The New Zealand Government Submission to the Australian Productivity Commission on the 2008 Review of the Trans-Tasman Mutual Recognition Arrangement

Executive Summary

The TTMRA is a cornerstone of the trading framework established by the Australian New Zealand Closer Economic Relations Trade Agreement ("ANZCERTA" or "CER") and a key element of the single economic market ("SEM") agenda. The SEM agenda seeks to address behind-the-border impediments to trade by identifying innovative and low-cost actions that could reduce discrimination and costs arising from different, conflicting or duplicate regulations or institutions.

At a strategic level, the TTMRA remains a central driver of economic integration and a powerful instrument of regulatory cooperation and coordination between Australia and New Zealand. It places disciplines on governments contemplating the introduction of new and diverging standards and regulations for the sale of goods and registration of occupations.

While the TTMRA is fundamentally sound and has delivered significant benefits to a wide range of stakeholders, there is room for improvement in some areas. These include:

- The need for continuing commitment to deeper and regular regulator-to-regulator cooperation and dialogue as a means to resolve issues and advance the objectives of the Arrangement. There are many areas where regulators in Australia and New Zealand are working closely together to further the objectives of the TTMRA and make a greater and positive contribution to the SEM. But there are other areas where relationships are not as well formed and where commitment will help avoid unnecessary miscommunication or difficulties in implementation and administration of regulations;

- A re-examination of the various exemptions to assess the scope for bringing elements of them, particularly in regard to the special exemptions, within mutual recognition. New Zealand is committed to removing exemptions from the TTMRA and is cautious about moving too hastily to convert any special exemptions to permanent exemptions. The Special Exemption Cooperation Programmes provide a strong mechanism for ongoing regulatory cooperation, including in the international context;

- The annual roll-over process of the special exemptions has become unnecessarily time consuming and administratively burdensome in light of the fact that many of remaining elements in the special exemptions programmes now require longer time frames to resolve. New Zealand proposes that the annual roll-over should be replaced by a three year process. This is considered a sensible timeframe to make progress while still maintaining disciplines to drive on-going regulatory cooperation;

- An examination of how registration authorities might be given more certainty with respect to the equivalence of occupations and concerns held by some stakeholders about how "jurisdiction shopping" caused by different registration requirements between jurisdictions might be addressed, if appropriate;

- The need for further awareness raising initiatives to support a deeper understanding of the principles and objectives of the TTMRA by all stakeholders;

- Other issues, including:

    - the implications of the imposition of use provisions on the sale of goods;
    - the potential implications for the TTMRA from bilateral mutual recognition arrangements with third parties; and
    - The possibility of expanding the scope of the TTMRA to include cross-border provision of services.

Submission to the Australian Productivity Commission on the 2008 Review of the Trans-Tasman Mutual Recognition Arrangement

1 The New Zealand government welcomes the opportunity to make this general submission to the Australian Productivity Commission ("the Commission") on the 2008 Review of the Trans-Tasman Mutual Recognition Arrangement ("TTMRA" or "the Arrangement"). It welcomes the Commission's intention to consult widely with interested parties in both Australia and New Zealand.

2 The TTMRA is the most advanced market to market mutual recognition model in the world. As such it is central to supporting the objectives of the Australia New Zealand Closer Economic Relations Trade Agreement ("ANZCERTA" or "CER"), and achieving a Single Economic Market ("SEM"). The World Trade Organisation ("WTO") has described CER, which reached its 25th anniversary this year, as "the world's most comprehensive, effective and mutually compatible free trade agreement". The TTMRA closely mirrors the Australian Mutual Recognition Arrangement. It is therefore important that the relationship between the two mutual recognition schemes is always accounted for.

3 The TTMRA is a cornerstone of the broader framework to create a seamless trans-Tasman business environment. It is a central driver of regulatory policy cooperation and economic integration between Australia and New Zealand. The SEM agenda seeks to address behind-the-border impediments to trade by identifying innovative and low-cost actions that could reduce discrimination and costs arising from conflicting or duplicate regulations or institutions.

4 The key objective of the TTMRA, to remove regulatory barriers to trans-Tasman trade in goods and the movement of registered professionals through mutual recognition of our respective regulatory regimes or harmonisation, continues to be met, delivering significant benefits to all stakeholders. The recent adoption by Western Australia of legislation implementing the mutual recognition principles of the TTMRA is a welcome development that will further strengthen the application of the Arrangement across all participating jurisdictions.

5 The unique feature of the TTMRA is that it recognises the equivalence of regulatory outcomes based on mutual confidence in the efficacy of respective regulatory systems. This confidence supports a true market to market outcome while accommodating differences in regulatory approaches when local conditions so require. While allowing for unilateral domestic regulatory reform, the design of the TTMRA places inherent disciplines on the introduction of standards and regulations for the sale of goods and registration of occupations. It is a strong constraint on regulatory divergence and excessive regulations. The TTMRA is fully consistent with Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade Agreement and with the Council of Australian Government's Principles and Guidelines for National Standard Setting and Regulatory Action which underpin the development of Australian regulatory responses.

6 New Zealand welcomes the 2008 Review as an opportunity to take stock of the progress that has been made since the 2003 Review, examine any outstanding issues and identify and consider any additional areas or issues that have emerged over the last five years in respect of this very important trans-Tasman Arrangement.

7 This submission is divided into five sections:

Section A: covers the application of the TTMRA to trade in goods;
Section B: covers the application of the TTMRA to occupations;
Section C: covers issues around public and regulators' awareness of the TTMRA;
Section D: covers third party mutual recognition arrangements and the TTMRA; and
Section E: concludes the submission.

Section A: Application of the TTMRA to Trade in Goods

Regulatory Coordination

8 The close regulatory cooperation generated by the TTMRA continues to facilitate mutual recognition and the alignment of jurisdictions' respective regulatory regimes. The removal of transaction costs under the TTMRA has allowed Australian and New Zealand businesses to exploit new competitive opportunities in the trans- Tasman market.

