
5 Registration of occupations

Key points

- Mutual recognition of registered occupations works reasonably well, but a range of issues prevent realisation of the full benefits of the schemes.
- Notwithstanding the time mutual recognition has been in force, uncertainty about the types of occupational regulation covered by the schemes remains. The extent of the coverage of the schemes should be clarified.
- Many study participants expressed concern about the potential for harm to stem from variations in occupational standards. The Commission could not identify systemic problems in any occupation on the basis of the limited evidence provided. However, it is clear that variations in standards can, occasionally, allow poorly qualified practitioners to operate. It is important that an effective mechanism exists for dealing with the harm that does, or might, stem from variations in standards.
- Regulators are very sensitive about performing criminal record checks, and do not always mutually recognise tests done elsewhere. Because community expectations demand a high standard in this area, an effective approach to resolving regulators' concerns in relation to criminal record checks is needed.
- Greater clarity on a range of other provisions of the mutual recognition legislation would improve the effectiveness of the schemes.
 - The legislation is ambiguous with respect to the conditions that can legitimately be imposed to achieve equivalence.
 - It is unclear whether ongoing requirements, for example, relating to continuing professional development, can be included as a condition of renewal for registrations granted under mutual recognition.
 - Definitions of undertakings and disciplinary action would resolve uncertainty about the types of information that may be shared between jurisdictions.
- Differences between jurisdictions in the scope of activities covered by licences have the potential to impede mutual recognition and labour mobility. Ministerial Declarations have gone some way towards resolving this problem.
- National licensing will reduce, but not eliminate, the need for mutual recognition.
- Efforts should be made to include New Zealand in the Ministerial Declarations, as well as in discussions about national licensing.
- A more accessible process for appealing regulator decisions is needed.
- Regulator expertise around mutual recognition could be significantly improved.

Previous reviews of the mutual recognition schemes concluded that they were working reasonably well for registered occupations, but identified a range of issues preventing realisation of the full benefits of the schemes (CRR 1998; PC 2003). This conclusion still holds. A range of issues affecting the effectiveness of the schemes is considered in this chapter. Additional issues relating to occupations are discussed in chapter 9 and appendix F, in the context of possible extensions to the schemes.

5.1 Registration arrangements covered by the schemes

Coregulation

Under the mutual recognition legislation, a registered occupation is defined as one for which some form of authorisation (for example, licensing, approval or certification) is required by or under legislation.

By this definition, a range of regulatory approaches, including coregulation and de facto and negative licensing, arguably give rise to ‘registered’ occupations. Coregulation, when used in this report, means ‘government endorsement, usually by legislation, of a private organisation, [that is] a professional association which is responsible for regulating the conduct and standards of its members’ (VEETAC 1993, p. xi). De facto registration arises when legislation authorises people who meet certain requirements to practise an occupation, without further reference to a registration authority (CRR 1998). Negative licensing ‘refers to legislation detailing what is not acceptable in the operation or activities of an occupation and providing sanctions for unsatisfactory conduct’ (VEETAC 1993, p. xii).

These three ‘light-handed’ regulatory approaches have generally been assumed to lie outside the coverage of the mutual recognition schemes (for example, VEETAC 1993 and CRR 1998). Some submissions to this study reflected this view. The New Zealand Institute of Chartered Accountants, for example, called for an extension of ‘the schemes to those occupations registered under coregulation’ (sub. 36, p. 2). The Australian Property Institute, for its part, assumed that the de facto licensing regimes for valuers in South Australia and Tasmania mean that valuers from those jurisdictions are not covered by mutual recognition (sub. 41).

But uncertainty prevails. As the NSW Government noted, ‘[t]he broad framing of this definition [of registration] can cause confusion over whether negative licences and coregulation should be considered as registration for the purposes of the MRA and TTMRA’ (sub. 55, p. 9).

While many types of regulation arguably give rise to registered occupations, the mutual recognition principle for occupations is that a person registered in one state is entitled to registration in an equivalent occupation in another state after notifying the *local registration authority* of that state. This could be interpreted to mean that registration approaches that do not involve a local registration authority are not covered by the mutual recognition legislation.

