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## 12 The next steps for mutual recognition

### Key points

- Administrative actions and legislative changes are urgently needed to remedy ambiguities and omissions in the mutual recognition legislation, as well as to enable the schemes to reach their full potential.
- Changes needed to the legislation and the underlying mutual recognition agreements include:
  - amendments to the schemes' permanent and special exemptions schedules to reflect progress achieved through the cooperation programs since the last review
  - amendments to clarify the meaning of the legislation and to reflect any modifications agreed by jurisdictions in relation to allowable conditions or scope
  - provisions to ensure the schemes are implemented effectively for stakeholders, with mechanisms to address concerns about regulatory differences, to provide legal and administrative redress and for dispute resolution.
- In the longer term, information is needed in relation to the costs and benefits associated with expanding the coverage of the Acts to such matters as: de facto and negative licensing; recognition of the 'tools' that form part of a registered occupation; and cross-border and short-term services provision.

Mutual recognition is one of the important regulatory tools used to meet the objectives of the Closer Economic Relations agenda between Australia and New Zealand. It has also been a key element of Australian efforts to lower barriers to interstate trade, and the schemes have had an important part to play in the more recently articulated 'single economic market' and 'seamless national economy' agendas of the Australian and New Zealand Governments. This report provides recommendations for clarifying what the schemes now cover and amending the Acts to ensure that the existing mutual recognition framework fulfils its potential. It also identifies changes that could, in the future, extend the coverage of the schemes to allow further aspects of goods, registered occupations and services regulation to be mutually recognised. However, before these possible extensions can be considered, a cost-benefit analysis is required.

This chapter summarises the main proposals contained in previous chapters that will require changes to the mutual recognition schemes. The summary is designed to be a 'one-stop shop' where stakeholders can view the 'to-do' list resulting from this

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report. The first part of the chapter identifies actions that can be taken immediately to clarify what the schemes currently cover and to improve the administrative procedures and governance of the schemes. The second part of the chapter sets out actions that are urgently required if the schemes are to meet their objectives, but that will take longer to implement because they involve changes to the mutual recognition legislation and the agreements underlying the schemes. The last part of the chapter identifies the proposals to be considered when thinking about what mutual recognition may look like in the future.

## 12.1 Improving understanding and governance

The recommendations and findings that can be acted on in the short term are identified in box 12.1. The actions that should be initiated immediately fall generally into two categories. The first involves informing stakeholders about what the mutual recognition schemes cover and the second sets out administrative changes that can be made to improve the operation of the schemes.

There are a range of options for conveying the information and supporting the administrative changes outlined in this part, including such initiatives as a revised mutual recognition users' guide and an internet-based practical test for regulators as proposed in chapter 11. Other actions will require coordinated and cooperative initiatives from goods regulators and occupation-registration authorities in the various jurisdictions.

### Informing stakeholders

The first steps involve informing the regulators and the public about what has been ascertained in this report about the current coverage and scope of the schemes. The Commission sought legal advice from the Australian Government Solicitor (AGS advice) in relation to the *Mutual Recognition Act 1992* (Cwlth) (MR Act) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) (TTMR Act (Cwlth)). The New Zealand Ministry of Economic Development provided advice that was sought from New Zealand Crown Law (Crown Law advice) related to the *Trans-Tasman Mutual Recognition Act 1997* (NZ) (TTMR Act (NZ)).

The AGS and the Crown Law advice (legal advice) is referred to throughout this report. It provides guidance in relation to the current legislative position for some of the contentious issues that hinder the operation of mutual recognition (appendix B). Although the final decision on the interpretation of the Acts lies with the courts, there is an absence of case law on important issues. The legal advice obtained for this report provides some confidence about what laws related to goods and

occupations are actually covered under mutual recognition. The advice also provides insights into the flexibility and coverage of the schemes' dispute procedures, and confirms that some of the provisions of the Acts are ambiguous.

