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D08/369358

Patrick Laplagne
Assistant Commissioner
Mutual Recognition Review
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Mr Laplagne

PRODUCTIVITY COMMISSION 2008 REVIEW OF THE MUTUAL RECOGNITION AGREEMENT AND THE TRANS TASMAN MUTUAL RECOGNITION AGREEMENT VICTORIAN INPUT

Consultation with Victorian Departments has identified a number of issues for inclusion in Victoria's input to the Productivity Commission (PC)'s 2008 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Agreement (TTMRA). Please note that this input does not represent the views of the Victorian Government; rather it consists of issues Victorian Departments and agencies wish to raise within the context of the Review and to aid and inform discussion. The comments provided by Departments and agencies:

a) *refer to issues raised in selected draft recommendations, findings and issues from the PC's 2008 Draft Report in relation to:*

- differences in occupational standards;
- mutual recognition of business registration;
- criminal record checks;
- requirements for further training;
- permanent exemption for medical practitioners; and
- oversight of mutual recognition by specialist occupational units.

Please refer to **Attachment One** for specific comments.

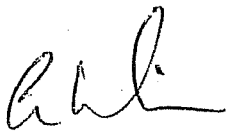
b) *provide further comments on the Victorian Government's 2003 response to the PC's Review regarding:*

- the Legal Profession;
- motor vehicles;
- registration of professions;
- dental health services;
- mutual recognition of New Zealand qualifications for early childhood practitioners; and
- assistance to people with disabilities and their Carers moving interstate.

Please refer to **Attachment Two** for specific comments.

If you require further information regarding these comments please contact Garry Ferris, Senior Policy Officer, International Relations, Government Branch, Department of Premier and Cabinet, telephone (03) 96510706; fax (03) 96515071, or by email at Garry.Ferris@dpc.vic.gov.au.

Yours sincerely



GREG WILSON
Acting Secretary

ATTACHMENT ONE

COMMENTS ON SELECTED DRAFT RECOMMENDATIONS, FINDINGS AND ISSUES FROM THE 2008 DRAFT REPORT

Please note that this input does not represent the views of the Victorian Government; rather it consists of the issues some Victorian Departments and agencies wish to raise within the context of the Productivity Commission's 2008 Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Agreement (TTMRA).

The Department of Justice (DOJ)

Since the last review of mutual recognition arrangements significant work has been undertaken to harmonise probity and competency requirements for the private security industry with the intention of enhancing mobility of the sector through the mutual recognition arrangements. This work culminated in an agreement by the Council of Australian Governments (COAG) on 3 July 2008 that all jurisdictions would implement nationally consistent probity and competency standards for the "manpower" (guarding) sector of the private security industry by 1 January 2010. It is anticipated that a Ministerial Declaration will then be drafted to support mutual recognition of private security licences. It is expected that implementation of these reforms will address previous concerns about mutual recognition of private security licences without due regard to training issues.

DOJ is also currently reviewing the *Private Security Act 2004* as required by section 178 of that Act. The findings of the review must be tabled in Parliament no later than 1 June 2009. The Commission's findings may also be relevant to this review.

SECTION 5.4 - CONDITIONS OVER WHAT IS PERMITTED

DOJ

The PC notes that there is confusion about what conditions can be applied to mutually recognised licences, particularly with regard to training requirements. Resolution of this issue will be of particular interest to security industry regulators as work on nationally consistent training standards is currently underway, as requested by COAG as part of the 3 July 2008 agreement.

SECTION 9.4 - MUTUAL RECOGNITION OF BUSINESS REGISTRATION

DOJ

This section notes that while sole traders who operate under schemes where registration involves "authorisation conferred by a local registration authority related to being 'fit and proper'" are covered by mutual recognition arrangements, partnerships or companies holding the same registration are not. The PC notes:

"Mutual recognition could potentially be extended to apply to business registration requirements that relate to business characteristics. At the moment, in many areas of service provision (for example, motor car traders, electrical contractors and real estate agents), a business run by a sole trader can access mutual recognition, whereas an identical business run by a company cannot. The costs to a business of having to register directly in each jurisdiction in which it operates could be significant." (p.204)

The PC is seeking feedback on the potential costs and benefits of its draft finding that "mutual recognition could be extended to business registration requirements where similar requirements would result in an individual being registered for mutual recognition purposes".