9 Some good examples of effective regulatory coordination are the Trans-Tasman Equipment Energy Efficiency Programme (E3), the Gas Technical Regulators Committee (GTRC) and the Electrical Regulatory Authorities Council (ERAC) cooperation programmes.

10 The E3, comprising policy and regulatory agencies from the Australian States, the Commonwealth and New Zealand, is responsible for the development and implementation of regulation on the trans-Tasman Minimum Energy Performance Standards (MEPS) and Mandatory Energy Performance Labels (MEPL) for energy using products. The objective of the programme is to develop harmonised energy efficiency requirements compatible with both the Australian and New Zealand markets.

11 The ERAC and GTRC are responsible for the liaison between the technical and electrical safety regulatory authorities of Australian jurisdictions and New Zealand. The very high level of cooperation and coordination in this area is delivering significant benefits for both countries particularly in the context of achieving better regulatory alignment. ERAC is reviewing the Australian electrical safety regime and GTRC is working on development and refinement of the gas appliance regimes to achieve improved regulatory alignment. The outcomes of the ERAC's review will support even closer alignment of the Australian and New Zealand regimes and may in the future support the development of a joint trans-Tasman regulatory regime in this area, furthering the SEM objectives.

12 The success of such co-operative programmes lies in their members treating Australia and New Zealand as a common market and assessing the impact of a proposed measure for both countries, including issues particular to regions (e.g. climate conditions), early in the process.

13 There are a number of lessons from these successful co-operative programmes that can be applied in other areas. These include:

- The regulatory coordination encouraged by the TTMRA works best when officials on both sides of the Tasman regularly share information on new policy direction and initiatives. This will ensure adequate time for officials to brief Ministers on proposed policy directions and their implication, and time to work through the issues collectively with a view to developing a joint solution;

- Good coordination of processes, timelines, and consultation between Australia and New Zealand throughout the development and implementation of a project means issues can be identified and addressed early, minimising the risk to the successful implementation of the project;

- Deeper and regular regulator to regulator dialogues and interaction at senior officials' level can help to ensure agencies on both sides understand the strategic and operational context of their work. This dialogue can usefully be formalised by way of inter-agency arrangements;

- The need for wider and more systematic approaches to dissemination of information from meetings (e.g. meeting outcomes, information exchange and upcoming events. This would support improved linkages between national strategies (for example the National Framework on Energy Efficiency and Conservation in Australia and the New Zealand Energy Efficiency and Conservation Strategy); and

- The need to encourage the further development and coordinated introduction of joint AS/NZS standards to ensure alignment of Australian and New Zealand regulatory requirements. The introduction of joint standards should take place, as far as possible, at the same time on both sides of the Tasman to avoid any scope for misalignment.

Joint Australia / New Zealand standards

14 Joint (AS/NZS) standards provide a technical underpinning for trans-tasman regulatory alignment. However, there are some challenges to increasing their use. For example, some joint standards contain large amounts of material defining regulatory requirements, such as enforcement procedures and penalties, which may not be equally applicable in both countries. This has the potential to:

- Make New Zealand regulations more difficult to structure and draft because the joint standards may be more focused on the Australian legal and industry environment;

- Make the processes of updating regulation, including for the purposes of regulatory alignment, slower than necessary because, in some cases, the standard would need to be amended before it could be adopted in full in legislation; and

- Place expectations on standards development committees that they may not be well equipped to deal with (for example, that they have regulation drafting expertise).

15 The challenges in using joint standards were, for example, illustrated recently in water efficiency regulation.

16 Appropriate Australian and New Zealand representation on joint standards development committees can help to overcome these challenges by ensuring that the standards are suitable for use in both countries and the need for country-specific standards is minimised. A joint standard should be finalised only after the proposed content of the standard has been clearly communicated to stakeholders for comment.

Permanent Exemptions

17 The TTMRA recognised the need for certain permanent exemptions. Pressure emerges from time to time for new permanent exemptions. This has the potential to undermine the TTMRA's strategic objectives. Any proposal for a permanent exemption therefore must be based on robust critical argument cognisant of the need to manage this risk. Recommendations for a permanent exemption should only be developed a last resort.

18 The TTMRA does not provide for specific requirements or processes to reassess permanent exemptions. This raises the question of whether it would be useful to develop such requirements and processes.

19 Some progress has been made in addressing existing permanent exemptions, including endeavours to narrow their scope and/or remove them altogether. Specific exemptions are discussed below.

Risk-categorised food

20 On the recommendations of the 2003 Review, the Imported Food Inspection Project was established to remove risk-categorised foods from the permanent exemptions schedule. The project team, which comprises ten senior officials from the Australian Quarantine and Inspection Service (AQIS), Food Standards Australia New Zealand (FSANZ) and the New Zealand Food Safety Authority (NZFSA) has met two-three times a year (plus teleconferences and electronic exchanges) for the past five years.

21 The project team acknowledges that 'risk-categorised foods' is an overly broad category for the purpose of managing health and safety concerns. To limit the scope of this exemption officials have agreed to manage respective high-risk food by aligning criteria for risk assessment and establishing equivalence for domestic production and processing systems. Both countries will need to maintain exemption risk lists for imported foods for third country purposes, but these lists should be limited to those foods where there are substantial differences in the import standards, rather than all foods currently captured by the general risk category. This specific 'trans-Tasman list' would reduce exempted foods to the minimum and allow both countries to operate the respective risk lists following the agreed criteria without impacting on trans-Tasman trade.

Agricultural and veterinary chemicals

22 Although it is agreed that this exemption should remain due to the differing conditions in each country, there is some opportunity to work towards narrowing this exemption through integrated implementation of the GHS (Globally Harmonised System for the Classification and Labelling of Chemicals). In New Zealand the hazardous properties of agricultural and veterinary chemicals including human and environmental toxicity are addressed separately under New Zealand's Hazardous Substances and New Organisms (HSNO) Act (which captures most such chemicals). In Australia, the Australian National Drugs and Poisons Schedule Committee (NDPSC), which conducts human health risk assessments for the APVMA, is considering options for adopting the GHS classification criteria. This creates an opportunity to harmonise the assessments relating to the intrinsic hazardous properties of these chemicals.

