

MUTUAL RECOGNITION (NEW SOUTH WALES) ACT 1992
No. 61

NEW SOUTH WALES



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No. 61

NEW SOUTH WALES



Act No. 61, 1992

An Act to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations. [Assented to 30 October 1992]

Mutual Recognition (New South Wales) Act 1992 No. 61

The Legislature of New South Wales enacts:

Short title and purpose

1. (1) This Act may be cited as the Mutual Recognition (New South Wales) Act 1992.

(2) The purpose of this Act is to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Interpretation

3. In this Act, "**the Commonwealth Act**" means the Act of the Parliament of the Commonwealth, enacted as referred to in section 4 (1) (a), and as amended and in force from time to time.

Enactment of uniform mutual recognition legislation

4. (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed under subsection (4) as the day on which the reference under this Act terminates, but not longer, namely, the matters to which the Schedule relates but only to the extent of:

- (a) the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule; and
- (b) the amendment of that Act (other than the Schedules), but only in terms which are approved by the designated person for each of the then participating jurisdictions.

(2) For the purposes of this section, a "**participating jurisdiction**" is:

- (a) a State for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the matters mentioned in subsection (1), or that adopts the Commonwealth Act, under paragraph (xxvii) of section 51 of the Commonwealth Constitution; or
- (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact the Commonwealth Act or that enables the Commonwealth Act to apply in relation to it.

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(3) For the purposes of this section, the designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

(4) The Governor may, at any time, fix by proclamation a day as the day on which the reference under this Act terminates.

(5) The day so fixed must be no earlier than the end of the period of 5 years commencing on the date of commencement of the Commonwealth Act.

(6) If some provisions of the Commonwealth Act commence before others, the reference in subsection (5) to the date of commencement of that Act is taken to be a reference to the commencement of the first provision or provisions to commence.

Approval of amendments

5. For the purposes of section 4 (1) (b), the Governor may, by proclamation, approve the terms of amendments of the Commonwealth Act.

Regulations for temporary exemptions for goods

6. Without limiting any other power to make regulations under any other Act, the Governor may make regulations for the purposes mentioned in section 15 of the Commonwealth Act.

SCHEDULE
MUTUAL RECOGNITION BILL 1992

A BILL

FOR

**An Act to provide for the recognition within each State
and Territory of the Commonwealth of regulatory
standards adopted elsewhere in Australia
regarding goods and occupations**

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Mutual Recognition Act 1992*.

Commencement

2. The provisions of this Act commence on a day or days to be fixed by Proclamation.

Principal purpose

3. The principal purpose of this Act is to enact legislation authorised by the Parliaments of States under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, and requested by the legislatures of the Australian Capital Territory and the Northern Territory, for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia.

Interpretation

4. (1) In this Act, unless the contrary intention appears:
“conditions”, when used in relation to occupations, means conditions, limitations or restrictions;
“deemed registration” means deemed registration as defined in section 25;

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"equivalent", when used in relation to occupations, has a meaning affected by Division 4 of Part 3;

"goods" means goods of any kind, and includes:

- (a) animals; or
- (b) a package containing goods; or
- (c) a label attached to goods;

"grant", when used in relation to registration, means grant, issue or otherwise confer registration;

"import" means import from outside Australia;

"labelling" of goods includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them;

"local registration authority" of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on of that occupation in the State;

"occupation" means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted;

"participating jurisdiction" has the meaning given by section 43;

"produce" includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production;

"registration" includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of an occupation;

"requirements", when used in relation to goods, means requirements, prohibitions, restrictions or conditions;

"sell" includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase;

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"State" includes the Australian Capital Territory or the Northern Territory;

"substantive registration" means registration under a law of a State, but does not include deemed registration;

"Tribunal" means the Administrative Appeals Tribunal.

(2) This Act is to be interpreted in accordance with the *Acts Interpretation Act 1901* as in force at the date on which this Act receives the Royal Assent.

Application of this Act to States

5. (1) This Act applies to a State, but only while it is a participating jurisdiction.

(2) Accordingly, a reference in this Act to a State is a reference to a State that is a participating jurisdiction.

Operation of this Act

6. (1) Nothing in this Act affects the operation of any other law of the Commonwealth.

(2) This Act does not limit the operation of a law of a State so far as it can operate concurrently with this Act.

Crown bound

7. Subject to section 5, this Act binds the Crown in right of the Commonwealth and of each of the States.

PART 2—GOODS

Mutual recognition

8. (1) The mutual recognition principle as applying to goods is as set out in this Part.

(2) This Part deals with goods produced in or imported into a State and their sale in another State.

(3) In this Part, the firstmentioned State is called **"the first State"**, and the other State is called **"the second State"**.

Entitlement to sell goods

9. The mutual recognition principle is that, subject to this Part, goods produced in or imported into the first State, that may lawfully be sold in

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that State either generally or in particular circumstances, may, by virtue of this Act, be sold in the second State either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements as described in section 10.

Requirements that do not need to be complied with

10. The further requirements referred to in section 9 are any one or more of the following requirements relating to sale that are imposed by or under the law of the second State:

- (a) a requirement that the goods satisfy standards of the second State relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance;
- (b) a requirement that the goods satisfy standards of the second State relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;
- (c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;
- (d) a requirement that any step in the production of the goods not occur outside the second State;
- (e) any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.

Requirements that do need to be complied with

11. (1) The mutual recognition principle is subject to the exceptions specified in this section.

(2) The first exception is that the principle does not affect the operation of any laws of the second State that regulate the manner of the sale of goods in the second State or the manner in which sellers conduct or are required to conduct their business in the second State (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the second State.

Examples: Laws relating to the following:

- (a) the contractual aspects of the sale of goods;
- (b) the registration of sellers or other persons carrying on occupations;
- (c) the requirement for business franchise licences;

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- (d) the persons to whom goods may or may not be sold;
- (e) the circumstances in which goods may or may not be sold.

(3) The second exception is that the principle does not affect the operation of any laws of the second State regarding the transportation, storage or handling of goods within the State, so long as:

- (a) those laws apply equally to goods produced in or imported into the second State; and
- (b) those laws are directed at matters affecting health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

(4) The third exception is that the principle does not affect the operation of any laws of the second State regarding the inspection of goods within the State, so long as:

- (a) inspection or the requirement for inspection is not a prerequisite to the sale of the goods in the second State; and
- (b) those laws apply equally to goods produced in or imported into the second State; and
- (c) those laws are directed at matters affecting the health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

Defences to offences regarding sale

12. (1) It is a defence to a prosecution for an offence against a law of the second State in relation to the sale of any goods if the defendant expressly claims that the mutual recognition principle applies and establishes that:

- (a) the goods were labelled at the point of sale with a statement to the effect that the goods were produced in or imported into the first State; and
- (b) the defendant had no reasonable grounds for suspecting that they were not so produced or imported.

(2) The defence is not available if the prosecution proves that the mutual recognition principle did not apply in the circumstances of the alleged offence (because for example the goods did not comply with requirements imposed by the law of the first State).

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(3) Any relevant presumptions or evidentiary procedures under the law of the first State are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under subsection (2).

(4) Any relevant defences under the law of the first State are available to the defendant in relation to matters sought to be proved by the prosecution under subsection (2).

(5) This section does not affect any defence that is available apart from this section.

Goods that comply with local law

13. (1) Nothing in this Part prevents goods from being sold in the second State if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.

(2) Nothing in this Part requires the labelling of goods as mentioned in section 12 if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.

Permanent exemptions

14. (1) This Part does not apply to goods that are specified in Schedule 1.

(2) This Part does not affect the operation of laws described in Schedule 2.

(3) Unless otherwise stated in Schedule 2, a law described in that Schedule includes any amendment or replacement of that law, but only to the extent that the amendment or replacement deals with the same subject-matter.

Temporary exemptions

15. (1) This Part does not apply to the sale in the second State of goods, or affect laws of the second State, for the time being declared by or under an Act or regulation of the State to be goods or laws to which this section applies.

(2) Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the State or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the State.

(3) No such exemption operates (together with the period of any previous exemption) for longer than a period of 12 months or an aggregate period of 12 months.

PART 3—OCCUPATIONS***Division 1—Preliminary*****Mutual recognition**

16. (1) The mutual recognition principle as applying to occupations is as set out in this Part.

(2) This Part deals with the ability of a person who is registered in connection with an occupation in a State to carry on an equivalent occupation in another State.

(3) In this Part, the firstmentioned State is called “the first State”, and the other State is called “the second State”.

Entitlement to carry on occupation

17. (1) The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:

- (a) to be registered in the second State for the equivalent occupation; and
- (b) pending such registration, to carry on the equivalent occupation in the second State.

(2) However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws:

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Application of this Part

18. (1) This Part applies to individuals and occupations carried on by them.

(2) This Part extends to an occupation carried on by an individual, where the individual is subject to more than one system of registration or more than one local registration authority in a State, and accordingly this Part applies in relation to each such system of registration and each such authority.

(3) Without limiting subsection (2), an example of such an occupation is that of a legal practitioner, which involves both the admission as a legal practitioner by a court and the issue of a practising certificate by another body.

Division 2—Entitlement to registration

Notification to local registration authority

19. (1) A person who is registered in the first State for an occupation may lodge a written notice with the local registration authority of the second State for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the mutual recognition principle.

(2) The notice must:

- (a) state that the person is registered for the occupation in the first State and specify that State; and
- (b) state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle; and
- (c) specify all the States in which the person has substantive registration for equivalent occupations; and
- (d) state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and
- (e) state that the person's registration in any State is not cancelled or currently suspended as a result of disciplinary action; and
- (f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any State, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and
- (g) specify any special conditions to which the person is subject in carrying on any such occupation in any State; and
- (h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.

(3) The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration).

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(4) As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original.

(5) The statements and other information in the notice must be verified by statutory declaration.

(6) The local registration authority may permit the notice to be amended after it is lodged.

Entitlement to registration and continued registration

20. (1) A person who lodges a notice under section 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation, as if the law of the second State that deals with registration expressly provided that registration in the first State is a sufficient ground of entitlement to registration.

(2) The local registration authority may grant registration on that ground and may grant renewals of such registration.

(3) Once a person is registered on that ground, the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in the first State.

(4) Continuance of registration is otherwise subject to the laws of the second State, to the extent to which those laws:

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

(5) The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they are conditions that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations.

(6) This section has effect subject to this Part.

Action following notice

21. (1) Registration must be granted within one month after the notice is lodged with the local registration authority under section 19.

(2) When granted, registration takes effect as from the date the notice was lodged.

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(3) However, the local registration authority may, subject to this Part and within one month after the notice was lodged, postpone or refuse the grant of registration.

(4) If the local registration authority neither grants the registration nor takes action under subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration immediately at the end of that period and no objection may be taken to the notice on any of the grounds on which refusal or postponement may be effected, except where fraud is involved.

Postponement of registration

22. (1) A local registration authority may postpone the grant of registration, if:

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or
- (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or
- (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation.

(2) If the grant of registration has been postponed, the local registration authority may in due course grant or refuse the registration.

(3) The local registration authority may not postpone the grant of registration for longer than a period of 6 months, and the person is entitled to registration immediately, at the end of that period, unless registration was refused at or before the end of that period.

(4) Nothing in subsection (3) prevents earlier registration from being granted on a review by the Tribunal.

Refusal of registration

23. (1) A local registration authority may refuse the grant of registration, if:

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or
- (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions.

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(2) A decision to refuse to grant registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than 2 weeks) after the person is notified of the decision, unless it has been previously revoked or there is an application for review to the Tribunal, in which case the Tribunal may make whatever orders it considers appropriate.

Notification of decision

24. A local registration authority must give the person who lodges a notice in accordance with section 19 a notice in writing of its decision to grant registration, or to postpone or refuse the grant of registration, or to impose conditions on registration.

Division 3—Interim arrangements

Deemed registration

25. (1) A person who lodges a notice under section 19 with a local registration authority of a State is, pending the grant or refusal of registration, taken to be registered as provided in section 20.

(2) Such registration is called “**deemed registration**” in this Act.

(3) Deemed registration in one State does not of itself provide a basis for registration in another State.

Duration of deemed registration

26. (1) A person’s deemed registration in the second State continues until it is cancelled or suspended or otherwise ceases in accordance with this Part.

(2) A person’s deemed registration in the second State ceases if the person becomes substantively registered in the State in connection with the occupation concerned.

(3) A person’s deemed registration in the second State ceases if the local registration authority of the State refuses to grant registration, subject to any determination of the Tribunal.

