
11 Awareness, expertise and oversight

Key points

- Evidence presented in earlier chapters indicates that firms and individuals are not making full use of the mutual recognition schemes, and that regulators are not always applying mutual recognition consistently or appropriately.
- Previous reviews also found these problems and attributed them to low public awareness, insufficient regulator expertise and inadequate oversight (monitoring and enforcement) by governments.
- Governments responded to the previous reviews by undertaking awareness-raising initiatives, clarifying who is responsible for oversight, and establishing an intergovernmental group of officials — the Cross-Jurisdictional Review Forum (CJRF) — to monitor and recommend scheme improvements.
- These initiatives have not been entirely successful because:
 - insufficient resources and expertise have been devoted to ongoing monitoring of the schemes
 - the enforcement role envisaged for COAG (Council of Australian Governments) Ministerial Councils and appeal tribunals has been limited due to the under-resourced monitoring by governments, and the cost and low public awareness of appeal mechanisms
 - individual regulators face barriers to building up and maintaining expertise on mutual recognition matters.
- To address these problems, COAG should agree to establish two specialist units — one for goods and the other for occupations — to monitor and provide advice on the operation of the schemes within Australia. The functions of the units should include:
 - advising COAG, regulators and the public on technical aspects of the schemes
 - providing a ‘complaints-box’ service that enables the public to alert governments about problems with the schemes, and facilitates greater use of appeals mechanisms
 - administering an internet-based test of regulators to confirm their expertise on mutual recognition matters
 - facilitating regulators’ annual updating of Ministerial Declarations of occupational equivalence
 - designing and delivering awareness-raising initiatives.
- The specialist units should support the CJRF and be located in the Australian Government Departments of Innovation, Industry, Science and Research (for goods), and Education, Employment and Workplace Relations (for occupations).

Evidence presented in earlier chapters indicates that firms and individuals are not making full use of the mutual recognition schemes, and that regulators are not always applying mutual recognition consistently or appropriately. These problems were also identified in the 2003 review (PC 2003), and to a lesser extent in the 1998 review (CRR 1998). The problems were attributed to limited public awareness of the schemes, insufficient regulator expertise, and inadequate oversight (monitoring and enforcement) by governments.

In this chapter, the Commission considers why changes made in response to the 1998 and 2003 reviews were not entirely successful in addressing the abovementioned problems. It is argued that a major factor has been the design of the mutual recognition schemes, particularly their decentralised governance arrangements.¹ No case is found for moving to a far more centralised system, as exists in the European Union, but various reforms are recommended to ensure that the ‘light-handed’ model used by Australia and New Zealand is more effective.

11.1 Design of the schemes and past reforms

The Australian and New Zealand model of mutual recognition is inherently decentralised, with administration and enforcement largely delegated to many existing regulators in each jurisdiction. This reflects the intention of the architects of the Mutual Recognition Agreement (MRA) and Trans-Tasman Mutual Recognition Arrangement (TTMRA) to have a ‘low-maintenance’ system that does not establish a new bureaucracy or require repeated updating (Sturgess 1993, 1994). The Commission considers this to be a commendable aspect of the schemes because it has made them easier to implement and has kept administration costs low.

However, the decentralised approach has also led to little government coordination (within and across jurisdictions) to ensure that regulators act in accordance with their mutual recognition obligations, and that firms and individuals are aware of and exercise their rights. In essence, the architects of the mutual recognition schemes envisaged this would occur through the development of case law (including the appeals mechanism for occupations), the referral of specific standards to COAG (Council of Australian Governments) Ministerial Councils, and a broad

¹ For the purpose of this study, the term ‘governance arrangements’ refers to how the responsibilities of, and relationships between, different bodies and jurisdictions are organised to form the system of mutual recognition across Australia and New Zealand.

commitment by heads of government (supported by COAG Ministerial Councils) to monitor the effectiveness of the schemes.²

Shortly after the MRA came into force, one of its principal architects — Gary Sturgess, then Director General of the NSW Cabinet Office — conceded that experience up to that time had revealed that there was a case for governments to take a more ‘hands-on’ approach regarding monitoring and awareness raising:

When we were designing the mutual recognition model I used to speak about it as a form of ‘low-maintenance regulation’ because it was intended to chug away quietly, bringing down ... barriers between states without the need for a great deal of effort from within government ... But it now seems that mutual recognition does require a bit more maintenance than I imagined at the time ...

