

Mutual Recognition (New South Wales) Act 1992 No 61

[1992-61]



New South Wales

Status Information

Currency of version

Current version for 23 June 2021 to date (accessed 29 May 2024 at 23:32)

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Note**
Amendment to the [Mutual Recognition Act 1992](#) of the Commonwealth is included in the Historical notes at the end of this document.
- **Editorial note**
The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

Responsible Minister

- Treasurer

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Mutual Recognition (New South Wales) Act 1992 No 61



New South Wales

An Act to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

1 Name of Act and purpose

- (1) This Act may be cited as the *Mutual Recognition (New South Wales) Act 1992*.
- (2) The purpose of this Act is to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in Australia regarding goods and occupations.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Interpretation

In this Act, **the Commonwealth Act** means the Act of the Parliament of the Commonwealth, enacted as referred to in section 4 (1) (a), and as amended and in force from time to time.

4 Enactment of uniform mutual recognition legislation

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth for a period commencing on the day on which this Act commences and ending on the day provided under section 5B as the day on which the reference under this Act terminates, but not longer, namely, the matters to which the Schedule relates but only to the extent of—
 - (a) the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule, and
 - (b) the amendment of that Act (other than the Schedules), but only in terms which are approved by the designated person for each of the then participating jurisdictions.

- (2) For the purposes of this section, a ***participating jurisdiction*** is—
- (a) a State for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the matters mentioned in subsection (1), or that adopts the Commonwealth Act, under paragraph (xxxvii) of section 51 of the [Commonwealth Constitution](#), or
 - (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact the Commonwealth Act or that enables the Commonwealth Act to apply in relation to it.
- (3) For the purposes of this section, 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.
- (4)–(6) (Repealed)

5 Approval of amendments

For the purposes of section 4 (1) (b), the Governor may, by proclamation, approve the terms of amendments of the Commonwealth Act.

5A Reference of matters concerning amendment of Commonwealth Act

- (1) The mutual recognition matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by making express amendments of the Commonwealth Act.
- (2) The ***mutual recognition matters*** are—
- (a) the matter of providing for individuals lawfully authorised to carry on an occupation in a State to carry on the occupation in another State, and
 - (b) the matter of providing for goods that may be sold lawfully in a State to be sold lawfully in another State, whether with or without the need to comply with some or all of the applicable legal requirements of the other State.
- (3) However, subsection (2)(b) does not include the matter of providing for—
- (a) an alteration of the process specified by the Commonwealth Act, section 47(2) and (3), as in force when this section commences, for making regulations amending the Commonwealth Act, Schedule 1 or 2, or
 - (b) the repeal or amendment of exemptions from the operation of the Commonwealth Act, Part 2, specified in the Commonwealth Act, Schedule 1 or 2.
- (4) The operation of each of section 4(1) and subsection (1) is not affected by the other subsection.

- (5) The reference of a matter under subsection (1) has effect only if and to the extent that—
- (a) the matter is not included in the legislative powers of the Parliament of the Commonwealth otherwise than by a reference under the Constitution of the Commonwealth, section 51(xxxvii), and
 - (b) the matter is included in the legislative powers of the Parliament of the State.
- (6) To avoid doubt, it is the intention of the Parliament of the State that the Commonwealth Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this section by—
- (a) provisions of Commonwealth Acts the operation of which are based on legislative powers that the Parliament of the Commonwealth has apart from the reference under subsection (1), and
 - (b) provisions of instruments made or issued under the Commonwealth Act or under provisions referred to in paragraph (a).
- (7) Despite any other provision of this section, a reference under subsection (1) has effect for, but no longer than, the period—
- (a) beginning when this section commences, and
 - (b) ending at the end of the day fixed under section 5B as the day on which the reference is to terminate.
- (8) In this section—

applicable legal requirements, in relation to goods that are sold, means requirements, prohibitions, restrictions or conditions imposed by or under law that apply to the goods or their sale.

express amendment of the Commonwealth Act means the direct amendment of the text of that Act, whether by the insertion, omission, repeal, substitution or relocation of words or matter, by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth Act.

goods means goods of any kind, and includes animals.

lawfully authorised, in relation to carrying on an occupation, means to hold or have a licence, permit, certificate, registration or other form of qualification or authorisation required by or under law to carry on the occupation.

occupation means an occupation, trade, profession or calling of any kind.

sold includes—

- (a) sold by wholesale or retail, and
- (b) distribution for sale or have in possession for sale, and
- (c) agree to sell, and
- (d) barter, and
- (e) expose or offer for sale, and
- (f) supply by way of exchange, lease, hire or hire-purchase.