(4) A person’s deemed registration in the second State ceases if the person ceases to be substantively registered in every other State mentioned in the notice as required by section 19 (2) (c).

(5) A local registration authority of the second State may cancel a person’s deemed registration in the second State if the person requests cancellation.

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(6) Deemed registration is not affected by postponement of the grant of substantive registration.

Activities under deemed registration

27. (1) A person who has deemed registration in the second State may carry on the occupation in the second State as if the deemed registration were substantive registration in the second State.

(2) However, the person may do so only:

- (a) within the limits conferred by the person's substantive registration in the first State; and
- (b) within the limits conferred by the person's deemed registration in the second State; and
- (c) subject to any conditions or undertakings applying to the person's registration in the first State, unless waived by the local registration authority of the second State under this section; and
- (d) subject to any conditions applying to the person's deemed registration.

(3) Without limiting anything in this Division:

- (a) the person may not carry on the occupation in the second State without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and
- (b) a person who has deemed registration in an occupation in the second State is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in that State; and
- (c) references in the law of the second State to persons registered in an occupation under the law of that State (however expressed) extend to persons who have deemed registration for the occupation under this Act.

(4) However, the local registration authority of the second State may waive any condition imposed under the law of the first State, or any undertaking given to the local registration authority of the first State, if it thinks it appropriate in the circumstances.

(5) The local registration authority of the second State may impose conditions as if deemed registration were substantive registration, but it must not impose conditions that are more onerous than would be imposed

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in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they correspond to conditions or undertakings that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations.

Division 4—Equivalent occupations

Equivalent occupations

28. The equivalence of occupations carried on in different States is to be determined in accordance with this Part.

General principle

29. (1) An occupation for which persons may be registered in the first State is taken to be equivalent to an occupation for which persons may be registered in the second State if the activities authorised to be carried out under each registration are substantially the same (whether or not this result is achieved by means of the imposition of conditions).

(2) Conditions may be imposed on registration under this Part so as to achieve equivalence between occupations in different States.

(3) This section has effect subject to any relevant declarations in force under this Division.

Declarations as to equivalent occupations

30. (1) This Part is to be given effect in accordance with relevant declarations (if any) made under this Division regarding equivalent occupations.

(2) If a declaration made by the Tribunal and a declaration made by Ministers are inconsistent, the ministerial declaration prevails.

(3) A declaration under this Part does not affect the registration of any person already registered (except in the case of a declaration made by the Tribunal in relation to that person specifically).

Declarations by Tribunal

31. (1) On a review, the Tribunal may make an order that a person who is registered in a particular occupation in a particular State is or is not entitled to registration in another State in a particular occupation, and may specify or describe conditions that will achieve equivalence.

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(2) On such a review, the Tribunal may make a declaration that occupations carried on in two States are not equivalent, but only if the Tribunal is satisfied that:

- (a) the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
- (b) registration in one State should not entitle registered persons to carry on a particular activity or class of activity in the other State, where:
 - (i) the activity or class of activity is a material part of the practice of a person registered in the first State for the occupation; and
 - (ii) the activity or class of activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons in the other State to a real threat to their health or safety or could reasonably be expected to cause significant environmental pollution (including air, water, noise or soil pollution); and
 - (iii) it is not practicable to protect the health or safety of such persons from that threat or the environment from such pollution by regulating the manner in which services in the occupation are provided.

(3) The Registrar or other proper officer of the Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *Gazette*.

(4) A declaration made on the basis of paragraph (2) (b) has effect for no longer than 12 months, and the local registration authority must promptly notify appropriate authorities in each other State and the Commonwealth of the declaration.

(5) The local registration authority is to give effect to the decision on the review, and must thereafter act in conformity with the decision in relation to other persons seeking registration.

Declarations by Ministers

32. (1) A Minister from each of two or more States may jointly declare, by notice in the *Gazette*, that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence.

(2) The declaration may be amended or rescinded in the same way.

(3) The declaration has effect only in relation to the States concerned.

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(4) The appropriate local registration authority is to give effect to the declaration.

Division 5—General provisions

Disciplinary action

33. (1) If a person's registration in an occupation in a State:

- (a) is cancelled or suspended; or
- (b) is subject to a condition;

on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way.

(2) However, the local registration authority of the other State may reinstate any cancelled or suspended registration or waive any such condition if it thinks it appropriate in the circumstances.

(3) This section extends to registration effected apart from this Act.

(4) This section has effect despite any other provisions of this Part.

Review of decisions

34. (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Tribunal for review of a decision of a local registration authority in relation to its functions under this Act.

(2) In subsection (1):

“decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

(3) If a local registration authority gives a person written notice of the making of a decision referred to in subsection (1), the notice must include a statement to the effect that:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application for review of the decision may be made to the Tribunal by a person whose interests are affected by the decision; and
- (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(4) Any failure to comply with a requirement of subsection (3) does not affect the validity of the decision.

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Costs

35. The Tribunal may order a party in proceedings before it to pay costs if the party has acted unreasonably.

Residence or domicile

36. Residence or domicile in a particular State is not to be a prerequisite for or a factor in entitlement to the grant, renewal or continuation of registration arising under this Part.

Furnishing information

37. (1) A local registration authority of a State must furnish without delay any information reasonably required by a local registration authority of another State about a person substantively registered under a law of the firstmentioned State.

(2) The obligation imposed under this section does not apply unless the authority of the other State notifies the authority of the firstmentioned State that the information is required in connection with:

- (a) a notice lodged by a person seeking registration; or
- (b) a person's deemed registration; or
- (c) actual or possible disciplinary action against the person.

(3) The authority of the firstmentioned State is empowered to provide the information, despite any law relating to secrecy or confidentiality.

(4) Nothing in this section affects any obligation or power to provide information apart from this section.

Receiving information

38. If a local registration authority receives information under section 37, the information is subject to any law relating to secrecy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions.

General responsibilities of local registration authorities

39. (1) It is the duty of each local registration authority to facilitate the operation of this Part in relation to the occupations for which the authority is responsible, and in particular to make use of the power to impose conditions in such a way as to promote the mutual recognition principle.

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(2) It is the duty of each local registration authority to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations for which the authority is responsible.

(3) The first such guidelines and information are to be available within 6 months after the commencement of this section.

Fees

40. (1) A local registration authority has power to impose fees in relation to substantive or deemed registration or the continuance of registration arising under this Part, but any such fees may not be greater than are applicable for registration apart from this Part.

(2) Nothing in this section prevents the fixing or prescribing of fees referred to in this section under any other law of a State, but the fees may not be greater than can be imposed under this section.

(3) The local registration authority may impose a condition on substantive or deemed registration arising under this Part to the effect that a person may not carry out activities under registration unless a fee or other payment has been paid, but such a condition may not be imposed unless it corresponds to a requirement attaching to registration apart from this Part.

(4) This section does not authorise the imposition of a tax.

Formalities requiring personal attendance

41. (1) Neither substantive or deemed registration, nor entitlement to registration, under this Part requires compliance with any statutory or other formalities requiring personal attendance in the second State.

(2) This section applies to formalities that would otherwise have to be complied with before, at or after registration.

Saving

42. Nothing in this Part prevents a person from seeking registration or being registered for an occupation under a law apart from this Part.

PART 4—GENERAL

References to participating jurisdictions

43. For the purposes of this Act, a participating jurisdiction is:

- (a) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth

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the power to enact this Act, or that adopts this Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution; or

- (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act or that enables this Act to apply in relation to it.

Application of mutual recognition principle

44. (1) The mutual recognition principle and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose.

(2) Nothing in this Act prevents a person from relying on the mutual recognition principle in relation to more than two States.

Machinery provisions regarding limitations etc.

45. In cases where Part 3 provides that conditions or undertakings that apply or are relevant to registration in the first State also apply or are relevant to registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable):

- (a) references to the first State are to be read as references to the second State;
- (b) references to officers or authorities of the first State are to be read as references to the corresponding officers or authorities of the second State.

Determining place of production

46. (1) For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in the State where the most recent step has occurred in the process of producing the goods (including for example processing, harvesting or packaging the goods).

(2) Subsection (1) applies even though:

- (a) the process of production may be incomplete; or
- (b) some steps in the process have not yet been carried out; or
- (c) some steps in the process were carried out elsewhere, whether in another State or outside Australia; or
- (d) the goods or a component of the goods were imported.

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Amendment of Schedules

47. (1) The Governor-General may make regulations amending the Schedules.

(2) No such regulation may be made unless the designated person for each of the then participating jurisdictions has published a notice in the official gazette of the jurisdiction setting out the terms of the proposed regulation and requesting that it be made.

(3) For the purposes of this section, the designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

SCHEDULE 1—PERMANENT EXEMPTIONS: GOODS

(Secs. 14, 47)

1. Firearms and other prohibited or offensive weapons.
2. Fireworks.
3. Gaming machines.
4. Pornographic material.

**SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS
RELATING TO GOODS**

(Secs. 14, 47)

1. A law of a State relating to quarantine, to the extent that:
 - (a) the law (or a direction or instrument given or made under the law or some other action taken under the law) regulates or prohibits the bringing of specified goods into the State or into a defined area of the State; and
 - (b) the State or area is substantially free of a particular disease, organism, variety, genetic disorder or any other similar thing; and
 - (c) it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other thing into the State or area; and
 - (d) it is reasonably likely that that introduction would have a long-term and substantially detrimental effect on the whole or any part of the State.

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SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS RELATING
TO GOODS—*continued*

2. A law of a State to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the State and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the State.
3. *Ozone Protection Act 1991* of the Australian Capital Territory.
4. *Weapons Act 1991* of the Australian Capital Territory.
5. *Ozone Protection Act 1989* of New South Wales.
6. *Clean Air Act 1963–1990* of Queensland, Part IVA.
7. Hazardous Substances (Chlorofluorocarbons and Other Ozone Layer Depleting Substances) Regulations 1988 under the *Health Act 1937–1988* of Queensland.
8. *Beverage Container Act, 1975* of South Australia.
9. *Clean Air Act, 1984* of South Australia, Part IIIA.
10. A law of Tasmania to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size.
11. *Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988* of Tasmania.
12. *Environment Protection Act 1970* of Victoria, section 16 (in relation to ozone depleting substances), section 41 (2) (d) and section 71 (1) (gba).
13. Environmental Protection Regulations 1987 under the *Environmental Protection Act 1986* of Western Australia.
14. *Business Franchise ("X" Videos) Act 1990* of the Australian Capital Territory.
15. *Classification of Publications Ordinance 1983* of the Australian Capital Territory.
16. *Crimes Act 1900* of the Australian Capital Territory, section 92NB.
17. *Film Classification Act 1971* of the Australian Capital Territory.
18. *Publications Control Act 1989* of the Australian Capital Territory.
19. *Film and Video Tape Classification Act 1984* of New South Wales.
20. *Indecent Articles and Classified Publications Act 1975* of New South Wales.

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SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS RELATING
TO GOODS—*continued*

21. *Classification of Publications and Films Act* of the Northern Territory.
22. *Classification of Films Act 1991* of Queensland.
23. *Classification of Publications Act 1991* of Queensland.
24. *Classification of Films for Public Exhibition Act, 1971* of South Australia and regulations under that Act.
25. *Classification of Publications Act, 1974* of South Australia and regulations under that Act.
26. *Summary Offences Act, 1953* of South Australia, section 33 and section 35.
27. *Classification of Publications Act 1984* of Tasmania.
28. *Classification of Films and Publications Act 1990* of Victoria.
29. *Censorship of Films Act 1947* of Western Australia.
30. *Indecent Publications and Articles Act 1902* of Western Australia.
31. *Video Tapes Classification and Control Act 1987* of Western Australia.

[Minister's second reading speech made in—
Legislative Assembly on 30 June 1992
Legislative Council on 27 October 1992]



SECOND READING SPEECH

MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992

MR. PRESIDENT,

I MOVE THAT THIS BILL NOW BE READ A SECOND TIME.

THE PURPOSE OF THIS BILL IS TO ENABLE NEW SOUTH WALES TO ENTER INTO A SCHEME FOR THE MUTUAL RECOGNITION OF REGULATORY STANDARDS FOR GOODS AND OCCUPATIONS ADOPTED IN AUSTRALIA.

MUTUAL RECOGNITION IS AN INITIATIVE ARISING OUT OF THE SERIES OF SPECIAL PREMIERS' CONFERENCES WHICH HAVE BEEN CONDUCTED OVER THE PAST EIGHTEEN MONTHS WITH THE OBJECTIVE OF ACHIEVING AN HISTORIC RECONSTRUCTION OF INTERGOVERNMENTAL RELATIONS.

