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Review of the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007*

June 2012

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Introduction

This is a report of the review of the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* (the WA Act) required under section 6 of the WA Act. The review was undertaken by the Department of the Premier and Cabinet, and examines the operation of, and the effect on Western Australia of the operation of the Commonwealth *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth Act) as adopted by the WA Act. The report of the review is required to be tabled in both Houses of Parliament no later than 6 months before the WA Act expires on 31 January 2013.

The trans-Tasman mutual recognition scheme is an extension of the national mutual recognition scheme¹ and, in general terms, subject to exceptions and exemptions, allows:

- goods produced in or imported into one State or Territory that may be lawfully sold in that State or Territory to be sold in New Zealand and vice versa without the need to comply with further sale-related regulatory requirements; and
- a person registered to practise an occupation in one State or Territory to practise and equivalent occupation in New Zealand and vice versa.

The Department of the Premier and Cabinet advertised for submissions to the review publicly and also sought submissions directly from a range of stakeholders. No significant issues with the operation of, or effect on Western Australia of the scheme were identified, and none of the submissions recommended that Western Australia withdraw from the scheme. Therefore, in accordance with section 6(2) of the WA Act, the report recommends that Western Australia's adoption of the Commonwealth Act should continue.

Review Process

The WA Act provides that the Minister is to review the operation of, and the effect on Western Australia of the operation of, the Commonwealth Act as adopted by the WA Act. The Premier is the Minister responsible for administering the WA Act and asked the Department of the Premier and Cabinet to undertake the review.

The terms of reference for the review are:

1. to review the operation of the *Trans-Tasman Mutual Recognition Act 1997* (Cth) as adopted by Western Australia under the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007*; and

¹ Clause F, Intergovernmental Arrangement on Trans-Tasman Mutual Recognition, 1996.

2. to review the effect on Western Australia of the *Trans-Tasman Mutual Recognition Act 1997* (Cth) as adopted by Western Australia under the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007*.

The Premier wrote to the Prime Minister of Australia, the Prime Minister of New Zealand, State Premiers and Chief Ministers to inform them of the review and invite submissions.

The Director General of the Department wrote to all Ministers seeking submissions and to occupational registration authorities requesting data and comments on the operation of the scheme. He also wrote to the Western Australian Chamber of Commerce and Industry and Fruitwest inviting submissions to the review.

The Department of the Premier and Cabinet advertised for submissions in *The West Australian* on 8 February 2012, in the weekly CCIWA Newsletter "Business Bytes" on 13 February 2012, and on the Departmental website.²

The closing date for submissions was 2 March 2012. A list of organisations that provided a submission or data is attached to this Report (Attachment 1). The Department would like to thank those who made a submission and for their assistance in this review.

Under section 6(2) of the WA Act, the Minister is to table this report in both Houses of Parliament and provide a recommendation as to whether or not adoption of the TTMRA by Western Australia should continue.

The review is to be completed and reports laid before each House of Parliament not later than 6 months before the day five years after the WA Act came into operation, that is, before 31 July 2012.

Background to Mutual Recognition

Mutual recognition was one of the micro-economic reforms of the 1990s. A national scheme was established first to promote the freedom of movement of goods and service providers in Australia by removing barriers caused by cross-border differences in regulations³. The Commonwealth, State and Territory Governments signed an Intergovernmental Agreement on Mutual Recognition (MR IGA) on 11 May 1992 to establish the national scheme based on the following principles:

- the sale of goods in a State or Territory if the goods can be sold lawfully in another State or Territory; and

² "Review of the *Trans-Tasman Mutual Recognition Act (Western Australia) 2007*," last modified 6 February 2012, <http://www.dpc.wa.gov.au/Consultation/Pages/Trans-TasmanActReview.aspx>.

³ Clause A, Intergovernmental Agreement on Mutual Recognition, 1992.

- the carrying on of an occupation in a State or Territory by a person who is registered in connection with an equivalent occupation in another State or Territory.⁴

Western Australia became a participating party in the national mutual recognition scheme in 1995⁵ and renewed its participation for another ten years after passing the *Mutual Recognition (Western Australia) Act 2010*, which commenced on 1 March 2011.

The MR IGA foreshadowed the extension of the national mutual recognition scheme to New Zealand, with parties agreeing to review potential benefits of New Zealand's participation consistent with the Australia-New Zealand Closer Economic Relations Trade Agreement.⁶ The Intergovernmental Arrangement on Trans-Tasman Mutual Recognition (TTMRA) was signed by Commonwealth, State and Territory Governments on 14 June 1996 and by the New Zealand Government on 9 July 1996 (TTMR IGA).

The trans-Tasman mutual recognition scheme is based on the following two principles:

- a good that may be legally sold in one State or Territory may be sold in New Zealand and a good that may legally be sold in New Zealand may be sold in the State or Territory; and
- a person registered to practise an occupation in a State or Territory is entitled to practise an equivalent occupation in New Zealand and a person registered to practise an occupation in New Zealand is entitled to practise an equivalent occupation in a State or Territory.⁷

The overarching objective of the TTMR IGA is to “*remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand, and to thereby facilitate trade between the two countries*”.

The Government of New Zealand noted in its submission to the review that the TTMR scheme is “*the most advanced market to market mutual recognition model in the world*”, a “*central driver of economic integration between Australia and New Zealand*”, and “*a cornerstone of the broader framework to create a seamless trans-Tasman business environment – a Single Economic Market (SEM)*”. The Prime Ministers of Australia and New Zealand endorsed the SEM Outcomes Framework in 2009,⁸ which seeks to “*address behind the border impediments to trade by identifying innovative and low-cost actions that could reduce discrimination and costs arising from conflicting or duplicate regulations or institutions*”.

⁴ Clause B, Intergovernmental Agreement on Mutual Recognition, 1992.

⁵ *Mutual Recognition (Western Australia) Act 1995 (WA)*.

⁶ Clause 9.1, Intergovernmental Agreement on Mutual Recognition, 1992.

⁷ Clause G, Intergovernmental Arrangement for Trans-Tasman Mutual Recognition, 1996.

⁸ http://archive.treasury.gov.au/ttoig/content/original_outcomes_proposals.asp

The general premise underpinning the national and trans-Tasman mutual recognition principles is that the regulatory requirements of one jurisdiction meet community expectations, and should be acceptable in another jurisdiction. The Second Reading Speech to the Commonwealth Trans-Tasman Mutual Recognition Bill 1996 notes *“the scheme reflects the high degree of confidence which exists between Australia and New Zealand in respect of each other’s regulations, regulatory systems and decision-making processes”*.⁹ Notwithstanding this premise, a number of Commonwealth and State laws that would be unintentionally affected by mutual recognition are excluded from the operation of the scheme, or are exempted on public safety or environmental grounds. It was the intention of the parties to the TTMR IGA that these exceptions and exemptions be minimised and for the trans-Tasman scheme to be consistent with the exceptions and exemptions to the national scheme as much as possible.¹⁰

The trans-Tasman mutual recognition scheme was expected to enhance the international competitiveness of Australian and New Zealand enterprises, increase the level of transparency in trading agreements, encourage innovation and reduce compliance costs for business.¹¹

The national and trans-Tasman mutual recognition schemes do not interfere with a jurisdiction’s regulatory environment. Jurisdictions can continue to regulate goods and occupations, but for matters that fall within the scope of the schemes, mutual recognition ensures that regulatory differences between jurisdictions are accepted. This may, in some circumstances, result in lower standards than those applying locally having to be accepted by some jurisdictions, but the expectation was that the schemes would provide an incentive for harmonisation and inter-jurisdictional agreement on minimum regulatory requirements. Since the national and trans-Tasman schemes have been in operation, there have been a number of national and trans-Tasman initiatives designed to standardise and minimise regulatory differences between jurisdictions.

Legislation

The Commonwealth Act is based on a text-based referral of power from the Parliament of New South Wales, and came into force on 1 May 1998. To implement the scheme, States and Territories needed to enact their own legislation to adopt the Commonwealth Act in order to become participating parties in the scheme. Western Australia was the last jurisdiction to enact adoption legislation, and became a participating party when the WA Act commenced operation on 1 February 2008. The WA Act adopts the Commonwealth Act under section 51(xxxvii) of the Australian Constitution, which means that the Commonwealth Act is extended as a

⁹ Australia, House of Representatives 1996, Trans-Tasman Mutual Recognition Bill 1996, Second Reading, Hansard, 7624.

¹⁰ Clauses F, H, Intergovernmental Arrangement for Trans-Tasman Mutual Recognition, 1996.

¹¹ Clause 9.1, Intergovernmental Agreement on Mutual Recognition, 1992.

Commonwealth law to Western Australia. The adoption can be terminated at any time in accordance with section 3(2) of the WA Act, which allows the Governor to fix a day on which the WA Act ceases to have effect.

Before the WA Act was passed, there had been two earlier attempts by Western Australia to participate in the trans-Tasman mutual recognition scheme. The Trans-Tasman Mutual Recognition (Western Australia) Bill 1999 and the Trans-Tasman Mutual Recognition (Western Australia) Bill 2002 were both considered by Standing Committees which recommended they be passed, but both Bills lapsed from the Notice Paper when the respective Parliaments were prorogued.¹²

The Trans-Tasman Mutual Recognition (Western Australia) Bill 2005, which became the WA Act, was also considered by the Standing Committee on Legislation. The Committee recommended some technical changes to the adoption Bill, and the Bill eventually became law, receiving Royal Assent on 6 December 2007.

One of those technical changes was that the WA Act should adopt the Commonwealth Act as in force on a date fixed by the Legislative Council *“being a date which falls within the period that the Bill is before the Legislative Council”*.¹³ The Standing Committee was concerned that any amendments made to the Commonwealth Act between the Legislative Council’s consideration of the Bill and before the date of Royal Assent would not be able to be scrutinised by the Western Australian Parliament. For this reason, the WA Act adopts the Commonwealth Act as at 25 October 2007.

The referral of power to the Commonwealth by New South Wales did not include an amendment power. Therefore, any amendments to the main provisions of the Act would need to be passed by New South Wales, then the Commonwealth and adopted by individual jurisdictions before they could apply.

