
2 Overview of the mutual recognition schemes

Key points

- The mutual recognition schemes were designed to remove barriers to interjurisdictional flows of goods sold and workers employed in registered occupations.
- Broadly speaking, the schemes mean that goods sold in one jurisdiction may be sold in other jurisdictions without meeting further requirements, and that people registered in occupations in one jurisdiction are entitled to registration in equivalent occupations in other jurisdictions.
- The schemes are not all-encompassing: services are not included; a range of state-based regulations are the subject of exceptions; some national regulations are excluded; and some laws and goods (and one occupation) that otherwise fall within the scope of the schemes are exempted from their effect.
- Monitoring of the schemes and efforts to ensure compliance appear to be weak.
- Previous reviews concluded that the schemes were working reasonably well, but identified a range of issues preventing realisation of their full benefits.

2.1 Background to mutual recognition

During the late 1980s, microeconomic reform emerged as a major element of Australia's economic strategy. Policy initiatives were introduced in a wide range of areas, with the goal of improving the efficiency and competitiveness of Australian industry. The Mutual Recognition Agreement (MRA) emerged from one of these initiatives.

In a speech to the Press Club in July 1990, Prime Minister R.J. Hawke drew attention to the 'burden of different rules and regulations and requirements' between Australian states and territories (Hawke 1990, p. 2). Contrary to the intention of the Australian Constitution to create a seamless national economy through the removal of barriers to trade between states, non-tariff barriers in the form of regulatory variation had given rise to eight distinct markets.

Among examples of impediments to the mobility of goods and services were: requirements for manufacturers to use different packaging for goods sold in different states; and the need for professionals and tradespeople to obtain a licence if they sought to work outside their home state. Prime Minister Hawke also made reference to the fact that, in 1992 (with the creation of the European Union), there would be fewer barriers to trade between members of the European Economic Community than between Australian states.

Prime Minister Hawke emphasised the need for better cooperation between Australian governments. Experience suggested this would be critical to effective reform. As the Industries Assistance Commission observed:

Existing mechanisms to promote cooperation between governments have met with only limited success. Australia's poorly coordinated rail systems and the inordinate delays in progress towards uniformity in state regulations in areas such as road transport and food are testimony to that. (IAC 1989, p. 5)

Prime Minister Hawke set in train a number of Special Premiers' Conferences to advance the reform agenda. In August 1990, when senior officials first met to give substance to the policy directions flagged in July of that year, mutual recognition was put on the table (Sturgess 1994). Separately, the Industry Commission also proposed mutual recognition as a solution to the issues raised by Prime Minister Hawke (IC 1990, pp. 84–6).

The attraction of mutual recognition lay in the fact that it allowed 'all regulations throughout Australia to coexist, while reducing the current adverse impacts of those regulatory differences' (CRR 1991, p. 2). The time consuming and difficult task of achieving uniform standards was avoided.

The October 1990 Special Premiers' Conference endorsed the mutual recognition concept and, as a result, a Commonwealth–State Committee on Regulatory Reform (the CRR), chaired by New South Wales, was formed to design a mutual recognition scheme for Australia.

A framework for the scheme was approved at a Special Premiers' Conference in July 1991 and, following consultation on a discussion paper (CRR 1991), final agreement was reached at a Special Premiers' Conference in November 1991. On 11 May 1992, the Commonwealth, state and territory governments signed the *Intergovernmental Agreement on Mutual Recognition* (MRA), committing the parties to:

... establish a scheme for implementation of mutual recognition principles for goods and occupations for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia. (MRA, p. 1)

The scheme took effect, following the passage of legislation, from 1 March 1993.

It is noteworthy that the MRA is silent on aspects of trade in services that do not involve occupational registration. The architects of the MRA considered including services, but excluded them on the grounds that ‘a large number [were] already regulated at Commonwealth level or under uniformity agreements. Examples include corporations law, banking and finance, nonbank financial institutions, insurance, securities, telecommunications and transport. State differences were most evident in the regulation of labour or occupations — hence, the decision to focus on mutual recognition of occupations’ (Wilkins 1995, p. 4). However, interstate variations in regulations governing the delivery of services remain an impediment to cross-border and short-term services provision — an issue taken up in chapter 9.

The MRA committed the parties to consideration of a similar scheme with New Zealand.

Australia and New Zealand have a long history of initiatives to reduce barriers to trade, beginning with the first preferential trade agreement in 1922. The Australia–New Zealand Closer Economic Relations Trade Agreement (CER), which took effect in 1983, committed the countries to working towards a comprehensive free trade area. By the mid-1990s, tariff barriers had been virtually eliminated and many non-tariff barriers had been reduced, but ‘in some areas, significant regulatory impediments, usually in the form of product standards, conformance assessment requirements for mandatory standards or occupational registration remain’ (COAG and NZ Government 1995, p. 17). In April 1995, the Council of Australian Governments (COAG) and the New Zealand Government released a discussion paper on a trans-Tasman mutual recognition scheme to address these regulatory impediments. Following negotiations, an *Intergovernmental Arrangement Relating to Trans-Tasman Mutual Recognition* (TTMRA) was signed in 1996 and came into force on 1 May 1998.