IN THIS SPEECH I WILL OUTLINE THE AIM OF MUTUAL RECOGNITION, THE BACKGROUND TO THIS IMPORTANT INITIATIVE, THE PRINCIPLES ON WHICH IT IS BASED AND THE MECHANISM FOR IMPLEMENTATION. I WILL CONCLUDE THE SPEECH WITH A SUMMARY OF THE PROVISIONS OF THE BILL.

(AIM)

THE PRINCIPAL AIM OF MUTUAL RECOGNITION IS TO REMOVE THE NEEDLESS ARTIFICIAL BARRIERS TO INTERSTATE TRADE IN GOODS AND THE MOBILITY OF LABOUR CAUSED BY REGULATORY DIFFERENCES AMONG AUSTRALIAN STATES AND TERRITORIES. MUTUAL RECOGNITION IS EXPECTED TO GREATLY ENHANCE THE INTERNATIONAL COMPETITIVENESS OF THE AUSTRALIAN ECONOMY AND IS A MAJOR STEP FORWARD IN THE ACHIEVEMENT OF MICRO-ECONOMIC REFORM.

IT INVOLVES A RECOGNITION BY HEADS OF GOVERNMENT THAT THE TIME HAS COME FOR AUSTRALIA TO CREATE A TRULY NATIONAL MARKET - A DREAM THE REALISATION OF WHICH THE FOUNDING FATHERS OF THIS NATION ENSHRINED IN THE CONSTITUTION - A DREAM WHICH THE PAROCHIAL POLITICS OF SUCCESSIVE STATE AND TERRITORY GOVERNMENTS HAVE FRUSTRATED FOR ALMOST ONE HUNDRED YEARS.

MR. PRESIDENT,

(BACKGROUND)

AT THE SPECIAL PREMIERS' CONFERENCE IN BRISBANE IN OCTOBER 1990, HEADS OF GOVERNMENT AGREED TO APPLY MUTUAL RECOGNITION OF STANDARDS IN ALL AREAS WHERE UNIFORMITY WAS NOT CONSIDERED ESSENTIAL TO NATIONAL ECONOMIC EFFICIENCY.

BETWEEN OCTOBER 1990 AND JULY 1991, MODELS FOR INTRODUCING A SCHEME OF MUTUAL RECOGNITION OF STANDARDS AND REGULATIONS RELATING TO GOODS AND OCCUPATIONS WERE DEVELOPED BY THE COMMONWEALTH-STATE COMMITTEE ON REGULATORY REFORM, CHAIRED BY THE DIRECTOR-GENERAL OF THE NEW SOUTH WALES CABINET OFFICE.

HEADS OF GOVERNMENT GAVE THEIR IN-PRINCIPLE SUPPORT TO THESE MODELS AT THE SPECIAL PREMIERS' CONFERENCE HELD IN SYDNEY IN JULY 1991, SUBJECT TO THE OUTCOME OF A NATIONAL COMMUNITY CONSULTATION PROCESS.

NATIONAL CONSULTATION BETWEEN JULY AND NOVEMBER 1991 INVOLVED THE RELEASE OF A

DISCUSSION PAPER ENTITLED "THE MUTUAL RECOGNITION OF STANDARDS AND REGULATIONS IN AUSTRALIA" AND A SERIES OF SEMINARS IN EACH CAPITAL CITY LED BY THE HONOURABLE NEVILLE WRAN, A.C., Q.C. INPUT WAS SOUGHT FROM BUSINESS, INDUSTRY, TRADE UNIONS, THE PROFESSIONS, STANDARDS SETTING BODIES, CONSUMER AND COMMUNITY REPRESENTATIVES ON ANY NECESSARY REFINEMENTS TO THE MUTUAL RECOGNITION MODELS. SOME 200 WRITTEN SUBMISSIONS WERE RECEIVED.

RESULTS OF THE CONSULTATION PROCESS WERE CONSIDERED BY PREMIERS AND CHIEF MINISTERS AT THEIR MEETING IN ADELAIDE ON 21-22 NOVEMBER 1991. WHILST THERE WERE DIFFERENT VIEWS EXPRESSED AT THE SEMINARS AND IN THE SUBMISSIONS, THE CONCEPT OF MUTUAL RECOGNITION WAS WIDELY EMBRACED AS A MEANS TO OVERCOME REGULATORY IMPEDIMENTS TO A NATIONAL MARKET IN GOODS AND SERVICES.

THE MAJORITY OF SUBMISSIONS DID NOT CALL FOR SUBSTANTIAL CHANGES TO THE MODELS, ALTHOUGH SOME EXPRESSED A PREFERENCE FOR UNIFORMITY.

ON THAT POINT, IT IS IMPORTANT TO NOTE THAT MUTUAL RECOGNITION IS INTENDED TO COMPLEMENT THE EFFORTS OF REGULATORY AUTHORITIES IN ACHIEVING NATIONALLY UNIFORM STANDARDS. IT WILL NOT IMPEDE THOSE EFFORTS WHERE IT IS AGREED THAT UNIFORM NATIONAL STANDARDS ARE NECESSARY. ON THE CONTRARY, RECENT EXPERIENCE WITH THE DOCTORS, FOR INSTANCE, SUGGESTS THAT MUTUAL RECOGNITION WILL HASTEN THE SUCCESSFUL RESOLUTION OF SUCH ENDEAVOURS.

THE INTERGOVERNMENTAL AGREEMENT ON MUTUAL RECOGNITION, SIGNED BY ALL HEADS OF GOVERNMENT WHEN THEY MET ON 11 MAY 1992, ACTIVELY PROMOTES THE DEVELOPMENT OF NATIONAL STANDARDS WHERE THE OPERATION OF MUTUAL RECOGNITION HIGHLIGHTS THE NECESSITY OF SUCH STANDARDS FOR PROTECTING THE HEALTH AND SAFETY OF CITIZENS OR PREVENTING OR MINIMISING ENVIRONMENTAL POLLUTION.

THE MUTUAL RECOGNITION PROPOSALS WERE SUBJECTED TO FURTHER PUBLIC SCRUTINY AFTER PREMIERS AND CHIEF MINISTERS AGREED TO RELEASE THE DRAFT MUTUAL RECOGNITION BILL LAST NOVEMBER. CHANGES

WHICH HAVE BEEN MADE TO THE DRAFT LEGISLATION AS A RESULT OF SUBMISSIONS RECEIVED ARE GENERALLY OF A MINOR DRAFTING NATURE ONLY AND AGAIN OVERWHELMING SUPPORT FOR THE CONCEPT OF MUTUAL RECOGNITION WAS EVIDENT WITH A FEW NOTABLE EXCEPTIONS, WHICH CONTINUED TO FAVOUR NATIONAL UNIFORMITY.

IT IS AN INDICATION OF THE COMMON SENSE WHICH UNDERLIES THE CONCEPT OF MUTUAL RECOGNITION, THAT THESE PROPOSALS HAVE HAD THE CLEAR SUPPORT OF GOVERNMENTS OF ALL DIFFERENT POLITICAL PERSUASION FROM THE OUTSET.

BY SIGNING A FINAL INTERGOVERNMENTAL AGREEMENT ON MUTUAL RECOGNITION IN MAY 1992, HEADS OF GOVERNMENT ENDORSED A REVISED VERSION OF THE MUTUAL RECOGNITION BILL. IT WAS AGREED TO AIM FOR ENACTMENT OF THIS LEGISLATION IN ALL STATES AND TERRITORIES BY 31 OCTOBER 1992 AND IN THE COMMONWEALTH BY 1 JANUARY 1993. PROCLAMATION OF THE COMMONWEALTH ACT WILL FOLLOW BY 1 MARCH 1993 AFTER ADMINISTRATIVE ARRANGEMENTS HAVE BEEN PUT IN PLACE.

MR. PRESIDENT,

(PRINCIPLES)

THE LEGISLATION IS BASED ON TWO SIMPLE PRINCIPLES. THE FIRST IS THAT GOODS WHICH CAN BE SOLD LAWFULLY IN ONE STATE OR TERRITORY MAY BE SOLD FREELY IN ANY OTHER STATE OR TERRITORY EVEN THOUGH THE GOODS MAY NOT COMPLY WITH ALL THE DETAILS OF REGULATORY STANDARDS IN THE PLACE WHERE THEY ARE SOLD.

IF GOODS ARE ACCEPTABLE FOR SALE IN ONE STATE OR TERRITORY, THEN THERE IS NO REASON WHY THEY SHOULD NOT BE SOLD ANYWHERE IN AUSTRALIA.

TO GIVE YOU SOME EXAMPLES OF THE DIFFICULTIES WE ARE TRYING TO OVERCOME:

IT WAS NOT SO LONG AGO THAT IT WAS VIRTUALLY IMPOSSIBLE TO MARKET COOKING MARGARINE NATIONALLY IN ONE PACKAGE. WESTERN AUSTRALIA REQUIRED MARGARINE TO BE PACKED IN CUBE TUBS WHEREAS THE

FAMILIAR ROUND TUB WAS ACCEPTABLE EVERYWHERE ELSE.

NSW HAS DEREGULATED ITS EGG INDUSTRY YET INTERSTATE CONSUMERS ARE STILL DENIED ACCESS TO COMPETITIVELY PRICED EGGS PRODUCED HERE.

NSW EGGS CANNOT BE SOLD IN QUEENSLAND WITHOUT FIRST BEING INSPECTED, SIZE GRADED, AND THEN STAMPED WITH A SYMBOL ISSUED BY THE QUEENSLAND DEPARTMENT OF PRIMARY INDUSTRIES. IT SEEMS THAT THE ONLY WAY FOR A NSW PRODUCER TO BECOME ELIGIBLE FOR THIS SYMBOL IS TO IDENTIFY THE FARMS FROM WHICH THE EGGS WILL BE SOURCED AND HAVE THOSE FARMS INSPECTED AND APPROVED BY A QUEENSLAND DEPARTMENT OF PRIMARY INDUSTRIES AUTHORISED INSPECTOR - AT THE NSW PRODUCER'S EXPENSE! THEN A NSW PRODUCER MUST SET UP A GRADING FLOOR IN QUEENSLAND AND SEEK APPROVAL FOR THAT GRADING FLOOR AND THE EGG INSPECTION PROCESS, AGAIN FROM A QUEENSLAND DEPARTMENT OF PRIMARY INDUSTRIES AUTHORISED INSPECTOR.

TASMANIAN LAW ALSO EFFECTIVELY PROHIBITS NSW EGG IMPORTS BY IMPOSING GRADING REQUIREMENTS UNIQUE TO THAT STATE.

MUTUAL RECOGNITION WILL MEAN PRODUCERS IN AUSTRALIA WILL ONLY HAVE TO ENSURE THAT THEIR PRODUCTS COMPLY WITH THE LAWS IN THE PLACE OF PRODUCTION. IF THEY DO SO, THEY WILL THEN BE FREE TO DISTRIBUTE AND SELL THEIR PRODUCTS THROUGHOUT AUSTRALIA WITHOUT BEING SUBJECTED TO FURTHER TESTING OR ASSESSMENT OF THEIR PRODUCT. THIS ENSURES A NATIONAL MARKET FOR THOSE PRODUCTS.

SIMILARLY, GOODS MANUFACTURED OR PRODUCED OVERSEAS WHICH COMPLY WITH THE RELEVANT STANDARDS IN THE JURISDICTION THROUGH WHICH THEY ARE IMPORTED, WILL BE ABLE TO BE SOLD IN ANY JURISDICTION.

THE SECOND PRINCIPLE IS THAT IF A PERSON IS REGISTERED TO CARRY OUT AN OCCUPATION IN ONE STATE OR TERRITORY, THEN HE OR SHE SHOULD BE ABLE TO BE REGISTERED AND CARRY ON THE EQUIVALENT OCCUPATION IN ANY OTHER STATE OR TERRITORY. IF SOMEONE IS

ASSESSED TO BE GOOD ENOUGH TO PRACTISE A PROFESSION OR OCCUPATION IN ONE STATE OR TERRITORY, THEN THEY SHOULD BE ABLE TO DO SO ANYWHERE IN AUSTRALIA.