**Box 12.1 Recommendations and findings that require immediate action**

*Recommendation or finding*

*Description of action*

**Informing stakeholders**

Finding 5.1	Notify regulators that coregulation may be within mutual recognition.
Finding 5.2	Raise regulator awareness of mechanisms for resolving concerns about variations in occupational standards.
Finding 5.3	Raise awareness of process to refer issues to Ministerial Councils.
Finding 5.5	Provide information on stakeholders' rights under the schemes.
Finding 5.6	Inform regulators that there are questions about whether ongoing training requirements apply to mutual recognition registrants.
Finding 5.7	Raise regulator awareness of mutual recognition obligations.
Recommendation 8.5	Regulatory guidelines should require that mutual recognition implications be considered when designing regulatory regimes.
Finding 9.2	Provide information that some business licences are likely to fall within the schemes.

**Administrative actions and consultation**

Recommendation 5.9	Consider extending Ministerial Declarations to New Zealand registered occupations.
Recommendation 5.10	Consultation for Australia's national licensing process should include New Zealand regulators.
Recommendation 6.1	Ensure foreshadowed national consumer product safety regime in Australia is integrated with mutual recognition legislation.
Recommendation 8.4	Establish central contact point to facilitate direct negotiation between regulators and interested parties over trade impediments.
Recommendation 8.7	Establish mechanisms for guidance on application of schemes and for dispute resolution.
Recommendation 10.1	Consider mutual recognition implications in all international agreements.
Recommendation 11.1	Establish two specialist units to provide efficient and effective oversight and monitoring of mutual recognition in Australia.
Recommendation 11.2	Annual reporting by registration authorities to specialist units.
Recommendation 11.3	Annual reporting by the Cross-Jurisdictional Review Forum to the Council of Australian Governments.

The Commission has found that regulators and other stakeholders need to be more aware of their rights and obligations under mutual recognition (findings 5.5 and 5.7). Information about the results of this report can be provided without delay to registration authorities in the areas of allowable conditions; the scope and coverage of the schemes; and existing mechanisms to address concerns about differences in standards.

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## *Conditions*

The Commission recommends that the MR Act, the TTMR Act (Cwlth) and the TTMR Act (NZ) (Acts) be amended to remedy the ambiguity that exists in relation to both registration and ongoing conditions (recommendation 5.5). In the meantime, however, regulators should not rely on legislative uncertainty to take action contrary to the likely interpretation of the Acts. To do so would incur the risk of acting outside their legislative authority. Guidance should be provided on the following:

- At the time of registration, legal advice suggests that registration conditions related to what the legislation defines broadly as ‘qualifications’ are unlikely to be allowed, although the wording of the Acts is somewhat ambiguous. Regulators are now more aware that conditions placed on registration should not require additional training, tests or experience. There is more regulator resistance to giving up requirements such as criminal record checks and conditions related to specialist or local knowledge. These requirements, however, do fall within the definition of ‘qualifications’ under the Acts.
- Once a person is registered under mutual recognition, the person is subject to the law of the second jurisdiction as long as two conditions are met. As discussed in chapter 5, the law in the second jurisdiction must apply equally to all registered persons and the law must not relate to qualifications in certain ways. The differences between the wording of the New Zealand and Australian Acts may result in different outcomes. Although there is ambiguity in the provisions of both TTMR Acts, regulators should be informed of the likely interpretation that applies under their own legislation.

## *Scope and coverage*

The Commission also recommends the legislation be clarified in relation to what registration types are covered under the Acts (recommendation 5.1). The legal advice suggests that the mutual recognition schemes have a wider application than is commonly understood and that registered occupations may include authorisations or approvals given by regulators for a broad range of activities. Information should be provided on the following:

- The schemes may apply even if there is no statutory body in charge of registration. Professional bodies and other coregulation entities may be registration authorities under the Acts if they have legislative authority to approve people to carry on particular activities based on criteria that make them ‘fit and proper’ to do so (finding 5.1).
- There is no need for legislation to require registration authorities to keep a list or register of approved persons in order for an occupation to be a ‘registered

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occupation’ under the Acts. This means that mutual recognition may cover occupations that regulators now consider outside the schemes because the legislation does not specify a register, or perhaps does not describe the approval process as registration.

