COMMONWEALTH OF AUSTRALIA

.NOHSC

National Occupational Health & Safety Commission

Mr Tony Hinton Commissioner Productivity Commission PO Box 80
Belconnen ACT 2616

Dear Mr Hinton,

File No. 2003/0307

RE: Draft Research Report: Evaluation of the Mutual Recognition Schemes

In June 2003 the Productivity Commission tabled a draft research report as part of its review of the Mutual Recognition Agreements (MRA) between the Commonwealth, States and Territories and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) between Australia and New Zealand. In response to this, please find attached comments from the National Occupational Health and Safety Commission Office (Attachment A). Please note that these comments do not reflect the views of the National Commission, nor its members.

Should you require any further clarification of the details of this submission, please do not hesitate to contact Mr Terrance O'Connor, the NOHSC Office contact for this matter, either by phone on 02 6279 1091, or alternatively by email at terrance.o'connor@nohsc.gov.au.

Yours sincerely

Tom Fisher
A/g Chief Executive Officer

23 September 2003

Encl: Attachment A: Comments on the Productivity Commission *Draft Research Report: Evaluation of the Mutual Recognition Schemes.*

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Attachment A

COMMONWEALTH OF AUSTRALIA

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Comments by the NOHSC Office on the Productivity Commission's Draft Research Report:

Evaluation of the Mutual Recognition Schemes

Attachment A

Introduction

The office of the National Occupational Health and Safety Commission (NOHSC) provides the following written comments on the preliminary findings of the Productivity Commission's June 2003 Draft Research Report: Evaluation of the Mutual Recognition Schemes (the report). The office also provided a submission, in April 2003, to the Productivity Commission's Review of the Mutual Recognition Agreements and the Trans Tasman Mutual Recognition Arrangement (TTMRA).

The NOHSC Office response provides a number of suggested corrections to the draft report and comments on findings relevant to the role of NOHSC in the Hazardous substances, Industrial Chemicals and Dangerous Goods Cooperation Program (the Chemicals Cooperation Program).

General Comments

As the lead agency responsible for coordinating and facilitating the Chemicals Cooperation Program, the NOHSC Office acknowledges the general need to improve the efficiency and implementation of the TTMRA process. The Productivity Commission report has identified a range of areas where this can be achieved, particularly in TTMRA governance and special exemption arrangements. The report also outlines the obligations of policy makers under the arrangement and the benefits that can be gained from mutual recognition.

The recent roundtable meeting in Canberra, coordinated by the Productivity Commission and attended by representatives from Commonwealth Departments (including the NOHSC Office), provided a forum to assess the level of support for the findings of the report. Representatives from the NOHSC Office welcomed the views expressed by the cooperation program members, and their support for pursuing special exemption (with reduced scope) where possible. The NOHSC Office also noted that members generally did not support permanent exemption at this time, unless mutual recognition was clearly not possible or desirable.

Relevant Recommendations of the Report

1. The NOHSC Office recognises that there are some areas of difficulty in the TTMRA process, particularly in the areas of TTMRA governance and administration and support. As a consequence, the NOHSC Office supports the preliminary findings in Section 8 of the report(with some reservation on 8.4) and welcomes recommendations that improve the administration and implementation of the TTMRA, particularly for the Chemicals Cooperation Program.

2. The NOHSC Office notes the recommendation for continued exemption under the TTMRA for hazardous substances at this time, as full mutual recognition may not be

attainable or desirable for some components of the program. However, the NOHSC Office feels that it is important that the Australian and New Zealand governments continue to work towards closer harmonisation and make every effort to develop cooperative mechanisms for free trade where practicable. To this end, the NOHSC Office has facilitated further meetings with the Australian and New Zealand program partners to further investigate mechanisms for mutual recognition.

3. The NOHSC Office supports preliminary findings 8.6, 8.7 and 8.8, and supports the need for further communication with members of the Chemicals Cooperation Program in addressing these areas. This includes:

- Exploring opportunities for harmonising, where practicable, the chemicals classification and labelling of chemicals between Australia and New Zealand in conjunction with, and due regard to, international activities being undertaken in this arena such as the Globally Harmonized System of Classification and Labelling of Chemicals (GHS);
- Agreeing in principle that the special exemption on hazardous substances, industrial chemicals and dangerous goods should be extended without annual rollovers until 2008; and
- Addressing the barriers to extending the special exemption on hazardous substances, industrial chemicals and dangerous goods through a joint Australia and New Zealand review to:
    1. identify ways to maximise the benefits of the GHS;
    2. develop options for policy coordination between jurisdictions; and
    3. streamlining classification and approval processes and aligning documentation requirements between jurisdictions.

4. It is acknowledged by this office that more work is needed to achieve mutual recognition/harmonisation in the areas covered by the Chemicals Cooperation Program. T he timetable as outlined by the Productivity Commission would allow for the development of a work plan to move towards mutual recognition, where possible.

