



Australian Government
Productivity Commission

Mutual Recognition Schemes

Productivity Commission
Issues Paper

January 2015

The Issues Paper

The Commission has released this issues paper to assist individuals and organisations to prepare submissions to the study. It contains and outlines:

- the scope of the study
- the Commission's procedures
- matters about which the Commission is seeking comment and information
- how to make a submission.

Participants should not feel that they are restricted to comment only on matters raised in the issues paper. The Commission wishes to receive information and comment on issues which participants consider relevant to the study's terms of reference.

Key dates

Receipt of terms of reference	11 December 2014
Due date for submissions	27 February 2015
Release of draft report	May 2015
Final report	September 2015

Submissions can be made

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The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

Terms of reference

2014 REVIEW OF THE MUTUAL RECOGNITION AGREEMENT AND THE TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT

I, Joseph Benedict Hockey, Treasurer, pursuant to Parts 2 and 4 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake a review of the operation of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) since the previous review, released in 2009.

1) The Commission is to:

- a) assess the coverage, efficiency and effectiveness of the MRA and TTMRA;
- b) recommend ways to further improve the inter-jurisdictional movement of goods and skilled workers, and reduce red tape, including examining the scope for automatic mutual recognition where applicable;
- c) address matters identified by the Cross-Jurisdictional Review Forum, including, but not restricted to:
 - the nature and extent of any problem caused by use of goods requirements that restrict the sale of goods under both the MRA and TTMRA, and the costs and benefits of any solutions proposed;
 - the issues associated with extending mutual recognition to business registration requirements under the MRA or TTMRA where similar requirements would result in an individual being registered, and the costs and benefits of any options proposed; and
- d) examine, following the entry into force of the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement, the extent to which the Agreement could facilitate the Trans-Tasman provision of services by particular occupations, based on a single registration,
 - consider how such an arrangement could operate; and
 - identify and document evidence of any occupations where there is sufficient demand for, and barriers to, cross-border service provision to merit inclusion in such an arrangement;
- e) examine the extent to which Commonwealth regulatory agencies are aware of their obligations under the TTMRA and have implemented mutual recognition processes.

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- 2) In undertaking the research study, the Commission is to consult relevant stakeholders in Australia and New Zealand, including the Cross-Jurisdictional Review Forum and to substantiate recommendations, wherever possible, with evidence relating to the scale of the problem and the estimated cost of both the problem and any solution(s) proposed. The Commission should also have regard to the approaches being taken by the Council for the Australian Federation towards ‘minimising labour impediments to improving labour mobility’, following the decision by the majority of States at COAG on 13 December 2013 to not pursue the National Occupational Licensing Scheme reform.
 - 3) The Commission’s report shall be presented to Australian Heads of Government and the New Zealand Prime Minister nine months from the date of commissioning and the Commission’s report is to be published.
 - 4) Within three months of receiving the Commission’s findings, the Cross Jurisdictional Review Forum is to present to Australian Heads of Government and the New Zealand Prime Minister a Review Report responding to those findings.

J. B. HOCKEY
Treasurer

[Received 11 December 2014]

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1 How to use this paper

This paper is intended to assist you in preparing a submission to the review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). It outlines a range of issues about which the Commission is seeking information. However, **you do not have to answer all of the questions posed in this paper or limit your comments to the issues mentioned.** You are free to submit any information you consider relevant to the study's terms of reference. Where possible, you should give evidence to support your views, such as data and documentation.

Please read attachment A for details about how to make a submission. To ensure due consideration of your input prior to release of the study's draft report, your submission should reach us by **27 February 2015**. Interested parties will be given an opportunity to comment on the draft report through further submissions.

2 What is the study about?

Mutual recognition seeks to promote economic integration by dealing with interjurisdictional differences in laws, regulations and technical barriers to the movements of goods and people.

Under the MRA and TTMRA, jurisdictions in Australia and New Zealand mutually recognise compliance with each others' laws for the *sale of goods* and the *registration of occupations* (box 1). This allows goods that can be lawfully sold in one jurisdiction to be sold in other jurisdictions without having to satisfy additional, or duplicative and potentially inconsistent, requirements. Similarly, people registered to practise an occupation in one jurisdiction are entitled to practise an equivalent occupation in other jurisdictions, after notifying the local occupation-registration body.

There is a formal requirement for the mutual recognition schemes to be regularly reviewed. To date, two such reviews have been completed, both by the Productivity Commission, and these were published in 2003 and 2009 (PC 2003, 2009).

In December 2014, the Australian Government directed the Productivity Commission to again review the MRA and TTMRA. The terms of reference for this review are provided at the beginning of this paper. In summary, the Commission has been asked to:

- assess the coverage, efficiency and effectiveness of the MRA and TTMRA
- recommend ways to further improve interjurisdictional movement of goods and skilled workers, and reduce red tape, including examining the scope for automatic mutual recognition where applicable

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- address matters identified by the Cross-Jurisdictional Review Forum (CJRF), including requirements for the use of goods and business registration¹
 - consider how the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement could facilitate Trans-Tasman provision of services, based on a single occupational registration
 - examine the extent to which Commonwealth regulatory agencies are aware of their mutual recognition obligations under the TTMRA and have implemented associated processes.

Box1 What the MRA and TTMRA do

In broad terms, under the MRA:

- a good that may legally be sold in one Australian state or territory can also be sold in another, regardless of differences in standards or other sale-related regulatory requirements
- a person registered to practise an occupation in one Australian state or territory can practise an equivalent occupation in another, without the need to undergo further testing or examination.

Similarly, under the TTMRA it is generally the case that:

- a good that may legally be sold in Australia may be sold in New Zealand, and vice-versa, regardless of differences in standards or other sale-related regulatory requirements
- a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and vice-versa, without the need to undergo further testing or examination.

However, the MRA and TTMRA only apply to occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required. Also, some goods are exempt from the MRA and TTMRA (detailed later in this issues paper).

The MRA and TTMRA do not apply to laws on how goods are used, or the manner of sale, transport, storage, handling and inspection of goods. Laws governing the manner of carrying on an occupation and registration of sellers and business-franchise licences are also not covered.

Source: Australian Government (2014b).

The Commission will consult widely with interested parties in Australia and New Zealand, and release a draft report in May for public comment prior to finalising its findings and recommendations. The final report will be presented to Australian Heads of Government and the New Zealand Prime Minister within nine months of commencing the review, and it will be published. A joint government response will be prepared by the CJRF.

The Presiding Commissioner for this review is Jonathan Coppel and the Commission's review team is based in its Melbourne office.

¹ The CJRF is an interjurisdictional committee of officials that oversees the MRA and TTMRA.

3 Rationale for mutual recognition

The primary rationale for introducing the MRA and TTMRA was that regulatory differences between jurisdictions were unnecessarily impeding cross-border movements of goods and labour. The potential costs of these differences included reduced competition in goods and labour markets, higher prices for consumers, larger compliance costs for firms operating across jurisdictions, and greater difficulty in attracting workers to locations where their services would generate the greatest net benefit.

While harmonising regulations across all jurisdictions would be one way of addressing concerns about regulatory differences, it would be a formidable task. Moreover, not all regulatory differences impede cross-border movements of goods and labour significantly, and so the benefits of harmonisation could be less than the implementation costs. Mutual recognition is an alternative means of reducing regulatory impediments without incurring the potentially substantial costs of harmonisation. However, there are also costs associated with implementing and maintaining mutual recognition, such as developing rules on how compliance is monitored and administering appeals mechanisms.

Mutual recognition is a feasible alternative to harmonisation for Australian jurisdictions and New Zealand because of their similar history, culture and objectives. This means that, in many cases, regulations meeting community expectations in one jurisdiction will tend to be acceptable to the other jurisdictions. It also means that regulatory differences are more likely to reflect historical or institutional arrangements, rather than significantly different assessments of risks to public health, safety and the environment.

- 1. What have been the benefits of mutual recognition under the MRA and TTMRA, and what evidence is there to support your assessment?*
- 2. What have been the costs of implementing and maintaining mutual recognition under the MRA and TTMRA, and to what extent are these outweighed by the benefits?*
- 3. Are there further benefits that could be realised from extending mutual recognition? What are the likely costs of doing so?*
- 4. What evidence is there that interjurisdictional differences in laws for the sale of goods and registration of occupations would, without mutual recognition, significantly impede cross-border movement of goods and labour?*
- 5. For which goods and occupations is mutual recognition a better alternative than other forms of regulatory cooperation (for example, harmonisation) in the sense that it generates a greater net benefit to the community?*

4 Mutual recognition of goods

As noted above, the MRA and TTMRA generally allow goods lawfully sold in one jurisdiction to be sold in others without having to satisfy additional requirements.