State, when used in relation to a State other than New South Wales, includes a Territory.

5B Termination of references

- (1) The reference made by section 4(1)(b) is terminated on the commencement of section 5A.
- (2) The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which—
 - (a) the references made by section 4(1)(a) and 5A(1) both terminate, or
 - (b) the reference made by section 5A(1) terminates.
- (3) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (2), in which case the revoked proclamation is taken, for the purposes of sections 4 and 5A, never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (2).
- (5) The revocation of a proclamation published under subsection (2) does not prevent publication of a further proclamation under that subsection.

5C Effect of termination of amendment reference before other reference

- (1) If the reference made by section 5A(1) (the **amendment reference**) terminates before the reference made by section 4(1)(a), the termination of the amendment reference does not affect—
 - (a) laws that were made under that reference before that termination, whether or not they have come into operation before that termination, or
 - (b) the continued operation in the State of the Commonwealth Act as in operation immediately before that termination or as subsequently amended or affected by—

- (i) laws referred to in paragraph (a) that come into operation after that termination, or
 - (ii) provisions referred to in section 5A(6).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the reference under section 4(1)(a) is terminated.

5D Minister required to seek exclusions for certain occupations

- (1) The Minister must, before or no later than 1 month after section 42T of the amended Commonwealth Act commences, make a declaration using section 42T (a **temporary exclusion declaration**) to exclude each relevant occupation from the operation of automatic deemed registration.
- (2) If a temporary exclusion declaration for a relevant occupation is not revoked before the end of the initial exclusion period, the Minister must make a declaration using section 42S of the amended Commonwealth Act (a **significant risk exclusion declaration**) to continue its exclusion from the operation of automatic deemed registration.
- (3) The Minister must make further significant risk exclusion declarations for an occupation mentioned in subsection (2) each time a previous significant risk exclusion declaration for the occupation ends for a reason other than revocation.
- (4) The Minister must comply with subsections (2) and (3) before the previous declaration ends.
- (5) The Minister must consult with relevant trade unions and industry groups at least once during each 12-month period during which a significant risk exclusion declaration for a relevant occupation is in force about whether the continued exclusion of the occupation is appropriate having regard to the purpose of the amended Commonwealth Act specified by section 3 of that Act.
- (6) The Minister must not revoke a temporary exclusion declaration or significant risk exclusion declaration for a relevant occupation before it is due to end unless the Minister—
 - (a) has tabled a revocation proposal in each House of Parliament, and
 - (b) the disallowance period for the proposal has ended or all motions to disallow the proposal have been defeated.
- (7) A revocation proposal for a relevant occupation must state—
 - (a) the trade unions and industry groups the Minister has consulted about the proposal, and

(b) the reasons why the Minister is satisfied the end of the exclusion of the occupation from the operation of automatic deemed registration would not—

(i) place the public at risk of harm, or

(ii) compromise the effective regulation of the occupation in the State.

(8) The *Interpretation Act 1987*, sections 40 and 41 apply to a revocation proposal in the same way as they apply to a statutory rule.

(9) This section does not limit or prevent the Minister making or revoking temporary exclusion declarations or significant risk exclusion declarations for occupations other than relevant occupations.

