water and Environment, *Technical Report No. 48: The Population Biology of Abalone in Tasmania. I. Blacklip Abalone from the North Coast and the Islands of the Bass Strait,* 1994

Department of Primary Industries, Water and Environment, *Rock Lobster Policy Document* 1997

Tasmanian Aquaculture and Fisheries Institute, *Tasmanian Rock Lobster Fishery Assessment Report 2000/2001*, 2001

Kennedy, *The Biology and Fishery for the Rock Lobster in Tasmania*, 1992 (internal report)

Kennedy, *Assessment of alternative minimum size limits*, 1998 (background report)