Most people tend to have a traditional scheme in mind when they think of registration, that is, a scheme in which the local registration authority is a statutory registration board. Legal advice on the *Mutual Recognition Act 1992* (MR Act) and the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth) (TTMR Act (Cwlth)) from the Australian Government Solicitor (AGS) is, however, that ‘any entity, whether created by statute or not, may be a registration authority, provided its function is “conferred by legislation”’ (appendix B). Similar advice was provided with respect to the *Trans-Tasman Mutual Recognition Act 1997* (NZ) (TTMR Act (NZ)) by the Crown Law Office in New Zealand (Crown Law). This suggests that some coregulatory arrangements fall within the scope of the schemes. The advice also indicates that the registration authority need not be a registration board. An example of a registration arrangement involving a statutory registration authority that is not a board is presented in box 5.1.

Box 5.1 Responsible service of alcohol certificates

From 1 January 2004, liquor licensing regulations in New South Wales provide that:

A staff member of licensed premises must not sell, supply or serve liquor by retail on the premises unless the staff member holds a recognised RSA [responsible service of alcohol] certificate. (Liquor Regulation 2008 (NSW), s. 41).

Legal advice from the AGS is that this requirement under legislation creates a registered occupation for the purposes of mutual recognition. The local registration authority is the NSW Casino, Liquor and Gaming Control Authority. According to the legal advice, the Authority holds this role because RSA certificates are granted by an approved training provider on behalf of the Authority (appendix B).

In other words, because there is a requirement for registration under legislation (an RSA certificate) and training providers grant that registration on behalf of the NSW Casino, Liquor and Gaming Control Authority, the Authority becomes ‘the authority in the state having the function conferred under legislation of registering persons’ (MR Act, s. 4).

The Commission’s view, therefore, is that coregulatory arrangements are likely to meet the requirements of registered occupations for mutual recognition purposes if all the other mutual recognition elements are present. In the case of de facto and negative licensing schemes, the lack of a registration authority within the meaning of the mutual recognition Acts means that mutual recognition probably does not

apply. The questions of whether mutual recognition might, or could, extend to de facto and negative licensing schemes are considered in appendix F.

FINDING 5.1

In contrast with the majority view among stakeholders, coregulatory arrangements appear likely to fall within the coverage of the mutual recognition schemes if the elements required for mutual recognition (authorisation under legislation conferred by a local registration authority) are present.

While the Council of Australian Governments' (COAG) national licensing initiative will lead to consistent registration approaches for many occupations, clarification of the coverage of the mutual recognition schemes would provide useful guidance until the national approaches are established, or for those occupations that do not move to national licensing.

RECOMMENDATION 5.1

The mutual recognition Acts should be amended to make clear whether or not the schemes cover coregulatory, de facto and negative licensing arrangements.

Arrangements involving practising certificates or licences

Practitioners in some occupations must hold more than one form of authorisation before they can provide services to the public. Plumbers in New Zealand, for example, must be registered and hold a current practising licence:

... registration once granted is for life unless the registration authority removes this by way of disciplinary order or the registrant requests that his or her name be removed [from the register]. (Plumbers, Gasfitters and Drainlayers Board, sub. DR70, p. 3)

Practising licences for New Zealand plumbers need to be renewed annually.

Multiple authorisations raise the possibility that the requirements of the mutual recognition legislation apply only to some forms of authorisation. However, the legislation makes it clear that this is not the case. Section 4(2) of the TTMR Act (NZ), for example, provides that:

If an individual is required by or under law to have more than 1 form of authorisation ... to carry on an occupation, registration includes each form of authorisation that any relevant local registration authority grants.

5.2 Differences in occupational standards

A key element of mutual recognition, as it applies to occupations, is that registration in one jurisdiction is sufficient grounds for registration in an equivalent occupation in another under mutual recognition. Differences in the occupational ‘standards’ — qualifications, skills and experience — required to obtain (and retain) registration are not grounds to reject an application. In other words, the jurisdictions that participate in the mutual recognition schemes have agreed to recognise each others’ standards, even though they may be different (box 5.2).