The TTMRA is closely modelled on the MRA and also excludes services. While the *1988 CER Protocol on Trade in Services* led to free trade in many services, a few exemptions remain. Some of these exempted services — for example, postal services, coastal shipping and third party insurance in Australia — are under consideration for inclusion in some form (Crean and Goff 2008). While the *Protocol* enables service providers from New Zealand to supply most services in Australia (and vice versa) free of tariffs and quotas, regulations covering the manner of service provision act as a continuing impediment to trade in services. This issue is considered in more detail in chapter 9.

In addition to committing signatories to enacting mutual recognition legislation, the MRA and the TTMRA play an important role in specifying the mechanisms for resolution of disputes around the requirements that should be met by goods being sold or for registration in an occupation.

2.2 Legislative underpinnings

Mutual recognition was implemented in Australia using an unusual approach:

The states and territories chose to implement the mutual recognition scheme through national scheme legislation, either referring their power to enact mutual recognition legislation to the Commonwealth Government, or adopting the Commonwealth legislation (pursuant to s. 51(xxxvii) of the Commonwealth Constitution). (CRR 1998, s. 1.2)

The Commonwealth passed the *Mutual Recognition Act 1992* (Cwlth) (MR Act) in December 1992. The states and territories began implementing the scheme in late 1992, with Western Australia the last jurisdiction to join, in late 1995.

The states and territories only agreed to the implementation of the MR Act. Amendment of this legislation requires the agreement of all jurisdictions participating in the scheme. The process of agreement, however, differs between jurisdictions. The territories and three states have referred the power to amend the legislation to the Commonwealth, as long as those states and territories approve the changes. The other three states have reserved the amendment power and would need to pass any amendments to the MR Act through their parliaments.

Legislation to give effect to the TTMRA was passed by Australia and New Zealand in 1997. The Australian states and territories subsequently passed legislation adopting the Commonwealth Act or referring power to the Commonwealth to enact the trans-Tasman mutual recognition legislation, with Western Australia the last state to join the scheme in 2007. In the case of the TTMRA, only the territories have referred the power to amend the legislation to the Commonwealth. All of the state jurisdictions require amendments to be passed through their parliaments.

The MRA and TTMRA legislation generally override any other state, territory or national legislation in both Australia and New Zealand. Section 6(2) of the MR Act states that the Act does not affect the operation of other Commonwealth laws and does not limit the operation of a state law so far as that law can operate concurrently with the Act. Section 5 of the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) (TTMR Act (Cwlth)) provides that the Act has effect, despite anything in any other Commonwealth law enacted before the commencement of the Act. It also provides that any Commonwealth law made after the commencement of the Act is to be construed as having effect subject to the Act, except where that law expressly overrides the Act. Section 5 of the *Trans-Tasman Mutual Recognition Act 1997* (NZ) (TTMR Act (NZ)) provides that every law of New Zealand must, unless otherwise expressly provided, be read subject to the Act. These provisions were included to ensure that the obligations of the mutual recognition schemes were not accidentally or deliberately circumvented by individual jurisdictions' legislative actions.

Local governments are also subject to the obligations set out in the MR Act and TTMR Acts. However, the practical effect of this provision may be minimal, as most local governments do not regulate the ‘sale’ or ‘registration’ activities that are covered by current mutual recognition requirements.

2.3 Mutual recognition principles and processes

The architects of the MRA opted for a ‘broad-brush approach rather than try to recommend to the Premiers that they should begin a comprehensive review of each piece of legislation and regulation’ (Sturgess 1994, p. 17). They sought a scheme that required minimal bureaucratic oversight and infrequent amendment. These goals were achieved through two models — one for goods and one for occupations.

The principle for goods

In the case of goods, the principle of mutual recognition is that goods produced in or imported into one jurisdiction, and that may lawfully be sold in that jurisdiction, may be sold in a second jurisdiction without meeting the requirements of that jurisdiction with respect to:

- the goods themselves (for example, their production, quality or composition)
- the way goods are presented (for example, their packaging, labelling or age)
- inspection of goods
- the location of production of goods
- any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of goods (MR Act, s. 10).

On the last point, the architects of the Australian mutual recognition model hoped that s. 10(e) would act to remove ‘indirect barriers to the sale of goods, that is, all those regulations relating to “possession” or “use” of goods, which do not directly prohibit sale, but can have the effect of doing so’ (Wilkins 1995, p. 5). Wilkins, who was involved in developing the model, commented:

I am hopeful that [s. 10(e)] will be interpreted by the Courts in the spirit of the legislation, to pick up a broad range of indirect barriers to interstate trade. Section 10(e) is something of a ‘wild card’ — it gives some uncertainty but also some scope for a jurisprudence to build up, not unlike the law generated under the Treaty of Rome. (Wilkins 1995, pp. 5–6)

The effectiveness of this section is discussed in more detail in chapter 8.

Operation of the mutual recognition principle removes the need for any authorisation process to sell goods in any other jurisdiction. Moreover, a producer or importer in one jurisdiction who is prosecuted for not meeting the standards of another jurisdiction can use the mutual recognition principle as a defence.

As a safeguard to consumers, a good that does not comply with the standards of a jurisdiction in which it is offered for sale must be labelled with state or country of origin information. This requirement was added in response to consumer concerns that a jurisdiction might opt for unacceptably low standards to attract business investment. It was anticipated that the potential for a negative ‘brand name’ to develop as a result of labelling would deter a jurisdiction from going down this path.

