

**TRANS-TASMAN MUTUAL RECOGNITION (WESTERN AUSTRALIA)  
BILL 1999**

**EXPLANATORY MEMORANDUM**

The purpose of this Bill is to implement the Trans Tasman Mutual Recognition Arrangement in Western Australia. The Arrangement was signed by Australian heads of government at the Council of Australian Governments on 14 June 1996. The Prime Minister of New Zealand subsequently signed the Arrangement on 9 July 1996.

The principal aim of the Trans-Tasman Mutual Recognition Arrangement is to remove impediments to trans-Tasman trade in goods and the mobility of labour caused by regulatory differences among Australian jurisdictions and New Zealand. This aim is achieved by providing for mutual recognition of regulatory standards for goods and registered occupations adopted in Australia and New Zealand.

The proposed scheme is based on the framework of the existing Australian Mutual Recognition Agreement, signed by Australian heads of government in May 1992. That scheme has recently been reviewed and it is generally considered that the practical benefits have included:

- greater choice for consumers;
- reduced compliance costs for manufacturers;
- economies of scale in production, leading to lower product costs;
- greater cooperation between regulatory authorities and the accelerated development of national standards where appropriate;
- greater discipline on individual jurisdictions contemplating the introduction of new standards and regulations; and
- increased movement of service providers and freedom for service providers to practise in jurisdictions in which they are not registered.

The Trans-Tasman Mutual Recognition Arrangement was finalised after the release of a discussion paper in April 1995 by the Council of Australian Governments and the government of New Zealand. Input was sought from industry, standards setting bodies and the profession. Approximately 142 written submissions were received. The comments received during the consultation process have been taken into account in deciding upon the final lists of exemptions and exclusions from the scheme.

**Principles**

The Trans-Tasman Mutual Recognition Arrangement is based on two main principles in relation to goods and registered occupations. The first is that a person registered to practise an occupation in Australia can seek automatic registration to practise an equivalent occupation in New Zealand and vice versa. A person will only need to give notice, including evidence of home registration, to the relevant jurisdiction to be entitled immediately to commence practice in an equivalent occupation in that jurisdiction.

Equivalence means that the activities carried out by practitioners registered in each jurisdiction must be substantially the same. This will be the case in most instances. However, if significant differences do exist between occupations, a registration authority may impose conditions on a person's registration in order to achieve equivalence.

The scheme will apply to all registered occupations in Australia and New Zealand with the exception of medical practitioners.

The second principle is that goods that can be legally sold in a participating Australian jurisdiction can be sold in New Zealand and vice versa, as long as the goods meet the regulatory requirements for sale in the jurisdiction in which they were manufactured or first imported. This means that goods, which can be sold lawfully in one jurisdiction, may be sold freely in another, even though the goods may not comply with all the details of regulatory standards in the second jurisdiction.

Under mutual recognition, producers in Australia will have to ensure that their products comply with the laws only in the place of production. If they do so, they will then be free to distribute and sell their products in New Zealand without being subjected to further testing or assessment of their product.

### **Implementation mechanism**

Australia and New Zealand are implementing the Trans-Tasman Mutual Recognition Arrangement through a legislative scheme which will include an Australian component and a New Zealand component. The New Zealand component of the scheme is the Trans-Tasman Mutual Recognition Act 1997 which was enacted on 20 August 1997. The Australian component of the scheme will require the Commonwealth, States and Territories to enact legislation.

The jurisdiction leading the implementation of the TTMRA in Australia is New South Wales. The Trans-Tasman Mutual Recognition (New South Wales) Act 1997 was enacted on 25 November 1997. The New South Wales Act is legislation referring power to the Commonwealth to legislate under section 51(xxxvii) of the Commonwealth Constitution for the passage of the Trans-Tasman Mutual Recognition legislation.

The Commonwealth legislation is the Trans-Tasman Mutual Recognition (Commonwealth) Act 1998. The States and Territories will legislate to either refer power to the Commonwealth or adopt the Commonwealth legislation to participate in the scheme.