The schedules to the Commonwealth Act can be amended by regulation, and the process depends on which schedule is being amended. Schedule 1 lists the Commonwealth and State laws that are excluded from the Commonwealth Act, Schedule 2 lists the Commonwealth and State laws that are permanently exempted from the Act, and Schedule 3 provides for any Commonwealth or State laws that are special exemptions to the Act. As a result of regulatory action in 2010, there are no longer any special exemptions to the Commonwealth Act.

Regulations to amend Schedules 1 and 2 of the Commonwealth Act must be endorsed by all participating jurisdictions before they are made (see section 44(3)

¹² The 1999 Bill was referred to the Standing Committee on Constitutional Affairs (1989 to 2001), which recommended in its report on the Bill - *Trans-Tasman Mutual Recognition (Western Australia) Bill 1999, November 1999, Report 46* - that all clauses be passed. The 2002 Bill was referred to the Standing Committee on Uniform Legislation and General Purposes (2002 to 2005), which also recommended in its report - *Trans-Tasman Mutual Recognition (Western Australia) Bill 2002, October 2002, Report 4* - that the Bill be passed. The 1999 Bill lapsed when the Third Session of the 35th Parliament prorogued on 4 August 2000, and the 2002 Bill lapsed when the Second Session of the 36th Parliament prorogued on 23 January 2005.

¹³ Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 8, Recommendation 1.

and 45(4)). Under section 43(1) of the Commonwealth Act, a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made. "Designated person" is defined in section 4 of the Commonwealth Act and, for a State, this means the Governor or a Minister of the Crown. Regulations to amend Schedule 3 require two-thirds of participating jurisdictions to endorse them before they are made. Technical amendments to Schedules 1 and 2, for example, to omit or reduce the extent of a State law excluded or exempted from the Commonwealth Act, can be made by the Governor General with the endorsement of an individual State.

Section 5(3) of the WA Act expressly acknowledges that schedules to the Commonwealth Act can be amended by regulation. However, to ensure Parliamentary scrutiny of these regulations, the Minister is required under section 4(2) to cause a copy of any regulations amending a schedule to be tabled in Parliament within 14 sitting days after the registration of the regulations in the Federal Register of Legislative Instruments. The following table sets out the Commonwealth regulations that have been made since 25 October 2007:

Commonwealth Regulations made since 25 October 2007	Publication date of Notice of Endorsement in WA Government Gazette	Date Regulations registered in the Federal Register of Legislative Instruments	Date Regulations Tabled in WA Parliament
Trans-Tasman Mutual Recognition Amendment Regulations 2008 (No. 1) ¹⁴	Trans-Tasman Mutual Recognition (Western Australia) Endorsement of Regulations Notice 2008 published on 28 March 2008	14 April 2008	Legislative Assembly - 6 May 2008 (Tabled Paper No. 3821) Legislative Council - 6 May 2008 (Tabled Paper No. 3917)
Trans-Tasman Mutual Recognition Amendment Regulations 2009 (No. 1) ¹⁵	Trans-Tasman Mutual Recognition (Western Australia) Endorsement of Regulations Notice 2009 published on 27 March 2009	17 April 2009	Legislative Assembly - 5 May 2009 (Tabled Paper No. 861) Legislative Council – 5 May 2009 (Tabled Paper No. 695)
Trans-Tasman Mutual Recognition Act 1997 Amendment Regulations 2010 (No. 1) ¹⁶	Trans-Tasman Mutual Recognition (Western Australia) Endorsement of Regulations Notice 2010 published on 22 January 2010	15 March 2010	Legislative Assembly - 20 April 2010 (Tabled Paper No. 1978) Legislative Council – 30 March 2010 (Tabled Paper 1850)
Trans-Tasman Mutual Recognition (Modification of	Trans-Tasman Mutual Recognition (Western	19 April 2010	Legislative Assembly - 4 May 2010 (Tabled Paper No. 2033)

¹⁴ SLI 2008 No. 59

¹⁵ SLI 2009 No. 65

¹⁶ SLI 2010 No. 42

Commonwealth Regulations made since 25 October 2007	Publication date of Notice of Endorsement in WA Government Gazette	Date Regulations registered in the Federal Register of Legislative Instruments	Date Regulations Tabled in WA Parliament
Act) Regulations 2010 (No. 1) ¹⁷	Australia) Endorsement of Regulations Notice (No. 2) 2010 published on 26 February 2010		Legislative Council – 4 May 2010 (Tabled Paper No. 1965)

In general terms, the 2008 and 2009 regulations extend the special exemptions in Schedule 3 of the Commonwealth Act for 12 months, and the 2009 regulations also partially converted the special exemption for gas appliances to a permanent exemption. The 2010 (No. 1) regulations created a permanent exemption for section 9 of the South Australian *Summary Offences Act 1953* which prohibits the sale of drug paraphernalia. The 2010 (No. 2) regulations converted the special exemptions in Schedule 3 to permanent exemptions.

Under section 5 of the WA Act, the Governor can make regulations for the purposes of section 46 of the Commonwealth Act. Section 46 allows individual jurisdictions to temporarily exempt a State law relating to particular kind of goods from the operation of the Commonwealth Act for 12 months. Temporary exemptions can only be made on public safety and environmental grounds. In 2011, Western Australia temporarily exempted the *Weapons Act 1999 (WA)*, *Weapons Regulations 1999 (WA)* and *Firearms Regulations 1974 (WA)* under the *Trans-Tasman Mutual Recognition (Western Australia)(Temporary Exemptions) Regulations 2011*. These regulations were published in the Western Australian Government Gazette on 17 May 2011, commenced on 18 May 2011, and were tabled in the Western Australian Parliament on 24 May 2011.¹⁸ These regulations are discussed in more detail later in the report.

Previous Reviews

There have been several previous reviews of the national and trans-Tasman schemes. In 1997, the Department of the Premier and Cabinet conducted a review of the *Mutual Recognition (Western Australia) Act 1995* in accordance with the review provision of that Act. This review found it was in Western Australia's interest to remain part of the national mutual recognition scheme, and recommended that adoption of the *Mutual Recognition Act 1992 (Cth)* continue.

¹⁷ SLI 2010 No.72

¹⁸ The *Trans-Tasman Mutual Recognition (Western Australia)(Temporary Exemptions) Regulations 2011* were published in the Western Australian Government Gazette on 17 May 2011 at page 1824, and tabled in the Western Australian Parliament on 24 May 2011, Tabled Paper No. 3423.

In 1998, the Council of Australian Governments (COAG) Committee on Regulatory Reform Review Group conducted a review of the Australian Mutual Recognition Agreement and the *Mutual Recognition Act 1992 (Cth)*.

The TTRM IGA provided for a general review of the operation of the arrangement and legislation in 2003 or in conjunction with the second review of the MR IGA, whichever came first. The purpose was to align future reviews of both the trans-Tasman and national schemes, which would then take place at five yearly intervals.¹⁹

In 2003, the Productivity Commission assessed the benefits of the scheme and identified improvements. The COAG Committee on Regulatory Reform was asked to report on the Productivity Commission's findings to COAG. In an interim report to COAG, the Committee on Regulatory Reform recommended the creation of the Cross-Jurisdictional Review Forum (CJRF) comprising representatives from all parties to the MR and TTMR IGAs to provide advice to COAG on the Productivity Commission's findings.

In the next five-yearly review in 2008, the Productivity Commission was asked to:

- assess the coverage, efficiency and effectiveness of both schemes since the 2003 review;
- consider how administrative provisions can be amended and/or enhanced to support more efficient operation of the national and/or trans-Tasman schemes;
- examine whether any components of overseas models of mutual recognition or any other changes might be made to enhance the function of the schemes; and
- explore any possible implications for the operation of the trans-Tasman scheme arising from participating jurisdictions' bilateral engagement with third countries.

The Productivity Commission published its report on 6 February 2009, and found that:

The Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) have increased the mobility of goods and labour around Australia and across the Tasman. In the goods area, mutual recognition has led to lower regulatory compliance costs for firms arising from jurisdictional differences. There is some evidence that this has contributed to the expansion of interstate and trans-Tasman trade. Increased labour mobility and reduced wage dispersion are consistent with the expected effects of mutual recognition of occupational registration.²⁰ (Finding 4.1)

¹⁹ Clause 12.2.1, Intergovernmental Arrangement relating to Trans-Tasman Mutual Recognition.

²⁰ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 82.

The Productivity Commission made a number of specific recommendations and these are referred to later in this report, where relevant. A list of the Productivity Commission's findings and recommendations is attached (Attachment 2).

The recommendations were considered by the CJRF, and a report was provided to COAG and the Prime Minister of New Zealand for endorsement. This was completed on 26 January 2010. Agreed recommendations, including several requiring legislative amendment, were to be progressed or considered as part of the CJRF's forward work program. Several changes have been made to the special and permanent exemption schedules to the scheme, which are discussed in more detail later in this report. However, as the CJRF, which is chaired by the Commonwealth, has not met since 30 June 2010, these other agreed recommendations have not been progressed.

Operation of the Goods Principle in Western Australia

The mutual recognition principle for goods as it applies to Western Australia is that a good that may be legally sold in Western Australia may be sold in New Zealand, and, a good that may legally be sold in New Zealand may be sold in Western Australia, without needing to comply with further sale-related regulatory requirements. In general terms, the principle applies to regulatory requirements relating to the goods themselves and the requirements leading up to the point of sale.

Section 11 of the Commonwealth Act lists the following regulatory requirements that do not have to be complied with:

- requirements relating to the goods themselves, including for example, requirements relating to their production, composition, quality or performance;
- requirements relating to the way the goods are presented, including 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 jurisdiction;
- requirements that any step in the production of the goods not occur outside the jurisdiction; or
- 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 jurisdiction.²¹

The regulatory requirements that continue to apply in a jurisdiction are listed in section 12, and are:

²¹ Section 11, *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

- laws that regulate the manner of sale of goods or the manner in which sellers conduct or are required to conduct their business in the jurisdiction. Examples include:
 - the contractual aspects of the sale of goods;
 - the registration of sellers or other persons carrying on occupation (eg liquor licences);
 - requirements for business franchise licences (eg tobacco licences);
 - the persons to whom goods may or may not be sold (eg the sale of liquor to minors); and
 - the circumstances in which goods may or may not be sold (eg health and hygiene requirements).
- laws that relate to the transportation, storage or handling of goods and are directed at matters affecting the health and safety of persons within the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise, or soil pollution) within the jurisdiction and apply equally to goods produced in or imported into the jurisdiction;
- laws that relate to the inspection of goods (other than laws providing that inspection is a prerequisite to the sale of goods in the jurisdiction) and are directed at matters affecting the health and safety of persons within the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) within the jurisdiction and apply equally to goods produced in or imported into the jurisdiction.

