

# **Permanent Exemption of LPG appliances from the Trans-Tasman Mutual Recognition Arrangements (TTMRA)**

## **Regulation Impact Statement for Consultation**

### **Purpose of a Regulation Impact Statement**

It is mandatory for the Council of Australian Governments (COAG), Ministerial Councils and intergovernmental standard-setting bodies to prepare a Regulation Impact Statement (RIS) for all reviews of existing regulation, proposed new or amended regulation, quasi-regulation and proposed treaties involving regulation which, when implemented, would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done.

The primary role of the RIS is to improve government decision-making processes by ensuring that all relevant information is presented to the decision makers when a decision is being sought. A RIS is a two stage process involving a RIS for consultation and a RIS for the decision makers.

In that context, this consultation RIS has been prepared as part of the process for developing policy options in response to the problem being addressed. The aim of this consultation RIS is to elicit views from affected parties prior to the development of the final decision RIS and recommendations for decision makers.

Further information on RISs is available from the Office of Best Practice Regulation website [www.obpr.gov.au](http://www.obpr.gov.au).

### **Background**

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is an agreement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand to mutually recognise compliance with each others' laws for the sale of goods and the registration of occupations. The agreement allows goods that can be lawfully sold in one jurisdiction to be sold in other jurisdictions without having to satisfy additional requirements. The TTMRA provides for mutual recognition and harmonisation of product standards and conformity assessment

procedures between Australia and New Zealand under the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

The Arrangement recognises that in some cases there are regulatory impediments to trade between Australia and New Zealand in the form of different standards, duplication of testing and certification requirements, or different regulatory requirements for those wishing to practise in different professions, and these should be discontinued where appropriate. The basic principle of the TTMRA relevant to gas appliances is that:

A good that may be legally sold in Australia may be sold in New Zealand and vice versa regardless of differences in standards or other sale-related regulatory requirements.

At the time of signing the TTMRA in 1996, it was recognised that the two countries had significantly different regulatory approaches to several goods<sup>1</sup>, including gas appliances. As a result these items were given special exemption status. The objective of special exemptions is to allow examination of differences in regulatory requirements and eventually address them through mutual recognition, harmonisation or permanent exemption. Under the TTMRA, special exemptions last for 12 months, and must be 'rolled over' if they are to remain in force. Each rollover has to be approved by at least two-thirds of the Heads of Government.

The special exemption status recognised that the Australian and New Zealand regulatory schemes with respect to gas appliances were different and that work would be required to achieve harmonisation or mutual recognition. The group of regulatory agencies chiefly responsible for pursuing the Cooperation Program in relation to gas appliances and the TTMRA, is the Gas Technical Regulators Committee (GTRC). The GTRC comprises representatives from the gas regulatory agencies of each Australian State and Territory and New Zealand. The members of the GTRC are:

- Victoria – Office of Gas Safety;

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<sup>1</sup> Other goods with special exemption status include: therapeutic goods; hazardous substances, industrial chemicals and dangerous goods; radiocommunications standards; and road vehicles.

- New South Wales – Ministry of Energy and Utilities and Office of Fair Trading NSW;
- South Australia – Office of the Technical Regulator;
- Western Australia – Energy Safety WA;
- Queensland – Department of Mines and Energy;
- Tasmania – Workplace Standards Tasmania;
- Northern Territory – NT WorkSafe;
- Australian Capital Territory – ACT Planning and Land Authority;  
and
- New Zealand – Energy Safety, Ministry of Economic Development.

Gas appliances have had special exemption status under the TTMRA renewed every 12 months for the past eleven years. The significant points of difference between the New Zealand and Australian States and Territories' gas appliances safety regimes are pre-sale certification of the safety of gas appliances and the labelling of appliances certifying them as safe for installation and use.

In 2006, New Zealand conducted a review of its gas appliance safety regime. As a result of the review, New Zealand has agreed to amend its regulations to require third party pre-certification of gas appliance safety. It has also agreed to require a labelling system compatible with that used in Australia. These changes have been agreed, both to progress mutual recognition of the Australian and New Zealand gas appliance safety regimes, and to deliver a safer system for gas appliances within New Zealand. These decisions by New Zealand have resulted in agreement by GTRC members to work proactively to progress mutual recognition of regulations relating to use of natural gas appliances across Australia and New Zealand.

The work to achieve the mutual recognition of natural gas appliances is currently underway. Consultations are progressing between the regulatory agencies regarding transition arrangements for the proposed new regulatory framework, which includes New Zealand amending its regulations for gas appliance safety and the Western Australian Technical Gas Regulator preparing a draft paper outlining the options for labelling requirements for all jurisdictions. Complementing this work, Standards

Australia has formed a committee which has prepared a draft outline of Joint Standards for minimum essential safety requirements for gas appliances.