- Business licences that include a requirement related to a qualification are likely to be ‘registered occupations’ if the licence is granted to an individual (finding 9.2). The responsible service of alcohol example used in the AGS advice illustrates this interpretation. As a result, the activities authorised in the first jurisdiction will be authorised in the second, if there is an equivalent licence. This also means that regulators should carefully scrutinise the business licences they administer to ensure that they are meeting their obligations under mutual recognition.

There are actions that regulators can take related to concerns about differences in standards and compliance for both goods and occupations. Standards issues can be raised between jurisdictions in an effort to harmonise requirements or reach common ground. Informal or formal agreements between regulators can ensure information sharing procedures and compliance mechanisms are in place before problems arise. Regulators should also be informed about what mechanisms already exist to address issues (finding 5.2). Guidance should be provided about the following:

- An undertaking can be enforced in a second jurisdiction if it falls within the definition of a ‘condition’ under the Acts. The AGS and Crown Law advice take slightly different views of when an undertaking is a condition. Although the New Zealand threshold may be slightly lower, it is clear that a legally binding undertaking can be enforced in a second jurisdiction. If registration authorities want to use undertakings as an effective compliance and enforcement mechanism, they can ensure all undertakings are legally binding, and agree to share information about undertakings and conditions in a timely way whenever disciplinary investigations or proceedings are started. Note, the Commission has recommended that the Acts be amended to clarify the definition of undertaking (recommendation 5.7).
- Occupation-registration authorities are able to recheck that mutual recognition applicants meet the requirements of the first jurisdiction. If a discrepancy is found, however, the fact that the applicant should not have been registered in the first jurisdiction is not, in itself, sufficient reason to refuse to register the person in the second jurisdiction. The Commission suggests that this outcome be reconsidered when the legislative changes are made (finding 5.4).

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## Administrative actions and consultation

As well as providing information and guidance for stakeholders, some of the recommendations and findings from this report can be addressed at the administrative level with consultation or changes to systems and procedures:

- Australian regulators should consider including New Zealand in the Ministerial Declarations and national licensing initiatives (recommendations 5.9 and 5.10).
- Regulators and policy-makers from both countries should ensure that mutual recognition implications are taken into account:
  - in Australia’s foreshadowed national consumer product safety regime to ensure integration with the mutual recognition schemes (recommendation 6.1)
  - when negotiating international agreements to mitigate possible risks to mutual recognition partners (recommendation 10.1).
- Specialist units should be established within the Department of Education, Employment and Workplace Relations and the Department of Innovation, Industry, Science and Research, with revised reporting requirements, to ensure there is effective oversight and monitoring of the recommendations and findings of the report (recommendations 11.1, 11.2 and 11.3).
- These units should be contact points for guidance on stakeholder rights and obligations under the schemes. The units will facilitate communication and resolution of mutual recognition issues between regulators and participants, and establish mechanisms for dispute resolution if communication between parties is unsuccessful (finding 5.5, recommendations 8.4 and 8.7).

## 12.2 Legislative changes

This section discusses the changes recommended by the Commission that are urgently needed to remedy ambiguities and omissions in the Acts, as well as enable the schemes to reach their full potential. These changes will inevitably have a longer gestation than those outlined in section 12.1 because the proposals require legislative and related changes. The various findings and recommendations will require amending the schedules or provisions of the Acts, changing the underlying agreements — the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) — taking administrative actions or some combination of these. The actions identified fall within three broad categories:

- narrowing the current exemptions
- clarifying what the Acts are intended to cover

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- making the schemes work more effectively.

Boxes 12.2 and 12.3 list the findings and recommendations that are intended to achieve these outcomes. Note, there may be some repetition between the boxes for findings and recommendations that relate to both immediate actions and legislative change.