(10) In this section—

amended Commonwealth Act means the Commonwealth Act as amended by the *Mutual Recognition Amendment Act 2021* of the Commonwealth, as in force from time to time.

automatic deemed registration has the same meaning as in the amended Commonwealth Act.

initial exclusion period means the period of 12 months beginning when section 42T of the amended Commonwealth Act commences.

relevant occupation means any occupation for which an individual must be lawfully authorised under a law of the State to carry on activities involving—

(a) teaching work, or

(b) electrical work, or

(c) mining work, or

(d) the work of a diesel mechanic, or

(e) building, maintenance or construction work, including the following—

(i) engineering work,

(ii) gasfitting work, including medical gasfitting work and medical gas technician work,

(iii) mechanical services and medical gas work,

(iv) air-conditioning work,

(v) the work of a refrigeration mechanic,

- (vi) plumbing work,
- (vii) tunnelling work,
- (viii) welding work,
- (ix) drilling work,
- (x) the work of a fitter and turner,
- (xi) the work of a shotfirer,
- (xii) the work of a rigger or dogger,
- (xiii) the work of a machine and heavy plant operator,
- (xiv) fire protection work.

6 Regulations for temporary exemptions for goods

Without limiting any other power to make regulations under any other Act, the Governor may make regulations for the purposes mentioned in section 15 of the Commonwealth Act.

Schedule

MUTUAL RECOGNITION BILL 1992

A BILL

FOR

An Act to provide for the recognition within each State
and Territory of the Commonwealth of regulatory
standards adopted elsewhere in Australia
regarding goods and occupations

The Parliament of Australia enacts—

PART 1 PRELIMINARY

—

1. Short title

This Act may be cited as the *Mutual Recognition Act 1992*.

2. Commencement

The provisions of this Act commence on a day or days to be fixed by Proclamation.

3. Principal purpose

The principal purpose of this Act is to enact legislation authorised by the Parliaments of States under paragraph (xxvii) of section 51 of the *Commonwealth Constitution*, and requested by the legislatures of the Australian Capital Territory and the Northern Territory, for the purpose of promoting the goal of

freedom of movement of goods and service providers in a national market in Australia.

4. Interpretation

(1)

In this Act, unless the contrary intention appears—

“conditions”, when used in relation to occupations, means conditions, limitations or restrictions;

“deemed registration” means deemed registration as defined in section 25;

“equivalent”, when used in relation to occupations, has a meaning affected by Division 4 of Part 3;

“goods” means goods of any kind, and includes—

- (a) animals; or
- (b) a package containing goods; or
- (c) a label attached to goods;

“grant”, when used in relation to registration, means grant, issue or otherwise confer registration;

“import” means import from outside Australia;

“labelling” of goods includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them;

“local registration authority” of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on of that occupation in the State;

“occupation” means an occupation, trade, profession or calling of any kind that may be carried on 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 or proper), and includes a specialisation in any of the above in which registration may be granted;

“participating jurisdiction” has the meaning given by section 43;

“produce” includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production;

“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 the carrying on of an occupation;

“requirements”, when used in relation to goods, means requirements, prohibitions, restrictions or conditions;

“sell” includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase;

“State” includes the Australian Capital Territory or the Northern Territory;

“substantive registration” means registration under a law of a State, but does not include deemed registration;

“Tribunal” means the Administrative Appeals Tribunal.

(2)

This Act is to be interpreted in accordance with the [Acts Interpretation Act 1901](#) as in force at the date on which this Act receives the Royal Assent.

5. Application of this Act to States

(1)

This Act applies to a State, but only while it is a participating jurisdiction.

(2)

Accordingly, a reference in this Act to a State is a reference to a State that is a participating jurisdiction.

6. Operation of this Act

(1)

Nothing in this Act affects the operation of any other law of the Commonwealth.

(2)

This Act does not limit the operation of a law of a State so far as it can operate concurrently with this Act.

7. Crown bound

Subject to section 5, this Act binds the Crown in right of the Commonwealth and of each of the States.

PART 2 GOODS

8. Mutual recognition

(1)

The mutual recognition principle as applying to goods is as set out in this Part.

(2)

This Part deals with goods produced in or imported into a State and their sale in another State.

(3)

In this Part, the firstmentioned State is called **“the first State”**, and the other State is called **“the second State”**.

9. Entitlement to sell goods

The mutual recognition principle is that, subject to this Part, goods produced in or imported into the first State, that may lawfully be sold in that State either generally or in particular circumstances, may,

by virtue of this Act, be sold in the second State either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements as described in section 10.