However, unresolvable issues remain regarding liquefied petroleum gas (LPG) appliances. There are differing compositions of LPG used in Australia and New Zealand. The Gas Regulators view is that this means some LPG appliances that can safely operate on Australian LPG (propane) if operated on New Zealand LPG (propane-butane mix), and vice versa, could pose an unacceptable safety risk to respectively New Zealand and Australian consumers. As well, flueless LPG cabinet heaters are effectively prohibited in Australia but are a major category of gas appliances sold and manufactured in New Zealand.

The current special exemption is in place until April 2009 but the Ministerial Council on Energy has strongly indicated that further exemptions should be avoided and that mutual recognition, harmonisation or permanent exemption should be finalised.

This consultation RIS has been prepared by the Department of Resources, Energy and Tourism on behalf of the GTRC. The purpose of the RIS is to examine the costs and benefits of the three options to resolve the issue of the treatment of LPG appliances under the TTMRA: mutual recognition; harmonisation; or permanent exemption.

## **1. Statement of the Problem**

The area of difficulty concerning the inclusion of LPG appliances under the TTMRA is the unacceptable risk to consumers of using LPG appliances designed to operate on a different LPG composition than that which is commonly supplied in New Zealand or Australia. These issues are brought about by the different composition of LPG in the two countries.

LPG is mainly propane (C<sub>3</sub>H<sub>8</sub>), propene (C<sub>3</sub>H<sub>6</sub>) or butane (C<sub>4</sub>H<sub>10</sub>). Propane is the predominant component of LPG used in Australia, and a mix comprising propane and butane (to a maximum of 50 per cent) is used in New Zealand. Appliances built to burn LPG comprising mainly propane can be hazardous when used to burn propane/butane mixtures, and vice versa.

In other words, there could be an unacceptable risk to some Australian consumers if LPG appliances meeting the necessary safety standards to operate on the New Zealand LPG composition are used in Australia using Australia's LPG composition; and there could be unacceptable risk to some New Zealand consumers if LPG appliances meeting the necessary safety standards to operate on the Australian LPG composition are used in New Zealand using New Zealand's LPG composition. These issues cannot be addressed under the TTMRA which provides a good that may be legally sold in Australia may be sold in New Zealand and vice versa regardless of differences in standards or other sale-related regulatory requirements.

LPG differs from natural gas in that it is stored in pressurised vessels. It must only be used in appliances that have been specially designed and certified for use with LPG, and these appliances can be either permanently fixed appliances or portable appliances. Common LPG appliances include: barbeques, patio heaters, gas lanterns and other household appliances such as gas cook tops, portable gas heaters and instant gas hot water systems.

Although the composition of the LPG is different in each country, the gas fittings and the gas storage cylinders used by the equipment appear the same, with the gas cylinders being marked as containing only LPG, and appliances for use with LPG.

An appliance sold in Australia is designed to use propane and if that appliance is then sent to New Zealand for sale then it could be potentially unsafe since in New Zealand the fuel available for use in the appliance is a mix of propane and butane<sup>2</sup>. This mix has a higher heating value, and would therefore overload the gas rating of the appliance resulting in flame impingement from a softer flame and sooting. There would also be a risk of carbon monoxide formation from incomplete combustion. Carbon monoxide, being a poisonous gas, can be fatal if inhaled in sufficient quantities.

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<sup>2</sup> If an appliance has been designed and tested for universal LPG then this should not be a problem. However, this is not a requirement of the standards.

The risks to Australian consumers from using a New Zealand appliance (designed to use a butane/propane mix) would primarily relate to the adverse impact on flame stability resulting from the use of the alternative fuel. This in turn increases the risk that the appliance may overheat and potentially cause an explosion due to a tendency for the flame to lift and being more prone to extinguishing.

Nearly all appliances manufactured for Australian domestic use have been designed and calibrated to operate solely on propane. To use a LPG mix of butane and propane in an appliance calibrated to this standard will usually have a number of side effects, including: appliance malfunction; a fluctuating flame temperature; a changing flame colour; a soot residue build up on cooking utensils etc, and in rare cases; carbon monoxide release. Also, due to the different densities of propane and butane, propane will tend to burn first once the gas is exposed to room temperature, leaving the heavier butane gas in the bottle to burn last.

The problem could be addressed by changing the specification for LPG in either Australia or New Zealand (or both) so that the specification was compatible. This would have potential significant cost implications for existing LPG users and the LPG infrastructure.

While it is possible to retrofit existing appliances to operate on both types of fuels, the cost of doing so would be uneconomic. Appliances that are modified in this way are less fuel efficient which would add to the cost of this option and have implications for Government energy efficiency planning in both Australia and New Zealand. As well, a change in the specification of the fuel available in the local marketplace may tempt users to risk unsafe home adjustments.