The only submission that the Department received in relation to the operation of these requirements in this jurisdiction was from the Department of Transport highlighting an issue with respect to the application of the goods principle to marine vessels imported from New Zealand. Recreational vessels in Western Australia must, at the point of the first sale or first registration within Australia be fitted with an Australian Builders Plate (ABP). The ABP confirms information about the capability of the vessel. For vessels less than 6 metres in length, the ABP must confirm that the boat complies with certain flotation standards. Recreational vessels in New Zealand do not have to comply with flotation standards, and the application of the goods principle means that these vessels do not have to be fitted with an ABP. Therefore, recreation vessels built in New Zealand are not fitted with flotation foam and no flotation tests are conducted, thus reducing their cost compared to Western Australian built vessels, and a consequential reduction in safety.

However, the submission noted this situation does not exist in other Australian jurisdictions. The *Western Australian Fair Trading (Product Information Standard) Regulations 2005*, which applies the APB Standard, expressly exempts vessels

imported from New Zealand from having to comply. Other jurisdictions may not have an express exemption in their APB legislation, or may only require the APB to be fitted at the point of first registration, possibly making it a 'manner of sale' requirement falling within the scope of section 12 of the Commonwealth Act.

The Department of Transport has indicated its intention to examine the legislation applying the APB in Western Australia and determine what changes need to be made so that vessels imported from New Zealand meet the same safety requirements as vessels built in Western Australia.

The Commonwealth Act provides a defence to a prosecution for an offence against sale of goods laws in an Australian jurisdiction if the defendant claims that the TTMR goods principle applies. The defendant needs to establish the goods concerned were labelled at the point of sale with a statement they were produced in, or imported into, New Zealand, and has no reasonable grounds for suspecting the goods were not produced in or imported into New Zealand. However, the defence cannot be used if the prosecution proves the principle did not apply in the particular case, because, for example, the goods did not comply with requirements imposed by the law of New Zealand.

The Productivity Commission found in its 2009 review that there was no evidence the defence provisions had been used. In conducting this review, the Department also did not find any use of the defence in Western Australia.

Exclusions and Exemptions

Certain Commonwealth and State laws are excluded or exempted from the operation of the Commonwealth Act. Excluded laws are laws that jurisdictions identified as being unintentionally affected by the goods principle and are excluded to the extent that those laws would be affected. Exempted laws are those that are potentially covered by the goods principle but jurisdictions have agreed that mutual recognition should not apply.

Exclusions – Schedule 1

Laws in relation to the following are excluded from the operation of the Commonwealth Act:

- customs controls and tariffs, but only to the extent that the laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing activities) and the prohibition of restriction of imports;
- intellectual property, but only to the extent that the laws provide for the protection of intellectual property rights and relate to requirements for the sale of goods set out in section 11;

- taxation and business franchises, but only to the extent that the laws relate to taxes imposed on the sale of locally produced and imported goods in a non-discriminatory way, including, for example, business franchise and stamp duties; and
- the implementation of international obligations, but only to the extent that the laws implementing those obligations deal with the requirements relating to the sale of goods set out in section 11.

In relation to intellectual property exclusion, the particular Western Australian legislation excluded from the operation of the Commonwealth Act is the *Armorial Bearings Protection Act 1979 (WA)*. In relation to the taxation and business franchises exclusion, there is a general exemption for State laws “*imposing or providing for the imposition, assessment or collection of taxation, including stamp duties, and providing for business licences*”.²²

These exclusions have remained unchanged since the commencement of the Commonwealth Act.

Temporary Exemptions

A temporary exemption allows an individual jurisdiction to ban the sale of a good in its jurisdiction for the purpose of protecting the health and safety of persons or preventing, minimising or regulating environmental pollution within the jurisdiction.²³

A temporary exemption is the trigger for a Ministerial Council to determine whether:

- mutual recognition should continue to apply as there is no real threat to public health, safety or the environment;
- the regulatory requirements should be harmonised or brought into alignment between jurisdictions in some other way; or
- mutual recognition should not apply and the good or law should be exempted permanently from the scheme.

There are guidelines on the COAG website that explain the process for seeking a temporary exemption.²⁴ An exemption only has effect for 12 months but unlike the national scheme, can be continued by Commonwealth regulation for another 12 months for legislative or other action taken to implement a Ministerial agreement.

As noted earlier in this report, Western Australia invoked temporary exemptions for the *Weapons Act 1999 (WA)*, *Weapons Regulations 1999 (WA)* and *Firearms Regulations 1974 (WA)*. The *Weapons Act 1999 (WA)* and the *Weapons Regulations 1999 (WA)* post-dated the Commonwealth Act. The *Firearms Regulations 1974 (WA)* was omitted at the time the Commonwealth Act was drafted.

²² Schedule 1, Part 2, clause 5 *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

²³ Section 47(3), *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

²⁴ “Mutual Recognition,” last modified 14 January 2009, http://www.coag.gov.au/mutual_recognition/index.cfm#mutual.

The Standing Council on Police and Emergency Management agreed on 11 November 2011 to the Western Australian legislation being permanently exempted from the scheme, and the Commonwealth Government is preparing the required Commonwealth regulations. However, as one jurisdiction did not provide confirmation of its support for the conversion until 18 May 2012, the Western Australian regulations have expired.

The Drug and Alcohol Office recommended in its submission that Western Australia “reserve the right under the scheme to act unilaterally to ban the sale of substances and goods in Western Australia that may be legally sold in New Zealand” and provided two examples where goods (drug paraphernalia) and substances (emerging psychoactive drugs) banned in Western Australia were able to be sold legally in New Zealand. As noted earlier in this report, mutual recognition does not interfere with a jurisdiction’s regulatory environment, but mutual recognition will apply to goods within the scope of the Commonwealth Act. Where goods do fall within scope, jurisdictions can use the temporary exemption process to unilaterally ban a good, and work with other jurisdictions to agree to a permanent exemption.

South Australia obtained a permanent exemption for section 9B of the *Misuse of Drugs Act 1953 (SA)*, which prohibits the sale of drug paraphernalia.²⁵ Western Australia indicated at the time that it would consider options for exempting Western Australian legislation once the 2011 amendments to the *Misuse of Drugs Act 1981 (WA)* were passed. The Department of the Premier and Cabinet will work with the WA Police Service to develop a temporary exemption for section 7B of the *Misuse of Drugs Act 1981 (WA)*.

In relation to emerging psychoactive drugs, following Western Australia’s ban of seven synthetic cannabinoids (including Kronic) under the *Poisons Act 1964 (WA)*, national action was taken to ban eight substances (including the seven banned in Western Australia), under the *Therapeutic Goods Act 1989 (Cth)*. This ban has been in place since 8 July 2011. The *Therapeutic Goods Act 1989 (Cth)* is permanently exempted from the application of the Commonwealth Act. On 5 August 2011, Western Australia banned a further 14 synthetic substances, and banned methylenedioxypyrovalerone (MDPV) on 11 February 2012. These substances will be added to the *Therapeutic Goods Act 1989 (Cth)* on 1 May 2012 together with eight groups of synthetic cannabinoids and a group entry for all synthetic cannabinomimetics. From 5 August 2011, New Zealand imposed a 12 month ban on the sale and supply of 43 identified synthetic cannabinoid products, including Kronic, to assess the safety of the products.

Until the commencement of the Australian Consumer Law (ACL) on 1 January 2010²⁶, jurisdictional product safety bans on products also had to be temporarily exempted under the mutual recognition schemes to be enforceable.

²⁵ *Trans-Tasman Mutual Recognition Act 1997 Amendment Regulations 2010 (No. 1)*.

²⁶ The Australian Consumer Law is contained in the *Competition and Consumer Act 2010 (Cth)*.

Bans on consumer products within the scope of the ACL are now automatically exempted from the operation of the national and trans-Tasman schemes.²⁷

Permanent Exemptions – Schedule 2

Schedule 2 of the TTMRA provides a list of general and specific Commonwealth and State laws relating to goods exempt from the operation of the scheme. The exempt general laws relate to quarantine and endangered species. The exempt specific laws relate to firearms and other prohibited or offensive weapons, fireworks, gaming machines, gas appliances, indecent material, ozone protection, therapeutic goods, hazardous substances, industrial chemicals and dangerous goods, radiocommunication devices, road vehicles (to the extent they deal with the regulation of child restraints) and gas appliances.

The permanent exemptions for gas appliances, hazardous substances, industrial chemical and dangerous goods, therapeutic goods, radiocommunication devices and road vehicles were originally special exemptions in Schedule 3 and converted to permanent exemptions following regulatory action in 2010. This is explained in more detail in the section on special exemptions.

An issue that attracted the attention of the WA Parliament during the passage of the WA Act and previous Bills was the scope of the permanent exemption for State quarantine laws.

The permanent exemption for quarantine states:

A law of an Australian jurisdiction, including a law relating to quarantine, to the extent that:

- (a) the law is enacted or made substantially for the purpose of preventing the entry or spread any pest, disease, organism, variety, genetic disorder or any other similar thing;*
- (b) the law authorises the application of quarantine measures that do not amount to an arbitrary or unjustifiable discrimination or to a disguised restriction on trade between Australia and New Zealand and are not inconsistent with the requirements of the Agreement establishing the World Trade Organisation.*

Both the Standing Committee on Uniform Legislation and General Purposes and the Standing Committee on Legislation considered the application of mutual recognition to the importation of apples from New Zealand. The Committee on Legislation observed the Commonwealth Act does no more than reflect Western Australia's existing obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures.²⁸

²⁷ See sections 120 and 121 of the *Competition and Consumer Act 2010 (Cth)*.