I strongly support the monitoring role that has been suggested by Commonwealth and state officials, though it is less than clear which body should be given responsibility for this ... What does matter, both in relation to goods and occupations, is that some agency is given the responsibility for promoting and explaining to small business what mutual recognition means and in publishing cases of intransigence by government authorities and hopefully shaming them into change. (Sturgess 1994, p. 31)

The need for greater government involvement was confirmed in the 1998 and 2003 reviews of the mutual recognition schemes. The 1998 review recommended that governments consider a coordinated awareness-raising campaign, establish a forum for occupation-registration authorities to discuss and resolve mutual recognition issues, and refer concerns about occupation-registration requirements in particular jurisdictions to the relevant COAG Ministerial Council. It appears little was done in response to these recommendations.

In the 2003 review, the Commission also concluded that there was a case for governments to take a more active role (PC 2003). This was based on evidence that the effectiveness of the MRA and TTMRA had been hampered by limited public awareness of the schemes, insufficient regulator expertise, and a lack of monitoring and enforcement by governments (box 11.1).

To deal with these issues, the Commission’s 2003 review recommended:

- an awareness-raising campaign aimed at regulators, policy advisers, industries and professions on the obligations and benefits of mutual recognition
- a clarification and restatement of who is responsible for oversight, monitoring and enforcement. The Commission noted that monitoring and compliance would

² As detailed in chapter 2, the intergovernmental agreements for the MRA and TTMRA contain clauses in which the heads of government made a commitment to monitor the effectiveness of the mutual recognition schemes, assisted by relevant COAG Ministerial Councils, and in light of this make resolutions on the future operation of the schemes.

be enhanced by each jurisdiction's coordinating agency taking active responsibility for mutual recognition matters

- the establishment of an intergovernmental group of officials to consider issues arising from the operation of the mutual recognition schemes, particularly for goods. The issues to be considered were to include the extension of mutual recognition to use-of-goods requirements, based on evidence gathered by jurisdictions through a complaints process (PC 2003).

Box 11.1 2003 findings on awareness, expertise and oversight

In the 2003 review of the mutual recognition schemes, the Commission found:

- occupation-registration authorities did not always grant individuals their full rights under mutual recognition, seemingly because of inadequate regulator expertise and/or limited awareness among applicants of their rights
- for goods, there was evidence of poor awareness among retailers and consumers, and inadequate expertise among regulators. For example, regulators repeatedly imposed product bans under consumer-protection laws that could be overridden by mutual recognition because the regulator failed to invoke an associated temporary exemption
- appeals mechanisms were rarely used (particularly for goods), possibly because of the costs involved
- heads of government and COAG Ministerial Councils did little monitoring of the mutual recognition schemes, contrary to commitments made in the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement
- there were few mechanisms for enforcement of mutual recognition obligations and decisions, and inadequate accountability where jurisdictions did not meet mutual recognition obligations.

Source: PC (2003).

The Commission's recommended reforms were largely accepted by the jurisdictions. An information campaign was undertaken, targeted primarily at regulators, but also including the secretariats of COAG Ministerial Councils, policy makers, industry, and registered occupations. This involved a series of workshops and seminars for government agencies and occupation-registration authorities (New Zealand Government, sub. 53), the production of an updated version of the official users' guide for the mutual recognition schemes (COAG and New Zealand Government 2006), and the provision of information on government websites.

A statement of who was responsible for oversight, monitoring and enforcement under the mutual recognition schemes was provided in the official users' guide, which is available on the COAG website.

The jurisdictions also agreed that an intergovernmental group of officials — the Cross-Jurisdictional Review Forum (CJRF) — would have an ongoing role ‘in receiving and sharing information and promoting broader policy discussion on areas not covered by the mutual recognition schemes and evaluating whether this is limiting the effectiveness of the schemes’ (CJRF 2004, p. 13). The CJRF comprises central-agency representatives from each government, who act as the point of contact for mutual recognition matters within their jurisdiction.

11.2 Why have past efforts been unsuccessful?

It is evident from previous chapters that the abovementioned efforts have not been entirely successful in addressing problems with public awareness, regulator expertise, and government oversight. Indeed, the 2003 findings summarised in box 11.1 could equally describe the current situation.