This finding is particularly relevant to the private security industry, as COAG has asked the Ministerial Council for Police and Emergency Management - Police (MCPEMP), in

consultation with the Security Industry Regulators Forum (SIRF), to explore options for enhancing mobility of business (master) licences and report back to COAG by July 2009.

The limitations of the current mutual recognition arrangements for business licence holders were a driver for this request. A SIRF Working Group, chaired by DOJ, is currently progressing this request. Unfortunately the work of the SIRF Working Group is not sufficiently progressed to be able to provide information about the potential costs and benefits of this proposal. DOJ would, however, welcome further exploration of the proposal to include business licences under the mutual recognition arrangements. DOJ also note that, as the regulator of the private security industry in Victoria, Victoria Police is also likely to have a keen interest in the PC's final report.

DRAFT RECOMMENDATION 5.4 CRIMINAL RECORD CHECKS

The Mutual Recognition Legislation should be amended to allow criminal record checks. Any amendment would need to be qualified to ensure checks did not unduly slow registration processes.

DOJ
In section 5.3 of the report the PC notes that despite differences in occupational standards remaining a key source of concern there is very little evidence of harm arising from these variations.

One of the key issues raised is under the current mutual recognition arrangements, regulators cannot require an applicant to undergo a criminal history check before recognising their licence. Further, while the regulator may recheck or audit whether the person met the registration requirements in the original jurisdiction, an individual's failure to meet certain requirements in the original jurisdiction is not grounds to refuse a mutual recognition application. As a result of these concerns, the PC has recommended "The mutual recognition arrangements should be amended to allow criminal history checks (Draft Recommendation 5.4)".

As the regulator of the private security industry in Victoria, Victoria Police would support this increased flexibility. However, allowing criminal history checks could potentially add an additional level of regulatory burden in the case of the private security industry should all jurisdictions implement national minimum probity standards (including national criminal history checks on application and local daily criminal history checks) for private security licences as agreed by COAG. Victoria is yet to implement the minimum standards; however, some other jurisdictions have already made the necessary legislative amendments.

The PC proposes two other possible approaches to dealing with the issue of criminal history checks:

- a system whereby regulators with significant concerns about another jurisdiction's criminal history checks could legally refuse registration and seek resolution of the concerns through a Ministerial council process; or
- allowing regulators to refuse registration under mutual recognition if a check reveals that an individual did not meet the registration requirements in the first jurisdiction.

While DOJ considers that all of the options are worthy of further consideration, it is DOJ's view that there are some potential problems with the above approaches. If jurisdictions wish to recheck a licensee's criminal record they can use continuous disclosure, annual returns or re-licensing processes so that all licensees must resubmit to a check. To only conduct rechecks of a criminal history arbitrarily when a licensee moves between jurisdictions would seem to be treating licensees differently. If licensing authorities are concerned about criminal

records then it may be the case that the licensing scheme should be amended to establish a frequency of criminal record checks that is appropriate for that scheme. Other possible approaches and the current Standing Committee of Attorneys-General (SCAG) project relating to a proposed national scheme for spent convictions are relevant in a consideration of this issue.

Although Victoria does not have a formal spent convictions scheme, Victoria Police has adopted an Information Release Policy which is based on the Commonwealth Spent Convictions Scheme. The adoption of this policy by Victoria Police has ensured that the outcomes of criminal history checks conducted in Victoria have reflected national practice.

Under the Victoria Police policy, in most instances offences that are over ten years old will not be disclosed. However, there are a number of circumstances where offences older than ten years will be disclosed. These include the commission of a subsequent offence and where there exists a specific legislative requirement, such as checks completed for the purpose of a Working with Children Check. Full disclosure will always occur where the criminal history enquiry is for the purpose of employment in the criminal justice system, such as working as a police officer or a corrections officer. Offences which resulted in a custodial sentence of longer than 30 months are always disclosed.

Current Consultation Exercise

SCAG is working on a project to design a national model Bill for a spent convictions scheme.

A Draft Model Spent Convictions Bill (Draft Bill) and related Consultation Paper have been published (they were published for comment on DOJ's website on Monday 24 November 2008). All Australian jurisdictions are participating in this consultation exercise.