If the LPG specification was changed and appliances were not retrofitted (a risk given the cost), there would be increased safety risks to consumers from using such appliances. This is particularly an issue since consumers already bear a certain level of risk in the use of these appliances, which have contributed to fatalities and other potentially dangerous situations. For example, leaking LPG can precipitate explosions and fires causing fatalities in confined spaces such as caravans, garages and basements. LPG is potentially more hazardous than natural gas owing to its

greater density making it heavier than air, and its propensity to collect at ground level rather than be dispersed upwards as is the case with natural gas. LPG also has a lower level of required ignition energy than natural gas and any potential ignition source, intentional or otherwise, can lead to a potentially dangerous situation.

The following table summarises fatalities caused by accidents involving LPG in Australia and New Zealand from 1998 – 2002:

Region	Population Exposed <sup>3</sup>	Fatalities/Fatal Accident Frequency Rate –LPG <sup>4</sup>							
		1998/99		1999/00		2000/01		2001/02	
ACT	0.104	na		Na		na		na	
NSW	2.167	na		Na		na		na	
NT	0.065	na		Na		na		na	
QLD	1.199	na		Na		na		na	
SA	0.500	na		Na		na		na	
TAS	0.157	na		Na		na		na	
VIC	2.222	na		1	0.45	na		na	
WA	0.632	na		Na		na		1	1.58
Aust	7.040	na		1	0.14	na		1	0.14
NZ	1.268	3	2.37			1	0.79	1	0.79
TOTALS	8.308	3	0.36	1	0.12	1	0.12	2	0.24

Source: GTRC website, [www.gtrc.gov.au/statistics.html](http://www.gtrc.gov.au/statistics.html)

There were two reported deaths in Victoria in 2006/07, both resulting from loose connections between LPG cylinders and appliances.<sup>5</sup> No gas related deaths were reported or investigated in South Australia, however several serious gas related incidents were investigated, which included:

- A house was destroyed by fire at Angle Vale. The fire was attributed to escaping high pressure LPG. Estimated damage was \$350,000. Although two persons were at home at the time no injuries occurred.

<sup>3</sup> Population Exposed: LPG customers where known x 2.7 persons per household plus BBQs or 1 in 3 of total population exposed to LPG BBQ.

<sup>4</sup> Fatal Accident Frequency Rate: number of fatalities/population exposed in millions

<sup>5</sup> Energy Safety Victoria, Annual Report 06-07, [http://www.esv.vic.gov.au/Portals/0/Alerts%20&%20Recalls/Files/ESV\\_AnnualReport\\_2007.pdf](http://www.esv.vic.gov.au/Portals/0/Alerts%20&%20Recalls/Files/ESV_AnnualReport_2007.pdf) [21 July 2008]

- A house was destroyed at Brahma Lodge as a result of an underfloor LPG escape and subsequent explosion caused by defective gas installation work by an unlicensed person. Estimated \$250,000 damage.
- An LPG cylinder exploded in a house at Elizabeth. Suspected arson, estimated damage \$100,000.
- LPG escape and fire at a home made barbecue. Burn injuries. Estimated \$60,000 damage to house. <sup>6</sup>

Three fatalities were reported in Western Australia in 2006-07 when a two burner LPG camp stove and LPG cylinder found under rubble after a house fire appeared to have been in use prior to or at the time the fire was initiated. The fire trapped a mother and her two children in the house and they subsequently died.<sup>7</sup>

In New Zealand during 2006, there were 18 notifiable and 23 non-notifiable LPG accidents reported to ESS, with five of the notifiable accidents causing injury to nine people. One notifiable LPG abuse accident caused one fatality. The general trend of five years 2002-2006 indicates some reduction in LPG injury accidents.<sup>8</sup> During 2007, 27 notifiable and 33 non-notifiable LPG accidents were reported to ES with five of the notifiable accidents causing two fatalities and injury to 14 people.<sup>9</sup>

The incidents described above point to the risks of using LPG appliances more generally. The poorer safety record of LPG appliances compared to natural gas appliances may also reflect:

- the fact that LPG appliances are often installed by untrained persons who can assemble separate components incorrectly;
- the fact that LPG appliances are subject to more wear and tear by virtue of their easy portability;

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<sup>6</sup> Annual Report of the Technical Regulator 06/07

<sup>7</sup> Department of Consumer and Employment Protection, Gas related incidents and fatalities, [http://www.docep.wa.gov.au/EnergySafety/Content/Regulation/Accidents\\_and\\_incidents/Gas\\_related\\_incidents\\_and\\_fatalities.html](http://www.docep.wa.gov.au/EnergySafety/Content/Regulation/Accidents_and_incidents/Gas_related_incidents_and_fatalities.html) [21 July 2008]

<sup>8</sup> Energy Safety Service, Summary of reported electrical and gas accidents: 1 January 2006 to 31 December 2006.