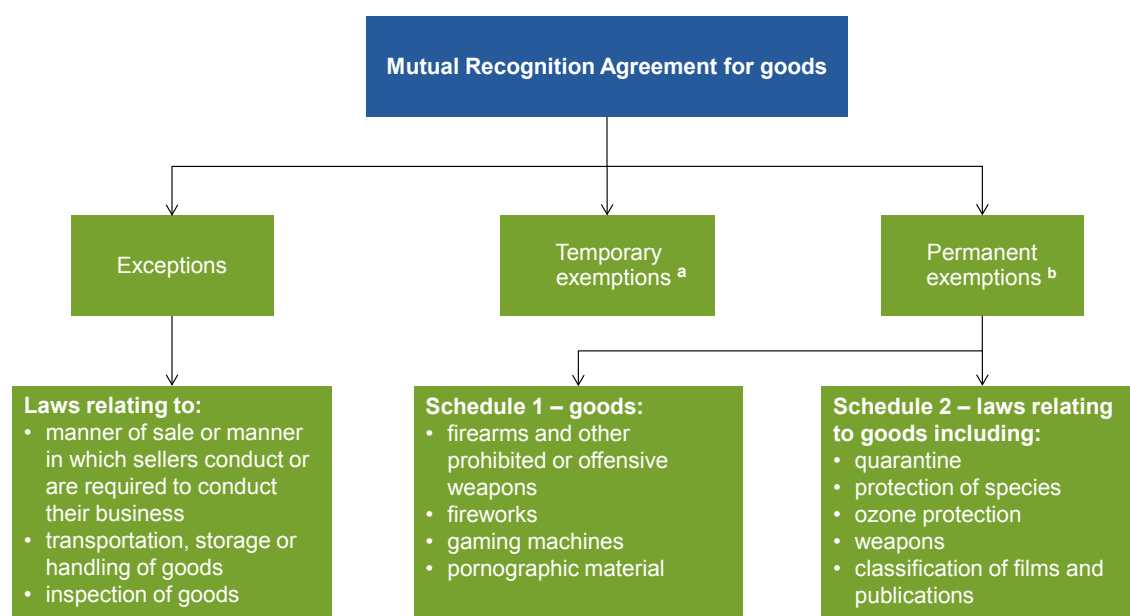
However, a number of goods and goods-related laws are explicitly kept outside the scope of the schemes. Moreover, the schemes only cover requirements for the sale of goods, which raises the possibility that a good is allowed to be sold under mutual recognition but cannot be legally used.

Measures that limit goods coverage

There are three types of exemptions that can be used to keep specific goods outside the scope of the MRA and TTMRA (figures 1 and 2):

- *permanent exemptions* — these ‘exist to deal with jurisdictional regulatory differences or situations where all parties agree that mutual recognition could jeopardise public health or safety’ (CJRF 2004, p. 30). There are many goods in this category
- *temporary exemptions* — these provide a means for jurisdictions to unilaterally ban goods for up to 12 months on health, safety or environmental grounds while the relevant Ministerial Council considers whether mutual recognition, harmonisation or a permanent exemption is appropriate. No goods are currently subject to a temporary exemption under the MRA or TTMRA
- *special exemptions* (TTMRA only) — these are for cases where jurisdictions are hopeful that greater integration can be achieved, but recognise further work is required. Special exemptions have to be renewed at least every 12 months until the outstanding issues are resolved by harmonisation, mutual recognition or a permanent exemption. There are currently no goods subject to a special exemption.

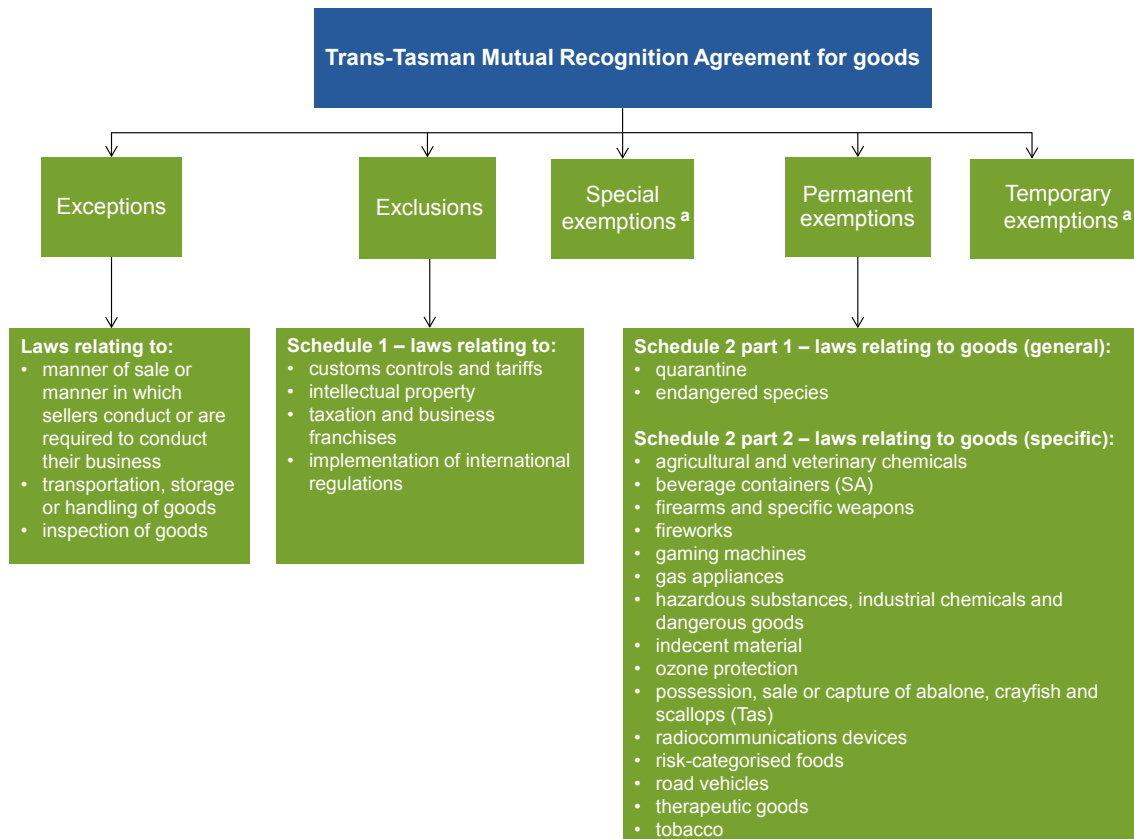
Figure 1 Coverage of goods under the MRA



^a There are currently no temporary exemptions. ^b Full list is in the *Mutual Recognition Act 1992* (Cwlth).

Sources: Australian Government (2013a, 2014b).

Figure 2 Coverage of goods under the TTMRA



^a There are currently no special and temporary exemptions.

Source: Australian Government (2013b).

There are also two measures to quarantine goods-related laws from the MRA and TTMRA:

- *exceptions* — these are laws the jurisdictions consider to be outside the intended scope of the MRA and TTMRA, including laws relating to how goods are sold
- *exclusions* (TTMRA only) — these are used to exclude laws relating to the sale of goods that essentially relate to the sovereign rights of nation states, such as customs controls and taxation.

The Commission will be considering the case for having the above measures.

6. *Are there areas where changes to the current architecture of the MRA and TTMRA for goods exemptions, exceptions and exclusions are warranted? If so, where and why?*
7. *How significant would the impact of your proposed changes be on the efficiency and effectiveness of the MRA and TTMRA? What would be the costs of such changes?*

Goods subject to permanent exemptions

Among the current permanent exemptions, there are four areas where the Commission had in its 2009 review supported an expansion of mutual recognition:

- risk-categorised foods (TTMRA)
- ozone-protection legislation (MRA and TTMRA)
- road vehicles (TTMRA)
- radiocommunication devices, where spectrum allocation can be harmonised (TTMRA).

In response, governments narrowed the exemption for risk-categorised foods to only products where they considered mutual recognition between Australia and New Zealand was unlikely to be achievable (CJRF 2014). Governments also supported removing the exemption of ozone-protection legislation from the MRA, following completion of phase-out plans for ozone-depleting substances within Australia. However, removal of the equivalent exemption from the TTMRA was not supported because Australia and New Zealand are committed to different phase-out schedules for ozone-depleting substances.

