NEW SOUTH WALES

GOVERNMENT SUBMISSION

PRODUCTIVITY COMMISSION - ISSUES PAPER:

REVIEW OF MUTUAL RECOGNITION

SCHEMES

SEPTEMBER 2008

CONTENTS

INTRODUCTION

New South Wales (NSW) strongly supports the continuation of both the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Both agreements extend economic opportunities for businesses and individuals in NSW and other participating jurisdictions by reducing regulatory costs.

Governments are significant purchasers of goods and services, and employers of many skilled occupational practitioners, in addition to their role as regulators. As such, it should be noted that the governments of NSW and other participating jurisdictions are also beneficiaries of efforts to improve the operation of national markets for goods and occupations through mutual recognition.

While the overall impact of mutual recognition has been positive, NSW considers that the operation of mutual recognition can be improved. This submission responds to the Productivity Commission's Issues Paper by detailing NSW's experience with mutual recognition and identifying areas where changes to update the MRA and TTMRA may be warranted. NSW's submission is structured to follow the format of Productivity Commission's Issues Paper including responses to particular questions raised in that paper.

Options identified by NSW in this submission should be regarded solely as possibilities for further investigation. Unless otherwise stated, these do not indicate the preferred position of the NSW Government. NSW will give further consideration to these matters in light of the Commission's draft and final reports.

As a general point, NSW notes that the following matters will be relevant to the Commission's review:

- the 2003 evaluation of mutual recognition schemes recommended legislative amendments to the MRA and TTMRA, e.g. clarification of the process for removing permanent exemptions from the MRA [Finding 6.4][1]. It is worth revisiting whether a package of legislative amendments to update the MRA and TTMRA, including these and other changes, is warranted at this time;
- COAG agreed in February 2006 to a Skills Recognition Initiative, to improve the transparency and effectiveness of mutual recognition for occupations. This initiative has led to the development of Ministerial Declarations of licence equivalency for a range of vocationally trained occupations; and
- COAG's July 2008 'Seamless National Economy' decisions, including a national licensing system for specified occupations. These will have significant ramifications for certain occupations currently covered by the MRA, and the TTMRA to the extent that New Zealand licence holders can apply for equivalent registration in Australia.

[1] Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Research Report, Canberra, 2003.

COVERAGE

Do you have any concerns about the broad architecture used to keep specific goods, occupations and laws outside the coverage of the MRA and TTMRA? If so, what are the relevant issues, how significant an impact do they have on the efficiency and effectiveness of the MRA and TTMRA, and what are the costs and benefits of any changes you recommend?

Currently both the MRA and TTMRA have processes to deal with jurisdictional concerns with particular goods under mutual recognition through temporary and permanent exemptions (and special exemptions for the TTMRA only). In addition, section 49 of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth (the TTMR Act) provides for certain occupations to be permanently exempt from the TTMRA. Medical practitioners are the only occupations currently exempt under those provisions.

New South Wales' submission to the 2003 evaluation noted that "the existence of the special exemption facility and the ability to extend exemptions ... can reduce the incentive for jurisdictions to align standards." While it is important that exemptions are provided for certain matters, it remains the case that there is a stronger impetus for the resolution of differing standards for those goods and occupations where jurisdictions cannot rely on the availability of exemptions. A recent example of such resolution has been for security industry occupations, where differing standards have been a particular challenge for NSW.

Example: Security industry
The security industry, which is administered by the NSW Police Force, is subject to mutual recognition arrangements, allowing licensees from other jurisdictions to apply for a licence in NSW.

However, mutual recognition poses a problem for NSW as there are markedly differing levels of regulation, including probity checks, criminal checks, training and competencies across these industries. NSW has been driving national reforms for the security industry to remedy this problem and recently COAG endorsed moves to introduce national minimum standards across jurisdictions to be implemented by 2010.

Do you have any concerns about the interaction between the MRA and TTMRA and any other legislation? If so, what are your concerns about the effectiveness and efficiency of the MRA and TTMRA and the other legislation? What changes would you recommend, and what costs and benefits would they involve?

The mutual recognition provisions as currently worded intend that there be certain general exemptions from the mutual recognition principles, for example in relation to the handling of goods, for goods where there are requirements that provide for health, safety or environmental protection and the requirements are applied equally regardless of origin of the goods. Many of the concerns about the way in which mutual recognition legislation interacts with product safety requirements could be addressed if these general exemptions were more clearly articulated in the legislation and better understood among regulators and industry.

For instance, section 11(2) of the *Mutual Recognition Act 1992* of the Commonwealth (MR Act) provides examples of the kinds of laws to which that particular exemption applies, however examples are not included for the exemptions provided under section 11(3) or 11(4).

The Commission may wish to consider whether the addition of further examples may make the intention of the legislation clearer in relation to the general exemption provisions of the MRA and TTMRA.

Permanent Exemptions

Is there still a case for clarifying and simplifying the process for removing permanent exemptions from the MRA, and if so what changes do you recommend? What would be the costs and benefits of your recommended changes?

In response to the Productivity Commission's 2003 review, the CJR Forum considered that changes to make the MRA permanent exemption process consistent with the TTMRA should be postponed until other legislative changes are also being made. NSW's submission raises a range of matters that could now form part of such a package of legislative reforms. If these and/or other matters requiring legislative amendments are pursued, the changes to permanent exemptions that the CJR Forum has previously endorsed should be progressed.

Should the permanent exemption for ozone protection be retained, and if so why?

New South Wales has no in-principle objection to the removal of the permanent exemption from the MRA only, subject to the Commonwealth broadening its regulation to include certain areas that are currently regulated by States and Territories. The permanent exemption under the TTMRA should remain in place until such time as Australia and New Zealand's regulatory regimes can be demonstrated to be equally effective.

The Commonwealth's *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* controls the manufacture, import and export of all ozone depleting substances (ODS) and their synthetic greenhouse gas replacements. It also controls imports of refrigeration and air-conditioning equipment containing an HFC or HCFC refrigerant and grants the Commonwealth the power to create a nationally consistent system to control the end-uses of these harmful gases.

The *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (as amended in 2005) contain controls relating to: import/export/manufacture licensing; manufacture and disposal of scheduled substances; refrigeration and air-conditioning; methyl bromide; and fire protection. The regulations are likely to be broadened in the future to include other end uses of ozone depleting substances and synthetic greenhouse gases - including the aerosol, solvents and foams sectors which are currently regulated by State and Territory governments.