Box 5.2 Variation in approaches to regulating valuers

Of all the registered occupations in Australia and New Zealand, valuers possibly exhibit the largest variation in regulatory approach. Four jurisdictions employ a traditional registration model (New Zealand, New South Wales, Queensland and Western Australia). South Australia, Tasmania and Victoria (the latter for government valuation work only) operate de facto regimes, while ‘[t]he two Territories have never had legislation covering the licensing of valuers’ (Australian Property Institute, sub. 41, p. 7).

Within each approach, the standards that must be met to carry on employment as a valuer range from the ‘let the market rule’ approach in the Australian territories that prescribes no standards, to the current New Zealand approach. The latter includes requirements that applicants: are at least 23 years old; of good character and repute; demonstrate a reasonable standard of professional competence; possess a minimum three-year university degree in valuation; and have the equivalent of three years full-time practical experience in the preceding ten years.

As in the 2003 review (PC 2003), differences in occupational standards remain a key source of concern for study participants. Some study participants, especially regulators, expressed misgivings about the potential risk of harm to property, health and safety from lower standards in some jurisdictions (box 5.3).

The evidence of harm provided to the Commission was anecdotal, and did not point to systemic problems that would affect an entire occupation in a given jurisdiction. However, given the limited data available, the Commission cannot discount the possibility that lower standards have caused, or might cause, harm to the public. Moreover, while examples provided appeared to be more akin to ‘one bad egg’ scenarios, at least one highlighted the potential for lower standards to allow, on occasion, the emergence of such scenarios. The ACT Health Registration Boards reported that:

Some ... jurisdictions allow a person to maintain their registration by payment of an annual fee, regardless of competence. The ACT recently received an application for

registration from a NSW registered podiatrist who had not practised at all for 20 years and who had done no CPD [continuing professional development] either. (sub. 44, p. 1)

The mutual recognition effects of this example are twofold. First, it is important to note that if there is a legitimate cause for concern about this podiatrist practising in the ACT under mutual recognition, this same concern should arise in NSW if the podiatrist decided to practise in that jurisdiction. The difference is that the application to register under mutual recognition has brought this risk to the attention of the ACT registration authority.¹ The second mutual recognition effect is that the risk that arises as a result of the NSW regime is being exported to the ACT.

It might be argued that one of the advantages of mutual recognition is that it will bring risks that arise because of differences in standards to light. The means of addressing issues of health, safety and protection of the environment under the schemes should address not just the individual risk of a particular applicant for registration, but also the regulatory regime that is the source of the risk.

Box 5.3 Variations in standards

The Valuers Registration Board of New Zealand was concerned that ‘public protection is likely to be compromised’ by the lower academic and practical requirements for registration in New South Wales (sub. 6, p. 2). On this point, the Valuers Registration Board of Queensland raised the possibility of ‘significant cost to the community through the inevitable lowering of standards within the valuation profession’ (sub. 19, p. 4).

Concerns have also been raised about the registration of psychologists. The New Zealand Psychologists Board reports that it was ‘confident that the standard set in New Zealand for registration as a psychologist is necessary for the protection of the public. This is a case, however, where there are apparently different assessments of risks to the public in a certain Australian jurisdiction’ (sub. 25, p. 2).

In commenting on jurisdictions’ differing requirements for registration, the Real Estate Institute of New Zealand suggested that ‘[a]ll attempts to lower eligibility requirements must be resisted ... or this will undermine the consumer protection elements already existing in the various pieces of legislation in the different jurisdictions’ (sub. 26, p. 2).

The Commission considers that it is very important that effective mechanisms exist for dealing with standards that are so low that the public or the environment are placed at risk of harm from poorly qualified practitioners. The following section presents suggestions for improving this element of the schemes, and raises concern about the options open to a regulator who uncovers an error in another regulator’s

¹ The question of whether New South Wales would allow a podiatrist with such out-of-date skills to practice has not been tested.

registration processes. Two specific standards-related concerns — ‘shopping and hopping’ and criminal record checks — are then discussed.