8. Is there scope to further expand the coverage of risk-categorised foods? What would be the costs and benefits of doing so? Are there particular goods that should be given priority?

9. Is the removal of the exemption of ozone-protection legislation from the MRA but not the TTMRA still justified? How can a similar outcome be achieved for the TTMRA?

Governments decided not to bring road vehicles and radiocommunication devices within the coverage of the TTMRA. At the time of the 2009 review, these goods were classified as special exemptions, with associated intergovernmental work programs to identify opportunities for greater integration. Shortly after the review, governments reclassified them as permanent exemptions and ceased the associated work programs.

This shift from special to permanent exemptions was made on the grounds that regulatory harmonisation was not realistically achievable. Another likely factor was the administrative costs associated with the special exemption process (discussed below). For radiocommunication devices, governments also noted that there were ‘adequate alternative mechanisms in place to facilitate further efforts to align regulatory approaches’ (CJRF 2014, p. 18).

In the case of road vehicles, the 2009 review had identified an opportunity for Australia and New Zealand to harmonise road vehicle standards in advance of, and in some cases to a greater extent than, what was expected to eventually be achieved at a global level.² The

² Australia and New Zealand are participants in the World Forum for Harmonisation of Vehicle Regulations, which is overseen by the United Nations Economic Commission for Europe.

Commission's subsequent inquiry on the automotive industry recommended that the Australian Government accelerate its harmonisation with global vehicle standards and the mutual recognition of other vehicle standards (PC 2014).

- 10. What are the costs and benefits of maintaining the permanent exemption for road vehicles and radiocommunication devices?*
- 11. What are the barriers to Australia and New Zealand achieving mutual recognition or harmonisation for road vehicles and radiocommunication devices? How can these barriers be addressed?*

The Commission will also be considering other permanent exemptions, including whether developments since the last review strengthen the case for removing them.

- 12. Should other goods on the schedule subject to permanent exemption be removed? Which ones and why? Is it feasible and what would be the advantages and disadvantages of doing so?*

Special exemption process

The ongoing administrative burden associated with the special exemption process for the TTMRA may partly explain why governments decided to convert all remaining special exemptions to permanent exemptions in 2010. In particular, special exemptions have to be renewed every 12 months, and this requires the agreement of no less than two-thirds of the Heads of Government. To inform this decision, the relevant regulators have to jointly prepare an annual report on progress in achieving integration, and why a further 12-month special exemption period should be granted.

- 13. Is the special exemption process for goods unnecessarily onerous, thereby creating unwarranted costs and discouraging efforts to expand the TTMRA's coverage? How could it be improved and what would be the costs and benefits of doing so?*
- 14. Did the 2010 decision to remove all remaining special exemptions significantly reduce the impetus to expand coverage of the TTMRA? What other mechanisms or initiatives could provide an impetus for such reform?*

A further issue is that there is no formal process for goods to be moved from a permanent to special exemption if changed circumstances raise the prospect of achieving mutual recognition.

- 15. Should there be a formal process to move goods from a permanent to special exemption and what would be the advantages and disadvantages?*

Exceptions and exclusions for goods

Exceptions from the MRA and TTMRA currently exist for laws relating to the:

- manner of sale or way in which sellers conduct their business

-
- transport, storage and handling of goods
 - inspection of goods.

Exclusions from the TTMRA currently exist for laws concerning:

- customs controls and tariffs
- intellectual property
- taxation and business franchises
- implementation of international agreements.

The Commission will consider whether these are unwarranted limitations to the coverage of mutual recognition.

16. Are the current exceptions and exclusions for goods under the MRA and TTMRA still justified? What, if any, changes do you recommend?

In the case of intellectual property, governments are working on initiatives outside of the mutual recognition schemes to align regulatory processes for granting and registering intellectual property rights in Australia and New Zealand. This is mainly occurring through the Trans-Tasman Outcomes Framework, which was established in 2009 to support the creation of a Single Economic Market between the two countries. The latest progress report for this initiative noted that progress has been made on several proposed areas of intellectual property law.

- Alignment of trademark registration procedures has been achieved.
- Work is ‘on track’ to develop a single trans-Tasman regulatory framework for patent attorneys, and single application and examination processes for patents filed in both jurisdictions (TTOIG 2014).

Australian legislative amendments necessary to implement the ‘on track’ initiatives are contained in the Intellectual Property laws Amendment Bill 2014, which was passed in the House of Representatives in November 2014. A Bill to amend the *Patents Act 2013* (NZ) is expected to be introduced into the NZ Parliament in 2015 (IP Australia 2014).

The Trans-Tasman Outcomes Framework also includes the goal of a single trans-Tasman register for trademarks, but work on this has been put on hold. A single trans-Tasman register for patents is not on the agenda. Nonetheless, single registers could be the logical step forward after alignment of application, examination and registration procedures. In the absence of single registers, there may be benefits from establishing mutual recognition of patent and trademark registration between Australia and New Zealand.

17. Given current efforts to align intellectual property laws in Australia and New Zealand, is there scope in the foreseeable future to remove the exclusion of intellectual property from the TTMRA? Would it yield a net benefit?

18. What are the barriers to implementing a single trans-Tasman register for trademarks and patents? How can they best be addressed?

19. In the absence of trans-Tasman registers for trademarks and patents, can mutual recognition of registration be a viable alternative? What would be the costs and benefits of mutual recognition?

Barriers posed by use-of-goods requirements

The terms of reference ask the Commission to consider cases where goods can be exported to another jurisdiction and sold under mutual recognition but cannot be legally used. This possibility arises because jurisdictions often have different requirements on how goods are used, and such use-of-goods requirements are not covered by the MRA and TTMRA.

Submissions to the 2009 review mentioned a small number of examples. These included buses exported from New South Wales, which could be sold in Western Australia but not registered for use without modification to meet different seat belt requirements. Another example was dishwashers exported from New Zealand, which could be sold in Australia but not used because they did not have the plumbing certification required by local water authorities.

Evidence of any problems posed by use-of-goods requirements appears limited. Moreover, it is uncertain what would be the magnitude of any net gains from seeking to address them.

There can be a case for jurisdictions to impose their own use-of-goods requirements to address unique health, safety and environmental concerns within a defined geographic area. Nonetheless, such requirements can create barriers to trade, and so should only be erected on solid net public benefit grounds.

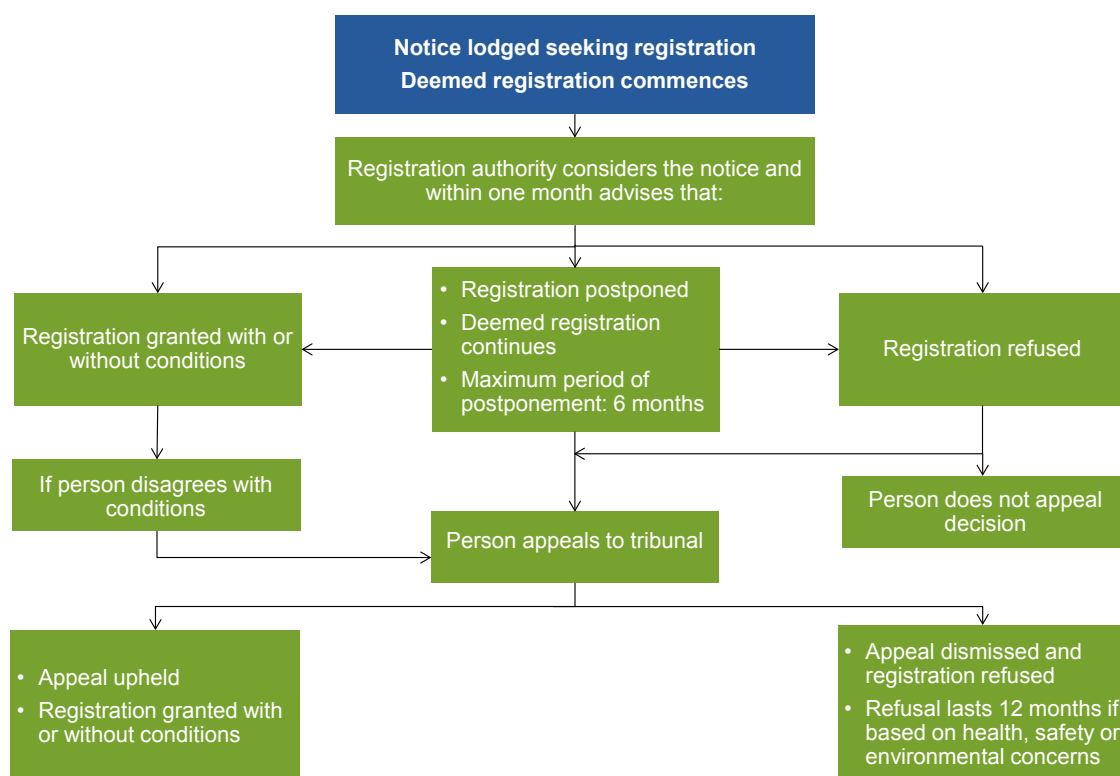
At the time of the 2009 review, it appeared that the European Union and Canada had developed a means to address this issue. Namely, their mutual recognition schemes covered use-of-goods requirements, but with an ‘opt out’ on public benefit grounds to address health, safety and environmental concerns.