A few classes of goods and laws are exempt from mutual recognition. They are described in section 2.4 below.

The principle for occupations

Initially, the architects of mutual recognition intended that the same mutual recognition principle would apply to goods and occupations. In other words, anyone registered in an occupation in one jurisdiction would be permitted to carry out that occupation in another jurisdiction.

Two factors caused the emergence of a different principle. First, the scope of activities registered in some occupations, that is, the tasks that can be undertaken, varies between jurisdictions. A carpenter’s licence in Victoria, for example, covers carpentry and joinery activities; separate licences are required for each set of activities in New South Wales (MR Act *Ministerial Declaration 9/12/2007*). Second, regulatory authorities manage the conduct of many occupations through codes of conduct and disciplinary procedures. To monitor provision of labour services effectively, these authorities need to know who is practising in their jurisdictions.

In the case of occupations, therefore, the principle of mutual recognition means that *registration* in an occupation in one jurisdiction is sufficient grounds for registration in the *equivalent* occupation in another jurisdiction. Anyone in a registered occupation wishing to work in a different jurisdiction needs to notify the relevant registration authority in that jurisdiction (with the exception of occupations for which registration is nationally recognised) and, with that notification, is *deemed* to be registered. When working in the second jurisdiction, the person has to comply with all regulations in that jurisdiction relating to how the occupation is conducted, for example, with respect to insurance, trust funds and registration fees.

Registration

The term registration covers a broad range of employment authorisations. Under the MR Act (and its trans-Tasman counterpart), it is defined to include:

... the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation. (MR Act, s. 4.1)

A key element of this definition is that the authorisation is *legislated*. A discussion of the activities covered by registration is presented in chapter 5.

A list of occupations registered in Australian states and territories and New Zealand is provided at appendix F. While the MRA covers occupations registered in Australian jurisdictions, it only has practical effect where individuals must register in each jurisdiction in which they work. This is not the case for occupations that are licensed nationally; for example, auditors and commercial pilots in Australia. Nor is this the case for occupations in which licences granted by a state or territory are recognised nationally — for example, crane or hoist operator licences and some maritime licences. Of course, where New Zealand licenses these occupations, the TTMRA applies.

Equivalence

Registered occupations are equivalent between jurisdictions if ‘the activities authorised to be carried out under each registration are substantially the same ... conditions may be imposed on registration ... so as to achieve equivalence’ (for example, MR Act, s. 29). Equivalence is discussed in more detail in chapter 5.

Deemed registration

To apply for registration in a second jurisdiction, an individual has to forward details of his or her registration in the home jurisdiction to the registration authority in the second jurisdiction and give consent to that authority requesting information relevant to his or her application from authorities of any jurisdiction.

So as not to impede mobility, an individual who applies for registration under mutual recognition is immediately entitled to work in the second jurisdiction. That is, he or she has deemed registration. Requirements of the jurisdiction in areas like insurance, fidelity funds and trust accounts must be met by deemed registrants.

Upon notification, the registration authority has one month to either grant or refuse the application, or it can postpone a decision for up to six months if: the information

provided in support of the application is incomplete or inaccurate; the circumstances of the applicant change materially; or the occupation for which registration is sought is not equivalent to the occupation carried out in the home jurisdiction. An applicant is entitled to substantive registration if the registration authority does not respond within a month.

2.4 Scope and coverage of the schemes

Although the cultures, economies and political institutions of the Australian states and territories and New Zealand are reasonably similar, the mutual recognition principles are not all-encompassing. As noted above, the MRA and TTMRA are silent on services. In terms of goods and occupations, state-based regulations governing how goods are sold or occupations are practised within jurisdictions are *exceptions* to the mutual recognition principles.¹ In addition, a number of national regulations, such as in the areas of taxes and customs controls, are *excluded* from the TTMRA. These exceptions and exclusions limit the scope of the mutual recognition schemes. For various reasons, at the time the schemes came into force, it was felt that some laws and goods (and one occupation) that did fall within the scope of the mutual recognition principles should be *exempted* from their effect, permanently or temporarily. These exemptions define the current coverage of the schemes. Figure 2.1 summarises the ‘architecture’ of the schemes.

Discussion of exceptions, exclusions and exemptions follows, with details summarised in figures 2.2 and 2.3.

Exceptions

Exceptions to the mutual recognition schemes reflect jurisdictions’ desire to retain the right to regulate aspects of the sale of goods to protect the environment and the health and safety of residents.

