



Australian Government
Department of Industry and Science

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Mutual Recognition Schemes Study
Productivity Commission
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Dear Commissioner

Productivity Commission Review of the Mutual Recognition Schemes

I write to make a submission to the Productivity Commission's *Review of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement*. The mutual recognition system as it relates to goods is well established, and the Department of Industry and Science (the department) has not been made aware of significant issues.

The department's submission aims to highlight the effective operation of mutual recognition and further notes that specific mutual recognition of goods issues such as high risk foods, road vehicles and radio communication devices are the policy responsibility of the relevant agencies (detailed below). The department has contacted the relevant agencies to make them aware of the PC review and the submissions process.

The role of the Department of Industry and Science

The department is responsible for administering the *Mutual Recognition Act 1992* (MR Act) and the *Trans-Tasman Mutual Recognition Act 1997* (TTMR Act) as they relate to goods. The Department of Education and Training has responsibility for the Acts as they relate to occupations.

While the department has overarching responsibility for goods, policy responsibilities for specific mutual recognition issues raised in the Issues Paper lie with the government agencies listed below.

- The Department of Infrastructure and Regional Development has responsibility for road vehicle standards.
- The Department of Environment has responsibility for ozone legislation.
- The Department of Health has responsibility for Therapeutic Goods.
- Food Standards Australian and New Zealand has responsibility for risk-categorised foods.
- The Australian Communications and Media Authority have responsibility for radiocommunications devices.

The above agencies may provide individual submissions to the 2015 Productivity Commission Review of the Mutual Recognition Schemes.

Current operation of the Mutual Recognition Acts as they relate to goods

The mutual recognition system as it relates to goods is well established, and the department has not identified significant issues where Commonwealth intervention would likely result in a net benefit.

Issues with mutual recognition are raised on a case-by-case basis and are generally to do with specific products, in specific States and/or Territories and not with the system itself. Of the small number of cases raised, the predominant issue is with regulatory harmonisation across jurisdictions and compliance to mandated standards, which are further discussed below (see Use of goods requirements).

The Issues Paper raises the possibility of an alternate enforcement mechanism for goods, such as an Administrative Appeals Tribunal. The department has not been made aware of any problems with the current enforcement mechanisms available under Australia's legal system.

Furthermore, relevant stakeholders have not advised of any issues with the existing temporary or permanent exemption processes, or the exclusions under the MR Acts.

Response to the 2009 Productivity Commission Review of Mutual Recognition

The 2009 Mutual Recognition Review made several goods related recommendations which the department and relevant Commonwealth agencies have worked to implement. For example:

- In line with Recommendation 7.1 of the 2009 Review, special exemptions have been converted to permanent exemptions for hazardous substances, industrial chemicals and dangerous goods. The Commonwealth regulations were made on 14 April 2010 and the New Zealand regulations on 12 April 2010;
- In accordance with Recommendation 8.1, relevant agencies subsequently agreed to narrow the scope of permanent exemptions for risk foods from the TTMR Act. Changes to the Australian *Imported Food Control Order 2001* took effect in September 2011 and brought several additional foods under the operation of the TTMR Act; and
- Consistent with Recommendation 6.1 of the 2009 Review, the *Australian Competition and Consumer Act 2010* (CC Act), includes provisions to ensure that temporary and permanent product bans under the CC Act will result in an exemption under the MR Act. As such, Australia's processes for exempting goods from the operation of the MR Act are integrated with the national consumer product safety regime.

For more information, please see the *Progress Report on Responses to the Productivity Commission's 2009 Review of Mutual Recognition Schemes – Cross Jurisdictional Review Forum Report to Australian Heads of Government and the New Zealand Prime Minister July 2014*.

Use of goods requirements

The department has dealt with a small number of enquiries concerning goods that are legally saleable through the mutual recognition principle but are not legally useable due to regulations related to use of goods. As the mutual recognition system does not cover post-point of sale requirements, these enquiries are generally referred to the appropriate regulators and enforcement bodies in the Commonwealth, State and Territory Governments. The department would welcome the Productivity Commission examining the feasibility and appropriateness of mutual recognition arrangements being extended to use of good requirements.

Recognition of international standards

For goods, Australian standards and conformance are already predominantly based on international standards. The Australian Government is focused on adopting international standards where appropriate, consistent with the World Trade Organisation's Technical Barriers to Trade (WTO TBT) Agreement. The recently released *Industry Innovation and Competitiveness Agenda (2014)*, includes a principle on the acceptance of trusted international standards and risk assessments by Australian regulators.

Interaction with trade agreements

The TBT chapters under Australia's Free Trade Agreements (FTAs) affirm our rights and obligations under the WTO, protect the integrity of our domestic standards and conformance system, and encourage cooperation and information sharing with relevant international standards bodies. Consistent with the WTO TBT Agreement, Australia's TBT chapters aim to ensure that technical regulations or standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. That said, nothing in Australia's FTAs limit our rights to maintain and adopt standards and technical regulations for legitimate objectives including the protection of human health or safety, animal or plant life or health, the environment, and national security requirements.

Thank you for the opportunity to make a submission in response to the Productivity Commission's Issues Paper. If you require any further information, please contact Mr Karl Brennan, Manager – Trade Policy Section

Yours sincerely

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Department of Industry and Science
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