- 20. To what extent are different requirements for the use of goods impeding interjurisdictional trade, and what would be the costs and benefits of extending mutual recognition to those use of goods requirements?*
- 21. Are use-of-goods requirements being used to circumvent mutual recognition obligations? If so, please provide evidence and indicate how this problem can be addressed.*
- 22. Do mutual recognition arrangements in countries other than Australia and New Zealand have features which could be used to address use-of-goods concerns under the MRA and TTMRA?*

5 Mutual recognition of occupations

Under the MRA and TTMRA, a person registered to practise an occupation in one jurisdiction is entitled to practise an equivalent occupation in other jurisdictions. The process for accessing this entitlement is summarised in figure 3. Applicants must first lodge their home jurisdiction registration details with another jurisdiction’s registration body. ‘Deemed registration’ is then granted automatically, which allows applicants to practise their occupation pending the granting or refusal of substantive registration. The relevant registration body has one month to grant, postpone or refuse registration. If a decision is not made after one month, applicants are entitled to immediate registration.

Figure 3 Occupation registration process under the MRA and TTMRA



Source: Australian Government (2014b).

Coverage of occupations

The MRA and TTMRA cover all occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required in order to legally practise the occupation. By definition, the mutual recognition of occupations only applies where registration is required in both jurisdictions — if registration was not required in the applicant’s home jurisdiction for a given occupation, then they cannot apply under mutual recognition for registration in other jurisdictions.

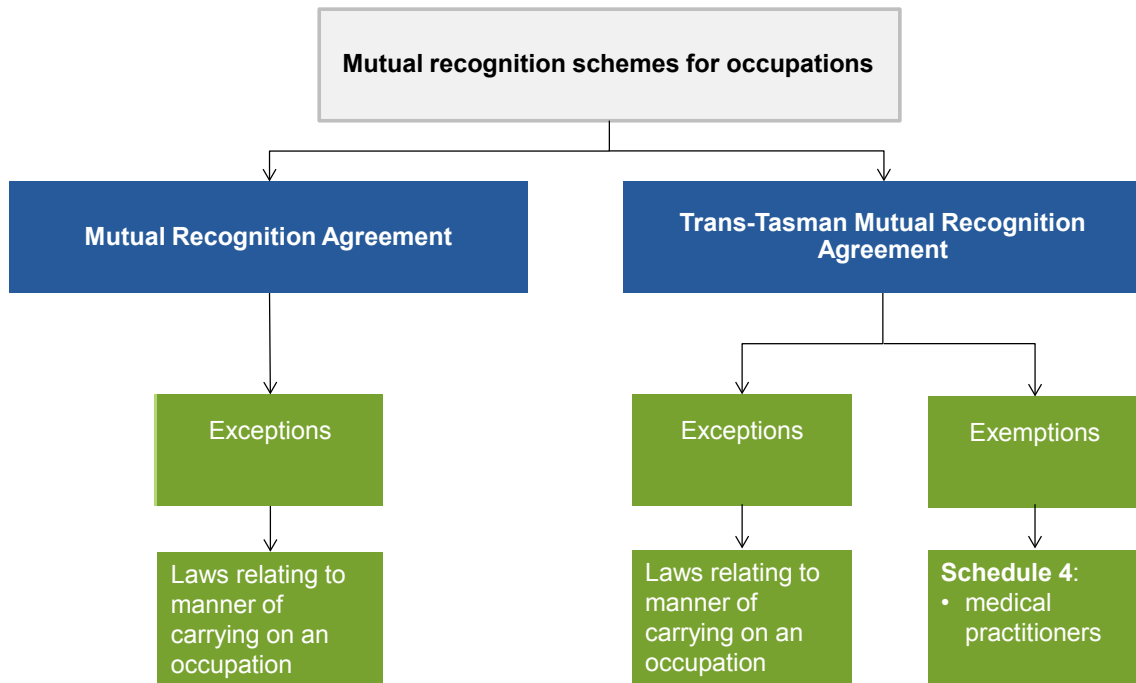
Further, mutual recognition does not apply to occupations where there is a national system of registration.

Measures that limit occupational coverage

Two measures are available to explicitly rule out coverage of specific occupations and related laws (figure 4):

- *exemptions* — used to rule out coverage of specific occupations. There is currently only one exemption — registration of medical practitioners under the TTMRA
- *exceptions* — laws relating to the manner of carrying on an occupation where they:
 - apply equally to all people carrying on, or seeking to carry on, the occupation
 - are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Figure 4 **Mutual recognition schemes for occupations^a**



^a These only cover occupations where some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required in order to legally practise the occupation.

Sources: Australian Government (2013a, 2013b).

The TTMRA exemption for medical practitioners only affects doctors trained outside Australia or New Zealand. Doctors with primary medical qualifications obtained in New Zealand are automatically granted general registration in Australia and vice-versa under other arrangements (Department of Industry 2014). Moreover, Australian registration is

given to graduates of accredited medical schools in New Zealand who have completed the required period of intern training.

Within Australia, the registration of medical practitioners and 13 other health professions is regulated by nationally consistent legislation under the National Registration and Accreditation Scheme.³ Once registered under the scheme, eligible health professionals are permitted to work anywhere within Australia. The Australian Health Practitioner Regulation Agency works with 14 national Health Practitioner Boards to implement the National Registration and Accreditation Scheme (AHPRA 2014).

23. Are the mutual recognition arrangements for medical practitioners trained in Australia and New Zealand effective?

24. Is the exemption for medical practitioners in the TTMRA still required? What would be the costs and benefits of removing this exemption?

25. How effective has the National Registration and Accreditation Scheme been in improving the mobility of health professionals? In what ways can it be improved?

26. How well does mutual recognition between Australia and New Zealand work for health professionals other than doctors?

Requirements for ‘manner of carrying on’ an occupation

The exception for laws regulating the ‘manner of carrying on’ an occupation means that applicants under mutual recognition must meet local requirements for ongoing activities of persons registered to practice an occupation. There is potential for these laws to significantly impede service provision across jurisdictions. For example, an individual seeking to provide services in a second jurisdiction might first be required to register, establish a principal office, set up a new trust fund for monies received, and develop a complaints process in the second jurisdiction.

The 2009 review suggested that one way of addressing such issues may be to adopt an approach similar to that used in the European Union. This could involve permitting individuals who provide services in more than one jurisdiction to:

- register only in their ‘home’ jurisdiction
- adhere to the ‘service provider’ regulations of their home jurisdiction when working in ‘host’ jurisdictions
- comply with the ‘service provision’ regulations of any host jurisdiction.

³ The following professions are nationally regulated by a corresponding national board: Aboriginal and Torres Strait Islander health practitioners, Chinese medicine practitioners, chiropractors, dental practitioners, medical practitioners, medical radiation practitioners, nurses and midwives, occupational therapists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists, and psychologists.

Under this approach, a registered architect based in New Zealand providing services to a client in Australia would not need to register in Australia, or comply with Australian regulations governing characteristics of their practice (for example, insurance and continuing professional development requirements). However, the New Zealand-based architect would have to abide by the Australian building code.

Such trans-Tasman provision of services could be facilitated by the recently implemented Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement. This agreement is designed to lead to cheaper and more effective resolution of trans-Tasman disputes than what was previously possible, and so could be of considerable assistance to the smooth operation of service provision across the Tasman (box 2).

Box 2 Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement

The Agreement Between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement was signed in 2008. Legislation to put the agreement into effect commenced in October 2013.