²⁸ Standing Committee on Legislation, *Trans-Tasman Mutual Recognition (Western Australia) Bill 2005*, June 2007, 38.

In its submission to this review, the Department of Agriculture and Food noted the Commonwealth Act does not inhibit Western Australia's ability to protect its biosecurity freedom from a range of pest and diseases because the Commonwealth Act does not override State biosecurity Acts and Regulations. The Department of the Premier and Cabinet did not receive any submissions from any industry group in relation to the scope of the permanent exemption for quarantine matters.

Special Exemptions

At the time the TTMR IGA was agreed, there were five categories of goods where Australian and New Zealand regulations differed significantly, but where parties agreed to expedite the examination of these differences with a view to either addressing them through mutual recognition, harmonisation or permanent exemption. Cooperation Programmes were established for:

- therapeutic goods;
- hazardous substances, industrial chemicals and dangerous goods;
- electromagnetic compatibility and radiocommunications standards;
- road vehicles; and
- gas appliances.

In 1999, a consumer product safety standard special exemption was also created, but was subsequently removed in 2003 as all but one of the relevant standards had been aligned. The special exemption for child car restraints remained. In 2009, the special exemption for gas appliances was partially converted to a permanent exemption for liquefied petroleum gas (LPG) appliances not tested and certified to operate safely on universal LPG, and flueless cabinet heaters, on safety grounds.

Special exemptions only operated for 12 months. Cooperation programs were overseen by Ministerial Councils, and regulatory authorities responsible for the cooperation reports prepared annual progress reports for Ministerial Council consideration three months before the special exemptions expired.

For eleven years, regulatory action was taken to roll the special exemptions over. As noted earlier, Commonwealth regulations were tabled in the WA Parliament in 2008, 2009 and 2010 extending the operation of the special exemptions. Following the 2009 review of the schemes by the Productivity Commission, jurisdictions agreed to remove the special exemptions from Schedule 3 and convert them into permanent exemptions. Western Australia's notice of endorsement was published in the Government Gazette on 26 February 2010. The Commonwealth regulations were tabled in the WA Parliament on 4 May 2010. The conversion to permanent exemptions removed the need for the annual rollover process, but continues to allow trans-Tasman collaboration in areas where regulatory harmonisation is realistically achievable. The permanent exemptions will be reviewed as part of the five yearly reviews of the schemes.

Effect of the Goods Principle in Western Australia

The Productivity Commission in its 2009 report examined the economic impacts of the goods principle on compliance costs for businesses operating across jurisdictions, the alignment of standards, and goods mobility.

Compliance Costs

The Productivity Commission identified a number of ways that mutual recognition can assist businesses selling products in more than one jurisdiction. These businesses do not have to meet multiple grading, packaging and labelling requirements, product safety standards, or testing, certification or conformance assessment requirements, and may experience lower storage and depreciation costs. The Productivity Commission noted the evidence on the impacts of mutual recognition on compliance costs is limited, but anecdotal evidence “*suggests that where it is effectively applied, the compliance costs avoided or reduced through mutual recognition can be substantial*”.²⁹

The Department of the Premier and Cabinet did not receive any submissions to this review that highlighted the reduction of particular compliance costs. The Department of Agriculture and Food noted in its submission that the scheme:

does offer a useful mechanism for reducing red tape and regulatory barriers to Western Australian agrifood exporters seeking to access the New Zealand marketplace. This is a repetitive theme expressed by businesses in the State of wanting Government's to find ways of reducing the cost and complexity of doing business and the regulatory burdens faced especially by smaller and medium enterprises. From this view point, the TTMRA acts as an effective way of making Western Australian exporters products more competitive, especially in the current climate of other countries seeking to sign Free Trade Agreements to gain preferential access for their exporters. The TTMRA will hopefully ensure that WA exporters can continue to effectively compete in the New Zealand marketplace against potential foreign competitors.

The Government of New Zealand noted in its submission the trans-Tasman scheme delivers benefits to all stakeholders through lower prices, and that reduced costs “*are likely to have contributed to the growth in trans-Tasman trade*”.

Alignment of Standards

One of the expected benefits of mutual recognition was greater harmonisation of regulations between regulators. The Productivity Commission reported the number

²⁹ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 47.

of joint or aligned standards between Australia and New Zealand grew by over 200 percent between 1997 to 2008.³⁰

The Department of Commerce advised in its submission to the review that Australian and New Zealand electrical and gas safety regulatory authorities have negotiated mutually agreed changes to their respective regulatory regimes to achieve greater regulatory alignment.

Under the Act, all electrical appliances certified and/or sold in one state in Australia can be traded in all states/territories and New Zealand without further certification. In 2007, the Electrical Regulatory Authorities Council (ERAC) recognised that a changing marketplace profile, including a greater reliance on imported electrical equipment, was increasing the risks of unsafe electrical equipment being supplied in Australia and New Zealand. These emerging problems and challenges led regulators to agree that a comprehensive review of the Electrical Equipment Safety System was essential to providing a strategic direction for future regulatory policy. In 2009, the relevant Ministers' responsible for electrical safety in each jurisdiction signed a Regulatory Impact Statement which resulted in a new system to come into effect during 2012. These changes will eliminate the current need for businesses and workers to operate within differing rules and electrical equipment certification systems across States and Territories.

From 1 July 2012, Queensland and Victoria will begin operating the new Electrical Equipment Safety System. The system is underpinned by nationally consistent legislation that establishes risk-based harmonised rules for certification of all types of electrical equipment. All other Australian jurisdictions and New Zealand will be amended to align with the new system. Once the new ERAC appliance safety scheme becomes operational, the approvals of electrical appliance will not rely on the Act. All regulators in Australia and New Zealand will be using a common database and a common Regulatory Compliance Mark.

Goods Mobility

The Productivity Commission noted in its report that the possible effects of mutual recognition on trans-Tasman goods markets include improved goods mobility through increased trade, greater consumer choice and the increased competitiveness of business, but that “it is difficult to isolate the effects of mutual recognition on goods mobility from other factors explaining variations in trade flows over time”.

For the purposes of this review, the Department of the Premier and Cabinet examined Australian Bureau of Statistics published data on the value of merchandise

³⁰ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 53.

exports and imports between Australia and New Zealand. In relation to exports, the data shows that since 2006-7, there has been a steady decrease in exports from Western Australia to New Zealand.

WA Exports to New Zealand 2006-2011³¹

	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
WA Exports to New Zealand (\$b)	1.1	1	0.6	0.4	0.3
Total WA Exports (\$b)	60.5	68.8	86.8	83.3	112.1
WA Exports to New Zealand as a proportion of Total WA Exports	1.82%	1.45%	0.69%	0.48%	0.27%

This data does not exclude goods that may be subject to temporary or permanent exemption from the scheme.

The decrease in exports could be the result of the contraction in the New Zealand economy following the global financial crisis rather than as a consequence of Western Australia commencing its participation in the scheme. According to data from the Commonwealth Department of Foreign Affairs and Trade, New Zealand's GDP remained unchanged between 2007-2008, but contracted by \$13.7b between 2008 and 2009. In 2008 and 2009, New Zealand experienced negative growth in Real GDP of 0.1% and 2% respectively. At the same time Australia's total merchandise exports to New Zealand fell across all categories of merchandise from approximately \$9b in 2007-08 to \$7.7b in 2010-11 (falling 4.1% in 2010-11).³²

In relation to agrifood exports, the Department of Agriculture and Food submitted that:

New Zealand is a small market for Western Australian agrifood exporters ranking 33rd in 2010/11 with a value of A\$16 million. This represents 1 percent of Australia's total agrifood exports to New Zealand of \$1.34 billion and 0.003 percent of the State's total of \$5.182 billion of agriculture, fisheries and forestry exports. New Zealand is a smaller market as the State's industries tend to focus on North and South East Asia and the Middle East due to advantages in transportation times and distances as well as established markets and future growth potential.

³¹ WA exports to New Zealand - Department of State Development, Total exports to New Zealand, and ABS report no. 5368.0, International Trade in Goods and Services, Australia, January 2012.

³² Department of Foreign Affairs and Trade Fact Sheet on New Zealand, December 2011.

Data for goods imported from New Zealand shows an increase in the value of merchandise imports in 2007-08 and 2008-09 to a level which has remained steady in the last two financial years.