The proposed reforms contained in the Draft Bill reflect SCAG's commitment to assist offenders to rehabilitate and reintegrate into the community by limiting the stigma of old criminal convictions for less serious offences. However, Governments understand that the proposed national scheme also needs to provide for important exceptions to when a conviction could be disregarded. As such, feedback on the proposed reforms is being sought from a diverse range of individuals and community organisations to help shape the legislation. The consultation documents may be accessed at:
http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/The+Justice+System/Community+Consultation/JUSTICE+-Draft+Model+Spent+Convictions+Bill+Consultation+Paper.

The Draft Bill will not necessarily pass into law in this form in any Australian jurisdiction. Final decisions about what the Bill should say and about its adoption as the national model will be taken only after the consultation process is complete. The Draft Bill proposes that if a conviction has become spent in the State or Territory where it was incurred, it is treated as spent in other Australian jurisdictions. This is to be done by each jurisdiction proclaiming the similar laws of other jurisdictions to be 'corresponding laws' for the purposes of this legislation. Otherwise, a person would find that an offence that was not disclosable in applications for employment in one state would be disclosable in others.

You may also wish to note that Mr Julian Gardner's report *An Equality Act for a Fairer Victoria* recommended, amongst other things, that the *Equal Opportunity Act 1995* (the Act) be amended to make it unlawful to discriminate against a person on the basis of an irrelevant criminal record. Spent convictions legislation would regulate the release of criminal record information; the proposed amendments to the Act would regulate how that information may be used.

DHS
Suitable arrangements for criminal record checks under the national registration and accreditation scheme are currently being considered. Feedback from stakeholders has indicated widespread support for the proposal to incorporate an element of criminal history checking into the registration process, although concerns were raised about the administrative burden and cost compared with the benefits.

Mandatory identity and criminal history checks when first registered was supported by the majority of submissions as the most cost effective option, followed by registration at the board's discretion and self-declaration.

DRAFT RECOMMENDATION 5.5
The mutual recognition legislation should be amended to make clear the types of condition that registration authorities can impose at the time of registration.

DOJ
DOJ supports this recommendation in-principle provided that it does not undermine the licensing framework in place in a jurisdiction by prohibiting the imposition of conditions on a mutual recognition licensee that would be imposed on all other, or a category of, licence holders in that jurisdiction.

The following reflects interim information provided by the Department of Education and Early Childhood Development (DEECD) and the Victorian Institute of Teaching.
DEECD supports the PC's draft recommendations in Chapter 5 of its draft report in relation to the registration of occupations. They will clarify and resolve a number of concerns that the Victorian Institute of Teaching has had with the administration of the mutual recognition obligations of the MRA and TTMRA.

DEECD would like to draw the PC's attention to COAG's Communiqué 29th November 2008 in relation to the Productivity Agenda and in particular the Smarter Schools - Quality Teaching National Partnership. This Partnership area identifies a range of activities which can be expected to facilitate greater mobility for the teaching profession. Those of particular relevance are:

- National Teacher Professional Standards Framework for teachers and school leader standards, including at the Accomplished and Leading Teacher levels;
- National consistency in pre-service teacher education course accreditation; and
- National consistency in the initial registration of graduate teachers.

These initiatives can also be found in the draft 2009-2012 Action Plan of the Ministerial Council on Education, Employment, Training and Youth Affairs (MCEETYA) that supports the recently launched Melbourne Declaration on Educational Goals for Young Australians.

It should be noted that in seeking to attend to these particular COAG and MCEETYA initiatives, a significant difficulty to be addressed is the fact that New South Wales does not administer a compulsory teacher registration scheme. The PC should ensure that their understanding of the teacher registration arrangements across Australia reflect this fact.

DRAFT RECOMMENDATION 5.6 REQUIREMENTS FOR FURTHER TRAINING

DOJ
DOJ supports in-principle this recommendation. It should, however, be noted that not all jurisdictions have compulsory continuing professional development requirements for licensees. The Victorian Government has previously stated that compulsory continuing

professional development should only be introduced where it is demonstrated that the benefits outweigh the costs.

DHS
Options for requirements for further training are currently being considered as part of the national scheme. Clause 1.25 of Attachment A of the Intergovernmental Agreement provides a role for the National Boards to manage the development of standards and requirements, including with respect to registration, competency, and continuing professional development.