It puts in place a framework for the resolution of trans-Tasman civil disputes, with the aim of making a trans-Tasman court case more like a court case between parties in the same country. This includes making it easier to:

- start Australian court proceedings against a person located in New Zealand
- ask for cases that were started in New Zealand to be heard before Australian courts in certain circumstances
- have a person located in New Zealand give evidence in certain Australian proceedings
- appear by audio or video link in New Zealand court proceedings
- have a broader range of Australian court judgments recognised and enforced in New Zealand.

Source: Australian Government (nd).

27. *To what extent do interjurisdictional differences in laws for the ‘manner of carrying on’ an occupation hinder labour mobility within Australia and across the Tasman? Are such differences warranted because, for example, individual jurisdictions have to address significantly different risks and community expectations?*
28. *What, if anything, should be done to reduce barriers to labour mobility caused by different laws for the ‘manner of carrying on’ an occupation, and what would be the costs and benefits of doing so?*
29. *To what extent could cross-border provision of services by particular occupations be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement?*

Refining the scope of registered occupations

Coregulatory, de facto and negative occupational licensing

While mutual recognition clearly applies to occupations that are covered by legislative licensing schemes, there is some uncertainty about whether or not this includes forms of occupational regulation with no statutory registration authority, such as coregulatory, de facto and negative licensing arrangements.

Coregulatory arrangements involve government endorsement, usually by legislation, of professional associations which are responsible for regulating the conduct and standards of their members. For instance, several professional bodies are involved in the regulation of the accountancy profession. De facto registration arises when legislation authorises people who meet certain requirements to practise an occupation, without further reference to a registration. This type of registration applies to land valuers in Tasmania, for example. Negative occupational licensing is ‘a statutory scheme that allows a person or business to practise an occupation unless they breach statutory-based requirements’ (COAG 2009, p. 3). For instance, in Victoria, debt collectors do not need a licence unless they are a prohibited person (because, for instance, they have been found guilty of certain crimes) or a prohibited corporation (such as a corporation managed by a prohibited person).

In its 2009 review, the Commission proposed that governments clarify whether the mutual recognition schemes applied to these forms of occupational licensing. At the time, it appeared that coregulatory arrangements were covered, but not negative and de facto forms of licensing.

30. Are coregulatory, de facto and negative licensing arrangements covered by the mutual recognition schemes? Should they be? Why or why not? What issues would arise as a result of their inclusion?

31. Are there other areas in which the occupations covered by the MRA and TTMRA are unclear?

Professions with optional or non-universal registration requirements

The MRA and TTMRA only apply where occupational registration is required for *all* practitioners (universal registration). Consequently, individuals working in occupations where registration is optional, or compulsory only for some practitioners, are unable to apply for registration under mutual recognition. For example, a new registration scheme that ‘grandfathers’ practitioners already carrying out the occupation is ineligible for mutual recognition. Mutual recognition would also not apply during any transitional period provided for existing practitioners to register under a new scheme.

The extent to which individuals are being prevented from accessing mutual recognition arrangements as a result of working in professions with optional or non-universal registration requirements is unclear. The CJRF recently proposed to further consider

mutual recognition in relation to schemes where registration requirements are not uniform or which cover only some practitioners in an occupation. It noted that circumstances that may need consideration include:

- where registration is dependent on the attainment or possession of some qualification, but registration is optional;
- where registration is dependent on the attainment or possession of some qualification, but registration is only compulsory for some practitioners (for example, after a certain date); and
- where registration is mandatory for all practitioners, but qualification requirements do not apply uniformly to registration applicants (for example, where registration is available under grandfathering arrangements to existing practitioners on introduction of a new registration system). (CJRF 2014, p. 25)

The Commission welcomes input on these issues.

32. Which occupations require registration by some, but not all, practitioners? What would be the costs and benefits of expanding the MRA and TTMRA to these occupations?

Mutual recognition of business registration

The Commission has been asked to consider the issues associated with extending coverage of the MRA or TTMRA to business registration. This was raised as a possibility in the 2009 review because in many areas of service provision — for example, motor car traders, electrical contractors and real estate agents — a business run by a sole trader can access mutual recognition, whereas a similar business run by a company cannot. Costs to such companies of having to resubmit registration requirements in each jurisdiction were seen as potentially significant.

The introduction in 2012 of a national registration scheme for Australian businesses means that businesses now only need to register once in order to operate across jurisdictions within Australia. In light of this change, it appears that the case for expanding mutual recognition to business registration within Australia has diminished.

For companies wishing to operate on both sides of the Tasman, a single entry point for business registration is being considered by the Australian Securities and Investment Commission and New Zealand Companies Office (TTOIG 2014). Under this proposal, businesses applying for incorporation in their home country will be able to simultaneously elect to be registered as a foreign company in the other country (with the provision of any additional information and payments required in that country).

33. Is there still a case for expanding mutual recognition to business registration, given that there is now a national system of business registration within Australia and authorities are working towards a single entry point for registering businesses operating on both sides of the Tasman?

Occupational equivalence, conditions and standards

A key issue for the mutual recognition of occupations is how registration bodies determine whether an occupation in their jurisdiction is equivalent to one in another jurisdiction. Under the relevant legislation, a registered occupation in one jurisdiction is equivalent to a registered occupation in another jurisdiction if the activities authorised to be carried out under each registration are ‘substantially the same’. Where a single licence authorises several activities in one jurisdiction, some of which have no equivalent in another, then equivalence can be achieved by limiting the scope of the mutually recognised licence, via the imposition of conditions.

34. Are marked differences between jurisdictions in the nature (or even existence) of licences for specific occupations hindering the assessment of occupation equivalence? If so, how can these differences be resolved?

Ministerial Declarations

The *Mutual Recognition Act 1992* (Cwlth) enables ministers from two or more Australian states or territories to jointly declare that specified occupations are equivalent, and also declare any conditions necessary to achieve equivalence. Over the period 2006 to 2009, in response to government and industry concerns about skill shortages, COAG worked to achieve full mutual recognition of selected vocationally trained occupations through the use of Ministerial Declarations signed by all Australian premiers and chief ministers. Occupation-registration bodies in Australia must give effect to these Ministerial Declarations. The mutual recognition of licences not included in Ministerial Declarations, including all licences obtained in New Zealand, continue to be a matter for individual occupation-registration bodies to determine.

These declarations led to the development of a set of tables for the selected occupations that describe the conditions under which occupations are equivalent across jurisdictions. A website has also been created so that individuals and regulators can search the tables for an equivalent occupation. An Allen Consulting Group review found that the equivalence tables have assisted regulators in making decisions on licence applications under mutual recognition — regulators have granted more licences with conditions as a result (ACG 2008). However, in its 2009 report the Commission cautioned that maintaining the currency of the tables will be important. It also raised concerns regarding unilateral modification of licence categories or customisation of equivalence conditions by individual jurisdictions. Such an approach defeats the purpose of Ministerial Declarations.

In its response to the 2009 review, the CJRF (2014) noted that there is no apparent barrier to Australian jurisdictions developing a Ministerial Declaration that includes a New Zealand occupational licence. It stated that such a declaration could be progressed through a Ministerial Council or by direct negotiation between Ministers. However, to date, there have been no Ministerial Declarations of occupational equivalence between Australian jurisdictions and New Zealand.

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35. *To what extent have Ministerial Declarations had a positive impact on geographic labour mobility? How could the declarations process be made more efficient and what would be the advantages and disadvantages of any change?*
 36. *Have current arrangements ensured that Ministerial Declarations are kept up to date? If not, what changes are required, and what would be the costs and benefits?*
 37. *Are there registered occupations not currently subject to a Ministerial Declaration — including occupations registered in New Zealand — which should be? Are there any barriers to this occurring?*

Conditions

As noted above, registered occupations are mutually recognised on the basis of the equivalence of activities authorised for those occupations. Under the MRA and TTMRA, conditions may be imposed by the registration body to achieve licence equivalence. For example, registration may be granted for some activities and not others.