<http://www.energysafety.govt.nz/upload/47039/MCA%20ElecGas%20Sum06%20web.pdf>

<sup>9</sup> Energy Safety, Summary of reported electrical and gas accidents: 1 January 2007 to 31 December 2007, <http://www.energysafety.govt.nz/upload/56483/summary.pdf>

- the fact that LPG as a fuel is inherently more dangerous than natural gas by virtue of its greater density than air, so exacerbating the danger from leaks from the appliance of the storage system; and
- the widespread use of LPG cabinet heaters in New Zealand (which are banned in Australia).

Given that using LPG appliances already pose risks to consumers, the issue of the trade in LPG appliances between Australia and New Zealand needs to be examined and resolved so that consumers do not face any additional or unnecessary risks when using LPG appliances.

Consultation Question:

1. Is there any specific data available on the magnitude of the safety risk posed by the use of different LPG compositions in these appliances?

Another area of difficulty regarding the inclusion of LPG appliances under the TTMRA concerns flueless cabinet heaters. These are portable LPG room heaters with the gas cylinder being integral to the appliance. Flueless gas heaters discharge the products of gas combustion into the room they are heating.

### **Australian Perspective**

The use of cabinet heaters in Australia has been effectively banned since the 1980s, because of their poor safety performance, the health effect of combustion products, and the effect of high water content in the air giving rise to damp conditions. Cabinet heaters have fewer safety devices such as oxygen depletion sensors and tilt switches and often lower levels of NO<sub>x</sub> controls when compared with flueless natural gas heaters. Australian jurisdictions are concerned that the inclusion of LPG appliances under TTMRA would allow flueless cabinet heaters to be sold in Australia, overriding existing laws restricting their sale and use.

Australian jurisdictions have signalled their concerns as follows:

## 1. Usage

Inappropriate usage of mobile LPG appliances can cause injury, death and damage to property. The safety problems deriving from the poor maintenance, home modification or misuse of LPG appliances cannot be overcome without extensive education of gas appliance users. In particular, the problems associated with people's actions and decisions leading to the lack of ventilation of a room would be difficult to overcome. Successful education of LPG appliance users would minimise, but not eradicate, issues associated with the inherent problem of gas composition.

## 2. Ventilation

The use of flueless gas space heaters in certain locations is restricted in Australia because of concerns over a lack of adequate room volume and ventilation to dilute the products of combustion to a safe level. Cabinet heaters being highly mobile appliances, can be used in small rooms such as bedrooms which are of particular concern as the inhabitant may fall asleep, and other rooms that have insufficient ventilation. Use in such rooms can cause illness and asphyxiation from the inhalation of pollutants produced during combustion (e.g. carbon monoxide or nitrogen oxides) and depletion of available oxygen in the air. Condensation problems are also an issue.

## 3. Storage of cylinders

Concerns have been raised about the possible risk of leaks from connection points and the risk of gas ignition during cylinder exchange times. In some jurisdictions, storage/use of cylinders inside dwellings is illegal, but in others, AS 1596 is referred to from their regulations which allows 10kg of LPG indoors per dwelling in Australia and 20kg per dwelling in New Zealand.

## 4. Health

Australian health authorities also concur with Australian regulators on the prohibition of the use of cabinet heaters for residential heating because of the poor safety performance of cabinet heaters, the health effect of combustion products and the effect of high water content in the air giving rise to damp conditions affecting occupants, particularly children and the elderly.

## 5. Safety Track Record

The Australian regulators consider that New Zealand has a poor track record regarding the safe use of these appliances given the number of incidents relating to cabinet heaters and would cite this as a reason to not permit them.

For example, for the period from 1998 to 2007, New Zealand reported 65 accidents resulting from the use of cabinet heaters (fatalities and injuries) that were notifiable under the *Gas Act*.

### **New Zealand Perspective**

In New Zealand, there are approximately 400,000 portable cabinet heaters in homes (equating to about a quarter of homes having a cabinet heater available to use). An Energy Safety survey from July 2006 showed that of people who own or use a LPG cabinet heater in their home, 43 per cent use this kind of heating as their main source of household heating (approximately 11 per cent of homes). The survey showed that 91 per cent of people who used cabinet heaters had only one cabinet heater in their household. However, those who used cabinet heaters as their main source of heating were more likely to have more than one cabinet heater in their home.

Almost half (44 per cent) of the respondents to the survey reported using their cabinet heater because it provided quicker heating than other sources and 41 per cent believed gas is cheaper than other options. One in ten keep a heater as a back-up heating supply.