Since 2005, Commonwealth regulations, developed under the *Commonwealth Ozone Protection and Synthetic Greenhouse Gas Management Act*, have replaced State and Territory ozone protection legislation, including NSW legislation and provided a nationally uniform approach to end use control of ozone depleting substances. The NSW Regulation was repealed in September 2006.

Given the national uniform approach created by the Commonwealth regulations, it would be reasonable to remove the permanent exemption for mutual recognition once the Commonwealth has broadened its regulation to include other end uses of ODS and synthetic greenhouse gases - including the aerosol, solvents and foams sectors which are currently regulated by State and Territory governments.

It should be noted that the uniform approach does not apply to New Zealand where different end use controls and management approaches exist in relation to import, export and trade of ozone depleting substances. A permanent exemption need not be retained in relation to mutual recognition across Australian States. However, a permanent exemption should apply until it can be demonstrated that NZ law applies an equally effective regulatory regime for the trade, manufacture and end use control of ODS.

Temporary Exemptions

Should the option of a 12-month extension for temporary exemptions under the TTMRA be retained, despite the inconsistency this creates with the MRA? What are the costs and benefits of your preferred approach?

For Australian jurisdictions, it is preferable that there be consistency between the MRA and TTMRA in relation to the provisions for temporary exemptions. Where goods may be legally sold in at least one other Australian jurisdiction as well as in New Zealand, it is necessary to seek an exemption under both schemes, in order for the exemption to be effective. In such circumstances the discrepancy in durations for temporary exemptions means that there may be little point pursuing any extension under the provisions of the TTMRA, as the expiry of the MRA temporary exemption may permit the relevant good to be sold on the grounds that it is legal to do so in another Australian jurisdiction.

New South Wales suggests that there is merit in considering changes to provide temporary exemptions of up to two years under both schemes, whether by adding the option of a 12 month extension to the MRA, or under a revised model applying to both schemes. In addition to the duration of exemptions, the NSW suggests that the Commission consider whether the incentives built into the temporary exemption process are adequate to encourage the timely resolution of regulatory differences between jurisdictions. The TTMRA currently requires the endorsement of a 12 month extension by at least two thirds of jurisdictions. There may be other suitable mechanisms available to provide incentives in addition to, or in place of this requirement.

Models that the Commission may wish to consider could include:

- a 12 month extension of temporary exemptions under the both the MRA and TTMRA consistent with existing arrangements under the TTMRA;

- replacing the current exemption arrangements under both schemes with provisions for two year exemptions under both the MRA and TTMRA, without a renewal requirement;
- provision for a single process to provide an exemption under both schemes for Australian jurisdictions, i.e. that an exemption taken out by a State or Territory under the TTMRA would automatically provide an exemption under the MRA without needing to implement a separate exemption (however this will rely on all jurisdictions continuing to be participants in both schemes); and
- reporting requirements in addition to, or replacing, the requirement of gaining two thirds of jurisdictions' approval in order to extend a temporary exemption, e.g. under a model of a single two year exemption, a requirement could be that the relevant Ministerial Council publish a work plan within the first 6 months of the exemption detailing how the regulatory difference is proposed to be resolved, and a further reporting requirement at the end of the two year period detailing what had been achieved and any further work required beyond the end of the exemption period.

Has the lack of a mechanism for Australian states and territories to jointly obtain a temporary exemption under the TTMRA led to significant unnecessary costs? If yes, what evidence do you have to support this and what measures do you recommend to address the problem? What would be the costs and benefits of your recommendation?

New South Wales does not have particular concerns with the lack of a joint temporary exemption process, but does not object to consideration of such an option. If legislative changes are required to give effect to such a mechanism, consideration should be given to making the changes part of a broader package of amendments to update the MRA and TTMRA.

In addition NSW notes that:

- where an Australian jurisdiction judges that a temporary exemption is desirable, it does not follow that the relevant concern is necessarily a problem for other Australian jurisdictions that would warrant a joint exemption; and
- there does not appear to be any particular barrier to jurisdictions coordinating their exemption processes at present, and in any case a joint process would presumably still require each State and Territory to assess whether a temporary exemption is necessary to their particular circumstances, and agree to the scope of any proposed joint temporary exemption.

Special Exemptions

What are the costs and benefits of the annual rollover process for TTMRA special exemptions, and does it generate a net benefit?

The benefit of the annual rollover process is that it provides an impetus to all jurisdictions to resolve those regulatory differences that are the subject of the exemptions. It does so by requiring that evidence be provided every year to demonstrate what action is being taken to resolve regulatory differences and justify why a further continuation should be granted. Accompanying this are the attendant costs including: preparing Cooperation Program reports each year; consideration of

these reports by Ministerial Councils, Heads of Government and associated agencies; drafting the necessary instruments to give effect to the rollover; and the gazettal of endorsement in at least two thirds of jurisdictions.

Despite progress achieved by the Cooperation Programs, the relevant regulatory differences have yet to be resolved to the point that Special Exemptions are no longer required. NSW considers that, while annual reporting obligations are useful, the rollover requirement is not an effective mechanism for driving the Cooperation Programs. In particular, the value of annual rollovers has diminished over time as the process has become increasingly routine.

The Productivity Commission's 2003 Review found that the annual rollover provisions "have proved cumbersome and resource intensive, and there is agreement among officials that they have not served a useful purpose." These concerns remain valid in 2008.

Example: TTMRA Special Exemption for Road Vehicles
With regard to road vehicles, New Zealand accepts vehicles that meet Australian, Japanese, European and USA standards. Australia only recognises Australian Design Rules (ADRs), although some ADRs have been harmonised with the European standards. In particular, both Australia and New Zealand have acceded to the United Nations – Economic Commission for Europe (UN-ECE) 1958 Agreement.

A special exemption under the TTMRA is currently in place to exempt road vehicles, where differences in regulations require further resolution. While Australia and New Zealand have been working towards harmonisation of these standards, significant differences remain. Consequently, the road vehicle special exemption has continued to be rolled over, and remains in force.

A similar problem exists with child restraints, where Australia and New Zealand are yet to harmonise the applicable standards. Child restraints have therefore been incorporated in the road vehicle special exemption.