23 Mutual recognition can also reduce costs associated with separate registration processes of agricultural and veterinary chemicals. The impediments resulting from the exemption can be and are being mitigated by seeking alignment in approaches to the maximum extent possible. Significant savings to the veterinary pharmaceutical industry have been achieved via mutual recognition of Australian and New Zealand compliance programmes governing veterinary pharmaceutical manufacture, creating benefits for manufacturers in both countries and reducing redundant auditing for companies manufacturing product for both countries. Significant savings are about to be achieved via registration of certain veterinary medicine products on the basis of regulatory assessment reports and registration decisions for the same by APVMA. This will make a greater range of product available to the New Zealand public and the livestock industry. Final details are being worked out to provide a secure and efficient pathway for the transfer of assessment reports and decisions. Furthermore, registration information requirements are currently being compared to eliminate unnecessary differences in order to facilitate complementary applications for registration.

24 The APVMA/NZFSA alignment of regulatory control of agricultural and veterinary chemicals is two years into a five year programme which further underscores the need for significant investment in time and relationship-building to achieve the necessary level of confidence to achieve the desired outcomes.

Quarantine Laws

25 Exports of animal products are subject to detailed quarantine requirements particularly in relation to highly processed items or food-related products such as pharmaceutical ingredients, fish baits, and pet food.

26 There are a number of product groups in the agricultural, horticulture and livestock production areas that are not covered by the permanent exemption for agriculture and veterinary chemicals and are traded in significant quantities under the provision of the TTMRA. These include animal feeds, pet foods and fertilizers. There are risk management issues associated with this trade, particularly because of the differing laws governing the manufacture, quality, labelling, acceptable claims, across New Zealand, the Commonwealth, and the States and Territories. This was highlighted last year when it became clear that pet foods and animal feeds that could be sold in Australia would not meet New Zealand requirements (i.e. non-GRAS ingredients and non-inspected animal product ingredients) but were legally able to be sold in New Zealand under the TTMRA. Managing these differences will require the establishment of processes to facilitate regulator engagement and discussions with a view to establishing confidence in the respective risk management systems for these products and driving towards better alignment.

27 New Zealand and Australia enjoy a unique close relationship in the quarantine area. This relationship goes beyond the joint food standards system and includes participation in each other's primary production and processing standards development. As a result, there is agreement that meat products derived from cattle, sheep and deer do not require import permits to enter Australia if the meat is for human consumption, and no quarantine certificates are required for exports of these products (of Australian or New Zealand origin) in either direction. (There are certification requirements for New Zealand beef products related to Australia's management of BSE risks which are currently under discussion, but not as part of Australia's quarantine regime). When products from these animals are destined for other purposes, such as for animal consumption or industrial use, however, some generic quarantine requirements are applied.

28 The trade of some animal products may be affected by unjustifiably strict quarantine measures. New Zealand would welcome the Commission's views on whether a working group should be established to examine the quarantine exemptions and assess whether the production and processing regimes in both countries are of a standard that any quarantine risks associated with selected animal products are, for instance, sufficiently removed at the point of production and would support forgoing quarantine clearance into the other country. For pests and diseases where both countries have the same health status no quarantine measures are necessary. Further, given the trust and knowledge existing between the national regulators, there are opportunities to agree equivalence determinations based on processing measures applied in each country which effectively manage bio-security risks. While not expressly required under the TTMRA, such a move would be entirely consistent with the objectives of a single economic market.

Ozone Protection

29 New Zealand supports moves towards the resolution of issues that have seen ozone depleting gases become permanently exempt from the TTMRA. The permanent exemption will need to be retained until regulators on both sides of the Tasman are confident that the alignment processes necessary to support the removal of the exemption have been completed. This would be facilitated by on-going regulator to regulator engagement and dialogue.

Gaming machines and indecent and pornographic material

30 New Zealand supports the continuation of these exemptions but with some minor wording changes to clarify the exemptions. In relation to the "gaming machine" exemption, we would suggest that the exemption be reclassified as "gambling equipment" instead of "gaming machine". This is partly because equipment that is a gaming machine in one jurisdiction is not necessarily deemed to be a gaming machine in others. It is also partly because New Zealand currently has a Gambling Amendment Bill underway that would narrow the formerly very wide gaming machine definition. The broader term of "gambling equipment" is therefore more appropriate.

31 The exemption for "indecent" or "pornographic" material is currently unclear. In particular it is unclear whether these terms are used to depict the same or different material. For clarification purposes, New Zealand suggests that the exemption be reclassified as "any material that is subject to or potentially subject to restrictions or prohibition on availability under censorship legislation".

Medical Practitioners

32 This exemption is addressed under Section C: Occupations below.

<u>Temporary Exemptions</u>

33 As with permanent exemptions, temporary exemptions, if not managed properly, can undermine the objectives of the TTMRA. New Zealand welcomed the guidelines on the use of temporary exemptions developed by the Cross Jurisdictional Review Forum which are designed to improve efficiency and manage this risk. These guidelines have been well publicised but their effectiveness is yet to be tested.

34 One useful application of temporary exemptions can be in situations where new regulation is being implemented on both sides of the Tasman to protect public health, safety or the environment, but where, due to parliamentary processes, the commencement dates of such regulation may not be fully aligned. The temporary exemption provides a 12 month adjustment period. An example is the temporary exemption New Zealand invoked for hot water heaters. The 12 month exemption period facilitated the introduction of a similar minimum efficiency product standard in both Australia and New Zealand thereby aligning the two regulatory regimes and removing the need for the exemption.

35 Care, however, still needs to be taken by regulators to avoid using temporary exemptions as quick "stop gap" measures. The introduction of temporary exemptions must be supported by robust analysis and justification including a careful assessment of whether the issue can be resolved within the 12 month period or not.

