

ACMA SUBMISSION TO THE DRAFT PRODUCTIVITY COMMISSION RESEARCH REPORT – REVIEW OF MUTUAL RECOGNITION SCHEMES

ACMA welcomes this opportunity to make comments on the draft Research Report released by the Productivity Commission as part of its Review into Mutual Recognition Schemes.

ACMA's comments focus on two matters addressed in the report:

- special exemption for radiocommunications under the Trans Tasman Mutual Recognition Arrangement (TTMRA); and
- interaction between the TTMRA and bilateral arrangements concluded with third countries.

Special exemption for radiocommunications

ACMA supports the recommendations made in the Productivity Commission draft Research Report that relate to current Special Exemption for radiocommunications.

Draft Recommendation 7.4 – Special Exemption for Radiocommunications

In relation to draft Recommendation 7.4, while ACMA is of the view that harmonisation of radiocommunications standards in relation to short-range devices and spread spectrum devices is unlikely in light of historical differences in spectrum use, ACMA believes that 2013 is an appropriate time to assess whether all harmonisation efforts have been exhausted.

ACMA will continue to work closely with the New Zealand Ministry of Economic Development (MED) to in relation to the other devices (HF CB, in-shore boating services and DECT devices) where both ACMA and MED believe that harmonisation is achievable.

Draft Recommendation 7.5 – Extension of timeframe for Special Exemptions

In relation to draft Recommendation 7.5, ACMA believes that a three year annual rollover timeframe is an appropriate duration for Special Exemptions. In the case of radiocommunications, migration of existing spectrum users to alternative spectrum bands (which is generally required where historical differences in spectrum use impede harmonisation of radiocommunications standards) involves various activities (including public consultation) required under spectrum regulatory arrangements. Such activities generally take longer than one year to complete. Therefore, the recommended three year period for annual rollover of special exemptions is appropriate.

TTMRA and third country bilateral arrangements

ACMA does not believe that draft finding 10.1 (and the supporting text) in Chapter 10 of the draft Research Report accurately reflects ACMA's concerns in relation to the interaction between the TTMRA and bilateral arrangements with third countries.

On page 218 of the draft Research Report, the Productivity Commission suggests that ACMA's concerns in relation to this matter focus on the 'quality' of goods that may be supplied to Australia where those goods meet the requirements of the arrangements concluded between China and New Zealand, but do not meet Australian regulatory requirements. ACMA's principal concern is with the apparent *de facto* recognition of

the 'CCC' compliance mark within Australia, without appropriate national consultation on the policy aspects of such recognition.

Under the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2008* (the EMC Labelling Notice) devices (other than 'low risk devices') covered by an applicable EMC standard must be labelled with either the C-tick or the Regulatory Compliance Mark (RCM) (the RCM allows a supplier to illustrate compliance with both EMC and electrical safety requirements). The equivalent New Zealand instrument recognises each of these compliance marks. This is the regulatory means by which Australia and New Zealand have harmonised EMC arrangements.

The C-tick compliance mark is used currently as a *prima facie* illustration of compliance with Australian EMC technical requirements. While ACMA does not disagree with the observation made in the Productivity Commission report that the C-tick does not have widespread public recognition, the C-tick (and RCM, in the case of equipment subject to EMC and electrical safety) is widely recognised and understood within the electrical and communications industry.

The current labelling requirements are intended to manage the risk of 'sub-standard' goods being supplied to the Australian market. Goods cannot be labelled unless the goods have been tested in accordance with Australian requirements (the supplier must also meet certain record keeping requirements). Therefore, the requirement that devices be labelled prior to supply to the Australian market provides the regulator, and the electrical and electronics industry, with a measure of confidence that the device does, in fact, meet mandatory (EMC) technical requirements.

ACMA does not object, in principle, to the acceptance of overseas compliance marks, provided that the relevant overseas compliance mark provides an equivalent level of confidence for government, industry and consumers. The acceptance of overseas marks, therefore, involves a policy decision that the overseas compliance mark provides such equivalent confidence. ACMA notes that section 182 of the *Radiocommunications Act 1992* specifically allows for the recognition of overseas compliance marks in Australian labelling requirements.

However, ACMA is concerned that the effect of the interaction between the TTMRA and bilateral third country arrangements may unwittingly circumvent this policy development process.

ACMA, through its external consultative groups (which comprise representatives of government and industry) is currently considering the extent to which overseas compliance marks could be recognised within the Australian compliance and labelling arrangements. While there has been some support for the concept of recognising overseas compliance marks, there is currently no consensus on the merit of such an approach. ACMA will be consulting with industry further on this issue over the coming months.

Notwithstanding this consultation process, ACMA understands that, as a result of the interaction of the TTMRA and the China-New Zealand MRA, equipment labelled in accordance with the New Zealand EMC labelling requirements can be lawfully supplied to Australia, notwithstanding that the equipment does not carry either the C-tick or RCM compliance marks provided for under the Australian EMC regulatory arrangements. Because the New Zealand instrument has been amended recently to

recognise the 'CCC' mark, CCC marked equipment can be supplied lawfully to Australia.

As a consequence, ACMA is concerned that interaction of the TTMRA and the China-New Zealand MRA may unwittingly circumvent the policy development process in relation to recognition of overseas compliance marks.

ACMA understands that other sectors of industry have similar concerns in relation to the interaction between the TTMRA and third country bilateral arrangements. ACMA recommends that the Productivity Commission analyse the issue further, and consider what safeguards can be considered by Government that limit the potential for third country arrangements to vary the operation of Australian regulatory arrangements without the agreement of the responsible policy or regulatory authority.