## **Narrowing and amending current exemptions**

The first set of legislative changes narrows or adds exemptions using the processes described in chapters 7 and 8. These proposals do not require Parliaments to pass legislation and do not change the underlying agreements. Box 12.2 includes changes to the schedules of the Acts that can be achieved by gazettal in each jurisdiction:

- The special exemptions for ‘nonuniversal’ liquefied petroleum gas appliances should be converted to a permanent exemption, subject to a cost–benefit analysis. Other changes from special to permanent exemption should be considered, including for hazardous substances, industrial chemicals and dangerous goods, and for some radiocommunications devices (finding 7.1, recommendations 7.1 and 7.4).
- The special exemptions for therapeutic goods, road vehicles and radiocommunications devices that may be harmonised in the future should continue to be rolled over, although therapeutic products should have a permanent exemption if the legislation for a harmonised trans-Tasman regime cannot be passed in the next 12 months (recommendations 7.2, 7.3 and 7.4).
- The laws relating to ozone protection should be removed from the permanent exemption schedule in the MRA, and consideration should be given to removal of ozone protection laws from the TTMRA (recommendation 8.2).
- Consideration should be given to moving some permanent exemptions — including risk-foods that have the potential to be harmonised and third-country trained medical practitioners — from the permanent exemption to the special exemption schedule (recommendations 8.1 and 9.1).
- The permanent exemption for Australia- or New Zealand-trained medical practitioners should be removed and mutual recognition should apply (recommendation 9.2).

There are two further recommendations concerning the exemptions. The first relates to the fact that there is currently no authority in the TTMR Acts for moving permanent exemptions into the special exemption schedules, for the purpose of bringing those areas into a cooperation program. The second relates to the proposal to change the timeframe for rolling over special exemptions from a maximum of

one year to a maximum of three years. Implementing these recommendations will mean amending the TTMR Acts and, therefore, they are discussed in the section below dealing with amendments to the Acts to clarify and improve the schemes.

**Box 12.2 Recommendations and findings that require changes to the schedules of the Acts**

<i>Recommendation or finding</i>	<i>Description of action</i>
<b>Schedule changes (gazetting by the jurisdictions)</b>	
Finding 7.1	Move the special exemption for ‘nonuniversal’ liquefied petroleum gas appliances to a permanent exemption subject to a cost–benefit test.
Recommendation 7.1	Consider changing the special exemption for hazardous substances, industrial chemicals and dangerous goods to a permanent exemption and/or applying mutual recognition to some products.
Recommendation 7.2	Change the special exemption for therapeutic goods to a permanent exemption unless the legislation for a trans-Tasman regime is passed within 12 months of governments receiving this report.
Recommendation 7.3	Rollover the special exemption for road vehicles.
Recommendation 7.4	Rollover the special exemption for some radiocommunications devices and change some to a permanent exemption.
Recommendation 8.1	Change the permanent exemption for some risk-foods to a special exemption.
Recommendation 8.2	Remove the permanent exemption for ozone protection from the MRA and MR Act and consider removal from the TTMRA and TTMR Acts.
Recommendation 9.1	Change the permanent exemption for third-country trained medical practitioners to a special exemption.
Recommendation 9.2	Remove the permanent exemption for New Zealand- and Australian-trained practitioners and allow mutual recognition to apply.

**Clarifying the scope and coverage of the schemes**

Based on legal advice, the Commission is recommending that the legislation be clarified and that better advice and mechanisms for redress be provided for stakeholders affected by the schemes. Box 12.3 sets out the findings and recommendations that, if implemented, will lead to minor or substantial revisions to the legislation. The discussion in this section and the next is not meant to pre-empt any policy or drafting decisions made by officials and regulators. However, where implementing a recommendation will clearly involve changes to certain provisions of an Act, these are identified in an attempt to clarify what effect the amendments would have.