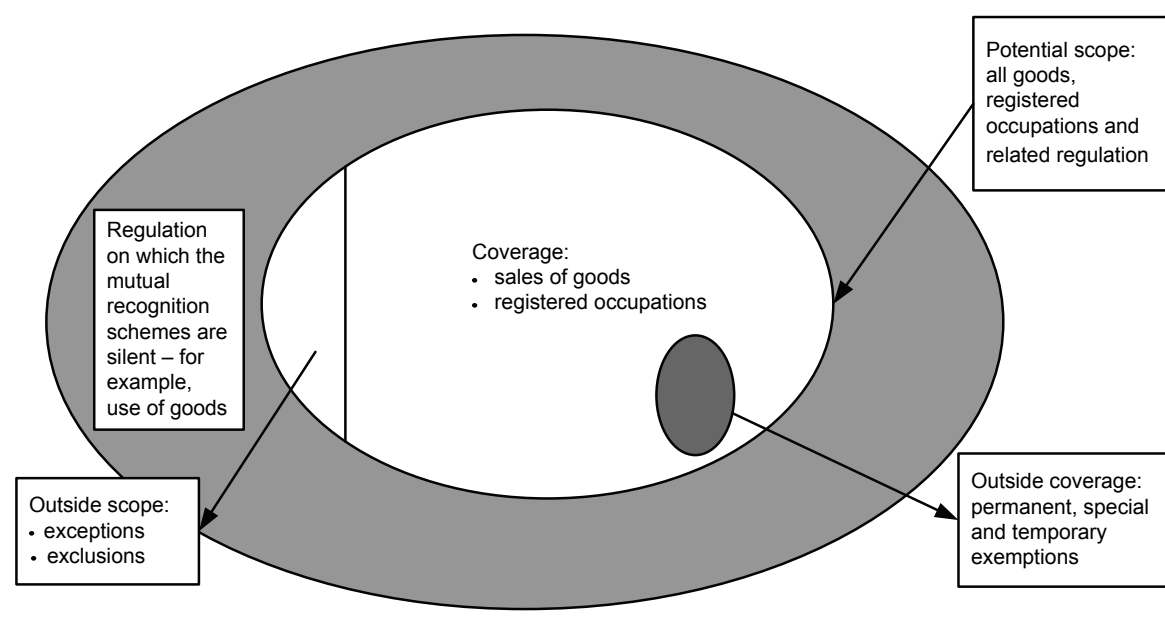
Exceptions relating to goods are identical under the MR Act and TTMR Acts and cover laws that (MR Act, s. 11):

- regulate the manner of sale of goods or the manner in which sellers conduct or are required to conduct their business in the jurisdiction (and include laws, for example, relating to the persons to whom goods may or may not be sold and the registration of sellers)

¹ ‘State’, as used in this context, refers to Australian states and territories and New Zealand.

- relate to the transportation, storage or handling of goods, provided those laws apply equally to goods produced in or imported from other Australian jurisdictions and New Zealand and are directed at health and safety concerns
- relate to the inspection of goods, provided: inspection is not a prerequisite for sale; and the laws apply equally to goods produced in, or imported from, other Australian jurisdictions and New Zealand, and are directed at health and safety concerns.

Figure 2.1 **Architecture of the mutual recognition schemes**



In terms of occupations, laws that regulate the manner of ‘carrying on’ an occupation (for example, with respect to insurance requirements, codes of conduct and disciplinary procedures) are exceptions to the MR Act and TTMR Acts, provided 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’ (TTMR Act (Cwlth), s. 16(2)).

Exceptions are discussed in more detail in chapters 8 (goods) and 9 (occupations).

Exclusions

Schedule 2 of the TTMR Act (Cwlth) (and schedule 1 of the TTMR Act (NZ)) details those laws excluded from the scheme. They fall within the categories of

customs controls and tariffs, intellectual property, other international obligations, and taxation and business franchises.

The rationale for exclusions appears clear. Flows of goods and labour would be disrupted, and the sovereignty of Australia and New Zealand would be compromised, if the areas under exclusion were subject to mutual recognition. If taxes were not excluded, for example, Australian tax rates might have to be mutually recognised along with the goods to which they apply — New Zealand consumers could then face different taxes on the same good, depending on whether it originated in Australia or New Zealand.

Exclusions are examined in greater detail in chapter 8.

Exemptions

Three classes of exemptions exist in the schemes — permanent and temporary exemptions (found in both the MRA and TTMRA), and special exemptions (TTMRA only). The composition of permanent and temporary exemptions differs between the MRA and TTMRA.

Permanent exemptions

Parties to the MRA and TTMRA permanently exempted a range of goods and laws from the schemes on the grounds that mutual recognition would inappropriately override jurisdictional sovereignty. Firearms, fireworks, gaming machines and pornographic material are exempted from the MRA. If these goods had not been exempted, for example, Victoria could ban the sale of fireworks, but application of the principle of mutual recognition would mean that, if they were able to be produced (or imported into) and sold in another jurisdiction, they could also be sold in Victoria — thus, the ban would be legally unenforceable.

Laws outside the coverage of the schemes relate to: quarantine; endangered species; ozone protection; weapons; indecent material; beverage containers in South Australia; and Tasmanian laws on the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size. In addition, under the TTMRA, laws relating to fireworks, agricultural and veterinary chemicals, certain risk-categorised food and gaming machines are permanently exempted.

On the occupations side, a permanent exemption applies to medical practitioners. Permanent exemptions from the mutual recognition schemes are examined in chapters 8 (for goods) and 9 (for medical practitioners).