The survey concluded that there is a general perception among cabinet heater users that these heaters are safe to use. Contributing to this understanding is the fact that the incidence level of safety issues is low – on a personal level very few users have experienced significant safety-related issues with their cabinet heater.

In summary, cabinet heaters are a source of main household heating in a significant number of New Zealand homes. They also are used as back up heating for emergencies (e.g. electricity cuts or snowed-in households), as supplementary heating to other heaters such as wood burners and for heating rooms which are only occupied

intermittently. They can also incorporate sophisticated safety features and the level of incidents each year is very low given the number of heaters in the market.

LPG heating is popular and its use has increased in recent years with greater encouragement for people to better heat their homes alongside increased electricity prices and declining use of wood and coal burning appliances.

Australia has a widespread reticulated natural gas (NG) service available to consumers, which makes the use of cabinet heaters a less attractive heating option especially considering the risks associated with their use, as identified by Australian jurisdictions. In New Zealand, mainline gas is confined to a small section of the North Island, and therefore from the New Zealand perspective, to not allow the use of cabinet heaters would impose significant social and economic costs.

The GTRC is seeking to satisfactorily resolve the issue of the trade in LPG appliances between Australia and New Zealand, through either mutual recognition, harmonisation or permanent exemption so that acceptable performance levels of gas safety and supply quality for retailing and end use application can be achieved, and agreed by all jurisdictions. The resolution of this matter would also end any uncertainty resulting from the continual rollover of the special exemption.

## **2. Objectives**

The objective of the proposed regulatory reform is to resolve the issue of the treatment of LPG appliances under the TTMRA.

Resolving the issue of LPG appliances will:

- Obviate the need for the continued rollover of the special exemption for LPG appliances; and
- Result in a solution that is acceptable to both Australian and New Zealand Gas Safety Regulators.

### **3. Statement of Options**

#### **Mutual Recognition**

Mutual recognition would address the regulatory differences between Australia and New Zealand in regard to LPG appliances by allowing them to be traded freely between Australia and New Zealand. Appliances would need to only comply with the standards and regulations applying in the country where they were produced.

Legislation implementing the TTMRA overrides any laws, with certain exceptions, that regulate the manufacture or the sale of goods. Examples of laws overridden by the scheme include<sup>10</sup>:

- Requirements relating to the production, composition, quality or performance of a good (such as product standards);
- Requirements that a good satisfy certain standards relating to presentation (such as packaging and labelling);
- Requirements that goods be inspected, passed or similarly dealt with (such as conformance assessment requirements); or
- Any other requirement that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the good.

#### **Harmonisation**

Harmonisation would address the regulatory differences between Australia and New Zealand in regard to LPG appliances by aligning the different standards or regulations (for both appliance and LPG specification requirements) between the two countries and requiring both Australia and New Zealand to follow the same substantive regulations. Harmonisation may mean that each jurisdiction (that is, New Zealand and Australia and within Australia) may have specific requirements but the regime adopted would be fundamentally the same.

Harmonisation would mean either:

- Australia adopting the New Zealand model;

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<sup>10</sup> Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, 1998.

- New Zealand adopting the Australian model; or
- Adopting a new hybrid model that accommodates some or all of the requirements of each country.

### **Permanent Exemption**

Permanent exemptions exist to deal with jurisdictional regulatory differences or situations where all parties agree that mutual recognition could jeopardise public health or safety.

A permanent exemption from the application of the Trans-Tasman Mutual Recognition Act 1997 (Australia) (the Act) may be made under Section 45. Schedule 2 of the Act lists laws that are permanently exempt from the Act. Schedule 3 of the Act lists laws that have a special exemption from the Act. The Governor-General may make regulations that amend Schedule 2, however a regulation cannot be made unless all the then participating jurisdictions have endorsed the regulation. Also, if the regulation deals with laws specified in Schedule 3 and will not take effect within 5 years after commencement of the Act, the regulation may be made if at least two thirds of the then participating jurisdictions have endorsed the regulations.

Permanent exemptions (as listed in Schedule 2) have been provided for laws relating to:

- Quarantine
- Endangered species
- Firearms/weapons;
- Fireworks;
- Indecent material;
- Ozone protection;
- Agricultural and veterinary chemicals;
- Risk categorised foods
- Gaming machines;
- Beverage containers (SA);
- Tasmanian laws on possession, sale or capture of abalone, crayfish and scallops.

Adopting a permanent exemption option for LPG appliances would effectively mean retaining the current position in terms of regulation of these appliances in both countries.