A PERSON WHO IS REGISTERED IN ONE JURISDICTION WILL ONLY NEED TO GIVE NOTICE, INCLUDING EVIDENCE OF THEIR HOME REGISTRATION, TO THE RELEVANT REGISTRATION AUTHORITY IN ANOTHER JURISDICTION THEN THEY WILL IMMEDIATELY BE ENTITLED TO COMMENCE PRACTICE IN AN EQUIVALENT OCCUPATION IN THAT STATE OR TERRITORY. NO ADDITIONAL ASSESSMENT WILL BE UNDERTAKEN BY THE LOCAL REGISTRATION OR LICENSING BODY TO ASSESS THE PERSON'S CAPABILITIES OR EXPERTISE. LOCAL REGISTRATION AUTHORITIES WILL BE REQUIRED TO ACCEPT THE JUDGMENT OF THEIR INTERSTATE COUNTERPARTS OF A PERSON'S EDUCATIONAL QUALIFICATIONS, EXPERIENCE, CHARACTER OR FITNESS TO PRACTISE.

IT IS RIDICULOUS THAT UNDER PRESENT ARRANGEMENTS LAWYERS, DOCTORS AND OTHER PROFESSIONALS MAY HAVE QUALIFICATIONS FROM THE

BEST UNIVERSITIES IN AUSTRALIA OR THE WORLD; SKILLED TRADESMEN MAY HAVE THE FINEST TRAINING AND ON-THE-JOB EXPERIENCE, BUT CANNOT WORK OUTSIDE THEIR HOME STATE BECAUSE OF A MULTIPLICITY OF BUREAUCRATIC OBSTACLES AND DELAYS.

IN SOME CASES, THEIR WORK EXPERIENCE IN THEIR HOME STATE IS CONSIDERED IRRELEVANT; IN OTHERS THEY ARE REQUIRED TO SPEND MONTHS OR EVEN YEARS RETRAINING.

EVEN THEN THEY MAY NEVER SUCCEED IN GAINING RECOGNITION WITHOUT VIRTUALLY STARTING FROM SCRATCH. THIS HAS LITTLE TO DO WITH ENSURING COMPETENCY. MUCH OF IT IS SIMPLY MOTIVATED BY A DESIRE TO PROTECT LOCAL PRACTITIONERS FROM COMPETITION.

MR PRESIDENT,

I AM SURE THAT EVERYONE WOULD AGREE THAT IN AUSTRALIA THE EXISTING REGULATORY ARRANGEMENTS OF EACH STATE OR TERRITORY GENERALLY PROVIDE A SATISFACTORY SET OF STANDARDS. THUS, ON IMPLEMENTATION OF MUTUAL RECOGNITION, NO

JURISDICTION WILL SUDDENLY BE FLOODED WITH PRODUCTS THAT ARE INHERENTLY DANGEROUS, UNSAFE OR UNHEALTHY, NOR WILL THERE BE AN INFLUX OF INADEQUATELY QUALIFIED PRACTITIONERS.

INDEED, MUTUAL RECOGNITION COULD RESULT IN AN ELEVATION OF STANDARDS IN SOME INSTANCES.

(IMPLEMENTATION MECHANISM)

THE MECHANISM FOR IMPLEMENTING MUTUAL RECOGNITION AND THUS ACHIEVING FREE TRADE IN GOODS AND SERVICES IN AUSTRALIA IS AN INNOVATIVE ONE. THE STATES AND TERRITORIES HAVE AGREED TO REQUEST AND EMPOWER THE COMMONWEALTH TO PASS A SINGLE ACT WHICH, ONCE ENACTED BY THE COMMONWEALTH, WILL OVERRIDE ANY STATE OR TERRITORY ACTS OR REGULATIONS THAT ARE INCONSISTENT WITH THE MUTUAL RECOGNITION PRINCIPLES. THE STATES AND TERRITORIES WILL EFFECTIVELY CEDE POWER TO ONE ANOTHER THROUGH THE MECHANISM OF COMMONWEALTH LEGISLATION.

LET ME STRESS THAT THE ADDITIONAL POWERS OF THE COMMONWEALTH WILL BE EXTREMELY LIMITED. STATES

AND TERRITORIES ARE NOT GRANTING EXTENSIVE NEW POWERS TO REGULATE GOODS AND OCCUPATIONS.

THE COMMONWEALTH WILL BE EMPOWERED TO PASS A SINGLE PIECE OF LEGISLATION. AMENDMENTS TO THIS LEGISLATION WILL REQUIRE UNANIMOUS AGREEMENT AMONG ALL PARTICIPATING JURISDICTIONS.

THERE WILL BE NO NEW POWERS FOR THE COMMONWEALTH TO UNILATERALLY ESTABLISH NEW STANDARDS OR CONTROLS. UNDER THE TERMS OF THE INTERGOVERNMENTAL AGREEMENT ON MUTUAL RECOGNITION THAT ALL HEADS OF GOVERNMENT SIGNED IN MAY 1992, COMMONWEALTH MINISTERS, LIKE THEIR STATE AND TERRITORY COUNTERPARTS ON MINISTERIAL COUNCILS, WILL BE SUBJECT TO THE SAME CONTROLS AND LIMITS. A MAJORITY VOTE OF MINISTERS IN SUPPORT OF A NEW STANDARD WILL BIND ALL THE PARTIES.

(SUMMARY OF PROVISIONS)

MR PRESIDENT,

I WILL NOW EXPLAIN THE PROVISIONS OF THE MUTUAL RECOGNITION (NEW SOUTH WALES) BILL IN GREATER DETAIL:

(NEW SOUTH WALES BILL - GENERAL PROVISIONS)

AS I HAVE ALREADY EXPLAINED THE NEW SOUTH WALES BILL WILL ENABLE THE COMMONWEALTH TO PASS AN ACT IN THE TERMS, OR SUBSTANTIALLY IN THE TERMS OF, THE ACT WHICH IS SET OUT IN THE SCHEDULE TO THE MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992.

AMENDMENT OF THE COMMONWEALTH ACT WILL REQUIRE APPROVAL BY A DESIGNATED PERSON FROM EACH JURISDICTION - FOR NEW SOUTH WALES, THIS PERSON IS THE GOVERNOR.

THE MUTUAL RECOGNITION SCHEME IS TO LAST INITIALLY FOR 5 YEARS, AFTER WHICH TIME THE GOVERNOR HAS THE POWER TO TERMINATE THE REFERENCE BY PROCLAMATION.

**(SCHEDULE TO NEW SOUTH WALES BILL -
COMMONWEALTH BILL)**

THE MUTUAL RECOGNITION PRINCIPLES IN RELATION TO GOODS AND OCCUPATIONS ARE SET DOWN IN CLAUSES 9-11 (FOR GOODS) AND CLAUSE 17 (FOR OCCUPATIONS) OF THE SCHEDULE TO THE STATE LEGISLATION. THE BILL IN THE SCHEDULE IS INTENDED TO BECOME AN ACT OF THE COMMONWEALTH PARLIAMENT.

THE LEGISLATION WILL NOT ENCROACH ON THE ABILITY OF JURISDICTIONS TO IMPOSE STANDARDS FOR LOCALLY PRODUCED OR IMPORTED GOODS NOR FOR LOCAL PEOPLE WISHING TO ENTER INTO AN OCCUPATION.

MUTUAL RECOGNITION WILL NOT AFFECT THE ABILITY OF JURISDICTIONS TO REGULATE THE OPERATION OF BUSINESSES OR THE CONDUCT OF PERSONS REGISTERED IN AN OCCUPATION. NOR IS IT INTENDED TO AFFECT THE REGISTRATION OF BODIES CORPORATE. ITS FOCUS IS ON THE REGULATION OF GOODS AT THE POINT OF SALE AND ON ENTRY BY REGISTERED PERSONS INTO EQUIVALENT OCCUPATIONS IN ANOTHER STATE OR TERRITORY.

LAWS THAT REGULATE THE MANNER IN WHICH GOODS ARE SOLD (SUCH AS LAWS RESTRICTING THE SALE OF CERTAIN GOODS TO MINORS) OR THE MANNER IN WHICH SELLERS CONDUCT THEIR BUSINESSES ARE EXPLICITLY EXEMPTED FROM MUTUAL RECOGNITION.

FOR OCCUPATIONS, THE LEGISLATION IS EXPRESSED TO APPLY TO INDIVIDUALS AND OCCUPATIONS CARRIED ON BY THEM.

AS I INDICATED EARLIER, MUTUAL RECOGNITION IS INTENDED TO ENCOURAGE THE DEVELOPMENT OF UNIFORM STANDARDS WHERE THESE ARE CONSIDERED NECESSARY FOR REASONS OF PROTECTING HEALTH AND SAFETY OR PREVENTING OR MINIMISING ENVIRONMENTAL POLLUTION.

THUS, PROVISION IS MADE FOR STATES AND TERRITORIES TO ENACT OR DECLARE CERTAIN GOODS OR LAWS RELATING TO GOODS TO BE EXEMPT FROM MUTUAL RECOGNITION ON THESE GROUNDS ON A TEMPORARY BASIS, THAT IS, UP TO 12 MONTHS. DURING THAT TIME, THE INTERGOVERNMENTAL AGREEMENT PROVIDES FOR THE RELEVANT MINISTERIAL COUNCIL TO CONSIDER THE

ISSUE AND MAKE A DETERMINATION ON WHETHER TO DEVELOP AND APPLY A UNIFORM STANDARD IN THE AREA UNDER EXAMINATION. WHEREVER POSSIBLE, MINISTERIAL COUNCILS ARE TO APPLY THOSE STANDARDS COMMONLY ACCEPTED IN INTERNATIONAL TRADE.

IN RESPECT OF OCCUPATIONS, THE ADMINISTRATIVE APPEALS TRIBUNAL WILL HEAR APPEALS AGAINST DECISIONS OF LOCAL REGISTRATION AUTHORITIES AND WILL HAVE THE POWER TO DECLARE AN OCCUPATION TO BE NON-EQUIVALENT. THIS WOULD OCCUR IN INSTANCES WHERE THERE IS NO TECHNICAL EQUIVALENCE (IN THE SENSE THAT THE ACTIVITIES A PRACTITIONER IS AUTHORISED TO CARRY OUT UNDER REGISTRATION FROM ONE JURISDICTION TO ANOTHER ARE NOT SUBSTANTIALLY THE SAME).

DECLARATIONS OF NON-EQUIVALENCE MAY ALSO BE MADE WHERE THERE IS TECHNICAL EQUIVALENCE BUT THERE ARE HEALTH, SAFETY OR POLLUTION GROUNDS FOR PREVENTING PRACTITIONERS FROM ONE STATE FROM CARRYING ON THAT OCCUPATION IN OTHER STATES AND TERRITORIES. SUCH DECLARATIONS ARE

TO HAVE EFFECT FOR 12 MONTHS, DURING WHICH TIME RELEVANT STATE AND COMMONWEALTH MINISTERS HAVE TO AGREE ON WHETHER OR NOT TO DEVELOP AND APPLY A UNIFORM STANDARD. IF NOT, MUTUAL RECOGNITION WILL APPLY.

THE INTERGOVERNMENTAL AGREEMENT ALSO PROVIDES FOR A CONCERNED STATE OR TERRITORY TO REFER A MATTER RELATING TO A PARTICULAR GOOD OR OCCUPATION TO THE APPROPRIATE MINISTERIAL COUNCIL FOR A DECISION ON WHETHER OR NOT TO DEVELOP AND APPLY A UNIFORM STANDARD.

IT IS EXPECTED THAT WHERE A MINISTERIAL COUNCIL DECIDES THAT A UNIFORM STANDARD IS REQUIRED IN RESPECT OF A PARTICULAR OCCUPATION, IT WILL APPLY A NATIONAL COMPETENCY STANDARD IF SUCH A STANDARD IS AVAILABLE. HEADS OF GOVERNMENT ASKED THAT THE PROCESS OF DEVELOPING SUCH STANDARDS BE ACCELERATED SO THAT BY DECEMBER 1992 IT IS EXPECTED THAT NATIONAL COMPETENCY STANDARDS WILL BE DEVELOPED FOR ALL REGULATED OCCUPATIONS AND PROFESSIONS.

THE LEGISLATION ALSO PROVIDES FOR CERTAIN PERMANENT EXEMPTIONS IN RELATION TO GOODS. HEADS OF GOVERNMENT HAVE AGREED THAT THE EXEMPTIONS SCHEDULES SHOULD BE EXTREMELY LIMITED - FOCUSING ON THOSE PRODUCTS FOR WHICH A NATIONAL MARKET IS UNDESIRABLE. EXAMPLES INCLUDE PORNOGRAPHY, FIREARMS AND OTHER OFFENSIVE WEAPONS, AND GAMING MACHINES. AMENDMENT OF THE EXEMPTIONS SCHEDULES WILL REQUIRE THE UNANIMOUS AGREEMENT OF ALL JURISDICTIONS.

