

TRANS-TASMAN MUTUAL RECOGNITION (WESTERN AUSTRALIA) AMENDMENT BILL 2022

EXPLANATORY MEMORANDUM

Overview

The purpose of this Bill is to continue Western Australia's participation in Trans-Tasman Mutual Recognition Arrangements (TTMRA) by adopting *the Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth (Commonwealth Act) under section 51(xxxvii) of the Australian Constitution.

The *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* (the Act) adopts the Commonwealth Act until 31 January 2023 and is due to expire.

Western Australia has been party to the *Intergovernmental Agreement on Trans-Tasman Mutual Recognition Arrangement* since 1996. Western Australia commenced participation in these arrangements when the Act commenced on 1 February 2008 for an initial period of five years. In 2012, the Western Australian Parliament agreed to extend the Act for a further 10 years until 31 January 2023.

TTMRA seeks to facilitate trade between Australia and New Zealand by removing regulatory barriers to the movement of goods and the mobility of persons in registered occupations.

The arrangements are based on two principles. Firstly, goods produced in or imported into New Zealand that may be sold legally in New Zealand may be sold legally in an Australian jurisdiction without meeting further regulatory requirements, and vice versa. Secondly, for occupations, a person who is registered in New Zealand for an occupation is entitled to carry on the equivalent occupation after notifying the local registration authority of an Australian jurisdiction, and vice versa. Conditions may be imposed on registrations by local registration authorities to achieve equivalence between occupations in different participating jurisdictions.

The Commonwealth Act exempts certain goods and laws from TTMRA on a permanent or temporary basis. Permanent exemptions can be found in Schedule 2 of the Commonwealth Act. Western Australian laws permanently exempt includes those relating to the Container Deposit Scheme, firearms and other prohibited or offensive weapons, fireworks, gaming machines, gas appliances, hazardous substances, industrial chemicals and dangerous goods and indecent material.

A jurisdiction can unilaterally exempt a good or a class of goods on a temporary basis for a period of up to 12 months for the purpose of protecting the health and safety of persons in the jurisdiction or preventing, minimising, or regulating environmental pollution. Western Australia currently has a temporary exemption in place for certain plastics to support Western Australia's Plan for Plastics.

If the Act is not amended prior to 31 January 2023, Western Australia would exit Trans-Tasman Mutual Recognition Arrangements which may have consequences for the free movement of goods and services between Western Australia and New Zealand.

Western Australia benefits from being part of Trans-Tasman Mutual Recognition Arrangements and should continue its participation.

Clause 1. Short title

Once enacted, the short title of this Bill would be the *Trans-Tasman Mutual Recognition (Western Australia) Amendment Act 2022*.

Clause 2. Commencement

This clause provides for the commencement of the Bill. Clauses 1 and 2 would come into operation on the day on which the Bill receives Royal Assent. The rest of the Bill would come into effect on the day after that day.

Clause 3. Act amended

This clause provides that the *Trans-Tasman Mutual Recognition (Western Australia) Act 2007* would be amended by this Bill.

Clause 4. Section 3 replaced

This clause proposes to delete section 3 of the Act, removing the interpretations defined under section 3(1) and the termination of the adoption on 31 January 2023 as currently defined by section 3(2). Removing the 31 January 2023 expiration date is required to ensure Western Australia's ongoing participation in TTMRA.

Clause 4 would insert new definitions for "adopt" and "Commonwealth Act" to ensure the Act adopts the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth) as required by the Constitution of the Commonwealth section 51 (xxxvii).

Clause 5. Section 4 amended

Clause 5(1) proposes to delete section 4(1) and insert new wording for the adoption. The Commonwealth Act, as originally enacted and as amended from time to time by regulations made under the Commonwealth Act, is to be adopted. This wording is in line with the parameters of the referring legislative power provided to the Commonwealth by the *Trans-Tasman Mutual Recognition (NSW) Act 1996* and all other adopting States and Territories.

Clause 5(2) proposes to amend section 4(2) to reference the amended adoption in section 4(1).

Clause 5(3) proposes to delete section 4(3), given the adoption of Commonwealth amendments through regulations would now be addressed in section 4(1).

Clause 5(4) proposes to amend the reference to the *Legislation Act 2003* (Commonwealth) to provide consistency with the *Mutual Recognition (Western Australia) Act 2020*.

Clause 5(5) proposes to delete section 4(5), as the adoption of the Commonwealth Act would now be provided for in section 4(1) and the termination of this adoption would now be provided for in section 7.

Clause 6. Section 7 replaced

This clause proposes to replace section 7 with the below sections.

Section 6 – Tabling documents relating to scheme reviews

This section proposes that a report of the operation of the *Intergovernmental Agreement on Trans-Tasman Mutual Recognition Arrangement* is to be tabled in both Houses of Parliament as soon as practicable if one is carried out and provided to the Minister.

This section would allow for the Minister to remove sensitive, confidential or personal information from the report before it is tabled in each House of Parliament.

This amendment is in line with amendments made to the *Mutual Recognition (Western Australia) Act 2020*.

Section 7 – Termination of adoption

This section proposes that the Governor may by proclamation terminate the adoption under section 4(1).

This amendment is in line with amendments made to the *Mutual Recognition (Western Australia) Act 2020* and other participating jurisdictions.

Section 8 – Revoking termination Proclamations

This section proposed that the Governor may by proclamation revoke a proclamation made under section 7. A revoking proclamation has effect only if published in the *Gazette* before the day fixed in the proclamation made under section 7.