10. Requirements that do not need to be complied with

The further requirements referred to in section 9 are any one or more of the following requirements relating to sale that are imposed by or under the law of the second State—

- (a) a requirement that the goods satisfy standards of the second State relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance;
- (b) a requirement that the goods satisfy standards of the second State relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;
- (c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;
- (d) a requirement that any step in the production of the goods not occur outside the second State;
- (e) any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.

11. Requirements that do need to be complied with

(1)

The mutual recognition principle is subject to the exceptions specified in this section.

(2)

The first exception is that the principle does not affect the operation of any laws of the second State that regulate the manner of the sale of goods in the second State or the manner in which sellers conduct or are required to conduct their business in the second State (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the second State.

Examples: Laws relating to the following—

- (a) the contractual aspects of the sale of goods;
- (b) the registration of sellers or other persons carrying on occupations;
- (c) the requirement for business franchise licences;
- (d) the persons to whom goods may or may not be sold;
- (e) the circumstances in which goods may or may not be sold.

(3)

The second exception is that the principle does not affect the operation of any laws of the second State regarding the transportation, storage or handling of goods within the State, so long as—

- (a) those laws apply equally to goods produced in or imported into the second State; and
- (b) those laws are directed at matters affecting health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

(4)

The third exception is that the principle does not affect the operation of any laws of the second State regarding the inspection of goods within the State, so long as—

- (a) inspection or the requirement for inspection is not a prerequisite to the sale of the goods in the second State; and
- (b) those laws apply equally to goods produced in or imported into the second State; and
- (c) those laws are directed at matters affecting the health and safety of persons in the second State or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

12. Defences to offences regarding sale

(1)

It is a defence to a prosecution for an offence against a law of the second State in relation to the sale of any goods if the defendant expressly claims that the mutual recognition principle applies and establishes that—

- (a) the goods were labelled at the point of sale with a statement to the effect that the goods were produced in or imported into the first State; and
- (b) the defendant had no reasonable grounds for suspecting that they were not so produced or imported.

(2)

The defence is not available if the prosecution proves that the mutual recognition principle did not apply in the circumstances of the alleged offence (because for example the goods did not comply with requirements imposed by the law of the first State).

(3)

Any relevant presumptions or evidentiary procedures under the law of the first State are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under subsection (2).

(4)

Any relevant defences under the law of the first State are available to the defendant in relation to matters sought to be proved by the prosecution under subsection (2).

(5)

This section does not affect any defence that is available apart from this section.

13. Goods that comply with local law

(1)

Nothing in this Part prevents goods from being sold in the second State if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.

(2)

Nothing in this Part requires the labelling of goods as mentioned in section 12 if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.

14. Permanent exemptions

(1)

This Part does not apply to goods that are specified in Schedule 1.

(2)

This Part does not affect the operation of laws described in Schedule 2.

(3)

Unless otherwise stated in Schedule 2, a law described in that Schedule includes any amendment or replacement of that law, but only to the extent that the amendment or replacement deals with the same subject-matter.

15. Temporary exemptions

(1)

This Part does not apply to the sale in the second State of goods, or affect laws of the second State, for the time being declared by or under an Act or regulation of the State to be goods or laws to which this section applies.

(2)

Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the State or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the State.

(3)

No such exemption operates (together with the period of any previous exemption) for longer than a period of 12 months or an aggregate period of 12 months.

PART 3 OCCUPATIONS

Division 1 Preliminary

16. Mutual recognition

(1)

The mutual recognition principle as applying to occupations is as set out in this Part.

(2)

This Part deals with the ability of a person who is registered in connection with an occupation in a State to carry on an equivalent occupation in another State.

(3)

In this Part, the firstmentioned State is called “**the first State**”, and the other State is called “**the second State**”.

17. Entitlement to carry on occupation

(1)

The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation—

- (a) to be registered in the second State for the equivalent occupation; and
- (b) pending such registration, to carry on the equivalent occupation in the second State.

(2)

However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws—

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

18. Application of this Part

(1)

This Part applies to individuals and occupations carried on by them.