THE MUTUAL RECOGNITION PRINCIPLE IN RELATION TO GOODS IS INTENDED TO OPERATE BY WAY OF A DEFENCE. THAT IS, IT WILL BE A DEFENCE TO A PROSECUTION FOR AN OFFENCE AGAINST A LAW OF A JURISDICTION IN RELATION TO THE SALE OF GOODS IF THE DEFENDANT EXPRESSLY CLAIMS THAT THE MUTUAL RECOGNITION PRINCIPLE APPLIES AND ESTABLISHES THAT:

- 1) THE GOODS OFFERED FOR SALE HAD LABELS SAYING THE GOODS WERE PRODUCED IN OR IMPORTED INTO ANOTHER JURISDICTION; AND

II) HE OR SHE HAD NO REASONABLE GROUNDS FOR SUSPECTING THE GOODS WERE NOT PRODUCED IN OR IMPORTED INTO THAT OTHER JURISDICTION.

IT WILL THEN BE UP TO THE PROSECUTION TO REBUT THIS OR TO SAY THAT THE MUTUAL RECOGNITION PRINCIPLE DOES NOT APPLY (BECAUSE, FOR EXAMPLE, THE GOODS DID NOT COMPLY WITH REQUIREMENTS IMPOSED BY THE LAW OF THE OTHER JURISDICTION). EXCEPT WHERE THE DEFENCE IS OVERTURNED, MUTUAL RECOGNITION WILL APPLY.

THE MUTUAL RECOGNITION PRINCIPLE IN RELATION TO OCCUPATIONS WILL MEAN THAT A REGISTERED PRACTITIONER WISHING TO PRACTICE IN ANOTHER STATE CAN NOTIFY THE LOCAL REGISTRATION AUTHORITY OF HIS OR HER INTENTION TO SEEK REGISTRATION IN AN EQUIVALENT OCCUPATION THERE. THE LOCAL REGISTRATION AUTHORITY THEN HAS ONE MONTH TO PROCESS THE APPLICATION AND TO MAKE A DECISION ON WHETHER OR NOT TO GRANT REGISTRATION.

PENDING REGISTRATION, THE PRACTITIONER IS ENTITLED, ONCE THE NOTICE IS MADE AND ALL NECESSARY INFORMATION PROVIDED, TO COMMENCE PRACTICE IMMEDIATELY IN THAT OCCUPATION, SUBJECT TO THE PAYMENT OF FEES AND COMPLIANCE WITH VARIOUS INDEMNITY OR INSURANCE REQUIREMENTS IN RELATION TO THAT OCCUPATION. NO OTHER PRECONDITIONS CAN BE IMPOSED ON THE ENTITLEMENT TO COMMENCE PRACTICE.

CONDITIONS CAN BE PLACED ON THE PRACTITIONER'S REGISTRATION IN ORDER TO ACHIEVE EQUIVALENCE. IN ADDITION, THE INTERSTATE PRACTITIONER IS IMMEDIATELY SUBJECT TO THE DISCIPLINARY REQUIREMENTS AND OTHER RULES OF CONDUCT IN THE NEW JURISDICTION APPLICABLE TO LOCAL PRACTITIONERS.

MR PRESIDENT,

THE GOVERNMENT IS CONFIDENT THAT PARTICIPATION IN THIS LEGISLATIVE SCHEME WILL PROVIDE MAJOR BENEFITS FOR NEW SOUTH WALES.

THE UNNECESSARY COSTS FOR PRODUCERS IN ACCOMMODATING MINOR DIFFERENCES IN REGULATORY REQUIREMENTS OF STATES AND TERRITORIES IN RELATION TO GOODS WILL BE REMOVED. GENUINE COMPETITION ACROSS STATE AND TERRITORY BORDERS WILL BE ENCOURAGED AS A RESULT OF PRODUCERS HAVING MORE READY ACCESS TO THE AUSTRALIAN MARKET AS A WHOLE.

LABOUR MOBILITY WILL BE ENHANCED WITH THE REMOVAL OF ARTIFICIAL BARRIERS LINKED TO REGISTRATION AND LICENSING LAWS. AS A RESULT, WE WILL BE ABLE TO MAKE BETTER USE OF OUR LABOUR FORCE SKILLS.

AUSTRALIA'S INTERNATIONAL COMPETITIVENESS WILL RISE AS PRODUCERS CAPITALISE ON THE ECONOMIES OF SCALE MADE POSSIBLE BY MUTUAL RECOGNITION. THIS IS A PROCESS THAT WILL OCCUR OVER THE MEDIUM TO LONG TERM.

MORE EFFICIENT STANDARDS BROUGHT ABOUT BY COMPETITION AMONG JURISDICTIONS SHOULD RESULT IN

COMMUNITY REQUIREMENTS BEING MET AT A LOWER OVERALL COST.

WIDER CONSUMER CHOICE AND A GREATER RESPONSIVENESS TO THE NEEDS AND DEMANDS OF CONSUMERS AMONG PRODUCERS AND REGULATORS SHOULD RESULT.

AT THE SAME TIME, AS I POINTED OUT EARLIER, THE MUTUAL RECOGNITION SCHEME IS DESIGNED TO ENSURE THAT THERE IS NO COMPROMISE ON STANDARDS IN THE IMPORTANT AREAS OF HEALTH AND SAFETY AND ENVIRONMENTAL PROTECTION.

MR PRESIDENT, THIS LEGISLATIVE SCHEME IS AN HISTORIC INITIATIVE AIMED AT OVERCOMING THE REGULATORY IMPEDIMENTS TO THE CREATION OF A TRULY NATIONAL MARKET IN GOODS AND SERVICES IN THIS COUNTRY. I AM PLEASED TO ACKNOWLEDGE THE SUBSTANTIAL CONTRIBUTION NEW SOUTH WALES OFFICIALS HAVE MADE IN DEVELOPING THE MUTUAL RECOGNITION SCHEME. THE GOVERNMENT WOULD ALSO LIKE TO ACKNOWLEDGE THE POSITIVE CONTRIBUTION MADE BY ALL HEADS OF GOVERNMENT, INCLUDING NICK

GREINER, IN FOSTERING AND PROMOTING THIS IMPORTANT DEVELOPMENT. IT IS A FINE EXAMPLE OF WHAT CAN BE ACHIEVED WHEN ALL GOVERNMENTS CO-OPERATE AND WORK TOGETHER IN THE NATIONAL INTEREST.

I COMMEND THE BILL TO THE HOUSE.

FIRST PRINT

MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

1. The object of this Bill is to enable the enactment of legislation applying uniformly throughout Australia for the mutual recognition by the States and Territories of each other's differing regulatory standards regarding goods and occupations.
2. The Bill forms part of a legislative scheme that involves the enactment of Bills, first by the States and Territories, and then by the Commonwealth.
3. The Northern Territory and the Australian Capital Territory are treated as States for the purposes of this Explanatory Note, and accordingly references to a State extend to either Territory.

The background

4. In October 1990, Heads of Government agreed in principle to work towards implementing a scheme of mutual recognition throughout Australia with the aim of removing inefficiencies brought about by varying standards and regulatory regimes in the different jurisdictions and ensuring the goal of freedom of movement of goods and labour in the national market. The agreement was reached in the context of enhancing the flexibility and competitiveness of the Australian economy.
5. Further agreement in principle was reached on 30 July 1991 by Heads of Government. The scheme to be established would provide for mutual recognition of standards for goods and of qualifications for entry to occupations. Further agreement was reached by Premiers and Chief Ministers in November 1991 on draft legislation to implement this scheme.
6. At their meeting on 11 May 1992, Heads of Government agreed to sign a final agreement, thereby endorsing a revised version of the legislation, which is substantially that now proposed for enactment. It was agreed that the legislation would be enacted in each State by 31 October 1992, and by the Commonwealth by 1 January 1993. It was also agreed that proclamation of the Commonwealth Act should occur by 1 March 1993. Each jurisdiction is to use its best endeavours to achieve this result. The agreement also included mechanisms for considering exemptions and for reviewing the operation of the scheme.

Mutual Recognition (New South Wales) 1992

The Commonwealth and State Bills

7. This Bill refers to the Parliament of the Commonwealth under paragraph (xxxvii) of section 51 of the Commonwealth Constitution the power to enact an Act in terms substantially the same as those set out in the Schedule to the Bill. The Territories will request the enactment of such an Act.

The Schedule contains a Bill for a Commonwealth Act with the short title of the *Mutual Recognition Act 1992*. Amendment of the proposed *Mutual Recognition Act 1992* (other than the Schedules to the proposed Act) is also referred (or the subject of a request) to the Commonwealth, but only in terms approved by the designated person for each of the then participating jurisdictions. The designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

8. The referral of those matters to the Commonwealth is for a period of at least 5 years which may be terminated by the Governor by proclamation.

9. Schedule 1 to the proposed Commonwealth Act contains permanent specified exemptions to the mutual recognition provisions relating to goods. Heads of Government decided that a national market was not desirable for these goods. They also agreed to exempt from mutual recognition certain laws which are set out in Schedule 2 to the proposed Commonwealth Act. The Governor is given power to make regulations for the purposes of the proposed Commonwealth Act providing for temporary exemptions of goods or laws relating to goods on certain specified grounds (limited to a period of not more than 12 months).

10. The proposed Commonwealth Act enables the Administrative Appeals Tribunal to review decisions on matters arising under the Act.

The result to be achieved by the Commonwealth and State Bills

11. The new national scheme for mutual recognition will involve participating States enacting legislation referring or requesting the enactment of a Mutual Recognition Act to the Parliament of the Commonwealth. The Commonwealth will then enact the Mutual Recognition Act in substantially the same terms as those set out in the State Acts, and the Mutual Recognition Act of the Commonwealth will apply to those States which have referring or requesting legislation.

12. The Commonwealth Act will provide a comprehensive scheme for mutual recognition which will operate independently of other State laws and therefore will not require modification of those laws to enable its implementation. This is achieved through section 109 of the Commonwealth Constitution, which provides that a Commonwealth Act prevails over a State Act to the extent of any inconsistency.

THE STATE BILL

Clause 1—Short title and purpose

The clause provides for the proposed Act to be cited as the *Mutual Recognition (New South Wales) Act 1992*, and states its purpose as being to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

Mutual Recognition (New South Wales) 1992

Clause 2—Commencement

The proposed Act is to commence on a proclaimed day.

Clause 3—Interpretation

The clause defines "the Commonwealth Act" to mean the Act to be enacted by the Parliament of the Commonwealth as referred to in clause 4.

Clause 4—Enactment of uniform mutual recognition legislation

The clause refers certain matters to the Parliament of the Commonwealth. Those matters are the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule and the amendment of that Act (other than the Schedules to that Act), but only in terms which are approved by the designated person for each of the then participating jurisdictions. The designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

The referral of those matters has effect from the commencement of the State Act until a day (occurring at least 5 years after the commencement of the Commonwealth Act) fixed by the Governor by proclamation.

Clause 5—Approval of amendments

The clause enables the Governor to approve the terms of amendments of the Commonwealth Act.

Clause 6—Regulations for temporary exemptions for goods

The clause enables the Governor to make regulations for the purposes of clause 15 of the Commonwealth Act (temporary exemptions).

THE COMMONWEALTH BILL

PART 1—PRELIMINARY

Clause 1—Short title

The clause provides for the proposed Act to be cited as the *Mutual Recognition Act 1992*.

Clause 2—Commencement

The clause provides for the proposed Act to commence on a day or days to be fixed by Proclamation of the Governor-General.

Clause 3—Principal purpose

The principal purpose of the proposed Act is to enact legislation to promote the goal of freedom of movement of goods and service providers in a national market in Australia.

Mutual Recognition (New South Wales) 1992

Clause 4—Interpretation

The clause contains definitions of expressions used in the proposed Act. In particular:

- (a) “goods” includes animals, a package containing goods and a label attached to goods; and
- (b) “local registration authority” of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on of that occupation in the State; and
- (c) “occupation” means an occupation, trade, profession or calling of any kind that may be carried out only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted; and
- (d) “Tribunal” means the Administrative Appeals Tribunal.

Clause 5—Application of this Act to States

This clause provides that the proposed Act applies to a State while it is a participating jurisdiction.

