

## Submission by the CEO of the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) to the Productivity Commission on its review of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Agreement

1. Under section 15 of the *Australian Radiation Protection and Nuclear Safety Act 1998*, I have a duty "to promote uniformity of radiation protection and nuclear safety policy and practices across jurisdictions of the Commonwealth, the States and Territories". This is because radiation protection in Australia is within the jurisdiction of each State and Territory. Any person who wishes to possess or use a radioactive source or radiation apparatus is required to obtain an authorisation from a radiation authority in each State or Territory. ARPANSA regulates only Commonwealth entities that possess, operate or use nuclear installations, radiation facilities and apparatus and radioactive sources.
2. The Commonwealth and each State and Territory have separate Acts and Regulations that prescribe requirements for the licensing of users (both individuals and organisations) and registration of radiation apparatus and radioactive sources. Consequently mutual recognition issues have arisen when radiation apparatus or radioactive sources are sold or transferred from one jurisdiction to another, either temporarily or permanently.

### Sale of goods

3. The mutual recognition principles apply to the sale of goods. However, in the case of radiation apparatus or radioactive sources often the trans-boundary movement of goods is because the custody of the goods is being transferred from one person to another. Also there are some big radiation services companies that operate in a few jurisdictions and the staff of these companies sometimes carry radiation apparatus with them or re-locate them to their branch offices in other jurisdictions. As such, I suggest that the mutual recognition principles are extended to apply to any form of transfer or movement of goods from one jurisdiction.

### Use of goods

4. I note that the Productivity Commission's 2009 review report on mutual recognition identified that 'use-of-goods' regulations continue to dictate specific conditions under which a good may or may not be used and this is a barrier to mutual recognition. Among the conditions that the report identified included requirements relating to the identity of the user. As an example of this condition, the 2009 report mentioned the requirement for persons to be licensed before they can use radioactive substances.
5. The Commission should note that another condition that exists in many jurisdictions' radiation legislation is the requirement for a radiation apparatus or radioactive substance to be approved or registered (or both) before the apparatus or substance can be used in that jurisdiction. This requirement acts, in some cases, as a barrier to mutual recognition of the registration of a radiation apparatus or radioactive substance.
6. In its recent Issues Paper, the Commission stated (at page 9) that while there may be a case for jurisdictions to impose use-of-goods requirements to address unique health, safety and environmental concerns within a defined geographic area, such requirements should only be on solid net public benefit grounds as they can create barriers to trade. I support this view. In addition, I suggest the Commission recommends that the requirement for 'net public benefit' is legislated as a pre-requisite before anything is exempted from mutual recognition on the basis of health, safety or environmental concern, with a right of review by the Administrative Appeals Tribunal.

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