**Box 12.3 Recommendations and findings that require changes to the Acts and underlying agreements**

<i>Recommendation or finding</i>	<i>Description of action</i>
<b>Amendments to the Acts for clarification purposes</b>	
Recommendation 5.1	Clarify types of registration covered by the schemes.
Recommendation 5.5	Clarify what conditions are allowed on registration.
<b>Amendments to increase the effectiveness of mutual recognition</b>	
Finding 5.2	Ensure mechanisms exist for resolving concerns about variations in occupational standards.
Recommendation 5.2	Clarify mechanisms through which tribunals can be approached for a declaration on occupational standards.
Recommendation 5.3	Include a mechanism to allow tribunals to provide advisory opinions to registration authorities and other interested parties.
Recommendation 5.4	Allow criminal record checks for registration where appropriate.
Finding 5.4	Consider allowing rejection of a mutual recognition applicant who does not meet registration requirements in their home jurisdiction.
Recommendation 5.6	Allow ongoing requirements such as professional development and criminal record checks if required for all registrants.
Recommendation 5.7	Allow undertakings to be transferable between jurisdictions.
Recommendation 5.8	Allow information on nondisciplinary or remedial action to be shared in some cases.
Recommendation 7.5	Allow special exemption rollover to be a maximum of three years.
Recommendation 8.3	Process needed in TTMR Acts for changing permanent exemptions to special exemptions.
Recommendation 8.6	Include use of goods requirements that prevent or restrict the sale of goods in the mutual recognition schemes, subject to limitation.
Recommendation 8.8	Provide for an advisory opinion or review of regulator decisions to be obtained from tribunals in relation to goods.
Recommendation 8.9	Allow referral to Ministerial Councils for all significant issues related to goods, not just standards.
Finding 9.1	Consider allowing mutual recognition for schemes that do not require universal registration.
Recommendation 12.1	Consider simplification of mutual recognition amendment process.

The first group of recommended changes in box 12.3 arises from the need to clarify the Acts in relation to some outstanding issues. This group of legislative amendments mirrors some of the more immediate solutions identified in the first section of this chapter related to information sharing and raising awareness. Changes to the underlying agreements and legislation are necessary only where wording is ambiguous or where the clear meaning of words does not reflect the apparent intent of the schemes:

- Amendments are needed to address uncertainty in relation to occupation-registration conditions. The likely interpretation is that conditions and regulatory requirements related to qualifications are not allowed at the time of registration. This likely interpretation should be made clear in the Acts. In

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relation to ongoing conditions, the amendments should ensure that character checks and ongoing professional development are allowed (recommendations 5.4–5.6).

- The mutual recognition Acts have wider coverage than is commonly understood in relation to some business licences, coregulation and the fact that a formal list of registered persons is not required. There are no recommendations to amend these provisions of the Acts, since the legal advice did not raise issues of uncertainty. However, it may be useful for the jurisdictions to consider whether the interpretation is consistent with the intention of the schemes and to clarify the Acts further, if necessary (recommendation 5.1).

## **Making the schemes work more effectively**

Several of the changes recommended for the schemes in previous chapters are important in order for the schemes to achieve their objectives more fully. There are two types of proposals outlined in this report that are directly focused on improving the schemes. One is to make the permanent and special exemptions work better. The other is directed at providing compliance and redress mechanisms. Although some of these changes will involve amending the Acts and the underlying agreements, other changes in this category can be implemented through administrative mechanisms.

### *Changes to make the permanent and special exemptions work better*

The following changes related to permanent and special exemptions will require amendments to the TTMR Acts:

- A legislative mechanism is needed to allow permanent exemptions listed in schedule 2 of the TTMR Acts to be moved to the special exemption schedule 3. This action is recommended for third-country trained medical practitioners (recommendation 9.1) and risk-foods (recommendation 8.1) to reflect work by regulators to narrow the scope of permanent exemptions and to allow the remaining areas of concern to be the subject of cooperation programs. The mechanism should be consistent with the other methods of changing exemption schedules, and similar to TTMR Act (Cwlth) s. 48 or TTMR Act (NZ) s. 82. This change will also mean a change in Part XIII of the TTMRA (recommendation 8.3).
- A change is needed to allow the special exemption rollover period to be extended from up to one year to up to three years. Amendments will be needed to both the TTMR Acts and the TTMRA (recommendation 7.5).