36 While the TTMRA provides a process for extending temporary exemptions for a further 12 months, the process may be unnecessarily administratively onerous and time consuming, requiring consideration by a Ministerial Council and approval by Heads of Government. The requirements of this process mean that the decision to extend a temporary exemption practically needs to be taken within the first 6-7 months of it coming into effect. The Commission may want to explore the value and implications of simplifying the two stage process.

Special Exemptions

37 When the TTMRA was negotiated, it was recognised that there were some areas where the application of mutual recognition principles was premature. It was nevertheless recognised that every effort should be made to bring these areas into the Arrangement through regulatory cooperation programmes. Special Exemption Cooperation Programmes were established to encourage regulators on both sides of the Tasman time to develop regulatory outcomes that support mutual recognition or harmonisation of the respective regulatory regime.

38 Good progress has been made towards resolving the special exemptions. There is agreement that the coordination programmes have provided a strong mechanism to support regulator-to-regulator cooperation. The cooperation programmes have also provided the opportunity for Australia and New Zealand to collaborate in the international context and help shape international debate on mutual recognition and harmonisation.

39 Many of the special exemptions have now reached the stage where overall progress is likely to be slow due to the need to address more significant differences in our respective regulatory regimes. Some of the special exemptions however contain products where mutual recognition can be achieved. This raises the question of whether there is scope to narrow the special exemptions to products where mutual recognition is not yet an option. In addition, presently, exemption headings would suggest that the scope of the exemption is wider than is actually the case. For example, not all radiocommunications devices are exempt from the TTMRA. Of the 34 categories of New Zealand regulated radiocommunication equipment, mutual recognition applies to 27 categories. It may therefore be more appropriate to focus the exemption on the outstanding 7 categories in order to crystallise cooperation efforts, maintain the momentum behind the remaining issues and make the special exemption more transparent.

40 Similarly, there may be scope for distilling elements of the scheduled special exemptions which are intractable and which are unlikely to be subject to mutual recognition or harmonisation in the long term. Consideration could be given to moving such elements to permanent exemptions. However, care is needed to ensure that any such move is supported by robust analysis and justification and is supported by an undertaking to revisit the issues in a timely manner, acknowledging that permanent exemptions narrow the scope and coverage of the TTMRA thereby undermining its objectives.

41 Specific comment on the status of each special exemption is provided in Annex A to this submission.

Annual Roll-over Process

42 In the past, the annual roll-over process has been useful in maintaining focus and momentum for the resolution of the special exemptions. However, as discussed above, many of the special exemption cooperation programmes have now reached a stage where the disciplines of an annual review process are unlikely to support further progress within a 12 month period. The outstanding issues require longer timeframes, particularly where progress is dependent on international developments (for example road vehicles and chemicals/hazardous substances) or the progression of domestic legislation (for example therapeutic goods).

43 In light of this, New Zealand would support simplifying the administration of the special exemptions by extending the roll-over period to a three year cycle. A three year cycle would enable regulators to focus on resolving the issues but remove the substantial administrative costs associated with reporting to Heads of Government under a pro-forma annual roll-over process.

Alternative Options for Supporting Regulatory Objectives

44 In addition to taking out a temporary exemption, regulators have recourse to other options, such product bans and import controls under their respective customs legislation, to achieve their policy objectives. Particular care needs to be taken to ensure every effort is made to use the institutional consultative mechanisms under the Arrangement to identify ways to resolve issues without resorting to these options prematurely and thereby undermining commitment to the principle of mutual recognition.

Use Provisions

45 The 2003 review found that regulations applying to the use of goods can impede inter-jurisdictional trade and as such there is a prima facie case for mutual recognition to apply to the use of goods.[1] However, the review also found that there are a number of implications that need to be considered if mutual recognition were to be expanded to include the use of goods. This needs to be supported by an analysis of use provisions that are barriers to trade.

46 While there are no recent new examples of use provisions, it may be worthwhile taking stock of existing provisions with a view to assessing whether further work is needed to gauge their trade impacts and provide guidance on how these can be mitigated.

47 New Zealand would welcome the Commission's views on whether there is a need to explore the development of guidelines to ensure that officials consider the trade implications of use provisions.

Section B: Occupations

Equivalency and Conditions on Registration

48 Recognition of the principle of equivalence of registered occupations and the limited circumstances under which conditions can be legitimately imposed on registration to support equivalence, is central to ensuring the TTMRA operates effectively for occupations.

[1] For example, appliances such as cloths washers and dish washers require plumbing certification by local authorities in Australia. This certification can only be gained from an Australian laboratory adding expenses and time to the approval process. While these requirements do not relate to the sale of the goods, they have the effect of preventing or hindering sale.

49 Feedback from some New Zealand registration authorities suggests that acceptance of equivalence, and the use of conditions to achieve equivalence, are "grey areas" in the practical application of the regime. Some authorities have reported being uncertain about whether an Australian and a New Zealand occupation are equivalent and when conditions might be imposed on registration. An example of where equivalence of an occupation has been understood differently between jurisdictions is that of food safety auditors. These differences in interpretation have lead some jurisdictions to argue for additional requirements to be imposed on food safety auditors before they can be approved or registered to operate in Australia or New Zealand – an outcome which contradicts the intent and objective of the TTMRA.

50 The effective operation of the TTMRA could be enhanced by greater certainty about the principle of equivalence that supports mutual recognition of registration of occupations. In addition, it may be worthwhile examining how greater consistency of interpretation of approvals or registration under the TTMRA (and to a certain extent the MRA) might be achieved to help clarify when conditions can be placed on registration. The Commission's views on how this might be achieved would be welcome.

51 Feedback received from some stakeholders also suggests that there may be insufficient understanding of the importance of the deliberate decision taken in respect of the TTMRA not to directly underpin mutual recognition of registration of occupation with mutual recognition of qualifications. The attention on differences between jurisdictions in respect of qualifications requirements for certain registered progression may underlie the concerns about the practical equivalence of some registered occupations noted above.