(2)

This Part extends to an occupation carried on by an individual, where the individual is subject to more than one system of registration or more than one local registration authority in a State, and accordingly this Part applies in relation to each such system of registration and each such authority.

(3)

Without limiting subsection (2), an example of such an occupation is that of a legal practitioner, which involves both the admission as a legal practitioner by a court and the issue of a practising certificate by another body.

Division 2 Entitlement to registration

—

19. Notification to local registration authority

(1)

A person who is registered in the first State for an occupation may lodge a written notice with the local registration authority of the second State for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the mutual recognition principle.

(2)

The notice must—

- (a) state that the person is registered for the occupation in the first State and specify that State; and
- (b) state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle; and
- (c) specify all the States in which the person has substantive registration for equivalent occupations; and
- (d) state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and
- (e) state that the person's registration in any State is not cancelled or currently suspended as a result of disciplinary action; and
- (f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any State, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and
- (g) specify any special conditions to which the person is subject in carrying on any such occupation in any State; and
- (h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.

(3)

The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration).

(4)

As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original.

(5)

The statements and other information in the notice must be verified by statutory declaration.

(6)

The local registration authority may permit the notice to be amended after it is lodged.

20. Entitlement to registration and continued registration

(1)

A person who lodges a notice under section 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation, as if the law of the second State that deals with registration expressly provided that registration in the first State is a sufficient ground of entitlement to registration.

(2)

The local registration authority may grant registration on that ground and may grant renewals of such registration.

(3)

Once a person is registered on that ground, the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in the first State.

(4)

Continuance of registration is otherwise subject to the laws of the second State, to the extent to which those laws—

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

(5)

The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they are conditions that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations.

(6)

This section has effect subject to this Part.

21. Action following notice

(1)

Registration must be granted within one month after the notice is lodged with the local registration authority under section 19.

(2)

When granted, registration takes effect as from the date the notice was lodged.

(3)

However, the local registration authority may, subject to this Part and within one month after the notice was lodged, postpone or refuse the grant of registration.

(4)

If the local registration authority neither grants the registration nor takes action under subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration immediately at the end of that period and no objection may be taken to the notice on any of the grounds on which refusal or postponement may be effected, except where fraud is involved.

22. Postponement of registration

(1)

A local registration authority may postpone the grant of registration, if—

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or
- (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or
- (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation.

(2)

If the grant of registration has been postponed, the local registration authority may in due course grant or refuse the registration.

(3)

The local registration authority may not postpone the grant of registration for longer than a period of 6 months, and the person is entitled to registration immediately, at the end of that period, unless registration was refused at or before the end of that period.

(4)

Nothing in subsection (3) prevents earlier registration from being granted on a review by the Tribunal.

23. Refusal of registration

(1)

A local registration authority may refuse the grant of registration, if—

- (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
- (b) any document or information as required by section 19 (3) has not been provided or is materially false or misleading; or

- (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions.

(2)

A decision to refuse to grant registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than 2 weeks) after the person is notified of the decision, unless it has been previously revoked or there is an application for review to the Tribunal, in which case the Tribunal may make whatever orders it considers appropriate.

24. Notification of decision

A local registration authority must give the person who lodges a notice in accordance with section 19 a notice in writing of its decision to grant registration, or to postpone or refuse the grant of registration, or to impose conditions on registration.

Division 3 Interim arrangements

—

25. Deemed registration

(1)

A person who lodges a notice under section 19 with a local registration authority of a State is, pending the grant or refusal of registration, taken to be registered as provided in section 20.

(2)

Such registration is called “**deemed registration**” in this Act.

(3)

Deemed registration in one State does not of itself provide a basis for registration in another State.

26. Duration of deemed registration

(1)

A person’s deemed registration in the second State continues until it is cancelled or suspended or otherwise ceases in accordance with this Part.

(2)

A person’s deemed registration in the second State ceases if the person becomes substantively registered in the State in connection with the occupation concerned.

(3)

A person’s deemed registration in the second State ceases if the local registration authority of the State refuses to grant registration, subject to any determination of the Tribunal.

