



1 August 2008

Mutual Recognition Agreement
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

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Dear Presiding Commissioner

RE: REVIEW OF MUTUAL RECOGNITION OF SCHEMES – PRODUCTIVITY COMMISSION ISSUES PAPER

Thank you for the opportunity to meet with you to discuss the Review of Mutual Recognition Schemes (**the Review**). Further to our meeting on 23 July 2008, please find below our comments on the Review.

Coles understands the Productivity Commission has been requested to undertake the Review to assess the coverage, efficiency and effectiveness of the Mutual Recognition Agreement (**MRA**) and the Trans-Tasman Mutual Recognition Agreement (**TTMRA**).

As a national supermarket retailer with more than 750 stores operating across all states and territories of Australia, Coles operates in a complex regulatory environment and is impacted by both the MRA and TTMRA.

Coles supports the use of the MRA and TTMRA as a short-term alternative way for government to reduce regulatory impediments on business. However, in the long term, Coles would prefer harmonisation of regulation across all states and territories of Australia and between Australia and New Zealand. This would limit unnecessary compliance costs, reduce the risk of business non-compliance and ensure consumers have uniform rights and product standards across all jurisdictions.

Whilst the MRA and TTMRA schemes have been successful to date, Coles believes there is room for improvement to both schemes. For example, Coles would like to see the scope/coverage broadened and increased awareness, expertise and governance arrangements. These points are explained in further detail below.

Broader Scope/Coverage

From a product perspective, Coles believes the scope of the MRA and TTMRA should be broader than just "*the sale of goods*" and additionally cover factors such as the way goods are transported, labelled, displayed, advertised/promoted and lawfully sold etc. A broader scope would help to reduce inconsistencies between states and ensure that consumers are not disadvantaged or limited in choice due to restrictions in one particular jurisdiction.

Escalation

Coles believes there is a strong need for an independent third party to be appointed so that manufacturers, retailers and government have a point of escalation in the event of a dispute or to clarify

any ambiguity about regulatory requirements under the MRA/TTMRA.

Education and awareness

Coles believes the MRA and TTMRA requirements should be included in government and regulatory policy-making guidelines. This would ensure that it is not left to industry to inform policy makers about MRA and TTMRA requirements.

It is also important that there be greater education and awareness for government and regulators about the MRA and TTMRA to reduce inconsistencies between states and between Australia and New Zealand.

Examples of inconsistencies

Coles is aware of a number of inconsistencies in terms of product regulatory requirements and believes the MRA/TTMRA could be utilised to reduce some of these inconsistencies. Please find below some examples.

Candles	<p>NSW and Victoria ban the supply of any object used to hold or decorate a candle (including candle rings) if it ignites and continues to burn for 5 seconds or more after ignition.</p> <p>WA has a banning order that states that candle holders and articles incorporating such holders must withstand the application of a candle flame or the heat from a candle without igniting or melting.</p> <p>So, in WA a candleholder cannot ignite or melt if exposed to flame, whilst in NSW and Vic the holder can ignite but must self-extinguish within 5 seconds or less. In all other States/Territories there are no such requirements applicable to candle holders.</p> <p>This is where consumer safety is protected differently or not at all depending on jurisdiction.</p>
Liquor	<p>There is currently no mutual recognition of Responsible Service of Alcohol (RSA) training in Australia. Coles would like to see the flexible Victorian RSA training program adopted in other jurisdictions and encourages all states to agree to mutual recognition of RSA.</p>
Tobacco	<p>Regulations regarding the sale, supply and display of tobacco products vary in each state. Often regulatory responses are introduced by one state in isolation e.g. each state took a different approach to ban/prohibit fruit flavoured cigarettes. This is an example of where a national approach should have been agreed to by the Ministerial Council on Drug Strategy or MRA utilised.</p>
NZ childrens clothing standards	<p>Children's nightwear and limited daywear sold in Australia and New Zealand is currently required to be labelled in accordance with AS/NZS 1249:2006 the Mandatory Standard for Children's nightwear and limited daywear having reduced fire hazard. This requires products to be classified as Category 1, 2, 3 or 4 and then labelled appropriately.</p>

	From 1 April 2009 this labelling will no longer be acceptable in New Zealand. Garments classified as categories 2 and 3 will be required to feature a new orange coloured label stating <i>Caution Not Heat or Flame Resistant Wear Snug-Fitting to Reduce Risk</i> . Consequently, children's nightwear and limited daywear sold in Australia will no longer be able to be sold in NZ without the garments requiring labelling rework (and vice versa).
Monkey Bikes	<p>Monkey bikes are scaled down bikes powered by an internal combustion engine, also called pocket bikes.</p> <p>In 2005 Victoria was the first State to ban these bikes where they did not comply with five specified safety requirements because they may "pose a risk of injury or death to children and adults due to mechanical faults".</p> <p>Bikes that did not comply with these safety requirements could still be legally sold in states other than Victoria. South Australia, Queensland and Tasmania introduced similar bans in 2006. NSW finally introduced similar provisions in December 2007.</p>
Flavoured Essence – NSW only	As of 1 January 2009, flavoured essence with more than 10% ethanol will no longer be able to be sold to consumers less than 18 years in NSW. This is not required in any other jurisdiction.
Spray paint	There are different requirements across the states in terms of the sale of spray paint – due to the complexity Coles no longer sells these products.
Country of Origin	Country of origin labelling was not adopted by New Zealand and has not been uniformly enforced in Australia.

Conclusion

Coles has identified some improvements that we believe could enhance the effectiveness of the MRA and TTMRA including a broader scope, increased awareness, expertise and governance arrangements.

In the long term, Coles would prefer that the Australian and New Zealand Government work towards a nationally consistent approach to regulation through harmonisation rather than mutual agreement.

Thank you again for the opportunity to participate in this consultation. We look forward to seeing the final report.

Yours sincerely

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Coles Public Affairs.