An example of the application of conditions to achieve equivalence is that of pest controllers under the Australian MRA. States in cooler climates do not suffer from termite problems. Pest controllers from those States, therefore, are not required to have training in, or experience with, the use of chemicals for the control of termites. To achieve equivalence between occupations, conditions have been imposed on such persons seeking registration in States that have termites such that they are not allowed to use termite control chemicals unless they have fulfilled the requirements of the States where they intend to work. (Australian Government 2014b, p. 12)

The Commission's 2009 review found evidence that regulators were imposing conditions on registration that were contrary to the intent of mutual recognition legislation in order to offset differences in standards, rather than just limit the scope of permitted activities. It recommended that mutual recognition legislation be amended to make clear the types of conditions (for example, around local knowledge or recency of practice requirements) that registration authorities may impose at the time of registration (PC 2009). In its response, the CJRF did not consider legislative amendments to be necessary and noted that there are existing judicial remedies available through the Administrative Appeals Tribunal or Trans-Tasman Occupations Tribunal to settle disputes around whether particular conditions can be imposed on a registration. Further, within Australia, Ministerial Declarations of licence equivalence may partly mitigate these issues.

38. *How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?*
39. *Are the systems for setting conditions on occupations effective and efficient? If not, what changes are required, and what would be the costs and benefits?*
40. *Have the review processes available through the Administrative Appeals Tribunal and Trans-Tasman Occupations Tribunal been effective in addressing disputes about conditions imposed on occupational registrations?*

Requirements for continued registration of occupations

In the 2009 review, the Commission presented legal advice which suggested that an Australian registration authority cannot impose ongoing requirements — such as for training or criminal record checks — on people who register under mutual recognition, but that a New Zealand authority is not similarly constrained.

However, there was ambiguity around this issue. The Commission therefore proposed that the mutual recognition legislation 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. In response, the CJRF supported the notion of legislative amendments, but decided to first consider whether an alternative option could address the issue.

The CJR Forum supports in principle that licence holders should be subject to the same ongoing requirements in a jurisdiction, irrespective of whether a licence was acquired under mutual recognition. However, careful consideration will need to be given to the implications for occupational practitioners who maintain a licence in more than one jurisdiction, for example where this would result in duplicate training requirements for persons concurrently registered in more than one jurisdiction.

The CJR Forum will also consider the option of encouraging regulators to recognise ongoing requirements conducted in other jurisdictions, where practical. (CJRF 2014, p. 13)

The Commission welcomes input on these issues.

- 41. Should people registered under mutual recognition be subject to the same ongoing requirements as other licence holders in a jurisdiction? Why or why not?*
- 42. Are amendments to mutual recognition legislation needed to clarify whether requirements for ongoing registration apply equally to all registered persons within an occupation? Are there alternative options? What are the costs and benefits of these approaches?*

Differences in occupational standards across jurisdictions

A key element of mutual recognition of occupations is that registration in one jurisdiction is sufficient grounds for registration in an equivalent occupation in another jurisdiction. Differences in occupational ‘standards’ — qualifications, skills and experience — required to obtain (and retain) registration are not grounds to reject an application. In other words, the jurisdictions that participate in the mutual recognition schemes have agreed to recognise each others’ standards, even though they may be different.

Differences in occupational standards across jurisdictions can lead to concerns about the risk of harm to property, health and safety from lower standards in some jurisdictions. In addition, it can create the potential for ‘jurisdiction shopping and hopping’ — the practice of registering in the jurisdiction with the easiest or cheapest requirements and then using

the MRA or TTMRA to move to a preferred jurisdiction. This strategy may be used by residents of a jurisdiction within Australia or New Zealand, or by people emigrating from a third country to those jurisdictions.

As a first option, regulators or jurisdictions concerned about lower occupational standards can engage in dialogue with their counterparts in other jurisdictions. If such dialogue does not resolve concerns, two formal mechanisms exist.

- The MRA and TTMRA have processes for referring concerns about specific occupational standards to COAG Ministerial Councils for resolution.
- The mutual recognition legislation allows a tribunal — the Administrative Appeals Tribunal in Australia or the Trans-Tasman Occupations Tribunal in New Zealand — to declare particular occupations as not being equivalent on standards grounds.

However, the 2009 review found that no occupational standards had ever been referred to a Ministerial Council, possibly because of the cost. The 2009 review also found a lack of clarity about how occupational standards are brought before the tribunals.

43. Is there any evidence of jurisdiction ‘shopping and hopping’ occurring for occupations which is leading to harm to property, health and safety in another jurisdiction via mutual recognition? If so, what is the extent of the problem and is it a systemic issue affecting an entire occupation? Is there evidence of any benefits, such as regulatory competition and innovation between jurisdictions?

44. How effective are current informal and formal processes — dialogue between jurisdictions, referral of occupational standards to Ministerial Councils, and recourse to a tribunal — in addressing concerns about differing standards across jurisdictions?

45. What are the costs and benefits from jurisdictions working on reducing differences in their registration requirements? How significant are they? What is the evidence?

Automatic mutual recognition of occupations

The Commission has been asked to consider the scope for automatic mutual recognition of occupations. In broad terms, under automatic mutual recognition an occupational licence issued by one jurisdiction would automatically be valid in other jurisdictions. Hence, unlike current arrangements for the MRA and TTMRA, individuals who wish to practise outside their originating jurisdiction would not be required to register again in the destination jurisdiction. This would avoid the administrative costs incurred by regulators and compliance costs borne by licence holders when they change, or work in multiple, jurisdictions.

There are already a small number of examples of automatic mutual recognition in Australia.

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- New South Wales recently adopted the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*, which enables licensed trades to work in New South Wales if they hold a licence in their home jurisdiction. At this stage, certain types of electrical licenses issued by Victoria, Queensland and the ACT are automatically recognised, provided the licence holder’s principal place of residence is in the jurisdiction that issued the licence.
 - Queensland allows electricians who hold certain specified licences issued by other states, territories and New Zealand (termed ‘external licences’) to work within the scope of that licence without having to apply for a Queensland electrical work licence.

Moreover, Australian states and territories are, through the Council for the Australian Federation (CAF), exploring the scope to adopt automatic mutual recognition more widely. This work was initiated after a majority of Australian states decided to discontinue implementation of a proposed national occupational licensing scheme.

CAF is considering an ‘external equivalence’ model — essentially a form of automatic mutual recognition — for selected license categories across jurisdictional boundaries (CAF 2014). Each state and territory government will make its own decision about the adoption of any external equivalence model but, through CAF, have agreed to start with electrical and plumbing/gas fitting occupations. The abovementioned arrangements already in place for electricians in New South Wales and Queensland are considered to be examples of the external equivalence model.

46. *Is there a strong case for adopting automatic mutual recognition more widely? What would be the implications for the MRA and TTMRA?*
47. *What are the advantages and disadvantages of the ‘external equivalence’ model being considered by the Council for the Australian Federation?*
48. *What are the strengths and weaknesses of the different models of automatic mutual recognition adopted by New South Wales and Queensland for electrical occupations? Would it be desirable to expand either of these approaches to other occupations and jurisdictions? Are there better models of automatic mutual recognition in place elsewhere?*

The terms of reference also raise the possibility of a single registration model for trans-Tasman service provision by particular occupations. While the terms of reference suggest that this would be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement, this may only be one of many elements needed for a trans-Tasman model of automatic mutual recognition.

49. *What additional issues would need to be considered for a trans-Tasman model of automatic mutual recognition? Would there be a net benefit from such a model? To what extent would it be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement? Are there specific occupations particularly suited to the model? What are the implications for the TTMRA?*

6 Mutual recognition governance arrangements

The governance arrangements for the MRA and TTMRA are a key determinant of their effectiveness and efficiency. The term governance arrangements is used here to refer to how the responsibilities of, and relationships and processes between, different agencies and jurisdictions are organised to ensure mutual recognition is implemented as envisaged by the jurisdictions.

The MRA and TTMRA have a complex system of governance arrangements involving many parties. The system is inherently decentralised, with administration and enforcement largely delegated to individual regulators in each jurisdiction. Responsibility for oversight of the mutual recognition schemes ultimately rests with Heads of Government, coordinated through COAG (including the New Zealand Government for TTMRA matters). To carry out this function, the Heads of Government are supported by various bodies, including COAG Ministerial Councils and government departments in their jurisdiction (box 3).

Box 3 Governance arrangements for the MRA and TTMRA

Heads of Government are ultimately responsible for oversight of the MRA and TTMRA. This is coordinated through the Council of Australian Governments (COAG), including New Zealand for TTMRA matters.

The **Cross-Jurisdictional Review Forum (CJRF)** — a committee of officials from central agencies in each jurisdiction — is responsible for monitoring and promoting effective operation of the MRA and TTMRA, responding to five-yearly reviews of the schemes, and recommending improvements to governments. The Australian Government provides a secretariat for the CJRF.