#### **4. Impact Analysis**

##### **4.1 Mutual Recognition of LPG Appliances**

The purpose of the TTMRA is to give effect to principles of mutual recognition. In the case of LPG appliances, the key principle is that a good that may be legally sold in Australia may be sold in New Zealand and a good that may be legally sold in New Zealand may be sold in Australia, regardless of the differences in standards or other sale-related regulatory requirements between Australia and New Zealand.

There are a number of potential benefits of mutual recognition. These are<sup>11</sup>:

- Lower costs to businesses and improved competitiveness, and lower compliance costs from being able to manufacture to a single standard;
- Greater choice for consumers;
- An impetus for both countries to consider the appropriateness of existing regulation in the light of all participating governments' objective of removing unnecessary barriers to trade;
- Greater discipline on regulators contemplating the introduction of new standards, regulations and registration requirements; and
- Greater cooperation between regulatory authorities.

#### **Costs**

The major cost associated with mutual recognition of LPG gas appliances relates to safety. Allowing LPG appliances into Australia that are set up to use other than a propane gas composition would greatly increase the safety risk associated with the use of LPG appliances; and vice versa, allowing LPG appliances into New Zealand that are not set up to use a butane-propane LPG composition would greatly increase the safety risk associated with the use of LPG appliances. The Australian and New Zealand gas regulators consider that whilst many appliances can operate on universal

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<sup>11</sup> Council of Australian Governments Committee on Regulatory Reform, *A User's Guide to the Trans-Tasman Mutual Recognition Arrangement*, 1998.

LPG compositions, this is not the case for all LPG appliances. For example, in Australia, the majority of LPG appliances operate on propane. Only a small number of mainly commercial appliances are designed to operate on universal LPG. If LPG appliances were to be mutually recognised, and a common LPG specification was not in place Australian and New Zealand consumers would bear an increased risk of injury and/or fatality when using such appliances.

## **Benefits**

The intended benefit of mutual recognition is to encourage trans-Tasman trade, resulting in improved competition and a greater choice for consumers. Goods need only to comply with the standards or regulations applying in the country in which they are produced, or through which they are imported before they can be sold in the other country.

At present, the major New Zealand manufacturers of gas appliances produce goods that comply with Australian standards and codes. These manufacturers sell appliances in Australia that carry a certification badge which identify them as complying with the relevant Australian standards. If mutual recognition of LPG appliances under the TTMRA occurred, it would mean that other New Zealand manufacturers producing appliances that do not meet Australian standards would be able to sell their appliances in Australia.

Similarly, Australian manufacturers supplying goods to New Zealand are complying with New Zealand standards and regulatory requirements including that an appliance must operate safely on New Zealand specification LPG. If mutual recognition of LPG appliances under the TTMRA occurred, it would mean that other Australian manufacturers producing appliances that do not meet New Zealand standards and regulatory requirements would be able to sell their appliances in New Zealand.

Given that there is a serious safety risk associated with using LPG appliances in Australia and New Zealand that do not meet local standards, and have been set up to use a different LPG composition to that locally available, the benefits accruing from

increased trade would be far outweighed by the risks posed to Australian and New Zealand consumers from mutual recognition.

Consultation Questions:

1. Views are sought from gas appliance manufacturers on the impacts that mutual recognition of LPG appliances may have on their current operations. Would mutual recognition provide significant benefits, or other benefits other than those raised above?
2. Views are sought from consumers on whether mutual recognition would substantially increase choice in the range of LPG appliances sold in Australia.

## **4.2 Harmonisation of LPG Appliances**

In certain circumstances, inconsistent regulation between different jurisdictions can result in a hindrance to trade due to the increased cost of approvals or the banning of certain products. Harmonisation would bring Australia's and New Zealand's gas regimes into closer alignment and allow for the trade in LPG appliances between the two countries.

Achieving a harmonised position on LPG appliances would entail each country agreeing to the level of safety that would be the basis of the regulation, and how safety can be assured. This would also require either the harmonisation of the LPG specifications between Australia and New Zealand, or mandating that new LPG appliances be designed to operate on universal LPG, and phasing-out or converting the existing stock of LPG appliances that operate on either propane or a propane/butane mix. Harmonising regulations and products across all jurisdictions can result in substantial implementation costs, which may be higher than the benefits of harmonisation, particularly where the regulatory differences are not significantly impeding cross-border trade.

## Costs

These costs may include:

- Administrative costs incurred by government and industry in reviewing the various Australian and New Zealand standards and regulatory requirements;
- Costs in establishing a new regulatory regime. These costs are in:
  - developing and establishing the new regulation;
  - implementation and enforcement of the regulation by government;
  - in adoption and compliance by the industry; and
  - consumers learning and understanding the new regulatory regime.
- Substantial costs associated with changing the LPG infrastructure in one, or both countries, and/or other costs associated with converting propane (or propane/butane) appliances to operate on universal LPG.<sup>12</sup>

## Benefits

The benefits of harmonisation may include:

- Products legally sold in New Zealand would be made available for sale in Australian jurisdictions and vice versa;
- LPG appliances would be brought under the TTMRA thereby meeting TTMRA objectives of promoting trade and providing a greater variety in goods and services.