(4)

A person’s deemed registration in the second State ceases if the person ceases to be substantively registered in every other State mentioned in the notice as required by section 19 (2) (c).

(5)

A local registration authority of the second State may cancel a person's deemed registration in the second State if the person requests cancellation.

(6)

Deemed registration is not affected by postponement of the grant of substantive registration.

27. Activities under deemed registration

(1)

A person who has deemed registration in the second State may carry on the occupation in the second State as if the deemed registration were substantive registration in the second State.

(2)

However, the person may do so only—

- (a) within the limits conferred by the person's substantive registration in the first State; and
- (b) within the limits conferred by the person's deemed registration in the second State; and
- (c) subject to any conditions or undertakings applying to the person's registration in the first State, unless waived by the local registration authority of the second State under this section; and
- (d) subject to any conditions applying to the person's deemed registration.

(3)

Without limiting anything in this Division—

- (a) the person may not carry on the occupation in the second State without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and
- (b) a person who has deemed registration in an occupation in the second State is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in that State; and
- (c) references in the law of the second State to persons registered in an occupation under the law of that State (however expressed) extend to persons who have deemed registration for the occupation under this Act.

(4)

However, the local registration authority of the second State may waive any condition imposed under the law of the first State, or any undertaking given to the local registration authority of the first State, if it thinks it appropriate in the circumstances.

(5)

The local registration authority of the second State may impose conditions as if deemed registration were substantive registration, but it must not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they correspond to conditions or undertakings

that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations.

Division 4 Equivalent occupations

28. Equivalent occupations

The equivalence of occupations carried on in different States is to be determined in accordance with this Part.

29. General principle

(1)

An occupation for which persons may be registered in the first State is taken to be equivalent to an occupation for which persons may be registered in the second State if the activities authorised to be carried out under each registration are substantially the same (whether or not this result is achieved by means of the imposition of conditions).

(2)

Conditions may be imposed on registration under this Part so as to achieve equivalence between occupations in different States.

(3)

This section has effect subject to any relevant declarations in force under this Division.

30. Declarations as to equivalent occupations

(1)

This Part is to be given effect in accordance with relevant declarations (if any) made under this Division regarding equivalent occupations.

(2)

If a declaration made by the Tribunal and a declaration made by Ministers are inconsistent, the ministerial declaration prevails.

(3)

A declaration under this Part does not affect the registration of any person already registered (except in the case of a declaration made by the Tribunal in relation to that person specifically).

31. Declarations by Tribunal

(1)

On a review, the Tribunal may make an order that a person who is registered in a particular occupation in a particular State is or is not entitled to registration in another State in a particular occupation, and may specify or describe conditions that will achieve equivalence.

(2)

On such a review, the Tribunal may make a declaration that occupations carried on in two States are not equivalent, but only if the Tribunal is satisfied that—

- (a) the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
- (b) registration in one State should not entitle registered persons to carry on a particular activity or class of activity in the other State, where—
 - (i) the activity or class of activity is a material part of the practice of a person registered in the first State for the occupation; and
 - (ii) the activity or class of activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons in the other State to a real threat to their health or safety or could reasonably be expected to cause significant environmental pollution (including air, water, noise or soil pollution); and
 - (iii) it is not practicable to protect the health or safety of such persons from that threat or the environment from such pollution by regulating the manner in which services in the occupation are provided.

(3)

The Registrar or other proper officer of the Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *Gazette*.

(4)

A declaration made on the basis of paragraph (2) (b) has effect for no longer than 12 months, and the local registration authority must promptly notify appropriate authorities in each other State and the Commonwealth of the declaration.

(5)

The local registration authority is to give effect to the decision on the review, and must thereafter act in conformity with the decision in relation to other persons seeking registration.

32. Declarations by Ministers

(1)

A Minister from each of two or more States may jointly declare, by notice in the *Gazette*, that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence.

(2)

The declaration may be amended or rescinded in the same way.

(3)

The declaration has effect only in relation to the States concerned.

(4)

The appropriate local registration authority is to give effect to the declaration.

Division 5 General provisions

33. Disciplinary action

(1)

If a person's registration in an occupation in a State—

- (a) is cancelled or suspended; or
- (b) is subject to a condition;

on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way.