In NSW, the Roads and Traffic Authority (RTA) is the State Government agency responsible for registering and inspecting vehicles. The RTA has no objection to the trade of vehicles and automotive products across the Tasman, provided that they are certified to UN-ECE regulations provided under the 1958 Agreement. However, until road vehicle standards are sufficiently harmonised, the RTA considers that the special exemption should remain in force in the interests of Australian road safety.

What reforms do you recommend to address concerns about the limited cost effectiveness of annual rollovers for TTMRA special exemptions? What would be the costs and benefits of your suggested reforms?

Do you expect the benefits of continuing to roll over the remaining special exemptions annually will outweigh the costs? If so, what evidence do you have to support your conclusion?

What actions do you recommend to remove the remaining special exemptions under the TTMRA? What are the costs and benefits of your recommended actions, and are

they feasible in light of the different positions Australia and New Zealand have maintained on a number of matters?

The Commission's 2003 Review recommended that the cooperation programs should continue without the need for annual rollovers and only require annual progress reports [findings 8.10, 8.12, 8.16, 8.18, 8.19 and 8.21][2]. The Cross Jurisdictional Review (CJR) Forum's response was that "because of the legislative difficultly involved, the current special exemption system of annual rollovers and progress reports should remain in place." In particular, changes to the rollover requirements would require amendments to the relevant legislation in all participating jurisdictions. Given the relatively small number of items which have a special exemption it was considered that it would be less burdensome to continue with the current arrangements, which are at least well understood by all parties.

Notwithstanding the CJR Forum's previous concerns, NSW recommends that further consideration be given to the option of changing or removing the annual rollover requirement for Special Exemptions. In particular, the difficulty and inefficiency of pursuing minor, piecemeal legislative changes to the TTMRA in each jurisdiction might be addressed by incorporating the removal of annual rollovers into a wider package of legislative amendments to update both the MRA and TTMRA. NSW suggests that consideration include reducing the frequency of rollovers or removing the rollover requirement entirely.

Exceptions and exclusions

Do you consider that occupations registered under coregulation should continue to be outside the coverage of the MRA and TTMRA, and if so why?

New South Wales does not object to further consideration of this issue. At present some occupations may be regulated by a government body in one or more jurisdictions but fall under a co-regulatory scheme in another jurisdiction. This results in inconsistency of approach and difficulties for those moving between jurisdictions that take different approaches to regulation.

However, careful regard will need to be given to the extent to which including coregulatory models will ease recognition, and what administrative and regulatory costs will be imposed on coregulators as part of such a scheme.

Should negative licensing arrangements for occupations be explicitly covered by the MRA and TTMRA? If so, how would this be achieved and what would be the benefits and costs?

It is difficult to see how a negative licensing scheme could be assessed against a positive scheme. Negative licensing schemes are usually based on persons being allowed to operate except where excluded because they have acted inappropriately. There may be little or no monitoring of participants unless there is a complaint. They are not the same as positive schemes which often have a range of entry requirements

[2] Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Research Report, Canberra, 2003.

and monitoring of licensees through the renewal process, although there may be some requirements in relation to holding a qualification.

Definition of 'registration'

In regard to the above points on negative licensing and coregulation, NSW recommends that the Commission consider changes to the MRA and TTMRA in order to clarify the definition of 'registration'.

Section 4 of the *Mutual Recognition Act 1992* ('MR Act') and *Trans-Tasman Mutual Recognition Act 1997* ('TTMR Act') of the Commonwealth define "registration" as follows:

> "**registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of an occupation;"

The broad framing of this definition can cause confusion over whether negative licences and coregulation should be considered as registration for the purposes of the MRA and TTMRA. In particular, the words "or any other form of authorisation" could result in the view being formed that, if a regulator kept any form of register, even a list of names of people working in that occupation, then this could be interpreted as "registration" under mutual recognition. Accordingly, consideration should be given to amending the definition to make explicit that coregulation and negative licensing are not covered by the MRA and TTMRA. If reforms to the schemes result in the expansion of mutual recognition to include some or all coregulation and/or negative licensing arrangements, then the extent to which this is the case will also need to be more clearly reflected in the definition.

Should the character checks required for some occupations continue to not be mutually recognised across Australian jurisdictions and with New Zealand? If so, why, and what evidence do you have that the benefit of not having mutual recognition outweighs the cost?

Both the MR Act and TTMR Act of the Commonwealth define occupations for the purpose of the MRA and TTMRA as:

> "**occupation** means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted."

Accordingly, character or fit and proper requirements are explicitly included as examples of the sorts of qualification requirements that fall within mutual recognition of occupations. However, character checks are applied for different reasons to the qualifications of training, education, examination or experience. Rather than a person's capability to operate, they generally concern managing the risk that,

irrespective of competence, a person may seek to use a position for an unlawful purpose. This extends to circumstances where a position can be used in a manner detrimental to third parties, who are not direct consumers of the services provided by the licensed individual.

While training, education, examination or experience qualifications are positive assessments of whether a person should be permitted to perform a particular occupation, character checks involve a negative assessment of individuals to exclude them from particular occupations. On this basis character checks are more akin to the negative licensing schemes that are already outside the scope of mutual recognition.

Individuals of unfit character should not be afforded the opportunity to evade probity checks through mutual recognition. In this regard, NSW recommends that the Productivity Commission include consideration of removing references to character and fit-and-proper person checks from MRA and TTMRA, as part of any legislative amendments that may be contemplated.

Where character checks are required by one jurisdiction, it should not be necessary for this to be repeated in another jurisdiction. NSW considers that the preferred remedy for this circumstance is for jurisdictions to negotiate mutually agreed harmonisation and recognition of character check arrangements, where possible.

OCCUPATIONS

Are registration bodies assessing the equivalence of occupations between jurisdictions in markedly different ways, and if so, what impact is this having on cross-border labour mobility?

A number of vocationally trained occupational licences issued in Australian jurisdictions are now captured in the Ministerial Declarations developed through COAG's 2006 Skills Recognition Initiative. This provides a clear equivalence of licences and minimises the ability of registration bodies to take a different approach to assessment of equivalence. These arrangements currently do not extend to NZ licences.

Are marked differences between jurisdictions in the number (or even existence) of licences for specific occupations hindering the assessment of occupation equivalence? How can these differences be resolved?