Figure 2.2 Scope and coverage of the MRA

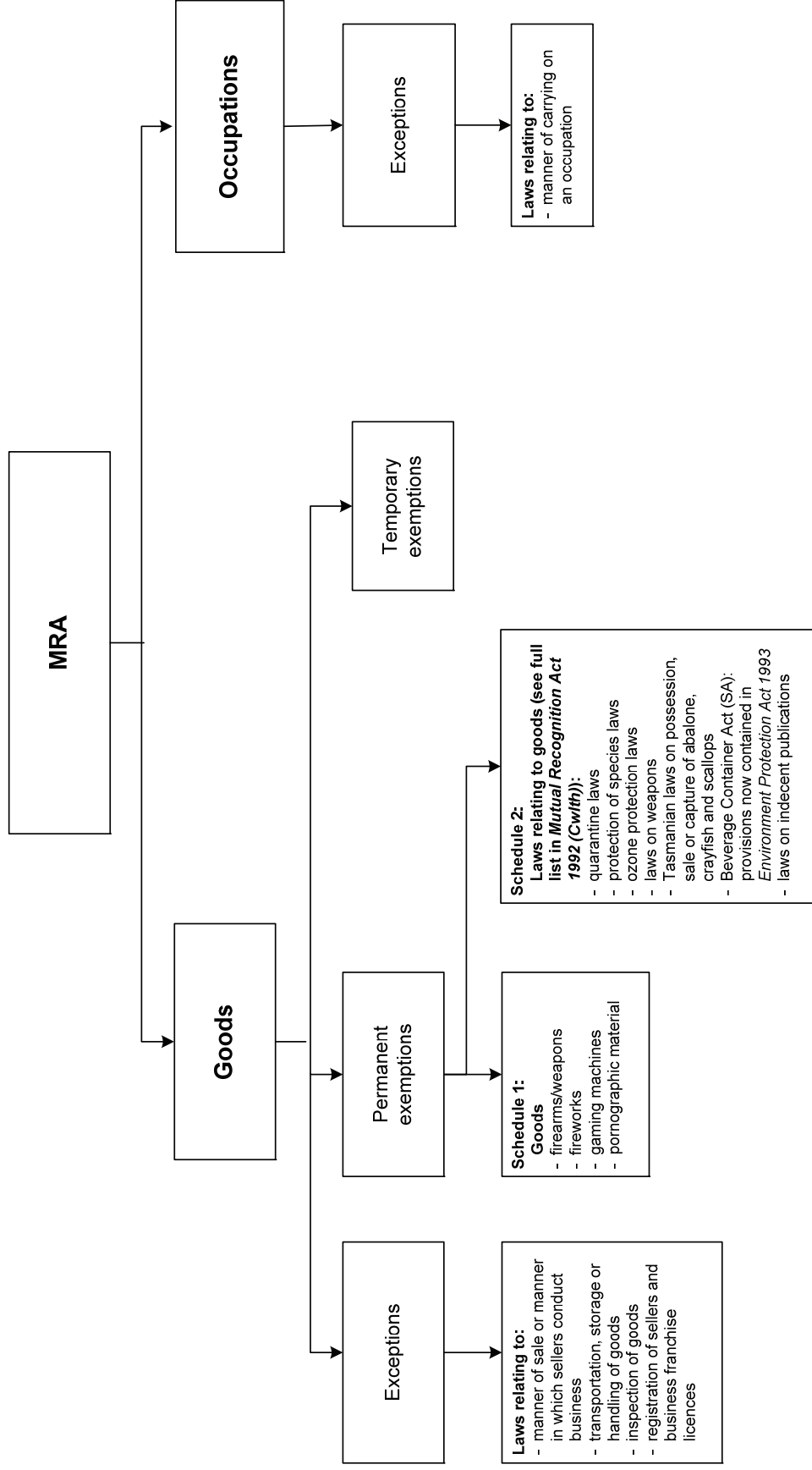
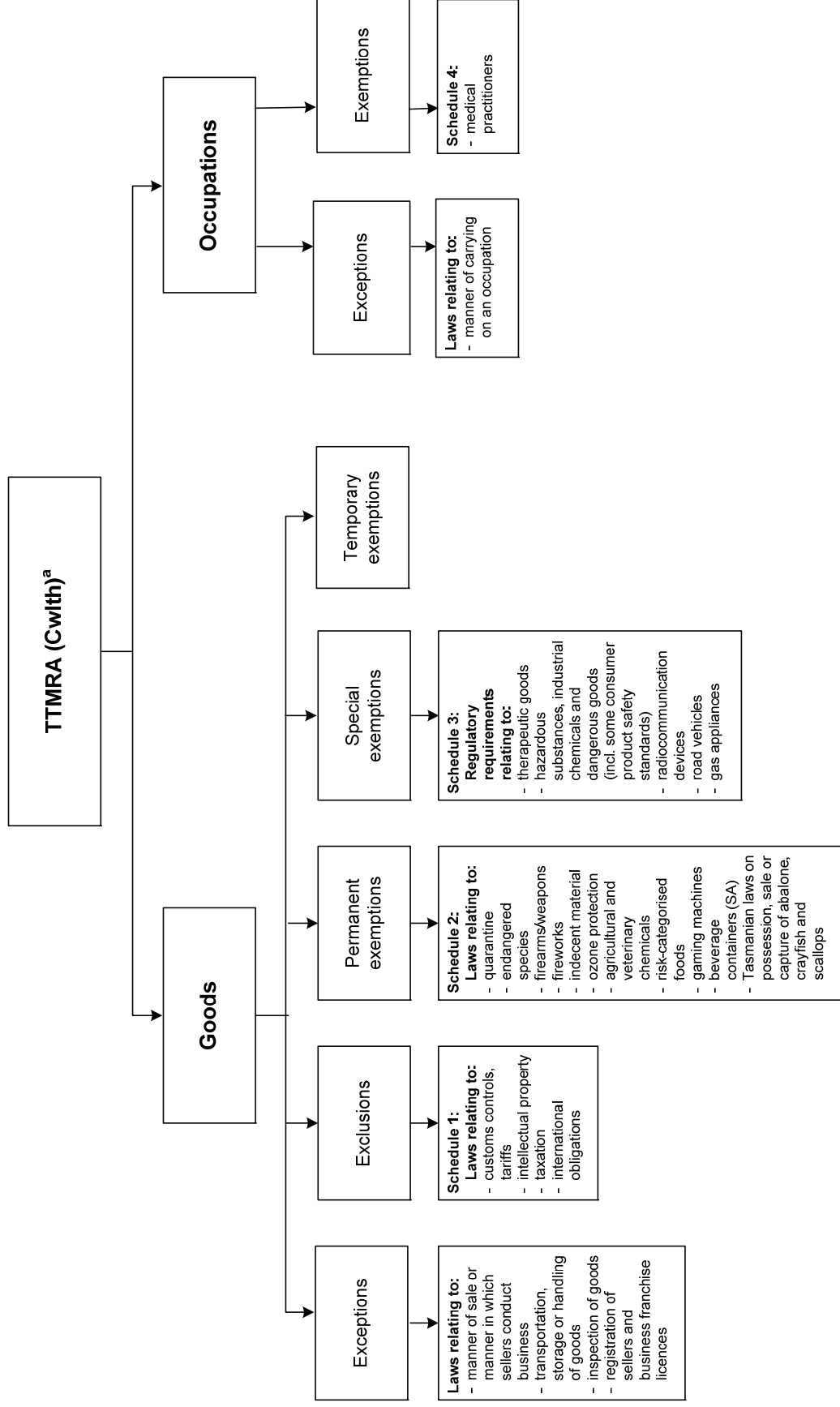