FINDING 5.2

Although many study participants raised concerns about lower occupational standards causing harm, the limited data provided did not offer conclusive evidence of systemic problems affecting an entire occupation in a given jurisdiction. This does not mean that such problems cannot arise. Furthermore, the evidence highlights the fact that lower standards can, on occasion, allow poorly qualified practitioners to operate. It is important that an effective mechanism exists for dealing with the harm that does, or might, stem from lower standards.

Avenues through which concerns can be addressed

Concerns about lower occupational standards

As a first option, regulators or jurisdictions concerned about lower occupational standards can engage in dialogue with their counterparts in other jurisdictions. Ideally, such dialogue would result in the discovery of some common ground, whereupon mutual recognition could resume to both jurisdictions’ satisfaction. If regulator dialogue does not resolve concerns, two formal mechanisms exist.

First, the MRA and the TTMRA contain processes for referring concerns about occupational standards to Ministerial Councils for resolution. A Ministerial Council must ‘endeavour to determine, within 12 months ... whether or not agreed standards ... should be set with respect to the carrying on of the occupation’ (MRA, para. 4.8.1). Determination of a standard requires a vote in favour by two-thirds of jurisdictions participating in the relevant mutual recognition scheme. A recommendation on standards is then made to Heads of Government. Unless at least one-third of the Heads of Government reject the recommendation within three months, participating jurisdictions are deemed to have agreed to implement any recommended standard as soon as practicable.

It appears that these processes have never been used. This may indicate a lack of awareness among regulators about the referral mechanism — possibly stemming from the location of this mechanism in the MRA and TTMRA, and not the mutual recognition legislation. If this is an issue, it should be addressed by the initiatives to enhance regulator expertise discussed in chapter 11.

FINDING 5.3

The mechanism of referring a concern about the standards required for registration in an occupation to a Ministerial Council appears never to have been used. It is possible that this reflects a lack of awareness that could usefully be addressed through initiatives to improve regulator expertise.

Second, the mutual recognition legislation allows for a tribunal — the Administrative Appeals Tribunal (AAT) in Australia or the Trans-Tasman Occupations Tribunal (TTOT) in New Zealand — to make a declaration that occupations are not equivalent on standards grounds. The wording of the MR and TTMR Acts is very similar, the main difference being the jurisdiction referenced. The TTMR Act (NZ), for example, provides that the TTOT can make a declaration if it is satisfied that:

... [an] activity or class of activity, if carried on by an individual not conforming to the appropriate standards, could reasonably be expected to expose persons in New Zealand to a real threat to their health or safety or could reasonably be expected to cause significant adverse effects on the environment in New Zealand. (s. 30(1)(b)(ii))

This said, the mechanism through which concerns about occupational standards are brought before a tribunal is not clear. The schemes provide only that a *person whose interests are affected* may apply to a tribunal for a review of a decision made by an Australian regulator (*Administrative Appeals Tribunal Act 1975* (Cwlth), s. 27), and that *an applicant* may apply for a review of a decision by a New Zealand regulator (TTMR Act (NZ), s. 42).

It could be argued that, in allowing the tribunals to rule on occupational standards following application for a review of the registration decision, the mutual recognition legislation permits regulators to refuse registration when they have significant concerns about the occupational standards applied by the applicant's home jurisdiction. But, as noted above, the general intent of the mutual recognition legislation is to preclude refusal of an application on a standards grounds. This ambiguity in the legislation should be clarified.

The Commission also considers that the mutual recognition schemes would work more effectively if regulators and other interested parties were permitted to seek advisory opinions from the tribunals in situations of this type (and, indeed, on any issue where the intent of the mutual recognition legislation is in doubt). A similar suggestion is made with respect to goods in chapter 8.

The mechanisms through which the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal can be approached to make a declaration on occupational standards should be clarified.