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### *Changes to address gaps in the legislation*

The Commission is recommending some legislative changes that address stakeholder concerns and allow the schemes to be more flexible in meeting the objectives of mutual recognition:

- Amendments to address regulator concerns about health and safety risks. The Commission proposes:
  - allowing criminal record checks for mutual recognition applicants for registration in a second jurisdiction if those checks are required for all applicants (recommendation 5.4)
  - allowing ongoing requirements such as professional development and criminal records checks for mutual recognition registrants (recommendation 5.6)
  - permitting undertakings to be transferrable between jurisdictions (recommendation 5.7)
  - allowing information related to nondisciplinary or remedial actions for registered persons to be shared between jurisdictions in some cases (recommendation 5.8). This proposal will be similar to those needed to ensure regulators have access to information about undertakings, and whether an applicant meets the requirements of the first jurisdiction. These changes could assist enforcement and compliance mechanisms
  - consideration of amendments to allow authorities to refuse to register an applicant who does not meet the registration requirements of the home jurisdiction (finding 5.4).
- Amendments to include use of goods requirements that restrict or prevent the sale of goods should be included under mutual recognition, unless the requirements apply equally to goods produced in or imported into the second jurisdiction, and they are directed at matters affecting health and safety of persons, or at protecting the environment in that jurisdiction, subject to limitations (recommendation 8.6).
- Amendments to ensure that mutual recognition applies to registered occupations in cases where it is not compulsory for all persons carrying on the occupation to be registered. This will mean that the definition of ‘occupation’ will change so that not only registered persons can carry out authorised occupations. This change will allow mutual recognition to apply, for example, to new registration or licensing schemes that ‘grandfather’ the rights of persons already working in the occupation (finding 9.1).

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## *Compliance, enforcement and redress*

Previous chapters have identified weaknesses in the MR and TTMR Acts related to the redress, compliance and decision-making mechanisms for sellers, users, registered persons, regulators and Ministerial Councils. Regulators and other stakeholders need better procedures with which to identify issues, and obtain a determination on those issues that will then be put into effect. For parties other than regulators, changes are proposed to provide people with both legal and administrative remedies when mutual recognition is not working effectively for them. The changes directed at regulators are intended to address the need for a determination about the application of the schemes, for both individual cases and for representative or generic circumstances (test cases).

Providing legal redress and appeal mechanisms for individuals and determinations for regulators will require amendments to the MR and TTMR Acts and the underlying agreements:

- An amendment is needed to allow regulators and other interested parties access to an administrative mechanism to obtain information and guidance on the application of the mutual recognition legislation, and to assist in the resolution of disputes (recommendation 8.7).
- Judicial mechanisms are needed in the MR and TTMR Acts to provide a determination on whether mutual recognition applies to the sale of goods in particular situations (recommendation 8.8):
  - For sellers or interested parties other than a regulator — this may mean adding a provision to the Acts requiring a decision to be made by a regulator before the need for a prosecution arises. This will allow a seller or interested party to apply for a review of the decision to an administrative appeals tribunal or similar body.
  - For a regulators — this would mean adding a provision that allows an administrative appeals tribunal or a similar body to give an advisory opinion on the matter referred to it. As an example, under s. 59 of the *Administrative Appeals Tribunal Act 1975* (Cwlth), the MR and TTMR Acts could provide for the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal to give such opinions, along with calling for evidence and holding hearings as appropriate.
- Changes to the underlying agreements are needed to ensure that jurisdictions may refer matters relating to all issues of significant dispute pertaining to goods to the appropriate Ministerial Council (recommendation 8.9).
- Amendments are needed pertaining to occupations:

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- Regulators and other interested parties should have wider access to Tribunals for declarations on equivalency of occupations and standards related to health, safety and the environment (recommendation 5.2).
  - The Acts should give Tribunals the power to give advisory opinions for occupations, similar to that suggested for goods (recommendation 5.3). A registration authority or other regulator may need to apply for an advisory opinion on whether mutual recognition applies to an applicant for registration in particular circumstances (finding 5.2).
  - Although it is important that users of mutual recognition have avenues for legal redress, access to tribunals and courts is not an effective remedy for those situations that need immediate or even timely action. An alternative to legal action should also be provided for sellers, users and applicants for registration. Administrative remedies will require dispute resolution mechanisms and the development of a central point of contact for information about how and when mutual recognition applies to particular situations (chapters 5, 8 and 11).
  - State TTMR Acts should be changed to simplify the amendment process by allowing the Commonwealth to amend the legislation if the jurisdictions approve those changes (recommendation 12.1).