Non-matching licence categories and training requirements

The different approaches to licensing and registration in the different jurisdictions have resulted in some jurisdictions taking the approach of grouping occupational functions differently. In some jurisdictions a number of licence categories will equate to one category in another jurisdiction. This is not restricted to any one occupation and is apparent in the building occupations, property occupations, restricted electrical licensing and plumbing occupations to name a few.

To a certain extent this has been resolved through the Ministerial Declarations where regulators first decided on the scope of work for a particular licence category and then mapped their licences to the scope of work. However, this does not resolve the problem entirely as it often means that restrictions need to be applied to achieve equivalence. The use of restrictions in jurisdictions where they are not usually applied creates confusion and uncertainty for both administrators and consumers.

A related concern is that for some occupations different jurisdictions provide licences permitting significantly different scopes of work based on the same level of qualification. For example, a person with a Certificate IV qualification applying for a licence for certain building occupations in NSW is permitted to perform a wider range of work than the same person would be if applying for a licence in Queensland. In such circumstances, a licence holder from Queensland moving to NSW can be better off applying through the regular NSW process on the basis of their qualifications. If that person was to apply on the basis of mutual recognition, they may only be granted a restricted licence to operate in NSW, based on the scope of work that their Queensland licence permits them to perform.

Registration arrangements that do not apply to all occupational practitioners

Both the MR Act (section 4) and TTMR Act (section 4) define occupations in terms of "any kind that may be carried on *only* by registered persons". Both Acts define registration as "licensing, approval, admission, certification (including by way of

practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation."

By contrast, where a new scheme is introduced that only applies to new entrants after a certain date, the scheme does not require all practitioners to be registered persons. Accordingly, such a scheme would fall outside the definition of "occupation" for the purposes of the MRA and TTMRA. NSW has identified this as a particular problem in relation to the teaching industry, see below, however it is to be expected that the problem will arise wherever such arrangements are applied.

Arrangements of this type are designed to progressively require all practitioners to be "registered" (within the meaning of the MR Act and TTMR Act), while imposing minimal regulatory burdens on existing occupational practitioners. NSW considers that it is consistent with the intent of the MRA and TTMRA that those practitioners who are required to be registered under such schemes be covered by mutual recognition. NSW therefore recommends that consideration be given to amending the MRA and TTMRA to capture registration regimes of this type.

Example: Teachers in NSW Schools

Teachers in NSW are accredited at the point of employment by a Teacher Accreditation Authority (TAA), which is usually the school or school system offering employment. Accreditation is conditional on gaining employment and certain other matters including qualification requirements. Under the terms of the *Institute of Teachers Act 2004* (NSW) TAAs are approved by the Director General of the Department of Education and Training, or by the Minister for Education and Training. This accreditation system is overseen by a government statutory body, the NSW Institute of Teachers, established under the same Act. However, these accreditation requirements *only* apply to teachers who commenced teaching after 30 September 2004, or who have been away from teaching for five years or more and are seeking re-employment. This arrangement provides for pre-scheme teachers to continue their occupation, while ensuring that eventually all teachers will need to be accredited under the new arrangements.

However, although the new accreditation scheme falls within the definition of "registration" for the purposes of the MRA and TTMRA, accredited NSW teachers are not recognised in other jurisdictions under mutual recognition. Both the MRA and TTMRA define occupations in terms of "any kind that may be carried on *only* by registered persons". By contrast, NSW's requirements are such that not all teachers are required to be accredited and therefore the scheme falls outside of the definition of "occupation".

To address this anomaly, NSW has sought to achieve mutual recognition of its accreditation system by means of bilateral agreements with other jurisdictions. An agreement with the Victorian Institute of Teaching was signed in 2006. Since this time, 148 Victorian teachers have been recognised by the NSW Institute of Teachers. A further agreement was reached with the Northern Territory in 2008.

In addition, NSW is recognises the registration of Queensland teachers, however this arrangement is not reciprocated by Queensland. The Queensland College of Teachers has indicated that in a single year it has granted registration to 601 teachers, including

191 from Victoria[3]. Given that NSW has a larger population again than Victoria, and shares a border with Queensland, it is reasonable to expect that at least as many NSW teachers might have been inclined to seek accreditation in Queensland under mutual recognition, had that option been available to them.

Are appeal mechanisms for the mutual recognition of registered occupations effective? Are individuals discouraged from making appeals because of a lack of awareness of appeal mechanisms and/or their cost? If so, what reforms do you recommend and what would be their costs and benefits?

The Office of Fair Trading, a primary regulator of trade occupations in NSW, reports that despite being advised of their rights to appeal, individuals usually prefer to obtain their licence in other ways such as applying through the new jurisdiction's process for non-mutual recognition applicants, returning to the originating jurisdiction for a licence variation to enable them to obtain the type of licence they want in the new jurisdiction.

How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?

Conditions imposed by the NSW Office of Fair Trading

In relation to occupations regulated by the Office of Fair Trading, the main occupations where conditions are imposed on people registering under mutual recognition are builder licences, a number of building trade licences (e.g. wall and floor tiling, pool and spa construction, plastering, fencing), plumbing occupations licences and restricted electrical licences. These conditions (or restrictions) are imposed in line with the Ministerial Declarations developed through COAG's 2006 Skills Recognition Initiative. The conditions relate to a restriction on the scope of work.

Introduction of new licence schemes that require additional training

New South Wales is generally supportive of the current mutual recognition provisions that prevent jurisdictions from requiring mutual recognition applicants to undertake further training as a pre-condition for granting a licence. However, once the applicant has been granted a licence under mutual recognition, they should be treated no differently to other licence holders. Under current MRA and TTMRA provisions, a licence holder who was granted their licence under mutual recognition arguably cannot generally be required to undertake training at anytime during which they hold that licence.

Specifically, section 20(4)(b) of the MR Act provides that continuance of registration is subject to the jurisdiction's laws, but only to the extent to which those laws:

> "are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation."

[3] Queensland College of Teachers, *Submission to Productivity Commission Review of Mutual Recognition Schemes*, 2008. http://www.pc.gov.au/__data/assets/pdf_file/0009/82179/sub032.pdf

This restriction is repeated in section 17(2)(b) and similar provisions are included in the TTMR Act at section 16(2)(b) and section 19(4)(b).

This is of concern in circumstances where a new licensing scheme is introduced that requires existing licensees in that jurisdiction to upgrade their training within specified time frames in order to retain or obtain a licence under the new scheme.