Occupation-Registration Authorities
Under the Health Practitioner Regulation (Administrative Arrangements) National Law Act 2008 (Bill A) the National Agency must, within three months after the end of the financial year, prepare an annual report for National Boards. This must include a report on the National Board's performance of its functions.

DRAFT RECOMMENDATION 5.7
Mutual Recognition Legislation should be amended to define undertakings and provide that they are transferable between jurisdictions.

DOJ
DOJ supports in-principle this recommendation. Undertakings restrict the practice of licensees and are generally the outcome of disciplinary action. Mutual recognition should not provide a loophole for licensees to avoid their obligations. Such a loophole has the potential to result in consumer detriment.

DRAFT RECOMMENDATION 5.8
Mutual Recognition Legislation should be amended to ensure that information on nondisciplinary or remedial action can be shared between jurisdictions.

DOJ
DOJ consider that matters that do not affect the ability of a licence to practice should not be disclosed through mutual recognition. Where a disciplinary action arises in a destination jurisdiction, access to such information could be sought if appropriate.

DRAFT FINDING 9.1 PERMANENT EXEMPTION FOR MEDICAL PRACTITIONERS

DHS
It is noted that the only occupation exempt from the TTMRA is medical practitioners. However, doctors with primary medical qualifications obtained in New Zealand are automatically granted general registration in Australia and vice-versa under separate arrangements. It is only overseas-trained doctors whose registration is not mutually recognised. Under the national registration and accreditation scheme, the National Medical Board, in conjunction with the Australian Medical Council, will determine the appropriate arrangements for assessment of competency standards.

DRAFT RECOMMENDATION 11.1
OVERSIGHT OF MUTUAL RECOGNITION BY SPECIALIST OCCUPATIONAL UNITS

DOJ
DOJ consider that the establishment of the proposed units has the potential to create a public perception that they have a supervisory role with respect to jurisdiction regulators. If the aim is to promote consistency between jurisdiction regulators with respect to mutual recognition decisions then alternative mechanisms, such as regular meetings, would be likely to be more effective.

DRAFT RECOMMENDATION 11.2
OCCUPATION REGISTRATION AUTHORITIES

DOJ
Occupation-registration authorities should be required to report annually on their administration of the mutual recognition schemes. This should include data on the number registered under mutual recognition, compared with total registrations, and information about complaints and appeals. Such reports should be provided to the specialist occupations unit mentioned in draft recommendation 11.1.

DOJ consider that while transparency of the operation of mutual recognition is desirable, the reporting requirements proposed would impose a significant administrative burden on jurisdiction regulators without any reciprocal benefit.

ATTACHMENT TWO

FURTHER COMMENTS ON 2003 VICTORIAN GOVERNMENT RESPONSE ON MUTUAL RECOGNITION

Please note that this input does not represent the views of the Victorian Government; rather it consists of the issues some Victorian Departments and agencies wish to raise within the context of the Productivity Commission's 2008 Review of the MRA and the Trans Tasman Mutual Recognition Agreement TTMRA.

Legal Profession

DOJ
Consideration is being given to further harmonisation in this area. The Legal Profession (Admission) Rules 2008 inserted provisions regarding mutual recognition of admissions to practice for interstate and New Zealand practitioners (see rules 5.04 and Schedule 11).

Motor Vehicles

DPC in consultation with VicRoads
VicRoads support permanent retention of the special exemption for road vehicles. Dialogue with New Zealand will continue as Victoria moves to harmonise certain vehicle regulations with international standards, including relevant United Nations Economic Commission for Europe and USA standards.

Federal / State regulatory scheme relating to motor vehicles
The Commonwealth regulates the manufacture and import of new vehicles for supply to the Australian vehicle market. The States have laws and regulatory systems to ensure that vehicles are maintained to appropriate standards and regulating their use.

Under the Commonwealth *Motor Vehicle Standards Act 1989*, standards are set in relation to new vehicles — see especially sections 14, 14A, 14B and 15. The Victorian *Road Safety Act 1986* (see especially section 10) and the Road Safety (Vehicles) Regulations 1999 set out standards for vehicles to be registered for use on Victorian roads. These laws also confer broad discretionary on VicRoads to exempt vehicles from particular requirements or to vary the standards in particular cases, such as for special purpose vehicles.