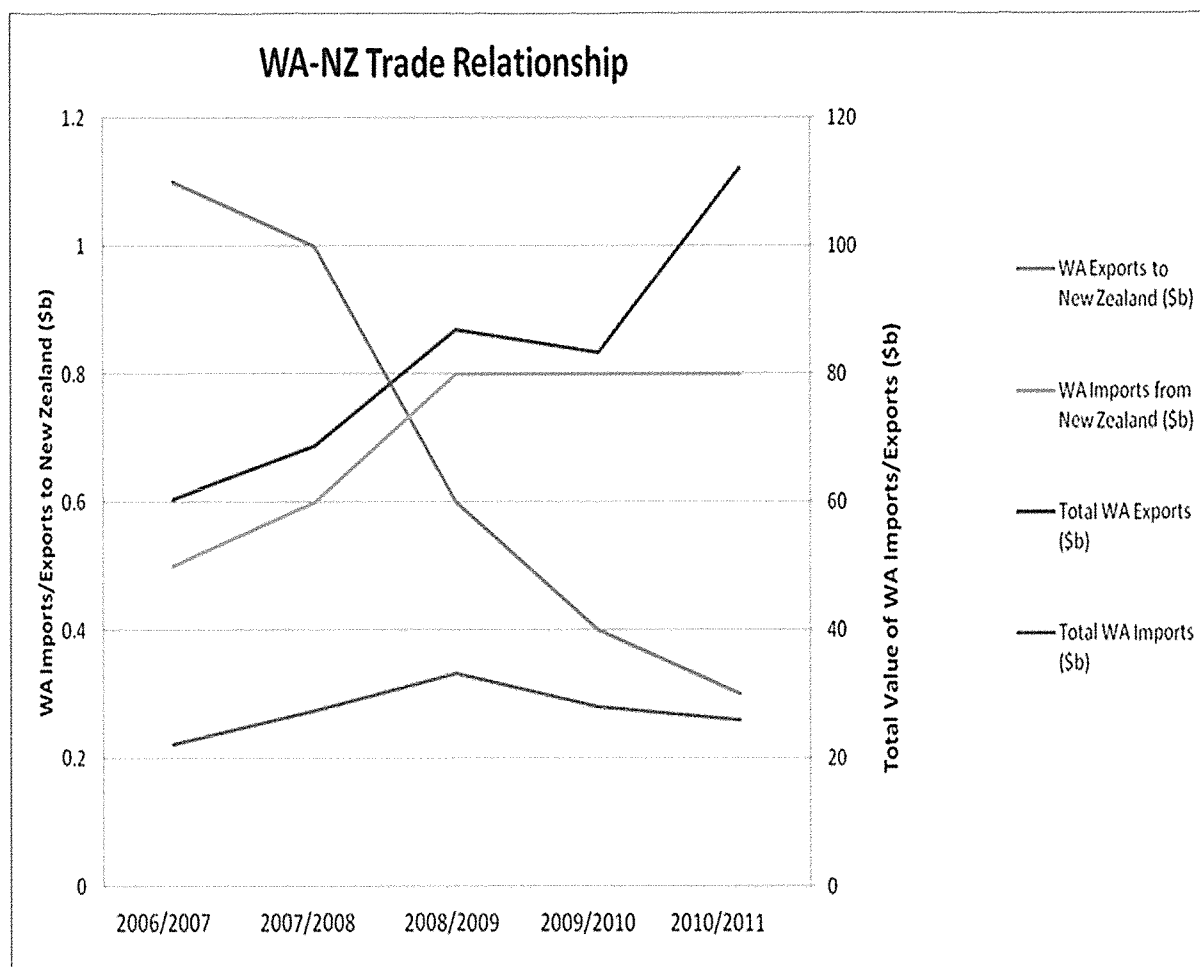
WA Imports from New Zealand 2006-2011³³

	2006- 2007	2007- 2008	2008- 2009	2009- 2010	2010- 2011
WA Imports from New Zealand (\$b)	0.5	0.6	0.8	0.8	0.8
Total WA Imports (\$b)	22.126	27.354	33.122	27.937	25.955
WA Imports from New Zealand as a proportion of Total WA Imports	2.26%	2.19%	2.42%	2.86%	3.08%

It may be possible to argue that Western Australia's participation in the trans-Tasman scheme has contributed to the increase in value of merchandise imports from New Zealand, and that Western Australian consumers have benefited through increased choice and greater competition as a result.

The following graph shows both the value of merchandise imports and exports between New Zealand and Western Australia between 2006 and 2011:

³³ Department of State Development, Total imports to New Zealand, and ABS report no. 5368.0, International Trade in Goods and Services, Australia, January 2012.



The Government of New Zealand noted in its submission that “*trans-Tasman trade has grown substantially since the CER [Australia New Zealand Economic Relations Trade Agreement] was signed in 1983 and today the two-way trade in goods between Australia and New Zealand is worth over \$18 billion per annum. This is also likely to have flow on effects e.g. increased competition leading to an incentive for companies to innovate, providing consumers with greater product choice*”.

Apart from the submissions from the Government of New Zealand and the Department of Agriculture and Food, the Department did not receive any other submissions in relation to the economic impact of the goods principle in Western Australia.

Operation of the Occupations Principle in Western Australia

The mutual recognition occupations principle as it operates in Western Australia is that a person registered to practise an occupation in Western Australia is entitled to practise an equivalent occupation in New Zealand and vice versa.

Occupation is defined in section 4 of the Commonwealth Act as “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 and proper) and includes a specialisation in any of the above in which registration may be granted”.

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 carrying on an occupation. The only registered occupation exempt from the TTMR is medical practitioners.³⁴

The scope of the occupations principle was considered in detail by the Productivity Commission in its 2009 review. It found there is uncertainty about the types of occupational registration covered by the schemes. The CJRF future work program includes exploring issues relating to the application of mutual recognition to co-regulatory licensing arrangements, and to investigate what action is necessary to clarify that de facto and negative licensing are not covered by the schemes. The scope of coverage was not raised in any submission to this review.

The process for a person registered for an occupation in New Zealand to obtain registration in Western Australia is, in summary:

- applicant lodges written notice containing certain specified information and documentation with occupational registration authority seeking registration in an equivalent occupation;
- on lodgement of the notice, applicant has ‘deemed’ registration in Western Australia, and can practise the occupation subject to certain limitations and requirements;
- the occupational registration authority has one month from date of lodgement to grant, postpone or refuse registration;
- if registration authority takes no action within the month, then registration is automatic and can only be reversed if fraud was involved; and
- registration authority must give the applicant notice in writing of its decision to postpone or refuse the grant of registration, or impose conditions on registration.

A more detailed description of the registration process is outlined in Attachment 3 to this report.

³⁴ Schedule 4, *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

The Commonwealth Act requires registration authorities to share information with registration authorities in other jurisdictions regarding applicants³⁵ and this information is to be provided without delay. The Western Australian College of Teaching advised in its submission that *“national agreements on processing teacher registration applications under Mutual Recognition provisions have been reached through the Australasian Teacher Regulatory Authorities Incorporated. A compliant, efficient, timely and reliable scheme has been established, with most cross-jurisdictional checking completed within two days.”*

Under section 39(2) of the Commonwealth Act, registration authorities are to prepare and make guidelines available about the operation of the Commonwealth Act as it applies to occupations they are responsible for registering. Guidelines are not prescribed. Almost all of the registration authorities contacted by the Department of the Premier and Cabinet for the purposes of this review advised they had prepared guidelines or provided information about the scheme in application forms. The Department was advised guidelines are not available for several occupations that the Building Commission³⁶ commenced regulating recently, and Employment Agents.³⁷ The Department of Commerce has advised that a new web page outlining both national and trans-Tasman mutual recognition scheme requirements for all equivalent occupations administered by the Commissioner for Consumer Protection, including Employment Agents, is being developed. There is no requirement in section 39(2) to publish these guidelines.

There is also a *User’s Guide to the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement* available on the COAG website, although these guidelines are out of date as they still show Western Australia as not participating in the trans-Tasman scheme.³⁸ The Department of the Premier and Cabinet has previously requested changes to the User Guide, but a revised Guide has not been uploaded.

Local registration authorities can impose fees in relation to deemed or substantive registration, so long as they are not greater than fees charged for non-TTMR registrations. A local registration authority may also 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.

³⁵ *Trans-Tasman Mutual Recognition Act 1997 (Cth)*, section 37.

³⁶ The Building Services Board regulates plumbers, painters and builders, and the Commonwealth Act has only applied to the registration of these occupations since 29 August 2011 when the *Building Services Registration Act 2011 (WA)* commenced. From 2 April 2012, the Building Commission will also regulate Building Surveyors under the *Building Act 2011 (WA)*. Guidelines for plumbers have been developed. In relation to builders and painters, relevant ‘Practitioner Application Guidelines’ request applicants to provide a mutual recognition declaration and copies of either interstate or New Zealand licences or registrations, if applicable.

³⁷ There has never been an application made for registration as an Employment Agent under the Commonwealth Act in Western Australia.

³⁸ Commonwealth of Australia. *A User’s Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA)* (2006), http://www.coag.gov.au/mutual_recognition/docs/mutual_recognition_users%27_Guide.pdf.

The Department of the Premier and Cabinet sought data from occupational registration authorities on the number of applications received for registration under the trans-Tasman scheme since the WA Act commenced. Only two registration authorities did not supply data.

OCCUPATIONS	TTMRA	TOTAL ³⁹
Architects	1	1150
Builders ⁴⁰	0	Not supplied
Dangerous Goods drivers	37	3760
Debt Collectors	0	70
Electrical worker ⁴¹	365	5040
Employment Agents	0	619
Gas Worker ⁴²	8	1670
Land Valuers	4	746
Legal practitioner	71	5177
Mine safety ⁴³	13	Not supplied
Motor Vehicle Dealers	0	762
Motor Vehicle Salespersons	0	1929
Motor Vehicle Yard Managers	0	1115
Painters ⁴⁴	0	Not supplied
Plumbers	110	6500
Real Estate Agents	1	3691
Real Estate Sales Representatives	13	9527
School Teachers ⁴⁵	475	48557
Security ⁴⁶	0	Not supplied
Settlement Agents	0	643
Shot firers	2	3505
TOTAL	1101	94461

Based on the data provided and noting some of the data only covered part of the time period, an estimated 1 percent of all occupational registrations in Western Australia occurred under the trans-Tasman occupations principle between 1 February 2008 and 31 January 2012.

³⁹ As at 31 January 2012.

⁴⁰ As noted in footnote 36, registration for builders under the Commonwealth Act has only been available since 29 August 2011.

⁴¹ This data is based on registrations from 15 August 2010 to 10 February 2012.

⁴² This data is based on registrations from 15 August 2010 to 10 February 2012.

⁴³ Mine safety occupations are: 1st class Mine Manager, 1st class Mine Manager (underground); A Grade Quarry Manager; B Grade Quarry Manager; and A Grade Quarry Manager. Data is from July 2010 and represent certificates issued for mutual recognition applications. Prior to this date, the Department were issuing letters advising applicants that their certificate is mutually recognised.

⁴⁴ As noted in footnote 36, registration for painters under the Commonwealth Act has only been available since 29 August 2011.

⁴⁵ This data is from April 2008.

⁴⁶ The following licences can be issued under the *Security and Related Activities (Control) Act 1996 (WA)*: crowd controller; investigator; security bodyguard; security consultant; security officer; and security installer.

The Department of the Premier and Cabinet had asked registration authorities to identify new registrants, that is, a person who was not registered in a previous year, but few registration authorities were able to provide this data, and the data that was received was not significant. The Department also requested data on the number of applicants from New Zealand that did not use the WA Act to register, but this data is not collected. The WA College of Teaching indicated in its submission that if an applicant has not used mutual recognition, they are advised to resubmit their application if the normal registration process would disadvantage them. The Department of Mines and Petroleum also advised in relation to dangerous goods drivers, that “numerous” drivers from New Zealand come to Western Australia to drive dangerous goods vehicles. However, many apply for a Western Australian licence because of employer preference, and because they receive a three year licence, rather than the balance of their New Zealand licence under the trans-Tasman scheme. The Legal Practice Board advised that no New Zealand lawyers applied for admission under the *Legal Profession Act 2008 (WA)*.

