



Administrative Appeals Tribunal

PRESIDENT'S CHAMBERS

The Hon Justice Garry Downes AM

23 December 2008

Professor Judith Sloan
Mutual Recognition Review
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

The Administrative Appeals Tribunal welcomes this opportunity to comment on issues raised in the Productivity Commission's draft research report on the review of the mutual recognition schemes.

The Tribunal conducts independent merits review of a wide range of decisions made under Commonwealth legislation, including the *Mutual Recognition Act 1992* and the *Trans-Tasman Mutual Recognition Act 1997*.

The Productivity Commission recommends that the mechanism through which the Tribunal can be approached to make a declaration on occupational standards should be clarified. One option identified by the Commission is that the mutual recognition legislation could be amended to permit a regulator to approach a tribunal for an advisory opinion consistent with that allowed under section 59 of the *Administrative Appeals Tribunal Act 1975*. The Commission has also identified that improved dispute resolution mechanisms are needed in relation to the scheme pertaining to the sale of goods. The Commission has suggested that a body such as the Tribunal could be used to provide advisory opinions on particular matters. It could also deal with appeals from sellers of goods and other interested parties against decisions of regulators to continue to enforce jurisdictional requirements.

The Tribunal recognises that whether particular functions should be conferred on the Tribunal is a policy question for Government. It does not generally express any view on such matters. The Tribunal notes, however, that it has the procedural flexibility and the expertise to carry out the kinds of functions identified by the Commission.

The Commission has also recommended the creation of two specialist units, one relating to goods and the other to occupations, to monitor and provide advice on the operation of the scheme in Australia. The Commission has suggested that part of the role of the units could be to assist in resolving simpler matters, including by mediation. They could also facilitate greater use of existing appeals mechanisms.

The Tribunal notes that alternative dispute resolution is also an essential part of its processes. Applications to the Tribunal are generally referred to a conference or another form of ADR. The Tribunal assists the parties to attempt to reach an agreed outcome while ensuring that appropriate steps are taken to progress matters where this is not possible. This approach is consistent with the Tribunal's statutory obligation set out in section 2A of the *Administrative Appeals Tribunal Act 1975* to provide a mechanism of review that is not only fair and just but also economical, informal and quick.

The Tribunal notes that, if it were decided to establish the specialist units, consideration may need to be given to a number of practical issues relating to the availability of review. These include matters such as whether a person would be required to attempt to resolve a matter with the assistance of one of the units before applying to the Tribunal and the time limits that would apply for making an application to the Tribunal. These are not matters that necessarily need to be considered as part of this review but may be relevant to the implementation of the proposals.

If you have any questions about the matters raised in this letter, please do not hesitate to contact Chris Matthies on (02) 9391 2474 or at chris.matthies@aat.gov.au.

GARRY DOWNES