What has changed since 2003 is that the problems have become more apparent to policy makers and regulators as a result of efforts to develop Ministerial Declarations of equivalent occupations in Australia. That process highlighted deficiencies in regulators’ expertise on mutual recognition matters, inconsistent application of the MRA and TTMRA, limited accountability when regulators do not meet their obligations, and a low level of awareness among applicants of their rights. Nevertheless, the problems continue, as evidenced by the inconsistent implementation of Ministerial Declarations across jurisdictions (chapter 5).

In the case of goods, efforts since 2003 to reform Australia’s product safety regulations have drawn greater attention to the common practice of regulators (and firms and individuals) to overlook mutual recognition obligations and rights when products are banned under consumer-protection laws (PC 2003, 2008f; chapter 6).

The question therefore has to be posed — why have past efforts had such limited success? This is considered by looking, in turn, at awareness, expertise and oversight.

Public awareness

In essence, public awareness raising to date has involved the official users’ guide and provision of information on government websites.

Having a users’ guide is a good idea, but the current version seems better suited to technical specialists in regulatory agencies and government departments, rather than

the public. It is unclear whether any market research was undertaken to ensure that the guide would meet the needs of individuals and firms.

The key mutual recognition websites appear to be those maintained by COAG and the New Zealand Government, and in the case of mutual recognition for licensed trades, the Australian licence recognition website. Again, it is unclear whether any market research was undertaken on these websites, but the first two seem best suited to policy makers and regulators. A key feature of those sites is access to a downloadable copy of the users' guide.

As noted in chapter 2, the Commission found that a search for the term 'mutual recognition' on the websites of the NSW, SA and WA Premiers' departments returned no results. This was also the case for the ACT Chief Minister's departmental website. Similarly, in chapter 5 it was noted that the websites of some occupation-registration authorities contain no reference to mutual recognition. The websites of various other occupation-registration authorities were found to refer to mutual recognition in a form, but had no guidelines or information on the mutual recognition schemes.

For goods, mutual recognition tends to operate silently in the background because there is no registration requirement similar to occupations. This makes it more difficult to maintain public awareness. The New Zealand Government noted that awareness was a problem among Australian electrical retailers:

An example of lack of awareness of the legal provisions of the TTMRA is in the electrical and electronic products area where many traders in Australia are unwilling to sell product from New Zealand that does not have Australian markings and documentation. Consequently, some New Zealand suppliers seek to gain Australian 'approvals' rather than seeking to enforce the provisions of the TTMRA. The example points to a possible need for further communication of the intent, principles and provisions of the TTMRA to retailers and consumers. (sub. 53, p. 20)

With regard to occupations, the Osteopathic Society of New Zealand (OSNZ) noted:

The OSNZ has feedback from potential entrants to the profession that they are mostly unaware, or unclear, as [to] the MRA and TTMRA. ... The OSNZ are of the opinion that an improvement to awareness would be of benefit. (sub. 9, p. 2)

Even if the users' guide and websites were perfect, it would be unrealistic to expect that there would ever be widespread public awareness of mutual recognition. The reality is that mutual recognition does not interest most firms or individuals unless they are about to sell goods or move across a border. The key issue is to make sure that the information is accessible to members of the public when they need it, and that bodies they would consult (such as industry associations, trade unions, and

government agencies) are conduits for accurate information. It is unclear whether this is happening at present. One industry association — Accord Australasia (sub. 39) — praised the information provided in the users' guide, but thought it needed to be promoted more effectively.

Publicity campaigns are unlikely to be sufficient in isolation to ensure that the mutual recognition schemes are effective. They need to be complemented by regulator expertise, and government monitoring and enforcement. As discussed below, these have clearly been inadequate.

Regulator expertise

The mutual recognition users' guide and associated websites have probably been useful in helping regulators to gain expertise. In addition, governments conducted workshops and seminars following the 2003 review to inform regulators about the mutual recognition schemes (New Zealand Government, sub. 53). However, the impact of these efforts is likely to have diminished with time. Another issue may be that central agencies in Australian states and territories do not have the expertise or resources to provide such workshops and seminars.

Even if campaigns to improve regulator expertise were sound, individual regulators face an 'economies-of-scale problem' that can be a major barrier to them building up and maintaining the necessary expertise. Mutual recognition is one of many issues regulators need to consider, and possibly not very often. This works against building up and maintaining expertise on mutual recognition matters in specific agencies, particularly smaller ones, such as some occupation-registration authorities.