Since the WA Act has been in operation, a number of Western Australian occupational registration boards have been abolished as a result of Western Australia’s participation in the Australian Health Practitioner scheme. The Australian Health Practitioner National Law⁴⁷ commenced in 2010 and created a national registration and accreditation scheme for health practitioners. The Australian Health Practitioner Regulation Agency currently oversees the registration in the following professions: chiropractors; dentists (including dental hygienists, dental prosthetists and dental therapists); medical practitioners; nurses and midwives; optometrists; osteopaths; pharmacists; physiotherapists; podiatrists; and psychologists.⁴⁸ Section 9 of the *Health Practitioner National Law (WA) Act 2010* continues the operation within Western Australia of the trans-Tasman mutual recognition occupations principle. The Minister for Health advised in his submission to the review that “*under previous Western Australian health profession specific legislation, health practitioners registered in NZ were able to register with the corresponding Western Australian board without the need for further testing or examination. At this time Western Australia boards monitored were able to clearly identify registrants who applied directly from NZ*”.

Registration authorities were also asked to provide data on the number of applications made under the WA Act that had been rejected but this data is not generally collected. The WA College of Teaching was able to advise that 27 applications have been rejected since the WA commenced on the basis that applicants had, following deemed registration, failed to provide required further information.

⁴⁷ The *Health Practitioner National Law (WA) Act 2010* commenced on 18 October 2010.

⁴⁸ From 1 July 2012, the following professions will join the scheme: Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, medical radiation practitioners and occupational therapists

The entitlement to recognition under the scheme only arises if the occupation in which the person is registered is equivalent to the occupation in which the person is seeking registration. Equivalency can be achieved by the occupational registration authority imposing conditions on a person's registration. Registration authorities have a duty under section 39(1) of the TTMR to make use of the power to impose conditions *"in such a way as to promote the Trans-Tasman mutual recognition principle"*. They cannot impose conditions that would be more onerous than those applied in similar circumstances if the application was not made under the trans-Tasman principle, unless the conditions already apply to a person's registration in New Zealand or are necessary to achieve equivalence.⁴⁹

Information was also sought on the number of applicants whose registration under the trans-Tasman scheme was granted with conditions attached to achieve equivalence. The Department of Commerce advised that licensed plumbers registered in New Zealand can be issued with an equivalent Western Australian tradesperson's licence in water supply and sanitary plumbing, but not drainage. Similarly, certifying plumbers registered in New Zealand can be issued with a Western Australian contractor license in water supply and sanitary plumbing.⁵⁰ Persons who wish to be licensed to undertake drainage plumbing are given the option to complete a Drainage Assessment. The Department of Mines and Petroleum also advised that conditions were attached in relation to one of the shotfirer licences to reflect the conditions specified on the applicant's New Zealand registration.

The Legal Practice Board of Western Australia noted in its submission *"it is sometimes difficult to correlate the conditions imposed in New Zealand to those imposed on WA practitioners"* and that the most common consideration is whether the practitioner should be subject to a period of supervised legal practice in Australia. The Board also advised that the provisions of the Commonwealth Act *"do not always sit neatly with those of the Legal Profession Act 2008"*, and the conditions under which the person is entitled to practice in Western Australia may not be correlated with the conditions under which legal practitioners in Western Australia must practice. Notwithstanding these difficulties, the Board advised it has not rejected any applications for a practising certificate from a legal practitioner admitted under the Commonwealth Act, nor has any legal practitioner admitted under the Commonwealth Act appealed the conditions imposed on their WA practising certificate.

In some professions, national standards have been agreed, making the assessment of equivalency more straightforward. For example, the Architects Board of Western Australia advised the architecture profession has nationally agreed standards for

⁴⁹ Section 19(5), *Trans-Tasman Mutual Recognition Act (Cth)*.

⁵⁰ There is no New Zealand equivalent for contractor level in drainage plumbing but if the Certifying Plumber is also registered as a Certifying Drainlayer in New Zealand, they could be issued with a Western Australian tradespersons licence in Drainage.

initial registration in Australia. These standards do not extend to New Zealand but the New Zealand Registered Architects Board uses the Australian national competency standards and process for accrediting tertiary qualifications in architecture under licence. The Board advised that, as a result:

- *the competency standards required of architects for registration are the same in both countries;*
- *all Registration Boards in Australia recognise tertiary qualifications from accredited schools of architecture in New Zealand; and*
- *although the requirements for practical experience and the examination process differ between Australia and New Zealand, the outcomes are similar.*

The Architects Board of Western Australia noted further that *“the Board is confident that the competence required for registration of a New Zealand architect is similar to that of a Western Australian architect, and hence does not have any concerns with the operation of the Act”*.

The Minister for Police advised a review of equivalent legislation the *Security and Related Activities (Control) Act 1996 (WA)* for the regulation of security officers and crowd controllers in New Zealand found their licensing regime is of a similar standard to Western Australia. This would make the assessment of equivalency a straightforward exercise for these occupations. The Department of Mines and Petroleum advised a national competency system has been implemented for shotfirers which provides for an improved match between Western Australia and New Zealand registrations and, therefore, limits the need for extra conditions.

A concern sometimes raised in relation to the mutual recognition schemes is that they encourage “shopping and hopping”, that is, registrants seek initial registration in the jurisdiction perceived to have the easiest occupational standards to meet, and then use mutual recognition to move to the jurisdiction where they want to work. The Productivity Commission in its 2009 report said that *“shopping and hopping is a desired outcome of mutual recognition reflecting its role in promoting regulatory competition between jurisdictions as there are gains to the economy so long as the first jurisdiction does not set standards so low as to cause harm to the public or the environment”*.⁵¹ The Productivity Commission was not able to identify any systemic problems based on the limited anecdotal evidence it was provided. The Department of the Premier and Cabinet did not receive any submission to this review raising “shopping and hopping” as a concern.

For some occupations, differences in national occupational standards have been addressed through Ministerial Declarations under the national mutual recognition scheme. In 2006-2007, there was a process to declare the equivalency of licences

⁵¹ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 82.

within a number of key priority trades.⁵² The Productivity Commission recommended in its 2009 report that consideration should be given to extending the Ministerial Declarations issued under the national mutual recognition scheme to occupations regulated in New Zealand.⁵³ Section 31 of the Commonwealth Act provides a mechanism for a Minister from New Zealand and a Minister from one or more Australian jurisdiction to jointly declare that specified occupations are equivalent and the conditions that will achieve equivalence. The CJRF recommended to Governments that consideration of whether to extend Australia's declarations of licence equivalency be deferred pending the commencement of the national licensing system.

The national licensing system will, when operational, apply initially to the following trades: plumbers and drainers, electricians, gasfitters, property agents and auctioneers, and refrigeration and air-conditioning mechanics. Builders and building-related occupations, conveyancers, and valuers will be included in system in the second phase of the reform. The Productivity Commission also recommended relevant New Zealand regulators be included in consultations around the development of national licensing systems in Australia.⁵⁴ It is understood that the New Zealand Government is monitoring developments with the national licensing system.

The Commonwealth Act outlines a process for applicants to seek a review of decisions made by registration authorities to the Administrative Appeals Tribunal (AAT). The AAT can make an order that a person registered in an occupation in New Zealand is or is not entitled to registration in an Australian jurisdiction, and can specify the conditions that will achieve equivalence, or make a declaration that occupations are not equivalent. To promote consistency, the AAT is to have regard to the decisions of the Trans-Tasman Occupations Tribunal of New Zealand.⁵⁵ A search of AAT decisions since 2007 did not reveal any applications for the review of a decision by a Western Australian registration authority. In addition, the Department did not receive any submissions from individuals expressing concern about the application of equivalency provisions by Western Australian registration authorities. Therefore, it is possible to conclude the occupations principle is being promoted by occupational registration authorities in this State.

The occupations principle does not affect the operation of laws regulating the conduct of an occupation. Therefore, applicants must comply with any requirements in the jurisdiction with regard to insurance, fidelity funds, trust accounts "and the like" designed to protect the public, clients, customers or others, and are subject to any

⁵² Ministerial Declarations were issued for: electricians; electrical fitters, lineworkers and cable joiners; tradespeople with restricted electrical licences; plumbers and gas-fitters; carpenters and joiners, bricklayers and builders; refrigeration and air-conditioning mechanics; auto-gas installers; motor vehicle repairers; and electrical contractors.

⁵³ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 109.

⁵⁴ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 110.

⁵⁵ Section 35(2), *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

disciplinary provisions that apply.⁵⁶ In addition, if a person's New Zealand registration is cancelled or suspended, or subject to a condition on disciplinary grounds, the person's Australian registration is affected in the same way.⁵⁷ A local registration authority can reinstate a cancelled or suspected registration or waive any condition where appropriate.

Under section 19 of the Commonwealth Act, once a person is registered, their entitlement to registration continues whether or not their registration ceases in New Zealand, and is subject to the laws of the local jurisdiction to the extent that those laws apply equally to all persons carrying on or seeking to carry on the occupation under the law of the jurisdiction, and are not based on the attainment or possession of some qualification or experience relating to their fitness to carry on the occupation.

The Productivity Commission in its 2009 report highlighted some ambiguities in the registration provisions in the Commonwealth Act, particularly in relation to whether local registration authorities can require criminal record checks of persons seeking registration under mutual recognition, and the ability of local registration authorities to impose ongoing requirements (for example, in relation to training or criminal record checks) on people registered under mutual recognition as a condition of continued registration. The CJRF recommended to Governments these ambiguities be clarified by legislative amendment.

The Productivity Commission also made recommendations to strengthen monitoring and oversight of the national and trans-Tasman schemes and regulator expertise. Based on the submissions to this review, it would appear regulators are aware of their obligations. As the use of the Act in this jurisdiction is limited, additional monitoring and oversight activities do not appear necessary.