## 12.3 Longer-term considerations

### Possible extensions to the schemes

The terms of reference for this report include assessing whether there is room for improvement in the coverage of the mutual recognition schemes. There are some areas that could be regarded as ‘natural’ extensions to the existing schemes, while others are ‘new’ to the schemes. Both could further the objectives of mutual recognition, but the benefits and costs of making the changes are unclear. Chapter 9 and appendix F discuss areas where the Commission has formed a view, and those that need further study, respectively. Box 12.4 identifies the relevant findings and possible extensions. Progressing these extensions would involve gathering information on the issues identified, and on the costs and benefits of applying mutual recognition to the following areas:

- business licences that would be mutually recognised if approved for an individual (finding 9.3)
- cross-border and short-term service provision (finding 9.4)
- new types of registrations, including de facto and negative licensing (appendix F)

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**Box 12.4 Possible future extensions**

<i>Finding or issue</i>	<i>Description of action</i>
Finding 9.3	Consider mutual recognition of business licences where a similar licence for an individual would be mutually recognised.
Finding 9.4	Consider conducting a stocktake of legislation that poses significant barriers to cross-border and short-term service provision and consider including mutual recognition of cross-border and short-term services in the schemes if justified by the stocktake results.
Appendix F issues	Consider impacts of including further types of registration and recognition of 'tools' that are part of a registered occupation.

- requirements related to a registered occupation that are separate authorisations for either 'tools' needed for carrying on the occupation, or discrete tasks or activities that form part of the occupation. An example of this is the firearms licence required for authorisation as a firearms instructor (appendix F).

### **The process for legislative changes for states' and territories' MR Acts**

This chapter has discussed the legislative changes that will be needed if the recommendations in this report are implemented. The process for changing the schedules to the MR and TTMR Acts is for the jurisdictions to agree and to gazette the changes to the schedules. This process is described in other chapters (chapters 2, 7 and 8).

The implementation of some recommendations, however, will require amendments to the Acts, the MRA and the TTMRA. The Australian Department of Foreign Affairs and Trade and the New Zealand Ministry of Foreign Affairs and Trade will lead the process for amending the TTMRA and this is discussed in more detail in chapter 10.

The process for amending the mutual recognition legislation is the responsibility of the jurisdictions and it is cumbersome, particularly for the TTMR Acts of the states and territories. Since each jurisdiction amends its own legislation, changes to the Acts entails some or all of the states passing new legislation and, in all cases, involves approval from each jurisdiction (chapter 2).

If the mutual recognition schemes are to meet the needs of the jurisdictions effectively, there should be flexibility in the legislative process so that changes agreed by the jurisdictions can be made as efficiently as possible. All of the legislation needs to change in the same way, at the same time, for mutual recognition to work as intended.

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

Changes to the TTMR Acts also require approval by all jurisdictions, but for most of the states there is no referred power to allow the Commonwealth to amend the legislation for all jurisdictions. This means that those states have to commit the additional time and resources to pass the legislation through their parliaments. If the objective is to ensure no changes can be made to legislation without state approval, this objective would still be met if the amendment power was referred to the Commonwealth. The additional requirement that each state pass identical amended legislation would appear unnecessary.

If the recommendations for legislative change in this report are implemented, there is an opportunity for states to reconsider the various mechanisms for amending the MR and TTMR Acts. Any changes designed to make the amendment process more efficient could occur at the same time as the other changes identified in this chapter.

RECOMMENDATION 12.1

***The state and territory jurisdictions should consider ways to make amending the mutual recognition legislation more flexible. The legislative mechanisms to amend the state Mutual Recognition Acts and the Trans-Tasman Mutual Recognition Acts could allow the Commonwealth to amend the legislation with approval from the jurisdictions.***