Submission to the
AUSTRALIAN PRODUCTIVTY COMMISSION

REVIEW OF MUTUAL RECOGNITION SCHEMES

PREPARED BY

THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

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Introduction

Our submission

1. The New Zealand Institute of Chartered Accountants ('the Institute') welcomes the opportunity to contribute to the Productivity Commission's ('the Commission') Review of Mutual Recognition Schemes. The review is both important and timely.

2. Our submission focuses primarily on the coverage of the existing mutual recognition schemes (MRA and TTMRA). We recommend that the efficiency and effectiveness of the schemes would be enhanced by extending the schemes to those occupations registered under co-regulation. This recognises that co-regulation for occupations have the same economic impacts as registration under legislation and that the current restricted scope creates barriers to skilled labour movement between jurisdictions.

3. We provide an example where the co-regulatory regimes for auditors in Australia and New Zealand inappropriately fall outside the current scope of Trans-Tasman Mutual Recognition Agreement (TTMRA), thereby resulting in welfare losses to both countries.

4. If you would like to discuss any aspect of this submission with the Institute, please contact: Steven Bailey – Director Government Relations (phone: 64 4 917 5633, and e-mail: steven.bailey@nzica.com); or David Pickens (phone: 64 4 474 7875, and e-mail david.pickens@nzica.com)

The New Zealand Institute of Chartered Accountants

5. The Institute's members make up the majority of the accounting profession in New Zealand. The Institute has approximately 30,000 members of whom close to 6000 work overseas. The Institute's members operate throughout the economy, participating in and advising all types of businesses, entities and individuals.

6. The Institute operates an active network of 17 branches, 15 in New Zealand and two overseas (Australia and the United Kingdom).

7. The Institute is also an active member of the Global Accounting Alliance ('the Alliance'). The Alliance facilitates co-operation between nine of the worlds leading professional accounting organisations, representing over 700,000 professional accountants working in 140 countries around the globe. The Alliance works with national regulators, governments and stakeholders to promote quality accounting services, share information and collaborate on important international issues, including influencing the global regulatory environment.

8. The Institute prepares its submissions through a synthesis of member views, in house regulatory experience, research and contracted specialist advice. Member views are sought through a variety of means including an open invitation to the membership for comment on issues of interest, standing committees of volunteers, ad hoc committees and informal networks of

members. The Institute's submissions to government can be viewed at www.nzica.com .

9. As well as preparing submissions to government on issues of importance to its members and the wider business community, the Institute:

- develops and promulgates ethical rules, professional standards and related guidance;
- develops national financial reporting standards and contributes to the development of international financial reporting standards;
- provides quality assurance services to members;
- promotes the 'Chartered Accountant', 'Associate Chartered Accountant' and 'Accounting Technician' brands;
- provides strong input to the international accounting community, including through the GAA;
- provides networking and career and practice development opportunities; and
- provides professional education and information services to members.

10. The Institute is committed to promoting public policy that furthers the overall interests of New Zealand. The Institute operates under a strong culture of putting public interest before member interest.

Coverage of mutual recognition schemes

11. A central rationale for the Mutual Recognition Agreement (MRA) and TTMRA is to remove unnecessary regulatory impediments to cross-border movements of goods and labour, thereby increasing competition in goods and labour markets, lowering prices for consumers, reducing compliance costs on firms operating across jurisdictions and minimising restrictions on the movement of workers to locations where their services would generate the greatest net benefit. With respect to occupations, the underlying principle of MRA and TTMRA is that a person registered to practice an occupation in one jurisdiction is entitled to practice an equivalent occupation in other jurisdictions.

12. This rationale and the principle underpinning mutual recognition are strongly supported by the Institute.

13. Through deeper coordination of regulatory environments, mutual recognition also facilitates closer integration of the New Zealand and Australian economies. This we believe materially contributes to the Australia and New Zealand Governments' stated long-term goal of a single economic market.[1]

[1] See PC (Productivity Commission) 2004, *Australian and New Zealand Competition and Consumer Protection Regimes*, Research Report, Canberra, p. 7.

14. Presently, the scope of the mutual recognition schemes (MRA and TTMRA) covers only traditional forms of occupational registration, where registration is required under legislation and administered by government. This is unnecessarily restrictive. It means that those occupations governed by different forms of regulation fall outside the scope of the mutual recognition schemes. This is the case for 'co-regulatory arrangements' for occupations. Co-regulation broadly means 'industry-association self regulation with some oversight and/or ratification by government'.[2]

15. The Institute submits that occupational co-regulatory regimes should be included within the scope of the mutual recognition schemes as co-regulation aims to achieve precisely the same policy outcomes as government regulatory arrangements for occupations (registration under legislation). Indeed, there are good public interest arguments for the legislature to delegate self-regulatory functions to professional bodies (box 1).

Box 1 **Advantages of self-regulatory approaches**

It is widely acknowledged that self-regulatory regimes can be more effective and efficient in achieving particular occupational regulatory goals. For example: [3]

- *Efficiency* — Professional self regulation means that administrative costs are internalised by the regulated profession. With easy access to those regulated, the information necessary to formulate and administer professional standards is achieved at lower cost than if solely government regulated. For the same reason, monitoring and enforcement costs are also less. Compliance cost on regulated members can also be expected to be reduced.
- *Effectiveness* — Self-regulators have a special knowledge of what members will see as reasonable in terms of regulatory obligations. There is therefore likely to be a closer link between what regulatory obligations are demanded and what is acceptable to members, thereby improving voluntary compliance. Because rules are developed by the profession, and not imposed by government, they are likely to be perceived as more credible — indeed, there is a tendency for self-regulatory bodies to take more 'ownership' of their own rules than coercive government rules. Professional self-regulation can also be more responsive to consumer demands, based on information from, for example, the complaints and disciplinary mechanisms, and unconstrained by legislative processes.
- *Expertise* — Self-regulatory professional bodies can command higher levels of relevant expertise and technical knowledge of best practices and innovative opportunities than is possible with solely government regulation. The ongoing proximity of links with the profession keeps expertise up to date and honed.