The CJRF reports to the **COAG Senior Officials Meeting**, which is chaired by the Secretary of the Australian Department of Prime Minister and Cabinet, with other members being corresponding departmental heads at a state and territory level within Australia.

A **central agency** in each jurisdiction — typically the treasury or head of government's department — is responsible for overall oversight of the schemes and providing a point of contact for mutual recognition matters in their jurisdiction. These central agencies also typically represent their jurisdiction in the CJRF.

Government departments and regulators in each jurisdiction are responsible for administering and enforcing particular aspects of the schemes, such as registering a specific occupation under mutual recognition.

Tribunals can review decisions made by occupation-registration authorities under the MRA and TTMRA. This function is carried out by the Administrative Appeals Tribunal in Australia and the Trans-Tasman Occupations Tribunal in New Zealand.

COAG Ministerial Councils can be called upon to make decisions on how a specific good or occupation is to be treated under the MRA and TTMRA. When a TTMRA issue arises, New Zealand has full membership and voting rights on the relevant Ministerial Council.

Sources: Australian Government (2014b); Mutual Recognition Agreement; Trans-Tasman Mutual Recognition Arrangement.

50. Are there any aspects of the governance arrangements for the MRA and TTMRA which reduce the effectiveness and efficiency of the schemes? If so, what are they and how large are the negative impacts? How could the deficiencies best be addressed and what would be the cost relative to the benefits?

Coordination and monitoring

The decentralised nature of the MRA and TTMRA reflects the intention of the architects of the schemes to have a ‘low-maintenance’ system which does not establish a new bureaucracy or require repeated updating (Sturgess 1993, 1994). These are commendable features because they make the schemes easier to implement than more centralised forms of economic integration, and avoid the costs of harmonising regulations for what may be relatively small benefits.

However, a decentralised approach can make it more challenging to ensure that there is coordination among governments and regulators (within and across jurisdictions) when warranted, such as to maintain consistency. It may also be more difficult to ensure effective monitoring and enforcement of the schemes, and timely remedial action when problems are identified, because oversight responsibilities are spread across multiple agencies which have many other responsibilities.

While an intergovernmental committee — the CJRF — has been established to coordinate and oversee the schemes, the Commission understands that it has been allocated few resources and rarely meets.

51. Have there been any inconsistencies within or across jurisdictions in how the MRA and TTMRA have been applied to goods and occupations? If so, what has been the nature and extent of the problem? How could this best be addressed?

52. Are enforcement mechanisms — including options available through tribunals and the courts — effective in cases where a jurisdiction or regulator fails to meet its mutual recognition obligations?

Awareness and expertise

A further challenge posed by the decentralised nature of the MRA and TTMRA is that it could contribute to problems that past reviews have found with:

- a lack of awareness among individuals and firms about their rights under the schemes, possibly because it is difficult for them to find information when it is dispersed across many agencies
- insufficient expertise among regulators about their obligations to mutually recognise goods and occupations, possibly because regulators — particularly smaller agencies, such as some occupation-registration bodies — struggle to maintain expertise when they do not pool resources with counterparts in other jurisdictions.

As a result, there may be a case for a more centralised approach to information provision and expertise, if it lowers search costs for individuals and firms, and there are economies of scale in maintaining technical expertise which regulators cannot achieve individually.

To some extent, the CJRF already performs a central role in this regard by publishing a users' guide for the MRA and TTMRA (Australian Government 2014b). However, the users' guide focuses on providing general information about the schemes, and the CJRF is not configured or resourced to respond to specific queries from the public and regulators. More specific information is provided on a central website for occupations subject to Ministerial Declarations (www.licencerecognition.gov.au).

53. *To what extent are potential benefits from the MRA and TTMRA not being achieved because individuals and firms are unaware of the rights they can exercise under the schemes? How, if at all, should this issue be addressed?*
54. *To what extent are regulators failing to meet their obligations under the MRA and TTMRA because they find it difficult to maintain the necessary expertise? Is this issue particularly evident for smaller regulators? What, if any, changes do you recommend?*
55. *How effective is the users' guide developed by the CJRF in making individuals and firms aware of their rights under the MRA and TTMRA, and regulators of their obligations? Could it be improved and, if so, how?*
56. *Does the licence recognition website for occupations subject to Ministerial Declarations (www.licencerecognition.gov.au) adequately address potential concerns about awareness and expertise on the MRA and TTMRA for those occupations? If not, what changes do you recommend?*

The architects of the mutual recognition schemes envisaged that other aspects of the governance arrangements would improve awareness and expertise over time. Specifically, the development of case law as individuals and firms used the courts and tribunals to seek reviews of regulator decisions, and governments referred specific standards to COAG Ministerial Councils for review. However, these mechanisms have rarely been used, possibly because of their cost. Participants have been asked to comment on this in above questions on occupations. In the case of goods, a further issue is that, unlike occupations, there is no option to have regulator decisions reviewed by a body like the Administrative Appeals Tribunal, rather than bear the cost of taking the matter to court.

57. *How effective are the options of having a court review of a specific regulator decision for a good, and COAG review the standards for a particular good? To what extent have they been used? How significant are any barriers to their use, such as their cost or a lack of awareness? What, if any changes, do you recommend?*
58. *Should regulatory decisions made under the MRA and TTMRA for goods be open to review by a tribunal, such as the Administrative Appeals Tribunal, similar to what is available for occupations? What would be the costs and benefits?*

Allocation of responsibilities for legislative reforms

Some changes to the MRA and TTMRA — such as which goods are subject to a permanent exemption — are relatively straightforward to implement because they only require governments to gazette changes to a schedule in the legislation underpinning the mutual recognition schemes. In contrast, reforming the design of the schemes can require amendments to the body of the mutual recognition legislation.

The typical amendment process for the legislation underpinning the MRA in most states and territories is to refer the powers to amend the Acts to the Commonwealth, but reserve the right for states to approve the changes before they are made. This process ensures the right of every jurisdiction to participate in, and agree to, any change but does not require the state parliaments to pass legislation to make the amendment.

The process for amending the (separate) legislation for the TTMRA is more cumbersome because only the Australian territories have referred their power to amend the legislation to the Commonwealth. All of the Australian states require amendments to be passed through their parliaments. If the objective is to ensure no changes can be made to legislation without universal state approval, this objective would still be met if the amendment power was referred to the Commonwealth, as for the MRA. The additional requirement that each state pass identical amended legislation adds a further cost with little apparent benefit.

59. Should the process for amending TTMRA legislation in Australia be streamlined so that, like the MRA, states refer to the Commonwealth their power to make legislative changes, while reserving the right to approve changes before they are made?

7 Overseas models of regulatory cooperation

Mutual recognition schemes are becoming increasingly commonplace around the world. The European Union, APEC, Scandinavia, United States and Canada all operate mutual recognition schemes. There are, however, significant differences in the nature of the various schemes, in terms of the type of regulations mutually recognised, the sectors covered (with many relating to relatively few sectors), and the method of implementation.

The TTMRA is one of the most comprehensive mutual recognition arrangements between countries. This is largely because the TTMRA (as well as the European Union internal market) relies on mutual recognition of rules while most other mutual recognition arrangements allow only for mutual recognition of conformity assessment procedures (under different partner country rules) within trade agreements.

60. Are there features of mutual recognition schemes used by countries other than Australia and New Zealand which could be adopted to improve the MRA and the TTMRA?

Mutual recognition is just one form of regulatory cooperation

Mutual recognition schemes represent only one form of regulatory cooperation. The OECD (2013) has identified ten other forms of international regulatory cooperation:

- integration or harmonisation of regulations through supranational or joint institutions
- specifically negotiated agreements, such as treaties or conventions
- regulatory partnerships between countries
- intergovernmental organisations (such as the OECD or World Trade Organisation)
- regional agreements incorporating regulatory processes (such as APEC)
- trans-governmental networks (such as the Basel Committee on Banking Supervision)
- formal requirements to consider international regulatory cooperation when developing regulations (for example, COAG Best Practice Regulation requirements)
- recognition of international standards
- ‘soft law’ or non-legally binding agreements
- dialogue or information exchanges.

The forms of international regulatory cooperation identified by the OECD are not intended to be mutually exclusive, with many features overlapping and countries — including Australia and New Zealand — typically combining several instruments to achieve their objectives.

61. Are there any lessons relevant to this review from the other approaches to international regulatory cooperation identified by the OECD?