There is also the prospect that similar circumstances could arise as part of the implementation of the system of national licensing, which COAG has agreed to develop. It is conceivable that the issuing of future national licences for certain occupations could be contingent on new training for holders of licences under current State and Territory systems. If such requirements would be precluded by obligations in the MRA and TTMRA, it would be prudent to consider whether amendments to the legislation are warranted.

Arguably conditions requiring continuing professional development may be permitted, on a broad interpretation of the MRA and TTMRA. However, NSW considers that it should be unambiguous that continuing professional development training can be applied to all licence holders, irrespective of how licences were first obtained.

In relation to these matters, the Productivity Commission may wish to consider the option of changes to the MRA and TTMRA to make clear that new and ongoing training requirements for licensees apply irrespective of whether a person first obtained their licence under mutual recognition.

Jurisdiction shopping and hopping

Is jurisdiction shopping and hopping occurring for occupations? If so, to what extent is it occurring and what are the costs (such as a 'race to the bottom') and benefits (such as regulatory competition and innovation between jurisdictions)? What specific examples and other evidence do you have to support your arguments?

New South Wales' experience has been that instances of jurisdiction shopping are generally isolated, and most applicants have made a genuine decision to settle in the new jurisdiction.

One recent example of jurisdiction shopping has occurred in the real estate area relating to the marketing by a New South Wales based Registered Training Organisation of an intensive course to Victorian and New Zealand residents with a view to becoming licensed in New South Wales and then obtaining a licence in the jurisdiction of residence via Mutual Recognition. It is anticipated that this concern will be addressed for Australian jurisdictions through the national licensing system agreed by COAG in July 2008, which will include property agent occupations.

Are possible measures designed to prevent jurisdiction shopping and hopping affected by a lack of legal certainty? If so, how could this uncertainty be removed?

A way of preventing jurisdiction shopping is for all jurisdictions to agree on the same scope of work and licence categories for a particular occupation, supported by agreement to the same qualification requirement.

Would measures such as sufficient language proficiency, residency requirements or bonds reduce jurisdiction shopping and hopping? What would be their costs and benefits?

It is possible that such measures could reduce jurisdiction shopping and hopping, however NSW considers that it would be more beneficial to deal with the issue through consistency in approach to the scope of work and qualification requirements.

As noted above, NSW's experience is that cases of systemic jurisdiction shopping are limited and most applicants have made a genuine decision to settle in the new jurisdiction. It is not desirable to place additional regulatory burdens on occupational practitioners that are making genuine applications under mutual recognition. Imposition of such requirements is counter to the intent of mutual recognition, which is to reduce regulatory burdens on the trade in goods and movement of occupational practitioners across jurisdictions.

Such measures would also involve additional administrative costs to operate, in particular, given that the measures would presumably apply to all mutual recognition applicants (if not all practitioners) for the occupation of concern, irrespective of origin. In this regard, if measures were to be contemplated that have the effect of treating foreign citizens differently to citizens of participating jurisdictions in relation to obtaining occupational registration under mutual recognition, this would need to include careful consideration of Australia's and New Zealand's free trade obligations under bilateral and multilateral agreements with third party jurisdictions.

If the Commission contemplates measures such as language proficiency requirements, the Commission should have due regard to whether there is a genuine need for language proficiency for particular occupations that is not currently being met. The Commission should also have careful regard to the consistency of any such proposal with the laws and policies of participating jurisdictions relating to multiculturalism and racial discrimination.

Ministerial Declarations

What concerns do the ministerial declarations for vocationally-trained occupations address? Have the declarations been effective in addressing those concerns, and what are the costs and benefits compared to the previous approach to mutual recognition?

If applied correctly, the Ministerial Declarations should improve transparency. However, it appears that there are cases where processing officers consider the matrices to be incorrect and are applying exclusions and/or conditions. While transparency has improved there are still gaps and discrepancies in the information available.

Additionally, there does not appear to be universal agreement from all jurisdictions on under what circumstances conditions and exclusions are applied in the originating jurisdiction. This has led to uncertainty around the new process and creates a

continuing administrative burden. Processing officers in addition to checking the COAG website and the mutual matrices are required to communicate with the first State of registration to determine why the conditions and/or exclusions have been applied in the originating jurisdiction before determining equivalency.

What are the costs and benefits of maintaining ministerial declarations over time? What institutional arrangements do you recommend to ensure the declarations remain up to date?

While maintaining the Ministerial Declarations provides a number of benefits such as improvements to the processing of applications and greater transparency, it will also have a cost impact. The development of the declarations involved considerable work in assessing and reaching agreement across jurisdictions, which have worked together and developed the expertise to undertake the annual reviews. It is likely that as time passes these experts may no longer be available to participate in the review process. Additionally, because of the range of different licence types for some occupations (e.g. plumbers) it is anticipated that it will be difficult to undertake the annual revision without the benefit of discussions with other States about the scope of their licences. For most of the categories covered in the Ministerial Declarations, a process will need to be put in place for annual review which allows for face to face discussions.

NSW's Office of Fair Trading has encountered instances where there has been a lack of communication across jurisdictions in relation to changes to licence categories. It appears that some new licence categories have been introduced in other States without consulting according to the COAG protocol. Those States have then unilaterally adjusted their interpretation of the Ministerial Declarations to take account of the new category.

It should also be noted that a shortcoming of Ministerial Declarations is in dealing with superseded licence types that are no longer issued, but remain valid. Declarations will generally cover only those licence types being issued at the time the declarations are developed. This can result in licence holders of superseded licence classes being unable to access the benefits afforded by the declarations, as these licences are not included.

The COAG national licensing initiative is expected to address these concerns for those occupations that are included in the initiative.

Shift to national licensing

On 3 July 2008, COAG announced its 'Seamless National Economy' decisions[4], including the development of a national trade licensing system. An Intergovernmental Agreement on the new system is due to be considered by COAG in December 2008. COAG has agreed that the national system will initially apply to the following trades:

- air conditioning and refrigeration mechanics occupations;
- building occupations;
- electrical occupations;

[4] http://www.coag.gov.au/coag_meeting_outcomes/2008-07-03/index.cfm#economy

- land transport occupations (passenger vehicle drivers, dangerous goods);
- maritime occupations;
- plumbing occupations; and
- property agent occupations.