Effect of the Occupations Principle in Western Australia

The Productivity Commission in its 2009 report examined the costs associated with occupational registration, and labour market impacts.

Costs

The Productivity Commission identified the following costs associated with occupational registration faced by individuals, their employers or local registration authorities:

- direct training costs associated with meeting qualification requirements;
- opportunity costs of meeting these and other registration requirements;
- assessment and certification of qualifications, experience and training;
- application and renewal licensing fees; and

⁵⁶ Section 26, *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

⁵⁷ Section 32, *Trans-Tasman Mutual Recognition Act 1997 (Cth)*.

- time costs associated with completing application procedures.⁵⁸

The Productivity Commission found mutual recognition removes some compliance costs associated with additional training, time spent on processing applications and certification and accreditation costs.

In relation to administrative costs and time associated with the assessment of qualifications and licences, the Department of Commerce noted in its submission in relation to electrical and gas workers' licences that *"mutual recognition arrangements have streamlined registration processes and facilitated workforce mobility, both within Australia and between Australia and New Zealand"* but *"it is sometimes an onerous task for regulators to identify and issue an equivalent licence"* because of significant variations of licence categories, scopes of licences and eligibility requirements for each category of licence across Australia.

The Productivity Commission stated in its 2009 report that *"mutual recognition is likely to lead to substantial savings with respect to the validation and accreditation of qualifications,"*⁵⁹ but the empirical evidence quantifying these savings is limited. The Department of the Premier and Cabinet did not receive any submissions noting the savings generated through the reduction of assessment and accreditation fees.

Labour Mobility

One of the expected benefits of mutual recognition is that the reduction in training and accreditation costs would encourage greater labour mobility between jurisdictions. There is no data available produced by either the Australian Bureau of Statistics or Statistics New Zealand that show the mobility of persons in registered occupations between Western Australia and New Zealand between February 2008 to March 2012.

The Productivity Commission used census data from 1996-2006 to assess labour mobility over the period in which mutual recognition has been operating and found national labour mobility in registered occupations (including New Zealand born persons who had arrived in Australia the year before the census) had increased between 1996 and 2006. The 2011 census data is not available until June 2012.

In its 2009 report, the Productivity Commission also conducted a modelling exercise which showed mutual recognition is likely to have relatively small effect on the wider economy, but could have significant effects at the jurisdictional level with improved mobility contributing to growth in gross state product in the 'boom jurisdictions'.⁶⁰

The Productivity Commission also noted any changes in labour mobility cannot be attributed solely to mutual recognition as other matters, such as employment

⁵⁸ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 57.

⁵⁹ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 59.

⁶⁰ Productivity Commission Review of Mutual Recognition Schemes Report 2009, 72.

opportunities, expected income, cost of living, and quality of life issues, are likely to be factored into a person's decision to move to another jurisdiction.

The WA College of Teaching advised in its submission that *"approximately 50% of New Zealand applicants for teacher registration would not have their application approved if they did not submit under Mutual Recognition provisions. This is because their qualifications would not meet the requirements for new applicants"*. The minimum qualification registration requirement for teachers in New Zealand is a three-year teaching qualification compared to four years in Western Australia. If mutual recognition did not apply, New Zealand teachers would need to undertake an additional year of formal training. The Standing Committee on Legislation in its 2007 report on the *Trans-Tasman Mutual Recognition (Western Australia) Bill 2005 (WA)* noted the WA College of Teaching's view that *"many New Zealand teachers are already informed of the higher qualification requirements in Western Australia and, therefore do not make formal applications"*.⁶¹ Therefore, it can be said that in relation to school teaching, the trans-Tasman mutual recognition scheme has encouraged labour mobility through the reduction in training costs.

The data obtained from registration authorities shows use of the WA Act is limited. Therefore, it is not possible to conclude Western Australia's participation in the trans-Tasman has been a significant factor in encouraging labour mobility, except perhaps in relation to teaching. However, there is general support by registration authorities for Western Australia's continued participation in the scheme.

The Minister for Health noted in his submission to the review that *"the benefits to WA from retaining the Act are those associated with WA being able to directly attract health professionals from NZ. Given the ability of health professionals to move in both directions under the Act, there will also be some costs to WA through the loss of registered health practitioners who choose to move to NZ. It is considered that there are health professional mobility benefits to WA through continuation of the adoption of the Trans Tasman Mutual Recognition Act 1997 (Cth)"*. The Minister for Small Business noted that the Commonwealth Act has *"assisted in addressing critical skill and labour shortages within small businesses that was especially prevalent at the height of the resources boom"*. The Minister noted particularly that in helping to facilitate the movement of skilled workers from New Zealand, Western Australia's ongoing participation in the TTMRA has been an important feature of the State's skills attraction campaigns.

The Minister for Police advised that the trans-Tasman mutual recognitions scheme *"has had no known negative impacts on WA Police in respect to goods or employment"*.

⁶¹ Parliament of Western Australia, Legislative Council, Standing Committee on Legislation, Report 8.

The Government of New Zealand noted in its submission that it does not have specific data to determine fully the effect of the trans-Tasman scheme on Western Australia and New Zealand, and that anecdotal evidence suggests that the scheme has had a positive effect, and that there is scope for the scheme to “*widen the pool of labour for WA’s mining industry*”.

Conclusion

Western Australia was the final jurisdiction to commence participating in the trans-Tasman mutual recognition scheme. In the four years since the WA Act commenced, there are no significant concerns with the operation of the scheme in this State in relation to either the goods principle or the occupations principle.

In relation to occupations, registrations under the trans-Tasman scheme represent a very small percentage of overall registrations in this State. It is unlikely this is because of a lack of awareness of the scheme as guidelines and information is provided by Western Australia registration authorities. There is evidence the development of national standards has assisted with the assessment of equivalency of occupations under the trans-Tasman scheme. Only limited information was provided to this review on the operation of the goods principle. Where issues have arisen, action has been is being taken.

The Commonwealth Act provides an overarching framework which is designed to encourage trade and the movement of labour between jurisdictions. It does not interfere with Western Australia’s ability to regulate goods and occupations, and for matters that fall within the scope of the scheme, mutual recognition ensures differences between standards in jurisdictions are accepted. There is no evidence to suggest the underlying premise of mutual recognition, that the regulatory requirements in one jurisdiction meet community expectations and should be acceptable in another, has caused any significant concerns in this jurisdiction. Western Australia has the ability to temporarily exempt goods from the operation of the scheme if there are concerns about the effect of the good on public safety or the environment, which the State has done in relation to weapons and firearms legislation and will do in relation to drug paraphernalia.

Notwithstanding the apparent limited use of the scheme in Western Australia, it is one of a number of national and trans-Tasman mechanisms to encourage trade, the competitiveness of businesses, and the mobility of labour, and Western Australia’s participation in the scheme is an important feature in campaigns to attract skills to Western Australia.

In these circumstances, it is recommended adoption of the Commonwealth Act continue.

As the Productivity Commission undertakes a comprehensive review of the national and trans-Tasman schemes every five years, it is also recommended that the legislation to continue Western Australia's participation in the trans-Tasman scheme not include a review provision. This would make the legislation consistent with the *Mutual Recognition (Western Australia) Act 2010*.

List of Submissions

Architects Board of WA

Department of Agriculture and Food

Department of Commerce

Department of Transport

Drug and Alcohol Office

Government of New Zealand

Land Surveyors Licensing Board of Western Australia

Legal Practice Board of Western Australia

Minister for Education

Minister for Health

Minister for Local Government

Minister for Police

Minister for Child Protection

Minister for Small Business

Registrar, Supreme Court of Western Australia

Western Australian College of Teaching

Radiological Council of Western Australia

Recommendations from the Productivity Commission's Review of Mutual Recognition Schemes Report 2009⁶²

Recommendation 5.1

The mutual recognition Acts should be amended to make clear whether or not the schemes cover coregulatory, de facto and negative licensing arrangements.

Recommendation 5.2

The mechanisms through which the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal can be approached to make a declaration on occupational standards should be clarified.

Recommendation 5.3

The mutual recognition Acts should be amended to create a mechanism for regulators and other interested parties to approach the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal for advisory opinions.

Recommendation 5.4

The mutual recognition Acts should be amended to allow criminal record checks, if they are required of local applicants.

Recommendation 5.5

The mutual recognition Acts should be amended to make clear the types of condition (for example, around local knowledge or recency of practice requirements) that registration authorities may impose at the time of registration.

Recommendation 5.6

The mutual recognition Acts should be amended to make it clear that requirements for ongoing registration, including further training, continuing professional development and criminal record checks, apply equally to all registered persons within an occupation, including those registered under mutual recognition.

Recommendation 5.7

The mutual recognition Acts should be amended to define undertakings and provide that they are transferable between jurisdictions.

⁶² Australian Government, "Review of Mutual Recognition Schemes," last modified 6 January 2012, <http://www.pc.gov.au/projects/study/mutual-recognition-schemes/report>.

Recommendation 5.8

The mutual recognition Acts should be amended to ensure that information on nondisciplinary or remedial action can be shared between jurisdictions, where such action arises from a regulator's concern about an individual's fitness to practise.

Recommendation 5.9

Consideration should be given to extending the Ministerial Declarations to occupations regulated in New Zealand.

Recommendation 5.10

Relevant New Zealand regulators should be included in consultations around the development of national licensing systems in Australia.

Recommendation 6.1

The foreshadowed new Australian consumer product safety regime should include provisions to ensure it is closely integrated with the temporary exemption processes under the MRA and TTMRA. In particular, the new consumer law should ensure that:

- when an interim product ban is imposed on a good under Australia's new consumer product safety regime, the MRA does not apply to that good until the ban is either resolved by a Commonwealth decision or lapses – in order to avoid duplication and inconsistency between the product safety regime and the temporary exemption process under the MRA
- when an interim product ban is imposed by any Australian jurisdiction, the temporary exemption process under the TTMRA is automatically invoked and the resultant temporary exemption for the relevant jurisdiction is automatically revoked when the interim product ban ends
- if and when an interim product and within Australia is resolved by a national permanent ban, a national temporary exemption under the TTMRA is automatically invoked for Australia.