The Australasian Teacher Regulatory Authorities (ATRA) noted that a central advisory agency would be helpful in addressing this problem:

ATRA sees it as a problem that there is no central agency which can advise on interpreting and applying mutual recognition legislation and that it is therefore up to each jurisdiction to obtain its own legal advice on these matters. This has the potential to result in differing legal interpretations on operational aspects relating to the implementation of mutual recognition legislation. (sub. 31, p. 4)

ATRA members from the Queensland College of Teachers (sub. 32) and Teachers Registration Board of South Australia (sub. 35) expressed similar views.

Another approach would be for regulators to obtain specialist advice, as needed, from external lawyers or other specialists. For example, the Valuers Registration Board of Queensland noted that it relies on external legal advice to supplement its 'working knowledge' of mutual recognition:

It is very difficult for the Valuers Registration Board (with a limited budget and a permanent staff of 1.5 persons) to maintain knowledge and currency of its mutual recognition obligations without incurring additional expense. It engages external legal advisors to provide advice if any issue arises. (sub. 19, p. 4)

However, many regulators do not appear to be taking advice from external specialists, given the problems noted in section 11.1. Cost is probably a factor. Another is that government oversight of the schemes is weak, so regulators do not have a strong incentive to obtain the necessary advice (externally or in-house) to apply mutual recognition consistently and appropriately. This problem is discussed further in the next section.

Government oversight

Responsibility for oversight of the mutual recognition schemes ultimately rests with the heads of government, coordinated through COAG (including the New Zealand Government for TTMRA matters). To carry out this function, the heads of government are supported by various bodies, including COAG Ministerial Councils and government departments in their jurisdiction (box 11.2).

A significant weakness of these governance arrangements is that responsibility for *ongoing* oversight of the mutual recognition schemes has not been assigned to bodies that have sufficient resources and expertise to carry out this function. Where enforcement powers do exist, particularly with COAG Ministerial Councils and appeals tribunals, the process is reactive rather than proactive.

While the post-2003 changes regarding oversight were well-intentioned, unfortunately they did not go far enough. In particular, setting up the CJRF for ongoing monitoring was a good idea, but its members (typically from central agencies in each jurisdiction) have not had sufficient resources or expertise to make much of an impact. For example, the CJRF (2004) had planned to gather information on how use-of-goods requirements were affecting mutual recognition, with the intention that this would promote policy discussion and inform the 2008 review.³ Little appears to have been done in this regard.

Within Australian states, Premiers' departments are typically assigned responsibility for oversight. However, as Carroll foresaw:

The ability of [Premiers'] departments to undertake the extensive, expensive and time-consuming task of monitoring the activities of all relevant agencies is limited ... (Carroll 1995, p. 43)

³ The CJRF made this commitment in response to finding 9.8 of the 2003 review.

Box 11.2 Governance arrangements for the MRA and TTMRA

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

The COAG **Committee on Regulatory Reform (CRR)** — a standing committee of officials from central agencies in each jurisdiction — was initially appointed to oversee the operation of the mutual recognition schemes on behalf of the heads of government and report to them as appropriate. However, the CRR continues to exist in name only, having been inactive for some time.

The CRR's oversight role has effectively shifted to the **Cross-Jurisdictional Review Forum (CJRF)**. The CJRF was initially established to advise heads of governments on the findings of the 2003 review of the schemes. Its responsibilities were soon expanded to the ongoing tasks of monitoring the operation of the MRA and TTMRA, making recommendations on matters that may be limiting the effectiveness of the schemes, and promoting broader policy discussion in areas where the schemes could be extended. The CJRF comprises representatives (usually from central agencies) who act as the point of contact for mutual recognition matters in each jurisdiction. In theory, the CJRF reports to heads of government through the CRR. In practice, the CJRF either reports directly to heads of government or through the COAG Senior Officials' Group, which comprises the heads of central agencies in each jurisdiction. The NSW Government provides a secretariat for the CJRF.

A **central agency** in each jurisdiction — typically the treasury or head of government's department — is responsible for overall oversight of the schemes in that jurisdiction.

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

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

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

Sources: CJRF (2004); COAG and New Zealand Government (2006); Mutual Recognition Agreement; Trans-Tasman Mutual Recognition Arrangement.

COAG Ministerial Councils have had little impact because the referral process has not been used, and they are not taking the initiative to monitor the schemes, contrary to commitments in the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement.