Figure 2.3 Scope and coverage of the TTMRA



^a The permanent exemptions and exclusions are slightly different in the TTMRA (NZ)

Temporary exemptions

To take account of concerns that goods might pose a risk to consumers or the environment, provision for a jurisdiction to temporarily exempt a good was included in the schemes. A temporary exemption permits a jurisdiction to ban the sale of a good, without the ban being rendered ineffective because the good remains on sale in other jurisdictions in which it is produced or into which it is imported.

The MRA and the TTMRA set out the processes to be followed with respect to temporary exemptions. The jurisdiction that creates a temporary exemption must refer it to the Ministerial Council responsible for goods of that type. The Ministerial Council is then required to determine whether a standard should apply and, if so, what the standard should be. Agreement from at least two-thirds of the members of a council (excluding members who are not party to the relevant scheme) is required for a standard to be accepted. It is then applicable in all jurisdictions.

A temporary exemption lasts for 12 months. Under the TTMR Acts, an additional 12 month period is allowed for implementation of the decision of a Ministerial Council.

Temporary exemptions are discussed in chapter 6.

Special exemptions

At the time the TTMRA came into force, there were five categories of goods for which Australian and New Zealand regulations differed significantly, but for which mutual recognition or harmonisation of regulations seemed attainable in due course. Special exemptions apply for these goods (therapeutic goods; hazardous substances, industrial chemicals and dangerous goods; electromagnetic compatibility and radiocommunications; road vehicles; and gas appliances).

In 1999, the hazardous substances, industrial chemicals and dangerous goods special exemption was amended to include a range of consumer products.

Cooperation programs involving Australian and New Zealand regulatory agencies were established to determine whether: (i) mutual recognition was appropriate for goods under special exemption; (ii) relevant regulations could be harmonised; or (iii) the goods should be permanently exempted from the TTMRA. These programs remain active, but consumer product safety standards, except those relating to children's car restraints, have been harmonised or mutually recognised and the

relevant goods have been removed from the special exemption for hazardous substances, industrial chemicals and dangerous goods.

A special exemption applies for 12 months, but can be rolled over for another 12 months with the agreement of two-thirds of jurisdictions participating in the TTMRA.

Special exemptions are considered in chapter 7.

2.5 Dispute resolution processes

In the case of goods, as noted above, a person prosecuted for an offence relating to the sale of a good can use as their defence that the mutual recognition principle applies.

No specific appeals process for goods producers, distributors or importers is designated in the mutual recognition legislation. If a retailer refuses to stock a product on the grounds that it does not meet the standards of the jurisdiction in which it is offered for sale, the supplier of the good has no avenue to appeal or challenge that decision, except through the courts.

In the case of occupations, any person whose interests are affected by a decision made by a registration authority can appeal to the Administrative Appeals Tribunal (AAT) or Trans-Tasman Occupations Tribunal (TTOT) for a review of that decision. The Tribunals can make an order that a person registered in an occupation in one jurisdiction is, or is not, entitled to registration in that occupation in another jurisdiction (MR Act, s. 31(1)).

Declarations on equivalence of occupations

Declarations by tribunals

After reviewing a decision made by a registration authority, the AAT or TTOT can make a declaration that occupations in two jurisdictions are not equivalent. In making a declaration, a tribunal has to be satisfied that either:

- the activities covered by registration in the two jurisdictions are not substantially the same (even with the imposition of conditions), or
- irrespective of whether or not the activities are substantially the same, the standards required for registration in the first jurisdiction would expose people in

the second jurisdiction to a real threat to their health or safety (MR Act, s. 31(2)(b)(ii)).