Recommendation 7.1

Following completion of the five year work plan for industrial chemicals in 2009, Australian and New Zealand Governments should consider converting the TTMRA special exemption for hazardous substances, industrial chemicals and dangerous goods into a permanent exemption, and/or applying mutual recognition to some areas. This should involve a cost-benefit analysis, based on a realistic assessment of the likelihood of achieving mutual recognition or harmonisation in the foreseeable future, given the slow progress to date.

Recommendation 7.2

The New Zealand Government should advise the Australian Government within three months of receiving this report whether the foreshadowed trans-Tasman regulatory regime for therapeutic goods is likely to be enacted by the New Zealand Parliament within the following nine months. If it advises that enactment is unlikely within this period, therapeutic products should be granted a permanent exemption from the TTMRA as soon as possible. If it advises that enactment is likely, but the parliaments fail to enact the legislation within twelve months of governments receiving this report, a permanent exemption should also be adopted as soon as possible.

Recommendation 7.3

The TTMRA special exemption for road vehicles should remain because there are opportunities for Australia and New Zealand to harmonise their vehicle standards and associated procedures in advance of, and in some cases to a greater extent than, the harmonisation expected to eventually be achieved at a global level. To ensure that the special exemption delivers results, the Australia and New Zealand Governments should develop a reinvigorated cooperation program for road vehicles that has clear objectives and deadlines, and is supported by a clear intent to reduce impediments to trans-Tasman trade in vehicles.

Recommendation 7.4

Because of the different historical paths of Australian and New Zealand spectrum allocation and use, a permanent exemption should be considered for short-range and spread-spectrum devices, once opportunities for harmonisation of standards are exhausted. A special exemption should remain where there is a possibility of harmonisation of spectrum allocation, including for the high frequency citizen band, in-shore boating devices and digital electrical cordless telephones. Devices likely to become obsolete in the near future should also remain as a special exemption until the exemption is no longer needed.

Recommendation 7.5

The TTMRA legislation should be amended so that special exemptions can have a maximum duration of three years, and can be extended for one or more further periods, each not exceeding three years. This reform should be reflected in the administrative procedures that governments use when considering special exemption rollovers, including that cooperation reports only need to be prepared every three years.

Recommendation 8.1

Consideration should be given to narrowing the permanent exemption for risk-foods from the TTMRA to include only those for which harmonisation or risk-food lists and equivalence of import-control measures are not achievable in the long term. Other risk-foods should be reclassified as a special exemption. Efforts should be made to achieve equivalence of import-control systems and third-country arrangements through a cooperation program, undertaken by a trans-Tasman working group, consisting of regulatory bodies and policy officials.

Recommendation 8.2

The permanent exemption for ozone-protection legislation should be removed from the MRA. Governments should also consider removing the ozone-protection exemption from the TTMRA, subject to both counterparty aligning their respective regulatory systems while ensuring consistency with international obligations.

Recommendation 8.3

A new provision should be included in the Trans-Tasman Mutual Recognition Acts which would allow, through regulation, exempted legislation to be moved from Schedule 2 (permanent exemptions) to Schedule 3 (special exemptions).

Recommendation 8.4

The exceptions for goods in the mutual recognition Acts should be retained.

Impediments to trade arising from the exceptions should be dealt with via direct negotiation with regulators on a case-by-case basis. A central point of contact should be made available to facilitate this process.

Recommendation 8.5

The implications of regulation for mutual recognition should feature as one of the factors to be taken into consideration in jurisdictions' respective regulatory guidelines.

Recommendation 8.6

Requirements relating to the use of goods, insofar as they prevent or restrict the sale of goods, should be explicitly brought into the scope of the mutual recognition schemes.

An exception should be made where mutual recognition of use provisions could expose persons in another jurisdiction to a real threat to health or safety or cause significant harm to the environment.

Recommendation 8.7

An effective, accessible administrative mechanism should be made available to sellers of goods, regulators and other interested parties (including industry and consumer associations) to obtain information and guidance on the application of the mutual recognition legislation to individual cases, and to assist in the resolution of disputes.

Recommendation 8.8

A judicial mechanism should be made available for sellers of goods and other interested parties to:

- obtain advisory opinions from a body such as the Administrative Appeals Tribunal
- appeal regulator decisions to enforce requirements where the parties believe mutual recognition should apply.

Recommendation 8.9

The existing mechanism for referral of issues relating to jurisdictional requirements for goods standards to Ministerial Councils should be extended to all issues of significant dispute relating to goods.

Recommendation 9.1

The permanent exemption for registered medical practitioners should become a special exemption, and be limited to third-country trained medical practitioners (that is, practitioners with primary and/or postgraduate qualifications obtained outside Australasia). Harmonisation of competency standards for overseas-trained medical practitioners could then be pursued through a cooperation program.

Recommendation 9.2

Mutual recognition should apply to registered medical practitioners who have gained their medical qualifications only within Australia or New Zealand.

Recommendation 10.1

Australia and New Zealand should take into account the possible impacts that international agreements will have on the mutual recognition framework when negotiating future initiatives with third countries.

Recommendation 11.1

COAG should strengthen its oversight of the mutual recognition schemes by agreeing to establish two specialist units – one for goods and the other for occupations – to monitor and provide advice on the operation of the schemes within Australia.

The functions to the two units should include:

- advising COAG, regulators and the public on technical aspects of the schemes
- providing a ‘complaints-box’ service that enables the public to alert COAG about problems with the schemes’ operation, and to facilitate greater use of existing appeals mechanisms by the public and the referral process by COAG when disputes cannot be resolved through mediation by the specialist units
- raising public awareness and regulator expertise on the schemes. This should include the providers of separate users’ guides for the public and regulators, a website, and seminars targeted at relevant industry associations, professional associations, trade unions, policy makers and regulators
- administering an internet-based practical test that relevant officials in regulatory agencies would have to undertake annually to confirm they have sufficient expertise to administer the mutual recognition schemes
- for the occupations unit, facilitate regulators’ annual updating of the Ministerial Declarations of occupational equivalence.

The administrative arrangements for the two units should be as follows:

- the units should be funded by contributions from all Australian jurisdictions, and support COAG’s Cross-Jurisdictional Review Forum
- the goods unit should be located in the Commonwealth Department of Innovation, Industry, Science and Research
- the occupations unit should be located in the Commonwealth Department of Education, Employment and Workplace Relations.

Recommendation 11.2

Occupation-registration authorities should be required to report annually on their administration of the mutual recognition schemes. This should include data on the number registered under mutual recognition, compared with total registrations and information about complaints and appeals. Such reports should be provided to the specialist occupations unit mentioned in recommendation 11.1.

Recommendation 11.3

The Cross-Jurisdictional Review Forum should report annually to COAG on its work program and achievements. This reporting should be done through COAG's Senior Officials' Group.

Recommendation 12.1

The state and territory jurisdictions should consider ways to make amending the mutual recognition legislation flexible. The legislative mechanisms to amend the state Mutual Recognition Acts and the Trans-Tasman Mutual Recognition Acts could allow the Commonwealth to amend the legislation with approval from the jurisdictions.

Registration Process under the *Trans-Tasman Mutual Recognition Act 1997*

- applicant lodges written notice with occupational registration authority seeking registration in an equivalent occupation:
 - the written notice must include certain documentary evidence and information relating to the person's existing registration in their home jurisdiction verified by statutory declaration⁶³; and
 - applicant must include a statement in the written notice consenting to occupational registration authority undertaking reasonable investigations relating to their occupation;
- on lodgement of the notice, the applicant has 'deemed' registration in the second jurisdiction:
 - deemed registration continues until it is cancelled, suspended or ceases⁶⁴
 - deemed registration allows the applicant to carry on the occupation as if registered substantively in the local jurisdiction, but the activities are limited, and local requirements as to the carrying out of the occupation apply⁶⁵;
 - the local registration authority may waive any condition imposed under the law of New Zealand or undertaking given to the local registration authority if appropriate, and may impose conditions so long as they are not more onerous than would be imposed in similar circumstances.
- the occupational registration authority has one month from date of lodgement to grant, postpone or refuse registration:
 - registration may be postponed if the information in the notice is materially false or misleading, any required document has not been

⁶³ Section 18 of the *Trans-Tasman Mutual Recognition Act 1997* (TTMRA) requires the information that must be included in the written notice, including the occupation for which registration is sought, the participating jurisdictions in which the person has substantive registration, a statement that the person is not the subject of disciplinary proceedings and that the person's registration is not cancelled or currently suspended as a result of disciplinary action, and any special conditions to which the person is subject in carrying on the occupation in any participating jurisdiction. The written notice must be accompanied by an original or copy of the instrument evidencing the person's existing registration. Under section 18(5) of the TTMRA, the statements and other information in the notice must be verified by statutory declaration.

⁶⁴ Section 25 of the TTMRA sets out the circumstances in which a person's deemed registration ceases, and includes when the person becomes substantively registered, the local registration authority refuses to grant registration and if the person ceases to be substantively registered in every other participating jurisdiction that the person has identified in his or her lodgement notice.

⁶⁵ Section 26(2) of the TTMRA provides that a person with deemed registration may only carry on the occupation in the local jurisdiction within the limits conferred by the person's substantive registration in New Zealand, within the limits conferred by the person's deemed registration in the Australian jurisdiction, subject to any conditions or undertakings applying to the person's registration in New Zealand (unless waived by the local registration authority), and subject to any conditions applying to the person's deemed registration.

provided or is false or misleading, the circumstances of the person lodging the notice has changed materially since the date of the notice or the date it was lodged or the authority decides that the occupation for which registration is sought is not an equivalent occupation;

- a registration authority can postpone the grant of registration for up to 6 months;
 - a person is entitled to registration if a registration authority does not refuse the grant of registration at or before the end of the 6 month period;
 - a registration authority may refuse the grant of registration if the information in the notice are materially false or misleading, any documents has not been provided or is false or misleading, or the registration authority decides that the occupation is not equivalent and equivalence cannot be achieved by the imposition of conditions.
- if registration authority takes no action within the month, then registration is automatic and can only be reversed if fraud was involved;
 - registration authority must give the person notice in writing of its decision to postpone or refuse the grant of registration, or impose conditions on registration.