The Council of Australian Governments also agreed to adopt a nationally-consistent approach to the regulation of the private security industry, focusing initially on the guarding sector of the industry, to improve the probity, competence and skills of security personnel and the mobility of security industry licences across jurisdictions, including a possible national system for security industry licensing.

These are expected to address many of the issues that currently exist for mutual recognition of occupational licences under the MRA. However, mutual recognition will still be important for facilitating the trans-Tasman movement of skilled occupational practitioners.

What are the costs and benefits of moving from mutual recognition to national licensing for registered occupations (other than health professions), and is there a net benefit from doing so?

A move to national licensing would eliminate some of the difficulties of interpreting the equivalent licences and scopes of work and provide greater transparency around what is actually licensed.

There would be substantial cost in moving to national licensing given the range of aspects of a licensing scheme which would need to be addressed. Licensing is not only about licence categories but also covers contractual arrangements, compliance, consumer redress, insurance, fidelity funds, consumer tribunals, standards and the interaction between licensing legislation and other consumer protection legislation. In addition to the cost involved in developing a national scheme to cover all aspects of licensing and ensuring associated regulation is considered, there would be a range of implementation costs.

Is there a case for some occupations to be subject to national licensing, but not others? Please specify and provide evidence, wherever possible.

Notwithstanding the benefits provided by Ministerial Declarations, most of the occupations covered by the declarations raise a range of difficulties associated with lack of consistency of approach by the different States, with the exception of electricians. These difficulties are expected to be ameliorated by the introduction of national licensing.

Example: Maritime Occupations
Under the *Commercial Vessels Act 1979* (NSW), any person operating as a crew member on a commercial vessel must hold an appropriate Certificate of Competency issued by NSW Maritime. The Certificates are issued in accordance with the Uniform Shipping Laws Code adopted by all State marine authorities. NSW Maritime has a process in place to recognise Certificates of Competency issued by other Australian States.

In addition to the above, any person operating as a marine pilot must meet the requirements set out in the *Marine Pilotage Licensing Act 1971* (NSW) and *Marine Pilotage Licensing Regulations* (NSW). These are based on commercial vessel competencies and experience. NSW Maritime and the NSW Port Corporations have processes in place to recognise qualifications from other Australian States and from New Zealand.

NSW Maritime considers that mutual recognition of Certificates of Competency for commercial vessel crew and marine pilots is well established but not as effective as it could be, because of differences between the jurisdictions in the areas the Certificates cover, Certificate classifications, underpinning qualifications and terminology.

As part of COAG's 2006 Skills Recognition Initiative, a Ministerial Declaration of Certificate equivalency is being developed for maritime occupations under the MRA. This is expected to allow commercial crew members seeking mutual recognition of their Certificates in other State to more easily determine what the equivalent Certificate is in that jurisdiction. COAG has requested that work on the Skills Recognition Initiative be completed by September 2008.

In addition, reforms are underway to transition to a national licensing scheme for maritime occupations. In March 2008, COAG requested the Australian Transport Council to consider and report back to the COAG Business Regulation and Competition Working Group (BRCWG) on implementation of a single national approach to maritime safety for commercial vessels. In July 2008, COAG further agreed to the development of a national trade licensing system, with an initial focus on trades including maritime occupations.

Australian Transport Council Ministers have agreed that, subject to the outcome of a regulatory impact assessment, they support a national approach to Maritime Safety regulation and are inclined towards broadening the application of the Commonwealth *Navigation Act 1912* to apply to all commercial vessels. This will involve Australian Marine Safety Authority (AMSA) becoming responsible for regulating vessel design, construction, and equipment, vessel operation (e.g. safety management systems) and crew certification and manning.

The TTMRA is also recognised in terms of Certificates of Competency at an administrative level within NSW Maritime and a standard policy has been developed to enable holders of New Zealand Certificates to be issued with an equivalent NSW Certificate upon application to NSW Maritime or the AMSA.

To what extent do current occupation-registration arrangements hinder service provision across jurisdictional borders, despite the existence of mutual recognition? Does this warrant a shift to national licensing, or other reforms, and what would be the costs and benefits?

There are known concerns with requirements for practitioners to be licensed by two jurisdictions for building and property agent occupations in NSW's border regions with neighbouring States and Territories. In addition, NSW is aware of concerns regarding the provision of property related services across jurisdictional boundaries

via the internet. There are particular difficulties where one jurisdiction regulates an occupation and the other does not or the occupations are regulated in very different ways. COAG's 2008 national licensing initiative has identified both of these occupational groups for early attention and it is anticipating that this will resolve these concerns with respect to the MRA.

AWARENESS, EXPERTISE AND GOVERNANCE

Is a lack of awareness of mutual recognition obligations undermining the effectiveness of the MRA and TTMRA? If so, please provide specific examples and evidence. How significant is the problem, if at all?

Bearing in mind the effectiveness of past awareness-raising efforts, what do you recommend to address any awareness problems you have identified?

The NSW agencies with primary responsibility for laws regulating goods and the registration of occupations, exhibit high levels of awareness regarding mutual recognition obligations. For example, processing officers in NSW's Office of Fair Trading are fully conversant with the requirements under the MRA and the TTMRA. The licence recognition website is being used to assist with assessment and front line staff report that it has facilitated processing.

In terms of awareness outside of government, NSW's experience has been that licensees often become interested in the issue of equivalence only if they intend moving from one State to another. Rather than increasing general public and occupational practitioner awareness, it may be more effective to make the information available by providing links to the www.licencerecognition.gov.au website, and the *User Guide to the MRA and TTMRA*[5] via a wider range of contact points. For example, government licensing websites, industry association websites.

Licensing authorities could also refer to the website and User Guide in their explanatory notes for applicants to raise awareness – this may also stop applicants applying for an authority for which they are not eligible.

To what extent do policy makers and regulators encounter difficulties in maintaining expertise on mutual recognition obligations? How, if at all, should this be addressed?

Within NSW, the Department of Premier and Cabinet (DPC) regularly communicates with the Office of Fair Trading and other agencies as necessary concerning mutual recognition matters. In addition, since 2006, the COAG Skills Recognition Initiative has provided a means to improve awareness and understanding of mutual recognition obligations among occupational regulators, and industry stakeholders.

At an interjurisdictional level, standing officer level forums such as the Cross Jurisdictional Review Forum and the COAG Skills Recognition Steering Committee have played important roles in facilitating discussion and awareness of mutual recognition issues among participating jurisdictions.

