

Act 1992 No. 61

MUTUAL RECOGNITION (NEW SOUTH WALES) BILL 1992*

NEW SOUTH WALES



EXPLANATORY NOTE

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

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

The background

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

Amended in committee—see table at end of volume.

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also agreed that proclamation of the Commonwealth Act should occur by 1 March 1993. Each jurisdiction is to use its best endeavours to achieve this result. The agreement also included mechanisms for considering exemptions and for reviewing the operation of the scheme.

The Commonwealth and State Bills

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

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

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

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

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

The result to be achieved by the Commonwealth and State Bills

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

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