

# PRODUCTIVITY COMMISSION REVIEW OF MUTUAL RECOGNITION SCHEMES

## Submission by the Department of Health and Ageing Office of Chemical Safety

The main rationale for introducing the MRA and TTMRA was that regulatory differences between jurisdictions were unnecessarily impeding cross-border movements of goods and labour.

Chemicals are an important input to all aspects of modern life including industry, agriculture and consumer products. In relation to hazardous substances, industrial chemicals and dangerous goods, a 'special exemption' applies under the scope of the TTMRA. In relation to industrial chemicals, a TTMRA Chemicals Cooperation Program has been established and is administered by the Australian Safety and Compensation Council (ASCC) on behalf of the Education, Employment and Workplace Relations portfolio. The Chemicals Cooperation Program relates to several areas of regulation that effect the free trade of chemicals, including:

- notification and assessment of industrial chemicals;
- workplace hazardous substances and dangerous goods;
- domestic poisons scheduling;
- material safety data sheets;
- labelling, including inner labelling of dangerous goods; and
- sale and use of explosives.

Broad issues have been identified which impede the mutual recognition of notification and assessment of industrial chemicals. These differences include the fact that:

- Australia assesses all new chemicals and priority existing chemicals, both hazardous and non-hazardous as well as priority existing chemicals;
- New Zealand assesses only hazardous chemical substances as identified by the manufacturer or importer;
- the definition of 'hazardous' is not the same for Australia and New Zealand, with New Zealand adopting the GHS definition which currently is more conservative than the Australian workplace classification (currently aligned with European Union definitions);
- NICNAS, like all other OECD countries, but unlike New Zealand, is a chemical entity based scheme (i.e. not product registration). New Zealand assess products as well as chemical entities;
- New Zealand must have regard in their assessment for the principles of the Treaty of Waitangi with the legislation requiring an assessment to provide any known and possible adverse effects throughout the life cycle of the hazardous substance (or new organism) on the relationship of Maori and their culture and traditions; and
- Differences between the New Zealand and Australian eco-systems may result in different risk assessment outcomes.

Furthermore, notwithstanding the difference in definition of 'hazardous', some non-hazardous chemicals (substances) are not subject to notification and/or assessed in New Zealand but do require notification and/or assessment in Australia. Mutual recognition would allow these chemicals (substances) to be sold in Australia without the need for the risk assessment deemed necessary. Even if a chemical is classified as non-hazardous in Australia, it may still be recommended that certain safety and risk information be required – 'non-hazardous' does not necessarily mean safe for all purposes. Australia's regulatory system covers the broad spectrum of chemicals where non hazardous substances still require labelling for consumers.

To date, the cooperative efforts between New Zealand and Australia have been thorough and positive and overall have contributed to reducing the regulatory burden for industry as well as producing efficiencies for both countries in the notification, assessment and regulation of chemicals. However,

despite these benefits, the differences between countries as noted in the analysis of both NICNAS and ERMA, suggest that a comprehensive regime of mutual recognition is unlikely. Furthermore, the differences between countries are such that to move towards mutual recognition could, in some circumstances, jeopardise Australia's trading position, particularly noting Australia's trade in chemicals with South-East Asia, the EU and North America.

Similarly, work in regard to the implementation of the Globally Harmonised System for Classification and Labelling of Chemicals (GHS) has demonstrated that the adoption of the GHS in Australia is likely to require different approaches to classification and labelling for consumer chemicals that reflect different legislative arrangements (eg State/Territory framework for poisons scheduling), differences in risk management approaches and the need to align with trading partners. Consequently, the Department of Health and Ageing also sees little likelihood of mutual recognition being achieved in relation to the GHS in the consumer chemical sector. It is noted that a situational analysis for GHS implementation into the consumer/domestic chemicals sector is being undertaken by the National Drugs and Poisons Schedule Committee with New Zealand as an observer on the Committee.

The June 2008 Issues Paper in support of the Review of Mutual Recognition Schemes notes that:

*"The jurisdictions' inability to resolve fully the issues associated with these areas since the TTMRA came into effect a decade ago, despite the existence of cooperation programs and the requirement to report progress annually, raises doubts about the prospect of ever achieving mutual recognition for some types of goods. As the Commission noted in 2003, some special exemptions seem destined to become permanent exemptions unless the points of difference can be removed."*

*"It is not feasible in this issues paper to cover the many technical matters that would need to be resolved if mutual recognition was to be achieved for the remaining special exemptions. However, a preliminary examination suggests that consideration needs to be given to whether the likely benefits of continuing to roll over the remaining special exemptions will outweigh the costs. Points of concern include that for a variety of reasons, including alignment with different international benchmarks, Australia and New Zealand have very different notification and assessment requirements for industrial chemicals. This is likely to continue, even if the draft recommendations of the Commission's current study of chemicals regulation were adopted"*

In relation to industrial chemicals and, in particular, the associated notification and assessment activities defined by the *Industrial Chemicals (Notification and Assessment) Act, 1989* (the Act), the Department of Health and Ageing agrees with this assessment. Ongoing efforts to secure mutual recognition in other aspects of the cooperative workplan on chemicals, such as in regard to chemicals labelling, harmonised safety data sheets etc should continue. It is noted that the work under the TTMRA Program has seen the development of a MOU between NICNAS and ERMA NZ which formalises a program of cooperation and information sharing. This cooperative arrangement would continue, including cooperation in such areas as inventory management, assessments of existing chemicals and international activities.

As an initial comment on the Issues Paper "*Review of Mutual Recognition Schemes*", it would seem timely and appropriate to consider a permanent exemption being applied thereby placing notification and assessment of industrial chemicals on the same footing as agricultural and veterinary chemicals, where, despite this permanent exemption, the level of cooperation between Australia and New Zealand on issues relating to agvet chemicals has not diminished. A similar position in regard to industrial chemicals would be anticipated under a 'permanent exemption' status.