Clause 6—Operation of this Act

The clause states that the proposed Act does not affect the operation of any other law of the Commonwealth or limit the operation of a law of a State so far as it can operate concurrently with the proposed Act.

Clause 7—Crown bound

The proposed Act binds the Crown in the right of the Commonwealth and of each of the participating States.

PART 2—GOODS

Clause 8—Mutual recognition

The clause states that the mutual recognition principle as applying to goods is as set out in this Part. The Part deals with goods produced in or imported into a State (“the first State”) and their sale in another State (“the second State”).

Clause 9—Entitlement to sell goods

The clause provides that goods produced in or imported into the first State that may lawfully be sold in that State may be sold in the second State without the need to comply with the requirements set out in clause 10.

Mutual Recognition (New South Wales) 1992

Clause 10—Requirements that do not need to be complied with

The clause specifies the requirements relating to sale that are imposed by the second State that do not need to be complied with. Those requirements are as follows:

- standards of the second State relating to the goods themselves, for example, requirements relating to their production, composition, quality or performance;
- standards of the second State relating to the way the goods are presented, for example, requirements relating to their packaging, labelling, date stamping or age;
- requirements that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;
- requirements that any step in the production of the goods not occur outside the second State;
- any other requirements relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.

Clause 11—Requirements that do need to be complied with

This clause contains exceptions to the mutual recognition principle. The principle does not affect the operation of any laws of the second State, so long as those laws apply equally to goods produced in or imported into the second State and are laws which fall into one of the following classes:

- (a) laws which regulate the manner of sale of goods or the manner in which sellers conduct their business in the second State (examples include laws relating to contractual aspects of the sale of goods, registration of sellers or other persons carrying on occupations, requirement for business franchise licences, the persons to whom, and the circumstances in which, goods may or may not be sold); or
- (b) laws which relate to the transportation, storage or handling of goods and are directed at matters affecting the health and safety of persons within the second State or at environmental pollution matters; or
- (c) laws which relate to the inspection of goods (other than laws providing that inspection is a prerequisite to the sale of the goods in the second State) and are directed at matters affecting the health and safety of persons within the second State or at environmental pollution matters.

Clause 12—Defences to offences regarding sale

The clause provides that it is a defence to a prosecution for an offence against sale of goods laws in the second State if a person claims that the mutual recognition principle applies and establishes that the goods concerned were labelled at the point of sale with a statement that they were produced in or imported into the first State and also establishes that the person had no reason for believing that the goods were not so produced or imported. The defence cannot be used if the prosecution proves that the mutual recognition principle did not apply in the particular case (because for example the laws did not comply with requirements imposed by the law of the first State).

Mutual Recognition (New South Wales) 1992

Clause 13—Goods that comply with local law

The clause provides that nothing prevents goods from being sold if they comply with the law of the State in which they are sold.

Clause 14—Permanent exemptions

The clause provides that this Part does not apply to goods specified in Schedule 1 and does not affect laws described in Schedule 2.

Clause 15—Temporary exemptions

The clause enables a State Act or regulation to declare that this Part does not apply to specified goods or does not affect the operation of specified laws. Such an exemption must be substantially for the purpose of protecting the health and safety of persons in the State or for preventing, minimising or regulating environmental pollution in the State and may not operate for a period exceeding, or periods exceeding in the aggregate, 12 months.

PART 3—OCCUPATIONS**Division 1—Preliminary****Clause 16—Mutual recognition**

The clause states that the mutual recognition principle as applying to occupations is as set out in this Part. The Part deals with the ability of a person who is registered in connection with an occupation in a State ("the first State") to carry on an equivalent occupation in another State ("the second State").

Clause 17—Entitlement to carry on occupation

The clause provides that a person who is registered in the first State for an occupation is entitled to be registered for an equivalent occupation in the second State after notification to the local registration authority for the second State. Pending registration, the person may carry on the equivalent occupation in the second State.

The mutual recognition principle does not affect the operation of laws that affect the manner of carrying on an occupation in the second State so long as those laws apply equally to all persons seeking to carry on the occupation or carrying it on and are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Clause 18—Application of this Part

The clause deals with aspects of how the Part applies. It applies to individuals only (and not to corporate bodies). It extends to each system of registration for an occupation in cases where more than one such system is involved (for example, admission as a legal practitioner by a court and issue of a practising certificate by another body).

Mutual Recognition (New South Wales) 1992

Division 2—Entitlement to registration**Clause 19—Notification to local registration authority**

The clause enables a person who is registered in the first State for an occupation to lodge written notice with the local registration authority of the second State seeking registration in an equivalent occupation. The clause specifies certain matters that must be contained in the notice and requires the notice to be accompanied by documentary evidence or information as to the person's existing registration.

Clause 20—Entitlement to registration and continued registration

The clause provides that once a person lodges a notice under clause 19 in the second State the person is entitled to be registered in the equivalent occupation and the entitlement continues (even if the registration in the first State ceases) so as to enable renewal of registration in the second State. Continuance of registration is otherwise subject to the law of the second State.

The local registration authority of the second State cannot impose conditions on registration that are more onerous than would be imposed in similar circumstances (having regard to qualifications and experience) unless they are conditions that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations. The clause states that it has effect subject to the Part (for example, clause 33).

Clause 21—Action following notice

The clause provides that registration must be granted within one month of lodging a notice under clause 19 and when granted takes effect from the date of lodgment of that notice. Within that month the local registration authority may postpone or refuse the grant of registration. If the registration authority does neither within that month, registration is automatic at the end of that month.

Clause 22—Postponement of registration

The clause specifies the circumstances in which the local registration authority of the second State may postpone registration. The postponement may not extend beyond 6 months and if it does registration is automatic at the end of that 6-month period unless registration was refused at or before the end of that period. Earlier registration may be granted on a review by the Tribunal.

Clause 23—Refusal of registration

The clause specifies the grounds on which the local registration authority of the second State may refuse registration. Those grounds are that a statement or information in the notice under clause 19, or documentary evidence or information provided as to existing registration, is materially false or misleading or that the registration sought is not for an equivalent occupation and equivalence cannot be achieved by imposing conditions.

Mutual Recognition (New South Wales) 1992

A decision to refuse to grant registration on the ground that an occupation is not an equivalent occupation takes effect at the end of a specified period of not less than two weeks after the person concerned has been notified unless it has been previously revoked or an application for review made to the Tribunal. On such an application the Tribunal may make whatever orders it considers appropriate.

Clause 24—Notification of decision

The clause requires a local registration authority to give notice in writing of its decision as to registration.

Division 3—Interim arrangements**Clause 25—Deemed registration**

The clause provides that pending determination of a notice under clause 19 the person lodging the notice has "deemed registration". Deemed registration does not of itself provide a basis for registration in another State.

Clause 26—Duration of deemed registration

The clause deals with the duration of a person's deemed registration. It ceases when the person is registered by the local registration authority of the second State, or if that authority refuses registration, or if substantive registration in other States ceases. It may be cancelled or suspended in accordance with this Part and is not affected by postponement of the grant of substantive registration.

Clause 27—Activities under deemed registration

The clause enables a person with deemed registration to carry on the equivalent occupation in the second State but subject to certain limitations. Those limitations include the limits conferred by the person's substantive registration as well as by the person's deemed registration.

Division 4—Equivalent occupations**Clause 28—Equivalent occupations**

The clause states that the equivalence of occupations carried on in different States is to be determined in accordance with this Part.

Clause 29—General principle

The clause provides that occupations in different States are to be taken as equivalent if the activities authorised under the registration for the occupation in each State are substantially the same. This equivalence may be achieved by the imposition of conditions.

Mutual Recognition (New South Wales) 1992

Clause 30—Declarations as to equivalent occupations

The clause provides that this Part is to be given effect to in accordance with relevant declarations under this Division regarding equivalent occupations. If an inconsistency arises between a declaration of the Tribunal (see clause 31) and a declaration of Ministers (see clause 32), the ministerial declaration prevails. A declaration does not affect the registration of a person already registered unless it is made by the Tribunal in relation to that person specifically.

Clause 31—Declarations by Tribunal

The clause enables the Tribunal to make an order, on a review of a decision of a local registration authority under the proposed Act, that a person registered in an occupation in the first State is or is not entitled to registration in the second State in a particular occupation.

On such a review, the Tribunal may also specify conditions that will achieve equivalence and may make a declaration that occupations carried on in two States are not equivalent if it is satisfied as to certain matters.

Such declarations must be published and notified to appropriate authorities in other States and the Commonwealth. The local registration authority must give effect to the decision on the review.

Clause 32—Declarations by Ministers

The clause enables Ministers from two or more States jointly to declare that specified occupations are equivalent and to specify conditions that will achieve equivalence. Such a declaration has effect only in relation to the States concerned and must be given effect to by the appropriate local registration authorities.

Division 5—General provisions**Clause 33—Disciplinary action**

The clause provides that if a person's registration in an occupation in a State is cancelled or suspended, or subject to a condition, on disciplinary grounds or as a result of or in anticipation of criminal, civil or disciplinary proceedings, the person's registration in an equivalent occupation in another State is affected in the same way (whether or not the registration in the other State was effected under the proposed Act). The local registration authority of the other State may in such cases reinstate the registration or waive conditions if it thinks it appropriate.

Clause 34—Review of decisions

The clause allows a person to apply to the Tribunal for review of a decision of a local registration authority under the proposed Act.

Clause 35—Costs

The clause empowers the Tribunal to order a party in proceedings to pay costs if the party has acted unreasonably.

Mutual Recognition (New South Wales) 1992

Clause 36—Residence or domicile

The clause states that residence or domicile is not to be a prerequisite or factor in a person's entitlement to registration under the proposed Act.

Clause 37—Furnishing information

The clause requires a local registration authority of a State to furnish promptly information about a person registered in that State reasonably required by a local registration authority of another State. The request for information must be in connection with the seeking of registration by the person in the second State, the person's deemed registration or actual or possible disciplinary action against the person.

The information may be furnished despite any law relating to secrecy or confidentiality.

Clause 38—Receiving information

The clause provides that once information is received by a local registration authority under clause 37 the information is subject to any law relating to secrecy or confidentiality applicable to information provided under the law of the State under which that authority is constituted or exercises its functions.

Clause 39—General responsibilities of local registration authorities

The clause sets out the general duties of local registration authorities under the proposed Act. They must facilitate the operation of this Part in relation to the relevant occupations and make use of the power to impose conditions in such a way as to promote the mutual recognition principle.

They must prepare guidelines and information as to the operation of this Part. Such guidelines and information is to be available within six months of the commencement of the clause.

Clause 40—Fees

The clause enables a local registration authority to impose fees in connection with registration under the proposed Act but not fees greater than those imposed for registration apart from the proposed Act. The authority may impose a condition on substantive or deemed registration that a person may not carry out activities authorised by the registration until the fees have been paid.

Clause 41—Formalities requiring personal attendance

The clause provides that registration or entitlement to registration under this Part does not require compliance with any requirements as to personal attendance in the second State.

Clause 42—Saving

The clause states that nothing prevents a person from seeking registration in an occupation apart from this Act.

Mutual Recognition (New South Wales) 1992

PART 4—GENERAL**Clause 43—References to participating jurisdictions**

The clause defines “participating jurisdiction” for the purposes of the proposed Act as being a State which has an Act referring to the Commonwealth the power to enact the proposed Act or a Territory which has an Act requesting the Commonwealth to enact the Act or enabling the Act to apply to it.

Clause 44—Application of mutual recognition principle

The clause provides that the mutual recognition principle and the proposed Act may be taken into consideration in proceedings of any kind and for any purpose.

The clause also ensures that a person may rely on the mutual recognition principle in relation to more than two States (as well as in relation to two States).

Clause 45—Machinery provisions regarding limitations etc.

The clause enables conditions or undertakings imposed on the registration of a person in an occupation in the first State to be construed with necessary adaptations for the purposes of registration in the second State.

Clause 46—Determining place of production

The clause provides a method for determining where goods are produced for the purposes of the proposed Act.

Clause 47—Amendment of Schedules

The clause empowers the Governor-General to make regulations amending the Schedules to the proposed Act but only if the designated person for each of the then participating States has published a notice in the relevant official gazette setting out the terms of the regulation and requesting that it be made.

SCHEDULE 1—PERMANENT EXEMPTIONS: GOODS

Schedule 1 specifies goods to which the mutual recognition principle as embodied in Part 2 does not apply.

SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS RELATING TO GOODS

Schedule 2 specifies laws which are not affected by the mutual recognition principle as embodied in Part 2.