(2)

However, the local registration authority of the other State may reinstate any cancelled or suspended registration or waive any such condition if it thinks it appropriate in the circumstances.

(3)

This section extends to registration effected apart from this Act.

(4)

This section has effect despite any other provisions of this Part.

34. Review of decisions

(1)

Subject to the [Administrative Appeals Tribunal Act 1975](#), application may be made to the Tribunal for review of a decision of a local registration authority in relation to its functions under this Act.

(2)

In subsection (1)—

“decision” has the same meaning as in the [Administrative Appeals Tribunal Act 1975](#).

(3)

If a local registration authority gives a person written notice of the making of a decision referred to in subsection (1), the notice must include a statement to the effect that—

- (a) subject to the [Administrative Appeals Tribunal Act 1975](#), application for review of the decision may be made to the Tribunal by a person whose interests are affected by the decision; and
- (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.

(4)

Any failure to comply with a requirement of subsection (3) does not affect the validity of the decision.

35. Costs

The Tribunal may order a party in proceedings before it to pay costs if the party has acted unreasonably.

36. Residence or domicile

Residence or domicile in a particular State is not to be a prerequisite for or a factor in entitlement to the grant, renewal or continuation of registration arising under this Part.

37. Furnishing information

(1)

A local registration authority of a State must furnish without delay any information reasonably required by a local registration authority of another State about a person substantively registered under a law of the firstmentioned State.

(2)

The obligation imposed under this section does not apply unless the authority of the other State notifies the authority of the firstmentioned State that the information is required in connection with—

- (a) a notice lodged by a person seeking registration; or
- (b) a person's deemed registration; or
- (c) actual or possible disciplinary action against the person.

(3)

The authority of the firstmentioned State is empowered to provide the information, despite any law relating to secrecy or confidentiality.

(4)

Nothing in this section affects any obligation or power to provide information apart from this section.

38. Receiving information

If a local registration authority receives information under section 37, the information is subject to any law relating to secrecy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions.

39. General responsibilities of local registration authorities

(1)

It is the duty of each local registration authority to facilitate the operation of this Part in relation to the occupations for which the authority is responsible, and in particular to make use of the power to impose conditions in such a way as to promote the mutual recognition principle.

(2)

It is the duty of each local registration authority to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations for which the authority is responsible.

(3)

The first such guidelines and information are to be available within 6 months after the commencement of this section.

40. Fees

(1)

A local registration authority has power to impose fees in relation to substantive or deemed registration or the continuance of registration arising under this Part, but any such fees may not be greater than are applicable for registration apart from this Part.

(2)

Nothing in this section prevents the fixing or prescribing of fees referred to in this section under any other law of a State, but the fees may not be greater than can be imposed under this section.

(3)

The local registration authority may impose a condition on substantive or deemed registration arising under this Part to the effect that a person may not carry out activities under registration unless a fee or other payment has been paid, but such a condition may not be imposed unless it corresponds to a requirement attaching to registration apart from this Part.

(4)

This section does not authorise the imposition of a tax.

41. Formalities requiring personal attendance

(1)

Neither substantive or deemed registration, nor entitlement to registration, under this Part requires compliance with any statutory or other formalities requiring personal attendance in the second State.

(2)

This section applies to formalities that would otherwise have to be complied with before, at or after registration.

42. Saving

Nothing in this Part prevents a person from seeking registration or being registered for an occupation under a law apart from this Part.

PART 4 GENERAL

43. References to participating jurisdictions

For the purposes of this Act, a participating jurisdiction is—

- (a) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact this Act, or that adopts this Act, under paragraph (xxxvii) of section 51 of the [Commonwealth Constitution](#); or

- (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act or that enables this Act to apply in relation to it.

44. Application of mutual recognition principle

(1)

The mutual recognition principle and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose.

(2)

Nothing in this Act prevents a person from relying on the mutual recognition principle in relation to more than two States.