Appeals tribunals and courts are rarely called upon to adjudicate disputes. As a result, they have not provided the discipline on regulator behaviour that the schemes' architects had envisaged. This is evident from:

- the problems identified in chapter 5 regarding inconsistent and inappropriate application of mutual recognition requirements by occupation-registration authorities
- the common practice noted in chapter 6 of consumer-product regulators failing to invoke a temporary exemption when banning a product.

For goods, the need to appeal to a court probably discourages many firms and individuals from challenging breaches of mutual recognition requirements (chapter 8). The lack of legal challenges in cases where product bans are not accompanied by a temporary exemption seems to support this view. Firms may conclude that it is cheaper to just comply with goods standards in other jurisdictions, or to comply by default with the most stringent standard across all jurisdictions. For example, the New Zealand Government noted:

... many traders in Australia are unwilling to sell [electrical and electronic] products from New Zealand that do not have Australian markings and documentation. Consequently, some New Zealand suppliers seek to gain Australian 'approvals' rather than seeking to enforce the provisions of the TTMRA. (sub. 53, p. 20)

Alternatively, firms may decide not to sell a good in another jurisdiction, rather than bear the cost of either meeting that jurisdiction's standard or using the courts to gain access under mutual recognition.

The solution to these problems is not to set up a new central bureaucracy to monitor and discipline regulators. The barriers that regulatory differences pose to cross-border movements of goods and labour across Australia and New Zealand are not sufficiently large that a centralised bureaucracy would deliver a net benefit. Instead, the Commission favours strengthening the existing 'light-handed' arrangements, as discussed in the next section.

11.3 The way forward

The recommendations that the Commission has made in previous chapters — such as the alignment of temporary exemption procedures with Australia's foreshadowed national product safety regime — will partially address problems with awareness, expertise and oversight. However, the Commission considers that there is also a need for reforms that target these issues more directly.

The key to the Commission’s proposal is to strengthen governance arrangements so that there is effective oversight of the schemes’ operation, but without incurring the significant costs of a large central bureaucracy. This can be done by building on the existing oversight architecture of the CJRF, COAG Ministerial Councils, and appeals tribunals. It would involve COAG appointing two specialist units — one for goods and the other for occupations — to monitor and provide advice on the operation of the MRA and TTMRA within Australia (the jurisdictions where most concerns appear to lie). The New Zealand Ministry of Economic Development (MED) (sub. DR89) noted that it already performs a similar function in New Zealand, particularly by educating and advising government departments and regulators.

The MED could continue its role (although possibly with greater resources devoted to assisting the public) as a complement to the proposed Australian units. To minimise overlap between the MED and proposed Australian units, individuals, businesses and government agencies should be encouraged to direct queries about the operation of the TTMRA to the body in their home country in the first instance. Where appropriate, the home-country body could pursue such queries with its equivalent in the other country on behalf of the querying party, or direct the querying party to a specific contact in the other country’s body. It would also be useful for the MED and proposed Australian units to develop protocols — possibly formalised in a memorandum of understanding — for how they would coordinate their actions on TTMRA issues.

Both of the specialist units proposed by the Commission should support the CJRF, reflecting its role as adviser to COAG on the mutual recognition schemes. The specialist units could also provide technical advice to regulators and general advice to the public. This would be a means of dealing with the economies-of-scale problem regulators face in maintaining expertise, and the public have in developing awareness of the schemes. CJRF members will of course still be able to draw on other sources of advice, including line agencies and regulators in their jurisdiction.

The specialist units could provide a ‘complaints-box’ service that enables the public to alert the CJRF about problems with the schemes’ operation, and to facilitate greater use of existing appeals mechanisms by the public and the referral process by COAG. For the public, this would provide a lower-cost option than appeals tribunals and the courts, in the first instance. The units could initially provide (general only) advice and, in the case of simpler matters, possibly pursue them with the relevant regulator on an informal basis (but with no power to make rulings).

As recommended in chapter 8, the units should also include a mediation function that provides a lower-cost means of resolving disputes than the use of the courts and appeal tribunals. If resolution cannot be reached, the units could facilitate greater

use of the courts and tribunals, by giving the public advice on how to proceed. That is, the units would effectively have an intermediary role for the appeals mechanisms. The Administrative Appeals Tribunal (sub. DR95) noted that, as it has its own means of alternative dispute resolution, implementation of this recommendation may require governments to consider whether parties will be compelled to use the dispute resolution service of the specialist units before applying to the Tribunal.