52 Our view, however, is that any proposals to address these concerns by supporting mutual recognition of qualifications should be treated with caution. Qualifications are but one element of the overall requirements for registration in both jurisdictions, the principle of broad confidence in registration requirements (i.e. "equivalence"), having been accepted at the outset under the Arrangement. In short, jurisdictions from the start expressed confidence in the efficacy and soundness of respective regulatory outcomes achieved under their registration systems. Regulators should accordingly continue to be encouraged to recognise that the principle of mutual recognition of registered occupations applies a discipline to encourage cooperation and coordination to ensure that all elements of the registration requirements are broadly aligned and consistent with meeting the obligations under the TTMRA.

53 This confusion should continue to be addressed by targeted awareness raising, better dissemination of information and processes to encourage regulators to share experiences. In the longer term, it would be worthwhile exploring the feasibility and implications of extending to New Zealand the current Australian process of Ministerial Declarations of equivalence for licensed occupations as a means of providing additional certainty for registering authorities and those seeking registration.

Jurisdiction Shopping and Hopping

54 Some regulators have raised concerns that differences in registration requirements between jurisdictions creates incentives for individuals to use the TTMRA to circumvent the need to meet more onerous requirements in jurisdiction A, by seeking registration in jurisdiction B and then seeking registration in jurisdiction A under the TTMRA. Although such concerns are not widely held, and most regulatory authorities appreciate the underlying intent of the TTMRA and are implementing their obligations accordingly, some regulators argue that the existence of different registration options creates a risk of lowering professional standards.

55 To ensure that the TTMRA is operating efficiently and effectively, it is important to investigate these stakeholders concerns. Care, however, must be taken to critically assess the merits of the arguments. There are a number of possible options that could help to alleviate these concerns which could be explored. These include:

- Supporting improved communication and coordination between registration authorities, by encouraging more formal links e.g. through memoranda of understanding, and systematic engagement. This would facilitate sharing of experiences and the development of common strategies for dealing with issues such the scope of registration requirements and processes and "problem" cases when they arise. Improved communication between authorities would facilitate better alignment of registration models, which would reduce concerns about jurisdiction shopping.

- The current work in Australia on a national registration/licensing scheme for health professionals could help to address these concerns by reducing the number of available registration models. There would be a need to take into account the New Zealand dimension when developing the models. To this end there could, for example, be value in assessing the feasibility of Australian and New Zealand registering authorities working closely together as Australia's national frameworks are developed, to ensure that trans-Tasman implications are fully understood, and that the new frameworks in Australia and those in New Zealand are as closely aligned as possible.

- Likewise, the current work on developing the mutual recognition matrix and the Ministerial Declarations on equivalency for certain trades will have positive implications for New Zealand. We would welcome the Commission's views on the potential benefits and implications of extending the matrix and the Ministerial Declarations to cover New Zealand registration requirements in those trades. This could provide additional certainty for both registering authorities and those seeking registration. New Zealand, through its participation on the CJR Forum is closely following the process of updating the Ministerial Declarations to ensure we are kept informed of developments and will look for opportunities for further engagement in this work.

56 To address concerns about jurisdiction shopping, some New Zealand registration authorities have suggested the introduction of a requirement for a set period of registration and practice in the jurisdiction of initial registration before an applicant can seek registration in another jurisdiction under the TTMRA. They argue that such a requirement would diminish the incentive for jurisdiction shopping. Any move, however, which introduced new constraints on the ability of individuals in either country to register in another jurisdiction under the TTMRA would need to be subject to robust problem assessment and cost-benefit analysis and attention to the potential impact on objectives of the Arrangement.

57 Subject to further analysis, the option discussed in the paragraph above could provide a possible way forward for removing the permanent exemption for medical practitioners. The Medical Council of New Zealand and the Australian Medical Council currently have an arrangement by which general registration is granted to medical practitioners with primary medical qualifications gained in the other jurisdiction/s. This arrangement for mutual recognition reflects the intent of the TTMRA but does not extend to international medical graduates. A requirement that in addition to registration, an international medical graduates has practiced in one jurisdiction for a set period of time could provide a way forward to removing the medical practitioner's permanent exemption.

Australian National Registration/Licensing Schemes

58 As noted above, currently Australia is reviewing its licensing arrangements for a range of occupations and is planning to introduce national licensing for a range of health professions and key trades. The development of this approach has implications for the operation of the TTMRA. There may be flow on benefits in terms of enhancing levels of assurance and consistency of registration requirements between New Zealand and Australia. Equally, close coordination between New Zealand and Australia in respect of the new registration models which are developed could be helpful in order to realise the potential efficiency benefits. We would therefore welcome the Commission's comments on whether sufficient mechanisms are in place to enable relevant registration and licensing bodies on both sides of the Tasman to co-ordinate as these frameworks develop. This will ensure that the TTMRA principles are taken into account early in the process and will pave the way for the implementation of consistent models trans-Tasman.

Cross-border provision of services

59 At present, the TTMRA focuses on movement of service providers, rather than on cross-border provision of services. This approach does not address the increasingly common situation of a person who practises a registered occupation in country A seeking to provide the relevant services to persons in country B, without becoming resident in country B or establishing a place of business in country B.

60 Where a service provider registered in country A is entitled to registration in country B under the TTMRA, it follows that there is no issue as to the qualification or fitness of the service provider to provide the service. A requirement to seek registration in country B before providing services in that jurisdiction creates a barrier to trade in services, and gives rise to compliance costs for businesses which may be significant compared with potential profits from occasional cross-border service delivery.

61 The 2003 Review noted that cross-border provision of services creates enforcement difficulties because there can be significant uncertainty about which regulatory regime applies. For example, if an architect based in NZ provides services to an Australian client in breach of professional standards under Australian law, even if Australian law provides on its face for those standards to apply, there is no mechanism for imposing effective disciplinary sanctions on a person resident in New Zealand. And the corresponding NZ disciplinary rules will not always apply, where the services are provided outside New Zealand.

62 The Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement ("the Treaty") was signed by Australia and New Zealand on 24 July 2008. Following its coming into force (which will occur after each party puts in place necessary domestic procedures including implementing legislation), it may be timely to examine potential benefits and implications of extending the scope of the TTMRA to cross-border provision of services in registered occupations.