[2] Braithwaite, J, Grabosky, P. and J. Walker (1987) 'An Enforcement Taxonomy of Regulatory Agencies', 9 *Law and Policy* 323.

[3] See for example: Australian Government 2007, *Best Practice Regulation Handbook*, Canberra, August, p. 102, (accessed at www.obpr.gov.au on 15 July 2008); Ayres, I. and J. Braithwaite (1992) 'Responsive Regulation: Transcending the Deregulation Debate' (Oxford: UP); and Ogus, A. (1995) 'Rethinking Self-Regulation', 15 *Oxford Journal of Regulatory Studies*, pp. 97–108.

16. There will therefore be times when government regulation is the most appropriate regulatory tool to achieve a particular regulatory objective. Likewise, there will be other times when self or co-regulation is more appropriate, given efficiency and effectiveness considerations. However, presently, the mutual recognition schemes unnecessarily bias occupational regulation in favour of government only regulation.

17. A failure to mutually recognise people practicing in co-regulated occupations between jurisdictions is costly. The economic impacts that arise from impediments to cross-border mobility of occupations registered under legislation equally apply to co-regulatory arrangements, and indeed self-regulatory regimes more broadly.

18. At the same time, as emphasised in the Commission's 2003 report, the Shakenovsky decision provokes an imperative for governments to clarify whether co-regulation is covered by mutual recognition, rather than leaving this judgment to the courts.[4]

19. The Institute submits that the efficiency and effectiveness of the mutual recognition schemes would be enhanced by extending the schemes to those occupations registered under co-regulation. And that this should be a strong recommendation in the Commission's final report.

An example: Auditing

20. As commented above, the core principle for mutual recognition for occupations is that a person registered to practice an occupation in one jurisdiction is entitled to practice an equivalent occupation in other jurisdictions.

21. Australian auditors are registered and overseen by their professional bodies and the Australian Securities and Investment Commission (ASIC). The New Zealand Institute of Chartered Accountants has delegated to it by an Act of Parliament responsibility for regulating those of its members that provide audit services, and its rules are scrutinised by a Committee of Parliament.

22. While their respective regulatory regimes differ, New Zealand and Australian auditors are regarded as equally proficient. The Australian and New Zealand Institutes of Chartered Accountants, for example, recognise each others' members for reciprocity purposes, and our discussions with Australian officials (for example, the Australian Treasury and ASIC) suggest those perceptions are shared more widely.

23. Currently, Australian auditors (who are members of the Australian Institute of Chartered Accountants and Certified Practicing Accountants (CPA) Australia) are able to undertake audits of New Zealand companies. This is provided for by section 199 of the New Zealand Companies Act 1993. However, New Zealand Chartered Accountants do not correspondingly have access to the Australian audit market — even though the New Zealand Institute would have little difficulty regulating its members in Australia to the required 'equivalent' standard. This trans-Tasman imbalance is not justified and, in compliance with

[4] See *Shakenovsky and The Dental Board of NSW [1999] AATA 98*. The Shakenovsky case was clear that 'any form of approval' constitutes registration. PC (Productivity Commission) 2003, 'Evaluation of Mutual Recognition Schemes', Research Report, 8 October, Canberra (pp. 254–255).

the core principle outlined in paragraph 20 above, should not be permitted by the TTMRA.

24. However, advice from the Australian Treasury is that for New Zealand auditors to be allowed to operate under the TTMRA, the Institute of Chartered Accountants of New Zealand Act 1996 must first be amended to provide for the Institute to be able to specifically register auditors. While this may technically be correct, it illustrates well the distortions and waste that occur as a consequence of the TTMRA not recognising co-regulatory frameworks (in this case non-statutory registration). Giving specific statutory backing to the Institute's registration of auditors will make no difference to how auditors are regulated or to regulatory outcomes.

25. Had the inconsistencies between the principles of the TTMRA and its coverage as discussed above not existed, both countries would have enjoyed the benefits of a more integrated audit market for many years. The Institute believes many other markets will be similarly impacted because of the limited scope of the TTMRA. These issues would be addressed by extending the TTMRA to include recognition of co-regulatory frameworks.

Summing up

26. Both the rationale and principle underpinning mutual recognition are strongly supported by the Institute. We consider that there are substantial economic benefits to both Australia and New Zealand from a well-developed, comprehensive, TTMRA. The Productivity Commission's review aimed at further improving the TTMRA is a tremendous opportunity to further strengthen the trans-Tasman regulatory relationship and contribute to the eventual achievement of the long-term goal of a single economic market.

27. The Institute believes that the next important phase for the TTMRA is to broaden its coverage and eliminate inconsistencies in its application between different regulatory forms — inconsistencies that create barriers to the movement of skilled labour between Australia and New Zealand. We have provided an example in the audit profession where co-regulatory arrangements unnecessarily fall outside the current TTMRA scope. There is no justifiable public policy reason for this situation.

28. The Institute submits that the efficiency and effectiveness of the mutual recognition schemes (MRA and TTMRA) would be enhanced by extending the schemes to those occupations registered under co-regulation. And that this should be a strong recommendation in the Commission's final report.