FIRST PRINT

MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992

NEW SOUTH WALES



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 2. Commencement
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 5. Approval of amendments
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-

SCHEDULE

MUTUAL RECOGNITION BILL 1992

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Section

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PART 3—OCCUPATIONS

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PART 4—GENERAL

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45. Machinery provisions regarding limitations etc.
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Mutual Recognition (New South Wales) 1992

SCHEDULE 1

PERMANENT EXEMPTIONS: GOODS

SCHEDULE 2

PERMANENT EXEMPTIONS: LAWS RELATING TO GOODS

MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

Mutual Recognition (New South Wales) 1992

The Legislature of New South Wales enacts:

Short title and purpose

1. (1) This Act may be cited as the Mutual Recognition (New South Wales) Act 1992.

- 5 (2) The purpose of this Act is to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

Commencement

2. This Act commences on a day to be appointed by proclamation.

10 **Interpretation**

3. In this Act, "the Commonwealth Act" means the Act of the Parliament of the Commonwealth, enacted as referred to in section 4 (1) (a), and as amended and in force from time to time.

Enactment of uniform mutual recognition legislation

- 15 4. (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day fixed under subsection (4) as the day on which the reference under this Act terminates, but not longer, namely, the matters to
- 20 which the Schedule relates but only to the extent of:
- (a) the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule; and
 - 25 (b) the amendment of that Act (other than the Schedules), but only in terms which are approved by the designated person for each of the then participating jurisdictions.
- (2) For the purposes of this section, a "participating jurisdiction" is:
- 30 (a) a State for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the matters mentioned in subsection (1), or that adopts the Commonwealth Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution; or
 - 35 (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact the Commonwealth Act or that enables the Commonwealth Act to apply in relation to it.

Mutual Recognition (New South Wales) 1992

(3) For the purposes of this section, the designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

(4) The Governor may, at any time, fix by proclamation a day as the day on which the reference under this Act terminates. 5

(5) The day so fixed must be no earlier than the end of the period of 5 years commencing on the date of commencement of the Commonwealth Act.

(6) If some provisions of the Commonwealth Act commence before others, the reference in subsection (5) to the date of commencement of that Act is taken to be a reference to the commencement of the first provision or provisions to commence. 10

Approval of amendments

5. For the purposes of section 4 (1) (b), the Governor may, by proclamation, approve the terms of amendments of the Commonwealth Act. 15

Regulations for temporary exemptions for goods

6. Without limiting any other power to make regulations under any other Act, the Governor may make regulations for the purposes mentioned in section 15 of the Commonwealth Act. 20

SCHEDULE
MUTUAL RECOGNITION BILL 1992

A BILL

FOR

- 5 **An Act to provide for the recognition within each State
and Territory of the Commonwealth of regulatory
standards adopted elsewhere in Australia
regarding goods and occupations**

The Parliament of Australia enacts:

10

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Mutual Recognition Act 1992*.

Commencement

- 15 2. The provisions of this Act commence on a day or days to be fixed
by Proclamation.

Principal purpose

- 20 3. The principal purpose of this Act is to enact legislation authorised
by the Parliaments of States under paragraph (xxxvii) of section 51 of the
Commonwealth Constitution, and requested by the legislatures of the
Australian Capital Territory and the Northern Territory, for the purpose of
promoting the goal of freedom of movement of goods and service
providers in a national market in Australia.

Interpretation

- 25 4. (1) In this Act, unless the contrary intention appears:
“conditions”, when used in relation to occupations, means conditions,
limitations or restrictions;
“deemed registration” means deemed registration as defined in section
25;

Mutual Recognition (New South Wales) 1992

“equivalent”, when used in relation to occupations, has a meaning affected by Division 4 of Part 3;

“goods” means goods of any kind, and includes:

- (a) animals; or
- (b) a package containing goods; or
- (c) a label attached to goods;

5

“grant”, when used in relation to registration, means grant, issue or otherwise confer registration;

“import” means import from outside Australia;

“labelling” of goods includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them;

10

“local registration authority” of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on of that occupation in the State;

15

“occupation” means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted;

20

“participating jurisdiction” has the meaning given by section 43;

“produce” includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production;

25

“registration” includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of an occupation;

“requirements”, when used in relation to goods, means requirements, prohibitions, restrictions or conditions;

30

“sell” includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase;

35

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"State" includes the Australian Capital Territory or the Northern Territory;

"substantive registration" means registration under a law of a State, but does not include deemed registration;

5 "Tribunal" means the Administrative Appeals Tribunal.

(2) This Act is to be interpreted in accordance with the *Acts Interpretation Act 1901* as in force at the date on which this Act receives the Royal Assent.

Application of this Act to States

10 5. (1) This Act applies to a State, but only while it is a participating jurisdiction.

(2) Accordingly, a reference in this Act to a State is a reference to a State that is a participating jurisdiction.

Operation of this Act

15 6. (1) Nothing in this Act affects the operation of any other law of the Commonwealth.

(2) This Act does not limit the operation of a law of a State so far as it can operate concurrently with this Act.

Crown bound

20 7. Subject to section 5, this Act binds the Crown in right of the Commonwealth and of each of the States.

PART 2—GOODS

Mutual recognition

25 8. (1) The mutual recognition principle as applying to goods is as set out in this Part.

(2) This Part deals with goods produced in or imported into a State and their sale in another State.

(3) In this Part, the firstmentioned State is called "**the first State**", and the other State is called "**the second State**".

30 **Entitlement to sell goods**

9. The mutual recognition principle is that, subject to this Part, goods produced in or imported into the first State, that may lawfully be sold in

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that State either generally or in particular circumstances, may, by virtue of this Act, be sold in the second State either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements as described in section 10.

Requirements that do not need to be complied with 5

10. The further requirements referred to in section 9 are any one or more of the following requirements relating to sale that are imposed by or under the law of the second State:

- (a) a requirement that the goods satisfy standards of the second State relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance; 10
- (b) a requirement that the goods satisfy standards of the second State relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age; 15
- (c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;
- (d) a requirement that any step in the production of the goods not occur outside the second State; 20
- (e) any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.

Requirements that do need to be complied with

11. (1) The mutual recognition principle is subject to the exceptions specified in this section. 25

(2) The first exception is that the principle does not affect the operation of any laws of the second State that regulate the manner of the sale of goods in the second State or the manner in which sellers conduct or are required to conduct their business in the second State (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the second State. 30

Examples: Laws relating to the following:

- (a) the contractual aspects of the sale of goods;
- (b) the registration of sellers or other persons carrying on occupations; 35
- (c) the requirement for business franchise licences;

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(d) the persons to whom goods may or may not be sold;

(e) the circumstances in which goods may or may not be sold.

(3) The second exception is that the principle does not affect the operation of any laws of the second State regarding the transportation,
5 storage or handling of goods within the State, so long as:

(a) those laws apply equally to goods produced in or imported into the second State; and

10 (b) those laws are directed at matters affecting health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

(4) The third exception is that the principle does not affect the operation of any laws of the second State regarding the inspection of goods within the State, so long as:

15 (a) inspection or the requirement for inspection is not a prerequisite to the sale of the goods in the second State; and

(b) those laws apply equally to goods produced in or imported into the second State; and

20 (c) those laws are directed at matters affecting the health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

Defences to offences regarding sale

25 12. (1) It is a defence to a prosecution for an offence against a law of the second State in relation to the sale of any goods if the defendant expressly claims that the mutual recognition principle applies and establishes that:

30 (a) the goods were labelled at the point of sale with a statement to the effect that the goods were produced in or imported into the first State; and

(b) the defendant had no reasonable grounds for suspecting that they were not so produced or imported.

35 (2) The defence is not available if the prosecution proves that the mutual recognition principle did not apply in the circumstances of the alleged offence (because for example the goods did not comply with requirements imposed by the law of the first State).

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(3) Any relevant presumptions or evidentiary procedures under the law of the first State are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under subsection (2).

(4) Any relevant defences under the law of the first State are available to the defendant in relation to matters sought to be proved by the prosecution under subsection (2). 5

(5) This section does not affect any defence that is available apart from this section.

Goods that comply with local law

13. (1) Nothing in this Part prevents goods from being sold in the second State if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State. 10

(2) Nothing in this Part requires the labelling of goods as mentioned in section 12 if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State. 15

Permanent exemptions

14. (1) This Part does not apply to goods that are specified in Schedule 1.

(2) This Part does not affect the operation of laws described in Schedule 2. 20

(3) Unless otherwise stated in Schedule 2, a law described in that Schedule includes any amendment or replacement of that law, but only to the extent that the amendment or replacement deals with the same subject-matter.

Temporary exemptions 25

15. (1) This Part does not apply to the sale in the second State of goods, or affect laws of the second State, for the time being declared by or under an Act or regulation of the State to be goods or laws to which this section applies.

(2) Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the State or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the State. 30

(3) No such exemption operates (together with the period of any previous exemption) for longer than a period of 12 months or an aggregate period of 12 months. 35

PART 3—OCCUPATIONS***Division 1—Preliminary*****Mutual recognition**

5 16. (1) The mutual recognition principle as applying to occupations is as set out in this Part.

 (2) This Part deals with the ability of a person who is registered in connection with an occupation in a State to carry on an equivalent occupation in another State.

10 (3) In this Part, the firstmentioned State is called “the first State”, and the other State is called “the second State”.

Entitlement to carry on occupation

15 17. (1) The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:

 (a) to be registered in the second State for the equivalent occupation; and

 (b) pending such registration, to carry on the equivalent occupation in the second State.

20 (2) However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws:

25 (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and

 (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Application of this Part

30 18. (1) This Part applies to individuals and occupations carried on by them.

 (2) This Part extends to an occupation carried on by an individual, where the individual is subject to more than one system of registration or more than one local registration authority in a State, and accordingly this Part applies in relation to each such system of registration and each such
35 authority.

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(3) Without limiting subsection (2), an example of such an occupation is that of a legal practitioner, which involves both the admission as a legal practitioner by a court and the issue of a practising certificate by another body.

Division 2—Entitlement to registration

5

Notification to local registration authority

19. (1) A person who is registered in the first State for an occupation may lodge a written notice with the local registration authority of the second State for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the mutual recognition principle.

10

(2) The notice must:

(a) state that the person is registered for the occupation in the first State and specify that State; and

(b) state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle; and

15

(c) specify all the States in which the person has substantive registration for equivalent occupations; and

(d) state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and

20

(e) state that the person's registration in any State is not cancelled or currently suspended as a result of disciplinary action; and

25

(f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any State, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and

(g) specify any special conditions to which the person is subject in carrying on any such occupation in any State; and

30

(h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.

35

(3) The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration).

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(4) As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original.

5 (5) The statements and other information in the notice must be verified by statutory declaration.

(6) The local registration authority may permit the notice to be amended after it is lodged.

Entitlement to registration and continued registration

10 20. (1) A person who lodges a notice under section 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation, as if the law of the second State that deals with registration expressly provided that registration in the first State is a sufficient ground of entitlement to registration.

15 (2) The local registration authority may grant registration on that ground and may grant renewals of such registration.

(3) Once a person is registered on that ground, the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in the first State.

20 (4) Continuance of registration is otherwise subject to the laws of the second State, to the extent to which those laws:

(a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and

(b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

25 (5) The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they are conditions that apply to the person's registration
30 in the first State or that are necessary to achieve equivalence of occupations.

(6) This section has effect subject to this Part.

Action following notice

35 21. (1) Registration must be granted within one month after the notice is lodged with the local registration authority under section 19.

(2) When granted, registration takes effect as from the date the notice was lodged.

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(3) However, the local registration authority may, subject to this Part and within one month after the notice was lodged, postpone or refuse the grant of registration.

(4) If the local registration authority neither grants the registration nor takes action under subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration immediately at the end of that period and no objection may be taken to the notice on any of the grounds on which refusal or postponement may be effected, except where fraud is involved. 5

Postponement of registration 10

22. (1) A local registration authority may postpone the grant of registration, if:

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or 15
- (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or
- (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation. 20

(2) If the grant of registration has been postponed, the local registration authority may in due course grant or refuse the registration.

(3) The local registration authority may not postpone the grant of registration for longer than a period of 6 months, and the person is entitled to registration immediately, at the end of that period, unless registration was refused at or before the end of that period. 25

(4) Nothing in subsection (3) prevents earlier registration from being granted on a review by the Tribunal.

Refusal of registration

23. (1) A local registration authority may refuse the grant of registration, if: 30

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or 35
- (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions.