In particular, the Commonwealth's Department Innovation, Industry, Science and Research has a pivotal role as a repository of information on the mutual recognition of goods and the coordination of related matters, including the Special Exemption rollover process. However, there is currently no equivalent body providing such a function in relation to mutual recognition of occupations at national level in Australia. While State and Territory agencies (primarily central agencies) have provided a useful

[5] http://www.coag.gov.au/mutual_recognition/index.cfm#users

function in this regard, particularly through the CJR Forum, staff turn-over and restructuring of responsibilities in different jurisdictions present a challenge to the retention of corporate knowledge on mutual recognition issues.

The COAG Skills Taskforce has provided effective coordination in relation to the particular COAG initiative of developing Ministerial Declarations, but this does not extend to a broader ongoing support to occupational mutual recognition more generally.

What reforms, if any, do you recommend to the governance arrangements for the MRA and TTMRA to improve their effectiveness? What would be the benefits and costs of your suggested reforms? How would they address concerns about maintaining regulator awareness of mutual recognition obligations?

In light of the circumstances described above, NSW considers that there is merit in examining the option of establishing a new, national body to coordinate occupational mutual recognition at a national level. This body could be part of an existing Commonwealth agency such as the Department of Education, Employment and Workplace Relations.

Such a body should work in concert with the existing Taskforce, however NSW considers that simply extending the remit of the existing Taskforce will not be sufficient. It may be appropriate such a body to assume the CJR Forum's secretariat function that is currently performed by NSW, and responsibility for coordinating the annual update process for Ministerial Declarations.

OVERSEAS MODELS OF MUTUAL RECOGNITION

What features of overseas models of mutual recognition do you recommend be adopted to enhance the functioning of the MRA and TTMRA? What would be the costs and benefits of your recommendations?

The MRA and TTMRA appear to have been comparatively more successful than schemes in place amongst the Canadian Provinces and Territories, and amongst European Union members.

The Canadian model

The Canadian 'Agreement on Internal Trade' (AIT) has been in force since 1995. All Provincial and Territorial Governments, as well as the Federal Government, are signatories to the AIT. Documentation relating to the AIT suggests that it was introduced for similar reasons to the MRA – i.e. to overcome non-tariff barriers to trade between the states[6].

The AIT objective states:

> "It is the objective of the Parties to reduce and eliminate, to the extent possible, barriers to the free movement of persons, goods, services and investments within Canada and to establish an open, efficient and stable domestic market. All Parties recognize and agree that enhancing trade and mobility within Canada would contribute to the attainment of this goal."[7]

How does mutual recognition in Canada differ to the MRA and TTMRA?

The AIT covers many areas that the MRA and TTMRA, which are focused solely on goods and occupations, do not. While this makes the AIT a more comprehensive agreement, at the same time it makes the overall document relatively complicated and difficult to understand.

There is also considerably greater flexibility in the AIT to allow for individual Provinces and Territories to essentially opt out of the mutual recognition requirements where it can be argued that there is a legitimate need for regulations on public benefit grounds, though measures introduced should be as least trade-restrictive as possible.

There is also a much greater focus in the AIT on the eventual harmonisation of regulations and standards. The MRA and TTMRA place little emphasis on harmonisation (except where this is deemed necessary to resolve issues that have led to an exemption from the schemes being introduced), which reduces the need for complicated and time-consuming negotiations.

[6] Further details including a consolidated version of the Agreement on Internal Trade is available from Industry Canada at http://www.ic.gc.ca/epic/site/ait-aci.nsf/en/home.
[7] Article 100, *Agreement on Internal Trade – Consolidated Version*, http://www.ic.gc.ca/epic/site/ait-aci.nsf/vwapj/AIT_agreement_2007-05_en.pdf/$FILE/AIT_agreement_2007-05_en.pdf

Goods

The AIT appears weak compared to the MRA and TTMRA. Essentially, it allows for additional requirements to be imposed providing they are for a legitimate purpose and are not unnecessarily trade restrictive. This does not allow goods able to be sold in one jurisdiction to be readily sold in another in the same way as does the MRA and TTMRA.

The MRA and TTMRA which require exemptions to be invoked (and then only for 12 months unless the agreement of other jurisdictions is obtained) for specific goods eliminates the risk of the discretion element allowed through Article 803 of the AIT. This is turn provides greater certainty for manufacturers – they can sell their goods without the need for further testing provided the good is not a specified exemption.

That said, the AIT potentially covers a broader range of goods-related regulations than does the MRA or TTMRA. Regulations relating to the manner in which goods are sold (e.g. rules about door-to-door selling) and use of goods regulations would also be covered by the AIT. Such regulations are not covered by the MRA or TTMRA.

Occupations

Whereas the MRA and TTMRA include all occupations that are within their scope, unless specifically excluded, the AIT only includes those occupations where a specific mutual recognition scheme has been agreed to. As at 2006, over ten years since the AIT was introduced, only 33 out of 51 regulated occupations were benefiting from full mutual recognition. By contrast, only one occupation – medical practitioner – is not subject to the TTMRA and all occupations are covered by the MRA.

The AIT also has a significant focus on qualifications (for instance, the requirement to harmonise qualification requirements and the use of the Red Seal program). The MRA and TTMRA are silent on qualifications – the focus instead is on whether or not a person is registered to practice an equivalent occupation (i.e. scope of work) in another participating jurisdiction.

Insights from the Canadian model for the MRA and TTMRA

While the AIT has been in place for longer than the MRA and TTMRA, it does not seem to have delivered the same level of results over this longer time frame.

That said, the process whereby regulators themselves come to a determination on a case by case basis regarding the mutual recognition of occupations has the potential to bring greater regulator support to mutual recognition, which would avoid some of the problems identified with the MRA and TTMRA around regulators attempts to frustrate mutual recognition.

The AIT has a broader coverage of goods-related regulations than does the MRA and TTMRA, but it does so with greater qualifications in that regulators can impose additional regulations if these are for a legitimate purpose and not unnecessarily trade restrictive. A similar kind of qualification could be placed on the mutual recognition of use of goods regulations should the MRA and TTMRA be broadened to cover use of goods regulations.