It is anticipated that the implementation costs of the harmonisation option would be substantial. It is possible that measures could be taken to ensure that safety of LPG appliances could be assured. However, it is not viable for either nation to change the composition of its LPG, and designing and/or retrofitting new and existing LPG appliances to operate on a new LPG composition (including universal LPG) would be uneconomic.

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<sup>12</sup> It should be noted that converting all LPG appliances to universal LPG would result in an additional adverse outcome relating to emissions standards.

For these reasons, harmonisation is not considered a feasible option for the resolution of the treatment of LPG appliances under the TTMRA.

Consultation Questions:

1. What additional costs may be incurred as a result of harmonisation? Is quantitative data available to accurately determine the size of these costs?
2. What additional benefits may arise from harmonisation?
3. Would it be economically feasible to mandate that all new LPG appliances be designed to operate on universal LPG, and phase-out the existing stock of appliances that operate on either propane or a propane/butane mix?
4. Can harmonisation be achieved?

### **4.3 Permanent Exemption of LPG Appliances**

At present there is no data collected specifically on LPG appliances, including the value of LPG appliances manufactured in Australia and the value of trade in these appliances between Australia and New Zealand. Therefore, it is not possible to be specific about the possible impacts of the difference in treatment of natural gas appliances and LPG appliances on trans-Tasman trade.

However, drawing on the available data relating to gas appliances and consultation with relevant stakeholders, it is possible to conclude that the benefits of permanent exemption for LPG appliances would outweigh any costs associated with the change, and will have a minimal impact on trans-Tasman trade. The basis for this claim is threefold: the proposed permanent exemption would constitute the maintenance of the status quo; there is minimal domestic-oriented industry in Australia and New Zealand, and a relative lack of trade in these appliances between Australia and New Zealand; and safety concerns due to the differing composition of LPG appliances across jurisdictions.

The special exemption for gas appliances has been rolled over for eleven successive years with few significant negative effects on the gas appliance market in Australia and New Zealand. Notwithstanding efforts to harmonise regulations pertaining to natural gas appliances, the permanent exemption of LPG appliances would constitute

maintenance of the status quo and it is not anticipated that industry or consumers would incur any additional costs as a result.

### **Costs**

It may be the case that the only cost associated with permanent exemption is that it is inconsistent with the objectives of the TTMRA and the benefits of mutual recognition would be foregone. Due to the small size of the trade in gas appliances between Australia and New Zealand, the forgone benefits for both Australia and New Zealand associated with the permanent exemption option would not be great.

In 2005, the Department of Industry, Tourism and Resources commissioned a report by ACIL Tasman on the trade in gas appliances and the regulation of gas appliances in Australia and New Zealand. The report found that:

Australian exports of gas appliances in 2004 were:

- \$45 million in total
- \$10 million to New Zealand.

New Zealand exports of gas appliances in 2004 were:

- \$29.5 million in total
- \$16.3 million to Australia.

Total Australian exports of domestic gas appliances have not grown in aggregate over the 1990 to 2000 period despite a temporary surge after 1998 which was attributable to an increase and then decline in exports of gas cookers and gas heaters probably driven by exchange rate movements.

Australian exports of domestic gas appliances to New Zealand grew by around 3 per cent per annum on average over the period and did not experience the surge after 1998. New Zealand exports of domestic gas appliances increased in total by around 12 per cent per annum on average over the period.

New Zealand exports of domestic gas appliances to Australia increased by around 12 per cent per annum over the period with a surge occurring after 1997.

Australian exports of gas appliances in total and to New Zealand are below trend for growth in exports of manufactured goods and domestic appliances between 1990 and 2004.<sup>13</sup>

New Zealand exports of gas appliances in total and to Australia are above trend for growth in exports of manufactured goods and generally in line with growth in exports of domestic appliances.

In summary, the trans-Tasman gas appliance trade has generally been low, and has typically been more significant for New Zealand than Australia. Further, New Zealand exports of domestic gas appliances to Australia have increased since 1998, while Australian exports of domestic gas appliances to New Zealand have decreased since 1998, in all years except 2002.