63 The Treaty:

- Includes mechanisms designed to resolve civil court proceedings with a trans-Tasman element more efficiently, effectively and at lower cost. These include simplifying the service of civil court proceedings and the process for enforcing a broader range of judgments across the Tasman. This will assist those involved in legal disputes concerning the provision of services across the Tasman. The resulting increased predictability in resolving trans-Tasman legal disputes should help reduce impediments to trade;
- Allows criminal fines imposed in one country for certain regulatory offences to be enforced in the other in the same way as a civil judgment debt. Currently such criminal fines are not enforceable due to a long-standing rule prohibiting the enforcement of another country's penalties. This prohibition impairs the effective enforcement of regulatory regimes in which each country has a strong mutual interest. To be included in the new regime, the fine must be imposed under a regulatory regime that impacts on the integrity and effectiveness of trans-Tasman markets. Occupational regulation and consumer protection statutes appear to meet this test and will be considered for inclusion; and

- Allows the arrangements for enforcing judgments to be extended to certain tribunal decisions, as agreed between the two governments (tribunal orders imposed in one country are currently not enforceable in the other). In due course, when consideration is given to which tribunals might be included, the respective TTMRA tribunals could be assessed for inclusion.

Section C: Awareness of TTMRA

64 Following the 2003 Review, the Ministry of Economic Development undertook a series of workshops and seminars targeting government agencies and occupational registration authorities to raise awareness and improve understanding of the provisions of the TTMRA. In addition, the Ministry set up a TTMRA-specific enquiry point which is predominantly used by individuals seeking information to assist with registration processes. The Ministry continues to engage with the policy machinery across the New Zealand public sector to ensure that the TTMRA is considered at an early stage of policy development processes.

65 In 2006, the Cross Jurisdictional Review Forum produced a revised version of the Users' Guide to the MRA and TTMRA. In addition to providing guidance on the key provisions of the mutual recognition schemes, the Guide now includes a new section on the respective roles and responsibilities of key stakeholders. The Guide, which has been widely publicised and is available on government websites in Australia and New Zealand, has been well received by stakeholders.

66 Against this background, we believe the understanding and appreciation of the TTMRA in New Zealand has grown since 2003. However there is still room for improvement.

67 For example, the reviews of the Food Regulation Agreement and of the Food Treaty identified a lack of understanding of the implications of the TTMRA with regard to food regulation. This lack of understanding by regulators as well as other stakeholders often manifests in a view that TTMRA acts in competition with, or undermines, the Food Treaty. The Food Treaty provides for the harmonisation of composition and labelling food standards. While the obligation to harmonise covers the majority of food regulation, it does not cover maximum residue limits (environment specific), food hygiene standards (site specific) and export standards (often set by third countries and including production and processing standards). The TTMRA does apply to standards outside the scope of the Food Treaty – it is this intersection between the obligations and principles of the Food Treaty and the TTMRA that is often not understood by food regulators. To overcome the potential for confusion, the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) agenda now includes an item on TTMRA information from the CJR Forum. This agenda item could potentially be expanded to include providing Food Regulation Ministers with a report on how relevant food regulation proposals will impact on, and meet the objective of, the TTMRA.

68 Retailer awareness of the TTMRA is another issue constraining exporters' ability to extract maximum benefits from the TTMRA. An example of lack of awareness of the legal provisions of the TTMRA is in the electrical and electronic products area where many traders in Australia are unwilling to sell product from New Zealand that does not have Australian markings and documentation. Consequently, some New Zealand suppliers seek to gain Australian "approvals" rather than seeking to enforce the provisions of the TTMRA. The example points to a possible need for further communication of the intent, principles and provisions of the TTMRA to retailers and consumers.

69 In relation to occupations, a large part of the queries received are general queries regarding whether a person who is practicing a particular occupation in one country is entitled to practice that occupation in the other country. While such queries do not signify any fundamental problems with the operation of the TTMRA itself, it may indicate that ongoing efforts to raise public awareness of how the TTMRA operates and what it does (and does not) deliver in respect of occupations could be worthwhile.

70 We would welcome the Commission's views on what additional initiatives could be put in place to further raise awareness of the TTMRA among all stakeholder groups, for example including a TTMRA information item on the agendas of all relevant Ministerial Council meetings.

Section D: Bilateral engagement with third countries

71 Australia and New Zealand are committed to liberalising trade with other countries through a number of bilateral, regional and multilateral agreements. Under most trade agreements, parties are required to give consideration to accepting or harmonising or mutually recognising technical regulations and conformance assessment procedures related to the export of goods.

72 Since the 2003 Review, both Australia and New Zealand have entered into a number of bilateral free trade agreements that include mutual recognition provisions. New Zealand has negotiated such arrangements in a way that is consistent with the TTMRA. For example, the Agreement between New Zealand and China on Co-operation in the Field of Conformity Assessment in Relation to Electrical and Electronic Equipment and Components, which is part of the New Zealand's free trade agreement with China, sets trade facilitation squarely within an enhanced risk management framework, with the objective of improved compliance in the New Zealand market. This will have positive flow on effects for Australia.

73 The Imported Food Inspection Project is considering risk assessments of food imported from third countries. Risk assessment principles have been agreed and this will provide the confidence in the respective systems that will form the basis of mutual recognition. It is proposed that in rare cases where agreement on import assessments on certain foods are so vastly different that mutual recognition is not possible, these foods should be entered on a list under Schedule 2, Permanent Exemption. The list would be considerably shorter than the existing risk lists that apply to imports from third countries. This proposal is intended to recognise each country's right to set import standards and negotiate bilateral arrangements on high risk foods with third countries while reducing barriers to trans-Tasman trade.

74 As there is potential for these kinds of agreements to increase over time, a question may therefore arise about the extent to which New Zealand and Australia should or would want to consult each other when negotiating with a third party. It is important that the TTMRA is taken into account when officials are negotiating such agreements to ensure that the agreements do not undermine the TTMRA.