Note that section 14B of the Commonwealth *Motor Vehicle Standards Act 1989* overrides vehicle standards of the States in relation to the supply of new vehicles to market. There is still, however, scope for State Laws to regulate vehicle standards for motor vehicles registered in their jurisdiction

Vehicle laws and road safety policy
There is a close interconnection between vehicle standards and road safety policies designed to reduce the road toll. Road safety is a core State Government responsibility. The stringency of jurisdictions in addressing this issue varies, with Victoria historically being one of the most stringent. If a 'lowest common standard' approach was implemented as part of the MRA and TTMRA, the Victorian Government's flexibility to introduce new safety initiatives or enforce existing laws could be limited.

Examples of Victorian vehicle laws relating to road safety include:

- The Victorian Government in 2002 introduced requirements for alcohol interlocks to be fitted in motor vehicles used by people relicensed after serious drink/driving offences.

- In December 2004, the Victorian Government extended vehicle registration requirements to 'monkey bikes'. Monkey bikes, also known as pocket or mini-bikes, are scaled down versions of motorcycles. Unless monkey bikes can be registered they cannot be used on public roads, footpaths or bicycle paths.

Risk of mutual recognition being used to avoid measures designed to regulate or prevent registration of stolen, damaged or imported non-standard vehicles

To be registered a vehicle must comply with relevant design laws (unless exempted) and be properly maintained. A vehicle must not be listed on the *Register of Written-off Vehicles* as a "statutory write-off". A major purpose of the written-off vehicle laws, which were introduced in 2003, is to prevent vehicles written-off by insurers as beyond repair from being re-registered for use on public roads either because they are unsafe, because they are actually stolen "rebirthed" vehicles or both.

The National Motor Vehicle Theft Reduction Council (a joint Federal, State, insurance industry body) has published reports on this issue. The laws and administrative systems of the various jurisdictions vary in their stringency and effectiveness. There is evidence that these disparities have been exploited in the past by registering vehicles in the jurisdiction with the least stringent requirements.

State vehicle registration laws may also be used to prevent registration of imported vehicles which were not built to Australian design standards ("grey imports"). This is the importation of used vehicles which do not meet Australian standards but which are registered then sold onto the Australian market. The Victorian Ombudsman conducted an investigation of VicRoads' registration practices in 2005. Grey imports are a major focus of this report. The report can be accessed at: www.ombudsman.vic.gov.au/resources/documents/Own_motion_investigation_into_VicRoads_registration_practices.pdf).

There is a potential risk that vehicles registered in a New Zealand could be registered in Victoria under the TTMRA, thus making it easier to register grey imports. That is, whichever jurisdiction has the less stringent import controls could be targeted by scammers as the weak link. Once imported into that market, there is a risk it could be re-exported to the other country under mutual recognition to avoid that jurisdiction's regulatory controls. The Victorian Ombudsman's report estimated that the total number of illegally registered 'grey' imports may be as high as 1800.

The continuing exemption from mutual recognition would reduce this risk. The creation of adequate systems and checks to address this might be suggested as a precondition to removing the exemption.

Registration of professions

DHS

DHS' 2003 comments are still current. It is noted that since 2003 COAG has agreed (26 March 2008) to the implementation of a single national registration and accreditation scheme for health professionals. The scheme is due to commence on 1 July 2010. The scheme will help health professionals move around the country more easily, reduce red tape, provide greater safeguards for the public and promote a more flexible, responsive and sustainable health workforce.

As part of the scheme's implementation partially regulated professions (professions registered in some Australian jurisdictions, e.g. speech pathologists) are being assessed for inclusion in the scheme post 1 July 2010. Partially regulated professions are being assessment against the 1995 Australian Health Ministers' Advisory Council's criteria.

Health professionals granted general registration hold approved qualifications either because they have graduated from an approved course of study or because their qualifications are judged equivalent under a mutual recognition (competent authority) arrangement.

In many respects operation of the scheme and harmonisation of registration within Australia will effectively replace existing MRA and TTMRA arrangements within jurisdictions. It is intended, however, that existing linkages, for example between national accreditation bodies and the equivalent registering authorities in NZ be maintained and strengthened, and that existing joint standard setting and assessment processes continue.