The CJRF should delegate the design and delivery of awareness-raising to the proposed specialist units. The Commission suggests that separate users' guides be prepared for the public and regulators, websites be reviewed for their usefulness to users, and that a new series of seminars be held, targeted at relevant industry associations, professional associations, trade unions, policy makers and regulators.

Issues for the occupations unit

The specialist unit for occupations could address concerns about the sustainability of Ministerial Declarations of occupational equivalence. As noted in chapter 5, a recent study undertaken for the COAG Skills Recognition Steering Committee raised concerns about how the Ministerial Declarations will be kept up-to-date in the future. That study, by the Allen Consulting Group (ACG 2008), recommended that a mutual recognition unit be established in the Australian Government Department of Education, Employment and Workplace Relations (DEEWR) to facilitate the updating of Ministerial Declarations (box 11.3).

A protocol currently exists for the annual updating of Ministerial Declarations (COAG 2008f) in which CJRF members and individual jurisdictions are responsible for coordinating changes, and DEEWR is largely responsible for processing and gazetting changes. This is not significantly different from what the Commission and the Allen Consulting Group have proposed.

Another function the specialist occupations unit could have is to administer an internet-based practical test that relevant officials in occupation-registration agencies would have to undertake annually to ensure that they have sufficient expertise to administer the mutual recognition schemes. This would provide an additional measure to maintain regulator expertise.

Box 11.3 Allen Consulting recommendations on sustaining mutual recognition for occupations

The Australian Government, on behalf of the COAG Skills Recognition Steering Committee, commissioned an evaluation of recent initiatives to improve mutual recognition of occupational licences across Australia. The evaluation, prepared by the Allen Consulting Group (ACG 2008) found that the sustainability of the initiatives would be aided by:

- establishing a mutual recognition unit in the Australian Government Department of Education, Employment and Workplace Relations (DEEWR) to provide a central source of advice on occupation-related aspects of the MRA and TTMRA, facilitate meetings of occupation-registration authorities from different jurisdictions, and administer the updating of Ministerial Declarations
- annual updating of Ministerial Declarations of occupational equivalence undertaken collectively by relevant occupation-registration authorities from all jurisdictions, and facilitated by the DEEWR unit
- timing state and territory variations to occupational licensing arrangements to coincide with annual meetings of occupation-registration authorities, and to take effect at the same time as the annual update of the Ministerial Declarations
- meetings of occupation-registration authorities also being used as a forum to maintain regulator understanding and awareness of their obligations regarding Ministerial Declarations.

Source: ACG (2008).

Location and funding of the units

An important issue is where to locate the specialist units. One option would be for the NSW Government to house them in the secretariat it provides for the CJRF. Alternatively, they could be located in the Commonwealth Departments responsible for occupation and goods-related aspects of the mutual recognition schemes — DEEWR and the Department of Innovation, Industry, Science and Research (DIISR) respectively.⁴ The NSW Government noted:

... the Commonwealth's Department of Innovation, Industry, Science and Research has a pivotal role as a repository of information on the mutual recognition of goods and the coordination of related matters, including the special exemption rollover process.

⁴ Under the Commonwealth's Administrative Arrangements Order, the Governor General has assigned administration of the Commonwealth's responsibilities for occupational provisions of the MRA and TTMRA legislation to the Minister overseeing DEEWR, and the goods-related provisions to the Minister overseeing DIISR.

However, there is currently no equivalent body providing such a function in relation to mutual recognition of occupations at a national level in Australia ...

New South Wales considers that there is merit in examining the option of establishing a new, national body to coordinate occupational mutual recognition at a national level. This body could be part of an existing Commonwealth agency such as the Department of Education, Employment and Workplace Relations ...