75 We would welcome the Commission views on the implications of the increasing number of third part bilateral agreements on the operation and effectiveness of the TTMRA. It may be useful to develop some broad guidelines on this issue to assist regulator, trade negotiators and policy makers.

Section E: Conclusion

76 The TTMRA is a key driver of trans-Tasman cooperation and has successfully provided the mutual recognition of goods and occupations between Australia and New Zealand. While the arrangement is fundamentally sound and has delivered significant benefits to a wide range of stakeholders, there is room for improvement in some areas. These include:

- An increased emphasis on regulator-to-regulator cooperation and dialogue as a means to resolve issues and advance cooperation under the TTMRA. There are many areas where regulators in Australia and New Zealand are working closely together to further the objectives of the TTMRA and make a positive contribution to the SEM. But there is room for improvement;

- A re-examination of the special exemptions to assess the scope for bringing elements of the special exemptions within mutual recognition. New Zealand would caution against moving too hastily to convert any special exemptions to permanent exemptions noting that the cooperation programmes provide a strong mechanism for ongoing cooperation, including in the international context. New Zealand would support the annual roll-over process should be replaced by a three year process in the interest of administrative simplicity and to increase the time available to progress cooperation activities. This change would still maintain disciplines to drive on-going regulatory cooperation;

- An examination of how registration authorities can be given more certainty about "equivalence" of occupation and concerns held by some stakeholders about "jurisdiction shopping" caused by different registration requirements as between jurisdictions can might be addressed; and

- New Zealand would welcome the Commission's thoughts regarding other issues that have been raised such as: the effect of use provisions on the sale of goods; the potential implications for the TTMRA from bilateral mutual recognition arrangements with third parties; and the possibility of expanding the scope of the TTMRA to include cross-border provision of services.

Annex A

Specific comment on the status of each Special Exemption

Motor Vehicles Exemption

1 The immediate or speedy harmonisation between the New Zealand and Australian requirements for vehicles, vehicle components and systems would require Australia to relax its applicable requirements and open up its domestic market to a far less restricted import, or conversely require New Zealand to restrict the sources from where vehicles, vehicle components and systems are sourced, or a combination of both. Any of these options would require significant policy decisions at government level on both sides of the Tasman.

2 There are some opportunities though, at least in respect of new vehicles.

3 Both New Zealand and Australia are actively participating in the work at the UN/ECE World Forum for Harmonization of Vehicle Regulations (WP.29). This forum works on the development of EN/ECE regulations and on the updating of the existing ones.

4 Since Japan is also active participant of this work, and also declared that they would align their requirements with the UN/ECE regulations, it is likely that the UN/ECE regulations will become a strong "leading" regulation set that will be followed or accepted in many countries. This would harmonize the vehicle requirements of New Zealand and Australia to a great extent. However, this process will take some time, and its timeline will primarily depend on the approach and determination of the Australian and Japanese regulators.

5 In addition to the above, the USA is also an increasingly active participant of the work at WP.29, and also contracting party to the 1998 Agreement aiming to establish global technical regulations (GTRs) for road vehicles, their components and systems. The aim of this agreement and work-stream is to ensure mutual recognition of vehicles (and systems, components) by countries requiring/accepting compliance with UN/ECE regulations and countries where compliance with FMVSS and EPA regulations are required. When all UN/ECE regulations and FMVSS/EPA regulations are harmonised under the GTR regime, and Australia and Japan have harmonized their regulations with UN/ECE as intended, the requirements for vehicles in New Zealand and Australia will be essentially harmonised. However, this process is at a very early phase and it would be very difficult to estimate when it may be completed.

6 In light of the above, the full or partial removal of road vehicles, their components and systems from the scope the Exemption would be difficult, and its success and impact may depend on the progress of the work carried out at the WP.29 on global harmonisation.

7 That said, Australia and New Zealand have been working on a programme aimed, where appropriate, at harmonising Australian and New Zealand road vehicle standards with the UN/ECE Regulations or those national or regional standards that are agreed by both authorities. The long timeframes associated with this work may raise the question of whether this exemption should be moved to a permanent exemption.

8 Before making such as decision, it is important to fully consider all options, including the possibility of narrowing the scope of the exemption by allowing mutual recognition to apply to certain parts or elements of the exemption. For example, the current exemption includes child restraints. It would be preferable to work towards a solution to resolve that matter than to have it wrapped up in a permanent exemption, should a joint decision be made to go that way. There is also the question as to whether new and used vehicles should be treated in the same way and there could be some scope to deal with each through a different process. Carrying out such an assessment would avoid the all or nothing approach and would support the objectives of the TTMRA. Further it would minimise the risk of setting an unhelpful precedent that would be difficult to remove in the future.

9 In this context, continuing the special exemption would enable regulators to work though the types of issues outlined above. It would oblige regulators to work together in new areas where there may be scope for the application of new standards. For example, New Zealand is progressing work on fuel economy standards as a way of reducing CO_2 emissions, and vehicle security measures to minimise theft of and from vehicles. Any New Zealand standard will apply to both new and used imports and in the case of fuel economy standards, may have implications for Australian vehicles being imported into New Zealand. If the exemption became permanent, it would remove the incentive to work together to ensure new policies are aligned and implemented in a similar timeframe and any trade implications addressed early on in the process.

Radiocommunications Exemption

10 The electromagnetic compatibility (EMC) regulatory arrangements in Australia and New Zealand are mostly harmonised, so products that comply with the EMC regulatory arrangements in one country can be supplied between the two countries without additional regulatory intervention. However, in recent years some minor changes to the EMC regulatory arrangements of each country have been made, independent of each other, which have caused minor variations to develop between the regimes.

11 Australian and New Zealand regulators have agreed to continually review the EMC arrangements to ensure that the regulations remain contemporary and relevant to industry requirements and where minor differences do exist, strategies will be developed to identify solutions for their alignment. The closer cooperation between the agencies is expected to prevent significant differences in EMC regulations occurring in the future.