Recognition of international standards

The Australian Government (2014a, p. 1) recently adopted the principle that ‘if a system, service or product has been approved under a trusted international standard or risk assessment, then Australian regulators should not impose any additional requirements ... unless there is a good and demonstrable reason to do so’. As a first step, the Therapeutic Goods Administration was to enable Australian manufacturers to register routine medical devices using conformity assessment certification from European notified bodies. Similarly, the National Industrial Chemicals Notification and Assessment Scheme was to increase its acceptance of international risk assessment materials from trusted overseas regulators. More generally, there was a commitment that regulators would review Commonwealth standards and risk assessment processes and assess whether unique Australian standards or risk assessments are needed.

This complements requirements that the Australian Government applies to new policy proposals. Specifically, regulatory impact statements have to ‘provide information on applicable international standards and whether the policy proposal differs from or adopts

those standards' (DPMC 2014, p. 31). Where options under consideration differ from international standards, an explanation for the variation should be provided.

The actions taken by the Australian Government are consistent with movements internationally towards increased harmonisation of standards, potentially reducing the need for mutual recognition.

62. What is the potential for greater acceptance of international standards and conformity assessments by Australia and New Zealand? What would be the implications for the MRA and TTMRA?

Interaction with trade agreements

Australia and New Zealand have entered into a number of bilateral, regional and multilateral trade agreements in recent years. These agreements potentially have implications for the TTMRA. While the TTMRA is reflective of the confidence that Australia and New Zealand have in each other's regulatory processes, this confidence does not necessarily extend to regulatory arrangements in third countries that might have trade agreements with Australia and New Zealand. Concern has sometimes been expressed that inferior quality goods or less qualified persons could emerge in either Australia and New Zealand as a result of decisions by the partner country.

In its 2009 report, the Commission did not see this as a major problem, given the lack of change to domestic regulatory requirements in each country, and the emphasis placed on ensuring standards are maintained. The Commission highlighted, however, the need to be cognisant of mutual recognition schemes when negotiating trade agreements.

63. Have there been implications for the TTMRA from Australia or New Zealand entering bilateral, regional and multilateral trade agreements in recent years? Are there examples of inferior quality goods or less qualified persons entering either country as a result of the interaction between the TTMRA and the trade agreements?

References

- ACG (Allen Consulting Group) 2008, *Evaluation of COAG Initiatives for Full and Effective Mutual Recognition*, Report to the COAG Skills Recognition Steering Committee, Canberra.
- AHPRA (Australian Health Practitioner Regulation Agency) 2014, *About*, <http://www.ahpra.gov.au/About-AHPRA.aspx> (accessed 22 December 2014).
- Australian Government 2013a, *Mutual Recognition Act 1992*, Canberra.
- 2013b, *Trans-Tasman Mutual Recognition Act 1997*, Canberra.
- 2014a, *A Lower Cost, Business Friendly Environment - Reducing the Regulatory Burden*, Canberra.
- 2014b, *A Users' Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA)*, Canberra.
- Australian Government and New Zealand Government nd, *Fact sheet - Trans-Tasman Proceedings Act 2010*.
- CAF (Council for the Australian Federation) 2014, *Council of the Australian Federation (CAF) Occupational Licensing Reform*, <http://www.caf.gov.au/OccupationalLicensing.aspx> (accessed 5 January 2015).
- CJRF (Cross Jurisdictional Review Forum) 2004, *Evaluation of Mutual Recognition Schemes*, Report to the Council of Australian Governments and the New Zealand Government, Sydney.
- 2014, *Progress Report on Responses to the Productivity Commission's 2009 Review of Mutual Recognition Schemes*, Canberra.
- COAG (Council of Australian Governments) 2009, *National Licensing System for Specified Occupations Decision Regulation Impact Statement*, Canberra.
- Department of Industry 2014, *Mutual Recognition*, <http://industry.gov.au/SKILLS/SKILLSANDLICENCERECONGNITION/MUTUALRECONGNITION/Pages/default.aspx> (accessed 17 December 2014).
- DPMC (Department of the Prime Minister and Cabinet) 2014, *The Australian Government Guide to Regulation*, Canberra.
- IP Australia 2014, *Regulation Changes Proposed to Implement Trans-Tasman Initiatives: Consultation Paper*, <http://www.ipaustralia.gov.au/about-us/public-consultations/consulting-ip-laws-amendment-bill-2014/consultation-paper/> (accessed 6 January 2015).
- OECD (Organisation for Economic Cooperation and Development) 2013, *International Regulatory Cooperation: Addressing Global Challenges*, Paris.
- PC (Productivity Commission) 2003, *Evaluation of the Mutual Recognition Schemes*, Research report, Canberra.

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- 2009, *Review of the Mutual Recognition Schemes*, Research report, Canberra.
- 2014, *Australia's Automotive Manufacturing Industry*, Inquiry Report No. 70, Canberra.
- Sturgess, G. 1993, 'An overview of mutual recognition', *Rationalisation of Occupations and Markets: A Seminar Presented by the Royal Institute of Public Administration Australia*, Carroll, P. (ed), Brisbane, pp. 13–22.
- 1994, 'Mutual recognition — A status report', *Red Tape — The Inside Story, The Lyrebird Series — Government–Business Relations in the 90s*, Royal Institute of Public Administration, Brisbane, pp. 27–40.
- TTOIG (Trans Tasman Outcomes Implementation Group) 2014, *Trans-Tasman Outcomes Implementation Group Report May 2014*, http://ttoig.treasury.gov.au/content/six_monthly/html/may_2014.asp (accessed 6 January 2015).

Attachment A: How to make a submission

This Commission invites interested people and organisations to make a written submission.

Each submission, except for any information supplied in confidence (see below), will be published on the Commission's website shortly after receipt, and will remain there indefinitely as a public document. The Commission reserves the right to not publish material on its website that is offensive, potentially defamatory, or clearly out of scope for the inquiry or study in question.

When providing a submission to the Commission, you may wish to remain anonymous or use a pseudonym. Please note that, if you choose to remain anonymous or use a pseudonym, the Commission may place less weight on your submission.

Copyright in submissions sent to the Commission resides with the author(s), not with the Commission. Submitters should ensure that they hold copyright in any submitted documents, or that the copyright holder has authorised the publication of any relevant documents on the Commission's website.

How to prepare a submission

Submissions may range from a short letter outlining your views on a particular topic to a much more substantial document covering a range of issues. Where possible, you should provide evidence, such as relevant data and documentation, to support your views.

This is a public review and all submissions should be provided as public documents that can be placed on the Commission's website for others to read and comment on. However, information which is of a confidential nature or which is submitted in confidence can be treated as such by the Commission, provided the cause for such treatment is shown. The Commission may also request a non-confidential summary of the confidential material it is given, or the reasons why a summary cannot be provided. You are encouraged to contact the Commission for further information and advice before submitting such material. Material supplied in confidence should be provided under separate cover and clearly marked 'IN CONFIDENCE'.

How to lodge a submission

Each submission should be accompanied by a submission cover sheet. The submission cover sheet is available on the study web page. For submissions received from individuals, all **personal** details (eg home and email address, signatures, phone, mobile and fax numbers) will be removed before they are published on the website for privacy reasons.

The Commission prefers to receive submissions as a Microsoft Word (.docx) file. PDF files are acceptable if produced from a Word document or similar text based software. You

may wish to research the Internet on how to make your documents more accessible or for the more technical, follow advice from Web Content Accessibility Guidelines (WCAG) 2.0 <<http://www.w3.org/TR/WCAG20/>>.

Do not send password protected files. Do not send us material for which you are not the copyright owner — such as newspaper articles — you should just reference or link to this material in your submission.

Track changes, editing marks, hidden text and internal links should be removed from submissions before sending to the Commission. To ensure hyperlinks work in your submission, the Commission recommends that you type the full web address (eg <http://www.referred-website.com/folder/file-name.html>).

Submissions sent by email must not exceed 20 megabytes in size as our email system cannot accept anything larger. If your submission is greater than 20 mb in size, please contact the Administrative Officer (Yvette Goss, Ph: 03 9653 2253) to organise another method of sending your submission to the Commission.

Submissions can be accepted by email or post:

Email*	mutual.recognition@pc.gov.au
Post	Mutual Recognition Schemes Study Productivity Commission Locked Bag 2, Collins Street East Melbourne VIC 8003

* If you do not receive notification of receipt of an email message you have sent to the Commission within two working days of sending, please contact the Administrative Officer.

Due date for submissions

Please send submissions to the Commission by **27 February 2015**.