It may be appropriate for such a body to assume the CJRF's secretariat function that is currently performed by New South Wales, and responsibility for coordinating the annual update process for Ministerial Declarations. (sub. 55, pp. 20–1)

Consistent with this view, the Commission favours locating the specialist units in DEEWR (for occupations) and DIISR (for goods). DIISR has built up and maintained expertise on the goods side through, among other things, its ongoing coordination of annual rollovers for special exemptions. To date, there has not been an equivalent ongoing administrative role for occupations, and so the resources that DEEWR has devoted to occupation-related aspects of the MRA and TTMRA has varied over time in response to specific issues. The most notable recent example was the establishment of a Skills Recognition Taskforce in DEEWR to assist with the development of Ministerial Declarations of occupational equivalence across Australian jurisdictions (chapter 5). The Commission understands that the Skills Recognition Taskforce has since shifted its focus from mutual recognition to the establishment of national licensing, due to the finalisation of Ministerial Declarations and the setting of new priorities by COAG. Nevertheless, DEEWR remains responsible for administering the occupation-related aspects of the MRA and TTMRA legislation at the Commonwealth level, reflecting its role as the lead agency for workplace policy at the national level. It therefore has a base of expertise and an ongoing role on workplace matters on which to build a specialist unit for occupation-related aspects of the MRA and TTMRA.

Governments in Australia will need to reach an agreement on how the proposed specialist units would be funded. The administration of the MRA and TTMRA within Australia is not purely a Commonwealth responsibility. On the contrary, the states and territories often implement the mutual recognition schemes in their jurisdiction, and have reserved the right in some cases to veto changes to the schemes. It is therefore appropriate that the states and territories have a 'financial stake' in the specialist units — rather than allowing them to be solely funded by the Commonwealth — to ensure that the units have a strong connection to all governments that implement the schemes within Australia.

COAG should strengthen its oversight of the mutual recognition schemes by agreeing to establish two specialist units — one for goods and the other for occupations — to monitor and provide advice on the operation of the schemes within Australia.

The functions of the two units should include:

- *advising COAG, regulators and the public on technical aspects of the schemes*
- *providing a ‘complaints-box’ service that enables the public to alert COAG about problems with the schemes’ operation, and to facilitate greater use of existing appeals mechanisms by the public and the referral process by COAG when disputes cannot be resolved through mediation by the specialist units*
- *raising public awareness and regulator expertise on the schemes. This should include the provision of separate users’ guides for the public and regulators, a website, and seminars targeted at relevant industry associations, professional associations, trade unions, policy makers and regulators*
- *administering an internet-based practical test that relevant officials in regulatory agencies would have to undertake annually to confirm they have sufficient expertise to administer the mutual recognition schemes*
- *for the occupations unit, facilitate regulators’ annual updating of the Ministerial Declarations of occupational equivalence.*

The administrative arrangements for the two units should be as follows:

- *the units should be funded by contributions from all Australian jurisdictions, and support COAG’s Cross-Jurisdictional Review Forum*
- *the goods unit should be located in the Commonwealth Department of Innovation, Industry, Science and Research*
- *the occupations unit should be located in the Commonwealth Department of Education, Employment and Workplace Relations.*

Reporting requirements

As noted in chapter 4, there are significant deficiencies in the record keeping of occupation-registration authorities that make it difficult to assess the effectiveness of the mutual recognition schemes. To address this issue, occupation-registration authorities should be required to report to the recommended specialist occupations unit on their administration of the mutual recognition schemes. This should include

data on the number registered under mutual recognition, compared to total registrations, and information about rejections, complaints and appeals.

The Victorian Department of Justice (via the Victorian Department of Premier and Cabinet, sub. DR96) cautioned that such reporting requirements would impose an administrative burden on regulators. This is a valid concern, which governments should address by ensuring that the reporting requirements do not extend beyond the provision of a small amount of data that regulators would reasonably be expected to collect anyway in order to monitor their operations.

RECOMMENDATION 11.2

Occupation-registration authorities should be required to report annually on their administration of the mutual recognition schemes. This should include data on the number registered under mutual recognition, compared with total registrations, and information about complaints and appeals. Such reports should be provided to the specialist occupations unit mentioned in recommendation 11.1.

At present, there does not appear to be a formal requirement for the CJRF to report regularly to COAG on its activities. Introducing such a requirement would provide added impetus for the CJRF to set specific goals and make progress, supported by the recommended specialist units. This reporting could be done through COAG's Senior Officials' Group, which comprises the heads of central agencies from each jurisdiction (COAG 2007). This would also be an opportunity to explicitly acknowledge that the CJRF is no longer supervised by COAG's Committee on Regulatory Reform, since the latter body has effectively ceased to exist (box 11.2).

RECOMMENDATION 11.3

The Cross-Jurisdictional Review Forum should report annually to COAG on its work program and achievements. This reporting should be done through COAG's Senior Officials' Group.