LPG appliances are a subset of all gas appliances, and in the absence of data on these appliances it can be assumed that the size of the trade in LPG appliance is significantly smaller than for all gas appliances. The Gas Appliance Manufacturers Association of Australia has estimated<sup>14</sup> that of the Australian gas appliance market, the split between natural gas and LPG would be on average, between 95 – 97 per cent natural gas. Given the small percentage of LPG appliances that comprise the market, it would therefore be expected that the trade in LPG appliances between Australia and New Zealand would be extremely small. Furthermore, given that the special exemption for gas appliances has been in place for the last eleven years, many major gas appliance manufacturers in New Zealand that wish to export appliances to Australia already have their appliances certified to Australian standards, and undertake trade with Australia.

It should be noted that the foregone benefits of mutual recognition are more significant if the regulatory differences between Australia and New Zealand reflect

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<sup>13</sup>ACIL Tasman 2005, *Australia New Zealand Gas Appliance Trade and Regulation*.

<sup>14</sup> Interview

national historical or institutional arrangements, rather than the objective assessment of risks to public health, safety and the environment.<sup>15</sup> In the case of LPG appliances, the regulatory differences are based primarily on safety concerns, therefore the benefits of mutual recognition, if it were achievable, would not be great.

## **Benefits**

The major benefit associated with permanent exemption is the avoidance of safety issues relating to the differing composition of LPG across jurisdictions.

Permanent exemption for LPG appliances constitutes a ‘lower-risk’ option for consumers as appliances that Australian regulators deemed unsafe would continue to be prohibited.

Other benefits that would accrue from preserving the current regulatory regime for LPG appliances in each country are:

- Regulatory certainty for manufacturers, importers, retailers and consumers; and
- Avoidance of the costs associated with transitional arrangements and implementing a new regulatory regime for LPG appliances.

At this stage it is anticipated that permanently exempting LPG appliances from the TTMRA will result in benefits to industry and the community that would outweigh the cost of prohibiting trade in LPG appliances between Australia and New Zealand.

### Consultation Questions:

1. What additional costs may be incurred as a result of permanent exemption?
2. What additional benefits may arise from permanent exemption?

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<sup>15</sup> Council of Australian Governments Committee on Regulatory Reform, *A User’s Guide to the Trans-Tasman Mutual Recognition Arrangement*, 1998.

## **5. Consultation**

In its 2007 Annual Cooperation Report, the GTRC advised that extensive discussions between regulators and the relevant Australian and New Zealand government departments identified that there was no feasible alternative to permanent exemption for LPG appliances that was acceptable to Australian safety regulators.

This consultation RIS has been reviewed by the GTRC. Industry and the community will be given an opportunity to comment on the RIS during the consultation period. This consultation RIS will be released for public comment for a period of four weeks.

At the end of the consultation period, public comments will be reviewed and incorporated into the decision RIS.

## **6. Evaluation and Conclusion**

Following extensive consultation, the GTRC believes that there is no feasible alternative but to apply a permanent exemption for LPG appliances. The Gas Regulators' views are based on safety considerations, not trade and competition.

Permanent exemption is viewed as the only feasible option to resolve the issue, and it is preferred as, on balance, it will result in the resolution of the issue of LPG appliances at the least cost to the industry and will result in safety requirements being met to the satisfaction of both Australian and New Zealand regulators. It is generally agreed by the members of the GTRC that a permanent exemption for LPG appliances under the TTMRA is the only practical solution to achieving mutual recognition for all other gas appliances. The very different situations outlined for each country regarding the use of cabinet heaters make it irreconcilable for the appliance to be either used or banned in both countries.

Mutual recognition is not viewed as a feasible alternative due to the safety risk that consumers would face if LPG appliances set up to use a different gas composition were allowed in Australia. Harmonisation is not viewed as a feasible option due to the substantial costs that would be incurred to harmonise regulations and the strong view that LPG appliances should be exempted for safety reasons.

## **7. Implementation and Review**

Following the completion of the public consultation period, a full decision RIS will be developed taking into account outcomes of the consultation process. Once completed, the Department of Resources, Energy and Tourism will advise the New Zealand Government who will then have an opportunity to examine the RIS. The first step of the implementation process requires the COAG E2WG's (Energy Efficiency Working Group) approval of the RIS. The decision RIS will then be forwarded to the Standing Committee of Officials for approval, after which it will be presented to the Ministerial Council on Energy for approval. Amendments seeking to add laws to the permanent exemption schedule of the TTMRA Act require the agreement of not less than two-thirds of the participating parties. Once agreement has been reached, the Minister for Resources, Energy and Tourism will write to the Prime Minister seeking approval for the permanent exemption. If approved, the Prime Minister will write to the TTMRA Heads of Government seeking their approval.

Once a permanent exemption has been approved, the TTMRA Act allows for permanently exempt laws to be amended or replaced, as long as this does not increase the scope of the exemption. The exemption will be reviewed periodically as the TTMRA requires the parties to the agreements to conduct five-yearly reviews.