Dental Health Services

DHS

There is a difference between Australia and New Zealand's recognition of overseas dental qualifications. Currently only United Kingdom, Ireland and New Zealand dental degrees are recognised by the Australian Dental Council (ADC) for automatic registration in Australia. Under the Public Sector Dental Workforce Scheme, introduced in 2004 to help alleviate workforce shortages in the public sector, graduates from dental programs in Canada, Hong Kong, Malaysia, Singapore, South Africa and the US are eligible to participate. Those eligible are granted an exemption from the ADC Preliminary Examination and are given a form of restricted registration to enable them to practise in the public sector for a period of up to 3 years during which time the ADC Final Examination must be undertaken.

The New Zealand Dental Council takes a broader approach in their listing of prescribed qualifications for registration as a dentist in the general scope of practice. Applicants with non-prescribed qualifications can also apply for registration and individual consideration. Representatives of the ADC and New Zealand Dental Council will soon begin discussions around ensuring as much consistency as possible in the recognition of overseas qualifications, given mutual recognition arrangements.

The ADC is undertaking their own review of assessment processes for overseas dental qualifications. A working party has been established and will investigate other potential approaches to assessment. This group is due to start meeting from early 2009.

Mutual recognition arrangements with New Zealand are working well for the delivery of oral health services in Victoria. If a New Zealand registered dentist applies for registration in Victoria, the ADC and the Dental Practice Board of Victoria will recognise a dentist's qualifications regardless of country of origin. Recruiting dentists via this process assists Victoria (and other States/Territories) to address the critical shortage of dentists in Australia.

Regarding protection of the public, there have been no reported cases of differing standards between New Zealand registered dentists and dentists with qualifications from Australia, United Kingdom and Ireland.

Early Childhood Services

DEECD

The Children's Services Regulations 1998 (R25) establish the requirements for staff to be deemed 'qualified' for employment in licensed children's services in Victoria. The DEECD's *Kindergarten Policy, Procedures and Funding Criteria* specifies the qualifications required for early childhood teachers employed in a kindergarten program which receives state government funding.

The current Victorian process is to have an external expert organisation assess overseas and interstate qualifications and recommend to the Department whether an interstate or international qualification is deemed equivalent for employment in Victoria. The theory and content of early childhood qualifications varies markedly between states and countries and is also subject to change without notice. DEECD are particularly concerned about mutual recognition of New Zealand early childhood qualifications as several of these have been assessed as not equivalent to Victorian qualifications.

Disability Services: Moving Interstate - Assistance to People with Disabilities and Their Carers

DHS

A review of the Interstate Portability Scheme was conducted by NSW on behalf of the National Disability Administrators (NDA), the predecessor to the Disability Policy and Research Working Group in 2004-05. An Interstate Portability Profile report was presented to the NDA in 2005. NSW was requested to prepare further work, including recommendations, for the Ministers' consideration at the Community and Disability Services Ministers' Conference (CDSMC) in July 2006.

In July 2006, the CDSMC endorsed the follow options:

> ***2 (i) (a) Consistency of approach to requests for transfer***
> *Current criteria state that the transfer of funding should only occur when the need is due to urgent, critical or unplanned circumstances. The criterion can be open to some degree of interpretation. An amendment to consider the transfer of funding to "upon request" of the individual and or family, may assist in providing consistency in application across jurisdictions. This change to the criterion could be implemented by all jurisdictions.*
>
> ***2 (i) (b) Provision of a clear definition of "urgent and critical"***
> *While this may assist in providing consistency in applying the criterion, many people either move interstate before notifying the relinquishing jurisdiction or purchase housing on the understanding that portability of funding will be forthcoming which can make the adoption of the criteria difficult.*

CDSMC also agreed to the work of any future portability scheme being included as part of the fourth Commonwealth State Territory Disability Agreement (CSTDA) renegotiations, in line with the direction decided above.

Victoria understands that each jurisdiction will undertake a review of the implementation of the 2006 CDSMC recommendations during 2009 and report back to the CDSMC.

As a result of the new NDA effective 1 January 2009, the previously agreed protocols will need to be reviewed as part of the CDSMC's broader discussions, during 2009 on the implications of a new NDA.