A declaration about the standards applying in a jurisdiction must be referred to a Ministerial Council by the jurisdiction in which the declaration applies. The referral process is described below.

Ministerial Declarations

Declarations on the equivalence of activities covered by registration can also be made by Ministers from two or more jurisdictions, by notice in the Gazette. A recent COAG initiative to achieve full and effective mutual recognition for occupations requiring vocational training has utilised this provision of the MR Act. This initiative is discussed in more detail in chapter 5.

Referrals of concerns about standards

In addition to describing the process for resolution of standards issues raised by the temporary exemption of a good, the MRA and the TTMRA outline a referral process applicable to both goods and occupations. Any jurisdiction can refer a question about the standard applying in another jurisdiction to a good or the practice of an occupation to the Ministerial Council responsible for that good or occupation.

A council has 12 months to examine the standard that should apply. A standard can be defined with the agreement of at least two-thirds of the members of a council (excluding those not party to the scheme under which a referral is sought), and is then applicable in all participating jurisdictions.

The good or occupation in question remains subject to mutual recognition while the council deliberates on the appropriate standard.

A summary of the processes through which disputes about differences in the activities covered by, or standards required for, registration is presented at figure 2.4.

2.6 Monitoring and compliance systems

Under the MRA, participating jurisdictions agreed that Heads of Government would monitor the effectiveness of the scheme and make resolutions on its continued operation. As part of this process, Ministerial Councils can be asked to report on the effectiveness of the scheme. The MRA also commits Heads of Governments to

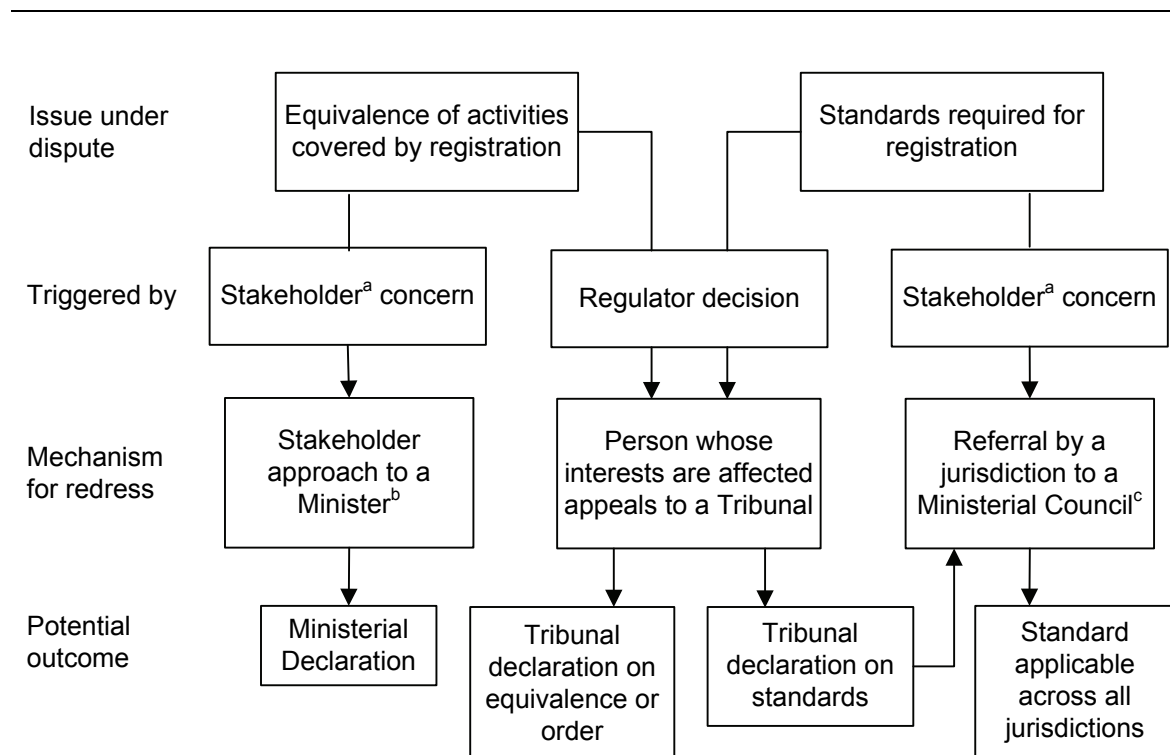
requesting the Ministerial Council on Vocational Education, Employment and Training (and its successors):

... to monitor the overall implementation of the scheme so far as it relates to occupations and report to Heads of Government on its effectiveness. (MRA, para. 7.1.4)

Paragraphs 12.2.1 and 12.2.2 of the TTMRA require Heads of Government of the participating parties to monitor the effectiveness of the TTMRA and make resolutions on the future operation of the Arrangement. They also enable Ministerial Councils to report on the effectiveness of the Arrangement in their particular area of responsibility and of the Arrangement overall.

It is unclear whether Ministerial Councils have undertaken any monitoring work.