Comments on the Draft Report

The NOHSC Office welcomes the draft report's preliminary findings, particularly those regarding the Chemicals Cooperation program. It should be noted, however, that some inaccuracies within the draft report should be addressed. Editorial comments on Hazardous substances, industrial chemicals and dangerous goods, are provided below.

Abbreviations (page XI)

The correct full name for GHS is:

"Globally Harmonized System of Classification and Labelling of

Chemicals" Chapter 8.2

Background (page 129)

The target timeframe for GHS implementation stated in the third paragraph, fourth sentence should read 2008, not 2005.

The Australian Framework (page 131)

The second paragraph, third sentence should read:

"It should be noted that there is no mandatory classification requirements relating to ecotoxicity, one of the properties covered by GHS, though Environment Australia assesses chemicals and recommends classification in accordance with GHS guidelines for NICNAS and APVMA. The NOHSC Approved Criteria for Classification of Hazardous Substances contains criteria for environmental classification for all workplace chemicals and comes into effect in
December 2004"

Attachment A

The National Occupational Health and Safety Commission (page 132)

This paragraph implies that NOHSC is part of the Office of Chemical Safety under the Health and Ageing Portfolio, which it is not. NOHSC is a statutory authority operating under the Employment and Workplace Relations portfolio.

In the NOHSC paragraph, the last sentence should read:

"NOHSC classifies chemicals as hazardous substances using the Approved Criteria for Classifying Hazardous Substances, where the upper limit for acute toxicity (LD50) is 2000mg/kg. Chemicals with an LD50 greater than 2000mg/kg are not classified as hazardous, and are not subject to hazardous substances regulation. The NOHSC Approved Criteria allows for classification of both substances and mixtures, similar to the GHS approach. NOHSC intends for the next revision of the Approved Criteria to be consistent with GHS classification"

Divergence from TGA Templates (p 134)

The title 'Divergence from TGA templates' is not correct, as the paragraphs under this heading are unrelated to TGA activities.

The acronym for NOHSC is incorrectly written as NOSCH on pages 134 (second paragraph under Divergence from TGA templates) and 138 (first paragraph of Finding 8.5).

Substances versus chemicals (page

135) Add the following after the first

sentence:

" For workplace chemicals, classification is required for both substances and mixtures, consistent with the NOHSC Approved Criteria."

Thresholds for requiring approvals (page 135)

The first paragraph should be expanded, for example:

" In New Zealand, all hazardous substances according to the GHS require approvals (the upper limit for classification for acute toxicity (LD50) is 5000mg/kg). In Australia, all new chemicals are notified and assessed under NICNAS (no limit), and industrial chemicals which are hazardous substances according to the NOHSC criteria and dangerous goods according to the Australian Dangerous Goods Code are regulated for control of use under State and Territory legislation (the upper limit for classification for acute toxicity (LD50) is 2000 mg/kg. Domestic chemicals (poisons) are regulated under the SUSDP."

Finding 8.5 (page 138)

Second paragraph beginning with 'NOHSC plans to review..." should have the following added:

"NOHSC and ERMA New Zealand have a memorandum of understanding (MoU) that allows this wider, ongoing consultation to occur."

Attachment A

Issues

The NOHSC Office has some issues in regard to some preliminary findings of the report, particularly in regard to:

Finding 8.4: that agricultural and veterinary chemicals (Ag/Vet) be removed from permanent exemption and be included in the hazardous substances, industrial chemicals and dangerous goods cooperation (chemicals cooperation) program.

The NOHSC Office is concerned that the inclusion of Ag/Vet chemicals into this program will in effect double the number of government agencies involved in the Chemicals Cooperative Program negotiations. This is due to the food, biosecurity and livestock components of ag/vet products being administered by a range of agencies that are not currently involved under the chemicals cooperation program. This may raise resource difficulties in coordinating the program. However, administration of this may be made easier if this program came under the responsibility of the Health Ministers' Council who have coverage of the larger components of the program. That said, implementation of the GHS for such chemicals would remove many regulatory inconsistencies that exist in the classification and labelling of ag/vet chemicals and chemicals of other sectors.

Findings 6.6 -7: that policy and regulation making processes be enhanced by including mutual recognition obligations into any regulatory impact statement requirements or guidelines in both Australia and New Zealand.

Though in principle this is a sound idea, the differences evident between current Australian and New Zealand Regulatory Impact Statement (RIS) requirements (as highlighted on pages 102104 of the report) may still result in different outcomes that may not benefit trade between both countries. At present, Australian (Commonwealth) RIS requirements are somewhat more stringent than RIS requirements in New Zealand. The NOHSC Office believes that the TTMRA would be better served if **RIS** requirements were more adequately aligned between Australia and New Zealand. This is also true for the Commonwealth and States/Territories in regard to the MRA.