The Commonwealth Act provides a comprehensive scheme for mutual recognition that 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. Amending the Commonwealth Act requires the unanimous consent of the participating jurisdictions.

The Trans-Tasman Mutual Recognition (Western Australia) Bill 1998 will adopt the Commonwealth legislation, making Western Australia a participating jurisdiction. The Western Australian legislation will adopt the Commonwealth Act for a period of five years. The Bill will only adopt the Commonwealth Act as it stands at the time the Western Australian legislation receives the Royal Assent. Any amendments to the Commonwealth Act will also have to be considered by the State Parliament for the amendments to apply in Western Australia.

### **Operation of the scheme**

The focus of mutual recognition is on the regulation of goods at the point of sale and on entry by registered persons into equivalent occupations in another participating jurisdiction. Mutual recognition will not affect the ability of jurisdictions to regulate the operation of businesses or the conduct of persons registered in an occupation. It is also important to note that 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.

In addition, the arrangement does not affect laws relating to the transport, handling and storage of goods as long as those laws are the same for both imports and locally produced goods. Nor does it affect the inspection of goods, provided inspection is not a prerequisite to sale. An example is customs inspections.

Moreover, the scheme will not affect laws relating to quarantine, endangered species, firearms and other prohibited or offensive weapons, fireworks, indecent material, ozone protection, agricultural and veterinary chemicals, and gaming machines. Nor will the scheme affect Australia's or New Zealand's international obligations, intellectual property laws, customs laws, taxation laws or tariffs.

The scheme incorporates a temporary exemption mechanism, giving participating jurisdictions the right to ban unilaterally, for a total of twelve months, the sale of goods in their jurisdiction in the interests of protecting the health and safety of persons or preventing, minimising or regulating environmental pollution. Before the temporary exemption expires, the ministerial council responsible for the affected goods is required to determine whether a particular standard should apply to the goods and, if so, the appropriate standard. A ministerial council determination can include whether to prohibit the sale of the goods in question and requires endorsement of heads of government.

The scheme will also set in train cooperation programs in a number of industry sectors. These will relate to therapeutic goods; hazardous substances, industrial chemicals and dangerous goods; road vehicles; electromagnetic compatibility and radio communications equipment; and gas appliance standards. Regulatory authorities in these areas will consider whether existing regulatory differences would be best addressed by either applying the mutual recognition principle to the affected goods, permanently exempting the goods from the operation of the scheme, or introducing harmonised standards for such goods.

For occupations, the legislation is expressed to apply to individuals and occupations carried on by them. Registered practitioners wishing to practise in another jurisdiction will be able to notify the local registration authority of their intention to seek registration in an equivalent occupation there and provide the required evidence. 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.

To avoid costly and lengthy appeals processes in the courts, the Commonwealth Administrative Appeals Tribunal will hear appeals against decisions of Australian registration authorities, and a newly created New Zealand tribunal will hear appeals against decisions of New Zealand registration authorities. The tribunals are required to cooperate to the maximum extent possible so as to ensure consistency in their determinations.

Outlined below is an examination of the contents of the Western Australian Bill on a clause by clause basis.

## **Explanation of Clauses**

Clause 1: Short title.

Clause 2: Commencement

This clause provides for the Act to come into operation on proclamation.

Clause 3: Interpretation

The "Commonwealth Act" is defined. (The text of the Commonwealth Act is set out in the Appendix to the Bill).

Clause 4: Adoption of Commonwealth Act

This clause adopts the Commonwealth Act as it stands at the time the Western Australian Act receives the Royal Assent.

Clause 5: Regulations for temporary exemptions

This clause enables the Governor (of this State) to make regulations for the purposes of temporary 12 month exemptions, as contemplated by section 46 of the Commonwealth Act.

Clause 6: Review of mutual recognition arrangements

This clause provides for a review of the operation of the Act after five years.

Clause 7: Expiry of Act

This clause provides that the Act will expire at the end of the 5 year period of adoption.