Figure 2.4 Summary of dispute resolution processes
Occupations



^a Stakeholders might include regulators, individuals or any other interested party. ^b Stakeholders could approach any Minister and, in theory, any Minister could negotiate a declaration with a Minister in another jurisdiction. ^c Referrals are made to the Ministerial Council responsible for the occupation in question.

The Cross-Jurisdictional Review Forum

In December 2002, COAG and New Zealand agreed to a two-stage review of the mutual recognition schemes (COAG 2002). Stage one involved a Productivity

Commission study of the benefits of the schemes and scope for improvements (PC 2003); and stage two, a report to COAG on the Commission's findings by the Committee on Regulatory Reform (CRR). In an interim report to COAG, the CRR recommended the establishment of a Cross-Jurisdictional Review Forum (CJRF), comprising representatives from all jurisdictions party to the MRA and TTMRA, to provide advice to COAG on the Commission's findings. One of the CJRF's recommendations was that it be given an ongoing role:

... in receiving and sharing information and promoting broader policy discussion on areas that are considered to be limiting the effectiveness of existing mutual recognition arrangements, including noncompliance, and potential areas of expanding the scope of the arrangements. In addition, a CJR Forum member from each jurisdiction will be the point of contact for mutual recognition matters in their jurisdictions. (CJRF 2004, p. 7)

This role is reflected in the proposed terms of reference for the Forum (CJRF 2004, appendix E). It is unclear whether these terms of reference were accepted.

In response to a Productivity Commission finding that 'responsibilities for oversight, monitoring and enforcement should be clarified and restated' (PC 2003, p. 104), the CJRF provided information on line agencies responsible for mutual recognition in each jurisdiction (CJRF 2004, appendix G). It is unclear how active these agencies are with respect to mutual recognition. A search on the term 'mutual recognition', for example, on the websites of a selection of these agencies — the Departments of Premier and Cabinet in New South Wales, South Australia and Western Australia — and the ACT government site, in early October 2008, returned no matches.

2.7 Recent developments

Despite initiatives like the MRA and microeconomic reform, over the past two decades 'Australia has experienced a dramatic rise in the volume and reach of regulation, in response to a variety of social, environmental and economic issues' (Regulation Taskforce 2006, p. i). A broad range of reforms has been initiated by COAG since early 2006 to reduce the costs of Australia's regulatory burden and promote greater integration. More recently, Prime Minister Rudd expressed strong support for the concept of a seamless national economy — 'a single national regulatory framework across all markets' (Rudd 2008b).

Among the COAG reforms commenced since early 2006 have been initiatives to achieve:

- 'the effective implementation of full mutual recognition of skills qualifications across Australia' (COAG 2006a, p. 1)
- national accreditation and registration of health professionals (COAG 2008c)

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- a national licensing system for specified occupations (primarily those requiring vocational education or training) (COAG 2008d) — with an intergovernmental agreement due with COAG in early 2009 (Licensing Line News 2008)
 - regulatory reform in a further 25 areas (COAG 2008d), including consumer product safety, food regulation and business name and related business registration processes.

When COAG met on 29 November 2008, the Australian Government committed \$550 million over five years to support the implementation of this reform agenda (COAG 2008f).

The implications of these reforms for the mutual recognition schemes are drawn out as appropriate in the rest of the report.

2.8 Previous reviews

Part IV of the MRA provides for the first review of the scheme, which was carried out by the CRR in 1998. Part XII of the TTMRA subsequently establishes five-yearly reviews of both the MRA and the TTMRA schemes. As mentioned above, the Productivity Commission reviewed the two schemes in 2003 (PC 2003). Two other reviews of the MRA have been conducted outside the formal review process (Government of Western Australia 1997; ORR 1997).

The Mutual Recognition Agreement

In early 1997, the Office of Regulation Review published a preliminary assessment of the impact of the MRA. It found that ‘the scheme appears to be working reasonably well and has achieved its primary goal of removing many regulatory barriers to the movement of people in registered occupations, and to interstate trade in goods’ (ORR 1997, p. viii).

Western Australia reviewed the operation of the MRA in 1997 to determine whether its adoption of the Commonwealth Act should be continued. Conclusions from the review included that: a lack of quantitative data hampered analysis of the impact of the MRA; qualitative evidence supported the notion of positive effects on employment mobility, the creation of national goods markets and the elimination of costs for businesses; and mutual recognition had been a stimulus for the creation of national standards for goods and occupations. The review concluded that it was in Western Australia’s interest to remain part of the mutual recognition scheme (Government of Western Australia 1997).

A review by the CRR in 1998 (CRR 1998) supported the view that the MRA was working well by encouraging the freedom of interstate trade in goods, the development of national standards and the removal of barriers to the movement of labour. However, a number of issues and concerns were raised. Most related to either a lack of national consistency of regulations and standards, or the scope for expanding mutual recognition.

2003 review of the MRA and TTMRA

In 2003, the Productivity Commission concluded that a lack of data and problems in disentangling the effect of mutual recognition from other factors complicated assessment of the effectiveness of the MRA and TTMRA. However, the Commission concluded, in part based on discussions with interested parties, that both schemes had contributed to their objectives.

The Commission recommended a number of changes to the operation, coverage and scope of the schemes. Among suggested changes were initiatives to improve: awareness; mobility of people in registered occupations; and monitoring and enforcement of the schemes.