12 Historical differences in spectrum usage have created differences in standards for radiocommunications equipment between Australia and New Zealand. The majority of arrangements applicable to radiocommunications equipment have been harmonised based on a common set of standards and labelling requirements. However, differences in spectrum usage mean several product standards remain non-harmonised.

13 Of the 34 categories of New Zealand regulated radiocommunications equipment, mutual recognition does not apply (in part or in whole) to the following 7 categories of equipment:

- Short Range Devices (although New Zealand has unilaterally recognised some Australian equipment on certain frequencies)
- HF Citizen Band Radio
- Avalanche Search and Rescue Beacons
- Trunked Mobile Radio
- Telemetry and Telecontrol
- Cordless Telephones (there is some bilateral recognition for equipment on certain frequencies that are common)
- Fixed Link Equipment

14 Regulators are working on aspects of the first two bullet points and advise that they expect some change in the next two to three years. Regulators continue to work on a number of these and the prospects for achieving harmonisation on several product standards by the end of 2009 are good. The other non-harmonised standards present a challenge due to significantly differing spectrum usage and it is expected these will not be aligned within the next two years.

15 There may be a small core of Radiocommunications special exemption categories that potentially could be transferred to a permanent exemption in the longer term. Moving to a permanent exemption at this stage is however premature as regulators are still working on a number of areas and are in the process of developing options to resolve these issues. It is therefore advisable that the special exemption continues to allow sufficient time for this work to progress before exploring the merits of moving to a permanent exemption. It may be possible to revisit this issue at the next review of the TTMRA in 2012.

Therapeutic Goods Exemption

16 The New Zealand and Australian governments have agreed to address the special exemption by developing a joint regulatory scheme for therapeutic products which will harmonise the regulatory requirements for therapeutic products in both countries. Substantial and groundbreaking work towards a joint therapeutic products regulatory authority (Australia New Zealand Therapeutic Products Authority (ANZTPA)) has been done. The work is currently postponed (and not abandoned as implied in the Productivity Commission Issues paper), due to insufficient political support for the passage of the implementing legislation (the Therapeutic Products and Medicines Bill) in the New Zealand Parliament. The key obstacle to the passage of the Bill at that time was disagreement over the treatment of complementary medicines under the proposed joint authority.

17 While work on establishing ANZTPA has been postponed, the implementing legislation for the proposed joint regulatory scheme remains on the Parliamentary Order Paper. The New Zealand government has stated that they remain committed to establishing ANZTPA and that harmonisation in the form of the joint scheme is the preferred outcome for the special exemption for therapeutic goods.

18 Given the hiatus in respect of the joint agency, New Zealand has a commitment to maintaining an on-going dialogue between respective therapeutic products regulatory agencies and to provide annual cooperation reports on progress towards harmonisation of therapeutic product regulation (TTMRA, Part IX Programmes for Cooperation, 9.3.1). New Zealand also sees value in updating the 1993 Memorandum of Understanding between the respective therapeutic products regulatory agencies. This work will provide a useful vehicle to enhance information-sharing and cooperation in the process of better aligning regulation of therapeutic products in both countries.

19 Pending the establishment of ANZTPA, the New Zealand Government is considering interim arrangements addressing New Zealand's domestic therapeutic regulatory needs. These arrangements would facilitate, or at the least not compromise, resumption of joint work on the ANZTPA.

20 Until such time as a joint authority can be established, retention of the TTMRA special exemption for therapeutic goods will be required. Removal of the special exemption to permit mutual recognition for this sector is not a viable option given New Zealand's outdated therapeutic products legislation.

Gas Appliances Exemption

21 There has been substantial progress of late towards progressing mutual recognition of natural gas appliances. Australian and New Zealand regulators have agreed to work on a strategy for mutual recognition of natural gas regulations covering gas appliance approvals.

22 New Zealand has prepared a proposal for amended gas appliance safety regulations that will require third party certification of meeting safety standards and a labelling system. These changes should allow for mutual recognition to apply. In addition, there is in principle support for a common approach to labelling.

23 The differences in LPG composition between Australia and New Zealand have been recognised as a safety issue for all LPG appliances. As it is not practical to resolve this issue by changes to either country's LPG supply, regulators have agreed to develop a cost-benefit analysis to support the recommendation of a permanent exemption for all LPG appliances.

24 It is anticipated that concluding the work supporting the application of mutual recognition of natural gas appliances and implementing a permanent exemption with a narrow scope will see the successful conclusion of this special exemption.

Hazardous Substances Exemption

25 Work towards mutual recognition for chemicals is progressing well. A major component of this work is implementation of the United Nations Globally Harmonised System of Classification and Labelling of Chemicals (GHS). Given the commonalities between different chemical groups (ozone depletors, agricultural and veterinary chemicals etc), New Zealand views the implementation of GHS as an opportunity to advance harmonisation and/or alignment of chemical specific aspects of regulatory control in various sectors.

26 Implementation in Australia of the GHS into the workplace chemicals sector is well advanced, while for consumer and domestic and agricultural chemicals the relevant Australian government agencies are still examining the implications for these sectors. New Zealand has already implemented the hazard classification aspects of an earlier version of the GHS in all sectors and is now updating that to the current version. The performance based nature of the regulations under the Hazardous Substances and New Organisms (HSNO) Act allows for the adoption of the hazard communication aspects of the GHS and this adoption is well advanced.

27 One of the key considerations for GHS implementation in Australia is how the GHS is implemented internationally by their major chemical trading partners. A concern for their industry is that GHS implementation should not occur in Australia ahead of these countries. However, care needs to be taken in case implementation of GHS by Australia's major international trading partners occurs faster than expected (for example we understand that the timing for EU implementation process will be: 1 December 2008, commencement of regulations for GHS, with a transitional period to 1 December 2010 for chemicals and 1 June 2105 for mixtures). Resolution of this is a critical factor in progressing towards mutual recognition for chemicals between Australia and New Zealand. Therefore, the special exemption under the TTMRA will need to be retained until then.