The mutual recognition Acts should be amended to create a mechanism for regulators and other interested parties to approach the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal for advisory opinions.

Registration processing errors

The Commission received legal advice from both Crown Law in New Zealand and the AGS that a regulator may recheck or audit whether an applicant met the registration requirements of the first jurisdiction (appendix B). However, the legal advice also states that an individual's failure to meet the requirements of the first jurisdiction is not grounds for the second jurisdiction to refuse to register him or her.

To address this problem, registration authorities could agree, either informally or more formally through a mechanism such as a Memorandum of Understanding, that a first jurisdiction will take timely action if any discrepancy is found by a second jurisdiction. Registration in the first jurisdiction can be cancelled, suspended or conditions or undertakings imposed so that the second jurisdiction can follow suit under either MR Act s. 33 or TTMR Acts s. 32.

Another solution lies in the way registration processes are structured. For example, registration authorities could require applicants under mutual recognition to declare that they have met the registration requirements of the first jurisdiction and are validly registered. If applicants do not meet these requirements, the second jurisdiction can use its powers under MR Act s. 23, TTMR Act (Cwlth) s. 22 or TTMR Act (NZ) ss. 22 and 20(6) to refuse registration on the grounds that the applicant provided false or misleading information.

The mutual recognition Acts could be amended to include a declaration of this type in the written notice that applicants for registration under mutual recognition must provide to local registration authorities (MR Act s. 19, TTMR Act (Cwlth) s. 20 and TTMR Act (NZ) s. 19).

A regulator may test whether an applicant under mutual recognition has met the registration requirements of his or her home jurisdiction, but cannot refuse the

application if the applicant has been registered in error. Consideration should be given to a mechanism that would permit regulators to legally reject an application in this situation.

Specific concerns about occupational standards

‘Shopping and hopping’

The term ‘shopping and hopping’ denotes the practice of registrants seeking initial registration in the jurisdiction perceived to have the easiest or cheapest registration system, then using mutual recognition to move to the jurisdiction in which they wish to work. A number of study participants expressed concern about this practice, and suggested that ‘shopping and hopping’ has become more frequent as information and communication technology have facilitated the spreading of information on variation in registration requirements.

In an important sense, ‘shopping and hopping’ is a desired outcome of mutual recognition of occupations, reflecting its role in promoting regulatory competition between jurisdictions. If workers can gain registration more cheaply and easily by registering with one jurisdiction and then invoking mutual recognition, there are gains to the economy, provided the jurisdiction of first registration does not set standards so low that registered workers can cause harm to the public or the environment.

The Commission suspects that some claims about ‘shopping and hopping’ reflect a desire on the part of some participants with vested interests to erect barriers to entry to practitioners from other jurisdictions.

A requirement that applicants for registration under mutual recognition be required to remain within the registering jurisdiction for 12 months to reduce ‘shopping and hopping’ was supported by some study participants (for example, Physiotherapy Board of New Zealand, sub. 7, p. 2; Dental Council of New Zealand, sub. 48, p. 1; New Zealand Psychologists Board, sub. DR 71, p.1). However, it was also argued that a requirement of this type would increase the administrative costs of the schemes and impose higher regulatory burdens on genuine applicants (NSW Government, sub. 55, p. 15). The Commission is also concerned that a residency requirement would work against the mobility of people seeking to provide services in more than one jurisdiction. The increasing importance of cross-border and short-term service provision is discussed in chapter 9.

In addition, the Commission notes that any initiative to limit ‘shopping and hopping’ would be unlikely to address some participants’ key concerns. The Physiotherapy Board of New Zealand, for example, raised the concern that it is

registering more physiotherapists each year, but that New Zealand continues to face shortages. Many of the new registrants move immediately to Australia, having only registered in New Zealand because the process is considerably cheaper and more convenient. As the Board noted, physiotherapists in Australia earn higher wages and Australian employers recruit actively in New Zealand. A residency requirement will not address skill shortages in New Zealand, if wages are the key factor in physiotherapists' decision about where to practise.