The AIT's focus on qualifications, rather than a person's registration, would potentially resolve the concerns identified by regulators relating to people with overseas qualifications. However, this would require a significant restructuring of the way in which the MRA and TTMRA work. The mutual recognition of qualifications would be more complex, requiring extensive lists to be drawn up regarding what qualifications were and were not accepted by which jurisdiction. Such lists would require extensive negotiations and regular updating, which would be time consuming.

In the absence of any finding that this issue is seriously impeding the operation of the MRA and TTMRA, it would seem a better approach for regulators to instead raise any concerns about specific qualifications with their relevant counterpart in an attempt to resolve the situation, rather than risking complicating the current operation of the MRA and TTMRA, which have been found to be generally working well.

The European Union model

The principle of mutual recognition in the EU was first established via a European Court of Justice (ECJ) ruling, rather than being something set out formally in an agreement or legislation.

The Cassis de Dijon ruling[8], made in 1979, held that "goods legally produced in one member state could be exported into another even if national regulations in that member state prohibited the production of such a good"[9].

There is also a considerable amount of case law in relation to the EU mutual recognition principle post-Cassis de Dijon. The development of mutual recognition in this manner has arguably increased the complexity of the principle, and made it less likely that Members States and businesses are aware of it.

In a resolution of October 1999, the European Council called for further efforts to improve the application of the principle of mutual recognition, particularly with regards to goods, services, and professional qualifications[10].

How does mutual recognition in the EU differ from the MRA and TTMRA?

There is a much heavier reliance on court decisions and case law in the formation of the principle of mutual recognition in the EU context. The operation of the MRA and TTMRA are more clearly established via the agreements themselves and supporting legislation, even if this legislation is, in particular cases, interpreted further by the courts (or more specifically by the Administrative Appeals Tribunal).

This seems to have had the effect of making the EU scheme more complex and difficult to understand than is the MRA and TTMRA, as one must undertake a close examination of the case law, or wait for a guiding interpretative communication from

[8] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61978J0120:EN:HTML
[9] SK Schmidt, 'The impact of mutual recognition – inbuilt limits and domestic responses to the single market', *Journal of European Public Policy*, vol 9 (6), 2002
[10] *European Council Resolution on mutual recognition*, 28 October 1999, Document 2000/C 141/02 www.ec.europa.eu/enterprise/regulation/goods/docs/mutrec/resolmutrec_en.pdf

the EC to be released, to gain a sense of the current way in which the mutual recognition principles are being interpreted.

Goods

The EU scheme allows for assessments of 'equivalency' to be made, whereas under the MRA and TTMRA the mutual recognition of goods is automatic. It therefore works in a manner more akin to the mutual recognition of occupations under the MRA and TTMRA. However, unlike the mutual recognition of occupations under the MRA and TTMRA, mere in equivalence is insufficient – there must also be public benefit reasons as to why the home jurisdiction regulation must be enforced.

The EU scheme also has broader coverage than the MRA and TTMRA, including use of goods (and in certain circumstances regulations relating to the way in which goods are sold).

Occupations

The main difference is the focus – the EU scheme focuses on services and qualifications whereas the MRA and TTMRA focus on registered occupations. In fact, the EU allows for (though does not encourage) additional registration requirements where these are non-discriminatory.

In most circumstances, however, persons providing services, including professional services, who wish to move among EU Member States will be able to do so without any requirement to re-register in the second jurisdiction (this is, in any case, the 'spirit' of the EU scheme if not always the way it works in practice). This differs from the MRA and TTMRA which requires re-registration in the second jurisdiction and an assessment of equivalency to be made.

Insights from the EU model for the MRA and TTMRA

The heavy reliance on case law and ECJ rulings to determine the way in which mutual recognition works has resulted in a relatively complex and apparently poorly understood mutual recognition scheme. This appears to be a situation to be avoided, rather than one from which the MRA and TTMRA would benefit.

The coverage of goods under the MRA and TTMRA could be broadened to also include use of goods regulations as the EU mutual recognition schemes do, but such a broadening of scope may require an 'out' on public benefit grounds, such as is present in the EU. The analysis of the Canadian AIT suggested a similar approach to the mutual recognition of use of goods regulations.

The EU mutual recognition scheme does not require re-registration in the second jurisdiction. Using such an approach in the MRA and TTMRA would have the potential to resolve issues relating to the cross-border or short-term provision of services. However, it would raise many more issues than it would resolve, including:

- mutual recognition applies only to *equivalent* occupations – if persons are not required to register in the second jurisdiction the regulator in that jurisdiction has

no means of assessing whether or not the scope of work authorised in each jurisdiction is equivalent;

- resourcing issues – many jurisdictions use licence fees as a means of funding the administrative costs of regulating an industry, including the costs of monitoring compliance with regulations, educating industry and consumers and so on;
- it would be unclear what regulatory rules such persons would need to operate under (i.e. rules covering continuing education, trust funds etc.) – if those of their home jurisdiction, this could lead to issues for consumers who would be expecting the protections offered by their own jurisdiction – if those of the new jurisdiction, there might be issues with the person's understanding of the new jurisdiction's regulatory requirements;
- it would be necessary to have arrangements in place to permit the enforcement of disciplinary action against a person who is not registered under an Act of that jurisdiction, e.g. memoranda of understanding; and
- increased difficulties for regulators trying to monitor compliance with requirements when they may be unaware whether or not a person is even operating in their jurisdiction.

As with the Canadian AIT, the EU scheme's focus on qualifications rather than registration could be adopted in an attempt to resolve concerns about overseas qualifications, but this would raise similar concerns to those already mentioned.

BILATERAL ENGAGEMENT WITH THIRD COUNTRIES

What are the implications for the operation of the TTMRA of Australia and New Zealand's bilateral engagement with third countries? Are there any risks associated with the on-selling of goods imported from third countries to TTMRA partners?

Decisions by participating jurisdictions to change criteria for certain goods or registration of certain occupations can be expected to impact upon what is covered by the TTMRA irrespective of whether such changes are made unilaterally or by means of an agreement with a third county. On this basis it is not apparent that there is a particular risk from bilateral engagement with third countries.

The general exceptions and exemption processes provided under the TTMRA also provide a degree of assurance that many risks can be managed, if they should eventuate. That said, the Commission may wish to examine in some detail the possible ramifications of Australia's and New Zealand's bilateral free trade agreements (FTAs) for the TTMRA. Given the relative infancy of bilateral FTAs, this may be a matter requiring further attention during the next five year review.