45. Machinery provisions regarding limitations etc.

In cases where Part 3 provides that conditions or undertakings that apply or are relevant to registration in the first State also apply or are relevant to registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable)—

- (a) references to the first State are to be read as references to the second State;
- (b) references to officers or authorities of the first State are to be read as references to the corresponding officers or authorities of the second State.

46. Determining place of production

(1)

For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in the State where the most recent step has occurred in the process of producing the goods (including for example processing, harvesting or packaging the goods).

(2)

Subsection (1) applies even though—

- (a) the process of production may be incomplete; or
- (b) some steps in the process have not yet been carried out; or
- (c) some steps in the process were carried out elsewhere, whether in another State or outside Australia; or
- (d) the goods or a component of the goods were imported.

47. Amendment of Schedules

(1)

The Governor-General may make regulations amending the Schedules.

(2)

No such regulation may be made unless the designated person for each of the then participating

jurisdictions has published a notice in the official gazette of the jurisdiction setting out the terms of the proposed regulation and requesting that it be made.

(3)

For the purposes of this section, 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.

SCHEDULE 1 PERMANENT EXEMPTIONS: GOODS

— (Secs. 14, 47)

1.

Firearms and other prohibited or offensive weapons.

2.

Fireworks.

3.

Gaming machines.

4.

Pornographic material.

SCHEDULE 2 PERMANENT EXEMPTIONS: LAWS RELATING TO GOODS

— (Secs. 14, 47)

1.

A law of a State relating to quarantine, to the extent that—

- (a) the law (or a direction or instrument given or made under the law or some other action taken under the law) regulates or prohibits the bringing of specified goods into the State or into a defined area of the State; and
- (b) the State or area is substantially free of a particular disease, organism, variety, genetic disorder or any other similar thing; and
- (c) it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other thing into the State or area; and
- (d) it is reasonably likely that that introduction would have a long-term and substantially detrimental effect on the whole or any part of the State.

2.

A law of a State to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the State and that it prohibits or

restricts the possession, sale, killing or capture of animals or plants of that species or other class in the State.

3.

Ozone Protection Act 1991 of the Australian Capital Territory.

4.

Weapons Act 1991 of the Australian Capital Territory.

5.

Ozone Protection Act 1989 of New South Wales.

6.

Clean Air Act 1963–1990 of Queensland, Part IVA.

7.

Hazardous Substances (Chlorofluorocarbons and Other Ozone Layer Depleting Substances) Regulations 1988 under the *Health Act 1937–1988* of Queensland.

8.

Beverage Container Act, 1975 of South Australia.

9.

Clean Air Act, 1984 of South Australia, Part IIIA.

10.

A law of Tasmania to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size.

11.

Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988 of Tasmania.

12.

Environment Protection Act 1970 of Victoria, section 16 (in relation to ozone depleting substances), section 41 (2) (d) and section 71 (1) (gba).

13.

Environmental Protection Regulations 1987 under the *Environmental Protection Act 1986* of Western Australia.

14.

Business Franchise (“X” Videos) Act 1990 of the Australian Capital Territory.

15.

Classification of Publications Ordinance 1983 of the Australian Capital Territory.

16.

Crimes Act 1900 of the Australian Capital Territory, section 92NB.

17.

Film Classification Act 1971 of the Australian Capital Territory.

18.

Publications Control Act 1989 of the Australian Capital Territory.

19.

Film and Video Tape Classification Act 1984 of New South Wales.

20.

Indecent Articles and Classified Publications Act 1975 of New South Wales.

21.

Classification of Publications and Films Act of the Northern Territory.

22.

Classification of Films Act 1991 of Queensland.

23.

Classification of Publications Act 1991 of Queensland.

24.

Classification of Films for Public Exhibition Act, 1971 of South Australia and regulations under that Act.

25.

Classification of Publications Act, 1974 of South Australia and regulations under that Act.

26.

Summary Offences Act, 1953 of South Australia, section 33 and section 35.

27.

Classification of Publications Act 1984 of Tasmania.

28.

Classification of Films and Publications Act 1990 of Victoria.

29.

Censorship of Films Act 1947 of Western Australia.

30.

Indecent Publications and Articles Act 1902 of Western Australia.

31.

Video Tapes Classification and Control Act 1987 of Western Australia.