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- (2) A decision to refuse to grant registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than 2 weeks) after the person is notified of the decision, unless it has been previously
 5 revoked or there is an application for review to the Tribunal, in which case the Tribunal may make whatever orders it considers appropriate.

Notification of decision

24. A local registration authority must give the person who lodges a notice in accordance with section 19 a notice in writing of its decision to
 10 grant registration, or to postpone or refuse the grant of registration, or to impose conditions on registration.

Division 3—Interim arrangements

Deemed registration

25. (1) A person who lodges a notice under section 19 with a local
 15 registration authority of a State is, pending the grant or refusal of registration, taken to be registered as provided in section 20.

(2) Such registration is called “**deemed registration**” in this Act.

(3) Deemed registration in one State does not of itself provide a basis for registration in another State.

20 **Duration of deemed registration**

26. (1) A person’s deemed registration in the second State continues until it is cancelled or suspended or otherwise ceases in accordance with this Part.

- 25 (2) A person’s deemed registration in the second State ceases if the person becomes substantively registered in the State in connection with the occupation concerned.

(3) A person’s deemed registration in the second State ceases if the local registration authority of the State refuses to grant registration, subject to any determination of the Tribunal.

- 30 (4) A person’s deemed registration in the second State ceases if the person ceases to be substantively registered in every other State mentioned in the notice as required by section 19 (2) (c).

- 35 (5) A local registration authority of the second State may cancel a person’s deemed registration in the second State if the person requests cancellation.

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(6) Deemed registration is not affected by postponement of the grant of substantive registration.

Activities under deemed registration

27. (1) A person who has deemed registration in the second State may carry on the occupation in the second State as if the deemed registration were substantive registration in the second State. 5
- (2) However, the person may do so only:
- (a) within the limits conferred by the person's substantive registration in the first State; and
 - (b) within the limits conferred by the person's deemed registration in the second State; and 10
 - (c) subject to any conditions or undertakings applying to the person's registration in the first State, unless waived by the local registration authority of the second State under this section; and
 - (d) subject to any conditions applying to the person's deemed registration. 15
- (3) Without limiting anything in this Division:
- (a) the person may not carry on the occupation in the second State without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and 20
 - (b) a person who has deemed registration in an occupation in the second State is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in that State; and 25
 - (c) references in the law of the second State to persons registered in an occupation under the law of that State (however expressed) extend to persons who have deemed registration for the occupation under this Act.
- (4) However, the local registration authority of the second State may waive any condition imposed under the law of the first State, or any undertaking given to the local registration authority of the first State, if it thinks it appropriate in the circumstances. 30
- (5) The local registration authority of the second State may impose conditions as if deemed registration were substantive registration, but it must not impose conditions that are more onerous than would be imposed 35

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- in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they correspond to conditions or undertakings that apply to the person's registration in the first State or that are necessary to achieve equivalence
5 of occupations.

Division 4—Equivalent occupations

Equivalent occupations

28. The equivalence of occupations carried on in different States is to be determined in accordance with this Part.

10 **General principle**

29. (1) An occupation for which persons may be registered in the first State is taken to be equivalent to an occupation for which persons may be registered in the second State if the activities authorised to be carried out under each registration are substantially the same (whether or not this
15 result is achieved by means of the imposition of conditions).

(2) Conditions may be imposed on registration under this Part so as to achieve equivalence between occupations in different States.

(3) This section has effect subject to any relevant declarations in force under this Division.

20 **Declarations as to equivalent occupations**

30. (1) This Part is to be given effect in accordance with relevant declarations (if any) made under this Division regarding equivalent occupations.

- (2) If a declaration made by the Tribunal and a declaration made by
25 Ministers are inconsistent, the ministerial declaration prevails.

(3) A declaration under this Part does not affect the registration of any person already registered (except in the case of a declaration made by the Tribunal in relation to that person specifically).

Declarations by Tribunal

- 30 31. (1) On a review, the Tribunal may make an order that a person who is registered in a particular occupation in a particular State is or is not entitled to registration in another State in a particular occupation, and may specify or describe conditions that will achieve equivalence.

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(2) On such a review, the Tribunal may make a declaration that occupations carried on in two States are not equivalent, but only if the Tribunal is satisfied that:

- (a) the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or 5
- (b) registration in one State should not entitle registered persons to carry on a particular activity or class of activity in the other State, where:
 - (i) the activity or class of activity is a material part of the practice of a person registered in the first State for the occupation; and 10
 - (ii) the activity or class of activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons in the other State to a real threat to their health or safety or could reasonably be expected to cause significant environmental pollution (including air, water, noise or soil pollution); and 15
 - (iii) it is not practicable to protect the health or safety of such persons from that threat or the environment from such pollution by regulating the manner in which services in the occupation are provided. 20

(3) The Registrar or other proper officer of the Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *Gazette*.

(4) A declaration made on the basis of paragraph (2) (b) has effect for no longer than 12 months, and the local registration authority must promptly notify appropriate authorities in each other State and the Commonwealth of the declaration. 25

(5) The local registration authority is to give effect to the decision on the review, and must thereafter act in conformity with the decision in relation to other persons seeking registration. 30

Declarations by Ministers

32. (1) A Minister from each of two or more States may jointly declare, by notice in the *Gazette*, that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence. 35

(2) The declaration may be amended or rescinded in the same way.

(3) The declaration has effect only in relation to the States concerned.

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(4) The appropriate local registration authority is to give effect to the declaration.

Division 5—General provisions

Disciplinary action

5 **33.** (1) If a person's registration in an occupation in a State:

 (a) is cancelled or suspended; or

 (b) is subject to a condition;

10 on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way.

 (2) However, the local registration authority of the other State may reinstate any cancelled or suspended registration or waive any such condition if it thinks it appropriate in the circumstances.

 (3) This section extends to registration effected apart from this Act.

15 (4) This section has effect despite any other provisions of this Part.

Review of decisions

34. (1) Subject to the *Administrative Appeals Tribunals Act 1975*, application may be made to the Tribunal for review of a decision of a local registration authority in relation to its functions under this Act.

20 (2) In subsection (1):

 “decision” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

25 (3) If a local registration authority gives a person written notice of the making of a decision referred to in subsection (1), the notice must include a statement to the effect that:

 (a) subject to the *Administrative Appeals Tribunal Act 1975*, application for review of the decision may be made to the Tribunal by a person whose interests are affected by the decision; and

30 (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

35 (4) Any failure to comply with a requirement of subsection (3) does not affect the validity of the decision.

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Costs

35. The Tribunal may order a party in proceedings before it to pay costs if the party has acted unreasonably.

Residence or domicile

36. Residence or domicile in a particular State is not to be a prerequisite for or a factor in entitlement to the grant, renewal or continuation of registration arising under this Part. 5

Furnishing information

37. (1) A local registration authority of a State must furnish without delay any information reasonably required by a local registration authority of another State about a person substantively registered under a law of the firstmentioned State. 10

(2) The obligation imposed under this section does not apply unless the authority of the other State notifies the authority of the firstmentioned State that the information is required in connection with: 15

- (a) a notice lodged by a person seeking registration; or
- (b) a person's deemed registration; or
- (c) actual or possible disciplinary action against the person.

(3) The authority of the firstmentioned State is empowered to provide the information, despite any law relating to secrecy or confidentiality. 20

(4) Nothing in this section affects any obligation or power to provide information apart from this section.

Receiving information

38. If a local registration authority receives information under section 37, the information is subject to any law relating to secrecy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions. 25

General responsibilities of local registration authorities

39. (1) It is the duty of each local registration authority to facilitate the operation of this Part in relation to the occupations for which the authority is responsible, and in particular to make use of the power to impose conditions in such a way as to promote the mutual recognition principle. 30

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(2) It is the duty of each local registration authority to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations for which the authority is responsible.

(3) The first such guidelines and information are to be available within
5 6 months after the commencement of this section.

Fees

40. (1) A local registration authority has power to impose fees in relation to substantive or deemed registration or the continuance of registration arising under this Part, but any such fees may not be greater
10 than are applicable for registration apart from this Part.

(2) Nothing in this section prevents the fixing or prescribing of fees referred to in this section under any other law of a State, but the fees may not be greater than can be imposed under this section.

(3) The local registration authority may impose a condition on
15 substantive or deemed registration arising under this Part to the effect that a person may not carry out activities under registration unless a fee or other payment has been paid, but such a condition may not be imposed unless it corresponds to a requirement attaching to registration apart from this Part.

20 (4) This section does not authorise the imposition of a tax.

Formalities requiring personal attendance

41. (1) Neither substantive or deemed registration, nor entitlement to registration, under this Part requires compliance with any statutory or other formalities requiring personal attendance in the second State.

25 (2) This section applies to formalities that would otherwise have to be complied with before, at or after registration.

Saving

42. Nothing in this Part prevents a person from seeking registration or being registered for an occupation under a law apart from this Part.

30

PART 4—GENERAL

References to participating jurisdictions

43. For the purposes of this Act, a participating jurisdiction is:

- (a) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth

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the power to enact this Act, or that adopts this Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution; or

- (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act or that enables this Act to apply in relation to it. 5

Application of mutual recognition principle

44. (1) The mutual recognition principle and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose. 10

(2) Nothing in this Act prevents a person from relying on the mutual recognition principle in relation to more than two States.

Machinery provisions regarding limitations etc.

45. In cases where Part 3 provides that conditions or undertakings that apply or are relevant to registration in the first State also apply or are relevant to registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable): 15

- (a) references to the first State are to be read as references to the second State; 20
- (b) references to officers or authorities of the first State are to be read as references to the corresponding officers or authorities of the second State.

Determining place of production

46. (1) For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in the State where the most recent step has occurred in the process of producing the goods (including for example processing, harvesting or packaging the goods). 25

(2) Subsection (1) applies even though: 30

- (a) the process of production may be incomplete; or
- (b) some steps in the process have not yet been carried out; or
- (c) some steps in the process were carried out elsewhere, whether in another State or outside Australia; or
- (d) the goods or a component of the goods were imported. 35

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Amendment of Schedules

47. (1) The Governor-General may make regulations amending the Schedules.

5 (2) No such regulation may be made unless the designated person for each of the then participating jurisdictions has published a notice in the official gazette of the jurisdiction setting out the terms of the proposed regulation and requesting that it be made.

10 (3) For the purposes of this section, the designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

SCHEDULE 1—PERMANENT EXEMPTIONS: GOODS

(Secs. 14, 47)

1. Firearms and other prohibited or offensive weapons.
2. Fireworks.
- 15 3. Gaming machines.
4. Pornographic material.

**SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS
RELATING TO GOODS**

(Secs. 14, 47)

- 20 1. A law of a State relating to quarantine, to the extent that:
 - (a) the law (or a direction or instrument given or made under the law or some other action taken under the law) regulates or prohibits the bringing of specified goods into the State or into a defined area of the State; and
 - 25 (b) the State or area is substantially free of a particular disease, organism, variety, genetic disorder or any other similar thing; and
 - (c) it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other thing into the State or area; and
 - 30 (d) it is reasonably likely that that introduction would have a long-term and substantially detrimental effect on the whole or any part of the State.

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SCHEDULE 2—PERMANENT EXEMPTIONS: LAWS RELATING TO
GOODS—*continued*

- | | |
|---|----|
| 2. A law of a State to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the State and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the State. | 5 |
| 3. <i>Ozone Protection Act 1991</i> of the Australian Capital Territory. | |
| 4. <i>Weapons Act 1991</i> of the Australian Capital Territory. | |
| 5. <i>Ozone Protection Act 1989</i> of New South Wales. | 10 |
| 6. <i>Clean Air Act 1963–1990</i> of Queensland, Part IVA. | |
| 7. Hazardous Substances (Chlorofluorocarbons and Other Ozone Layer Depleting Substances) Regulations 1988 under the <i>Health Act 1937–1988</i> of Queensland. | |
| 8. <i>Beverage Container Act, 1975</i> of South Australia. | 15 |
| 9. <i>Clean Air Act, 1984</i> of South Australia, Part IIIA. | |
| 10. A law of Tasmania to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size. | |
| 11. <i>Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988</i> of Tasmania. | 20 |
| 12. <i>Environment Protection Act 1970</i> of Victoria, section 16 (in relation to ozone depleting substances), section 41 (2) (d) and section 71 (1) (gba). | |
| 13. Environmental Protection Regulations 1987 under the <i>Environmental Protection Act 1986</i> of Western Australia. | 25 |
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