On balance, inclusion of a residency requirement in the mutual recognition schemes is not supported.

Criminal record checks

Criminal record checks appear to be a particularly sensitive issue for regulators. These checks, for example, underlay concerns about licences for security sensitive ammonium nitrate raised with the Commission during its study of chemicals and plastics regulation (PC 2008b) (box 5.4). One regulator told the Commission that its registration arrangements lay outside the coverage of the mutual recognition schemes because they involve criminal record checks and, in essence, that these were too important to mutually recognise. Other regulators mutually recognise registrations from other jurisdictions but nonetheless require applicants to undertake a criminal record check as a condition of registration.

The Commission can see nothing in the mutual recognition schemes that supports these approaches. Character and being 'fit and proper' are two of the qualifications mentioned in the legislation that can give rise to a registered occupation for mutual recognition purposes (for example, TTMR Act (Cwlth), s. 4). Furthermore, the legislation stipulates that registrants under mutual recognition must abide by the laws of the host jurisdiction governing the practice of an occupation, unless those laws are based on the attainment of a qualification or experience relating to fitness to carry on the occupation. In other words, criminal record checks cannot legally be required of registrants under mutual recognition.

Some study participants argued that regulators should be able to run their own checks because of the potential for an offence to have been committed after a check was undertaken in another jurisdiction (for example, Australian Teacher Regulatory Authorities, sub. 31). Participants also expressed concern about the fact that regulators in some jurisdictions are more limited in the information that they can seek on individuals than their counterparts in other jurisdictions. 'For example, provisions differ regarding the type of offences and whether and to what extent "spent" convictions are revealed' (Australian Teacher Regulatory Authorities, sub. 31, p. 2).

Box 5.4 **Security sensitive ammonium nitrate (SSAN) licensing issues**

In 2004, COAG agreed to a set of principles for the regulation of ammonium nitrate to address the security risks associated with the potential illegitimate use of this substance. The agreed principles were to guide the states and territories in their regulation of ammonium nitrate, given that the control of dangerous goods and explosives is their responsibility. Currently, in most cases, anyone who manufactures, imports, transports, sells or uses ammonium nitrate requires a licence.

To the extent that use of security sensitive ammonium nitrate (SSAN) reasonably constitutes an individual's occupation, SSAN licences could be subject to mutual recognition. If the use is, instead, more in the nature of a 'tool', or one of the elements required to carry out an occupation, then it may not be subject to mutual recognition as a registered occupation in its own right (appendix F contains further details on this issue).

As the Commission noted in its recent report on chemicals and plastics regulation (PC 2008b), SSAN regulations in some jurisdictions include provisions for licence recognition, but approaches vary. Victoria has explicit, comprehensive provisions regarding mutual recognition of security clearances and licences in its regulations. Other jurisdictions have capacity within their regulations to recognise each other's licences on a temporary basis. This variation in approach appears to relate to concerns about criminal record checking.

In a submission to the Commission's report on chemicals and plastics regulation (PC 2008b), the SA Government stated that its capacity to recognise security clearances from other jurisdictions is currently inoperable because other jurisdictions do not have systems in place to:

... ensure any change of security status of the individual licensed in the primary jurisdiction would be immediately transferred to the secondary licensing jurisdiction ([that is,] South Australia). (SA Government 2008, p. 3)

The Commission recommended harmonisation of critical licensing elements, including background checking and standards for probity of individuals, in order to reduce the compliance and administration costs of duplicating these processes for operators in multiple jurisdictions.

Regulator concerns about criminal record checks, as reflected by the approach to SSAN licences, suggest the need for change in their treatment in the mutual recognition schemes.

The frequency of regulator refusal to mutually recognise criminal record checks suggests a need to change the status of these checks within the mutual recognition schemes. If there is widespread agreement that these checks should be allowed, then the Commission considers that the schemes should reflect that view. However, any amendment to the Acts to allow regulators to require criminal record checks of applicants for registration under mutual recognition would need to ensure those checks did not slow registration processes and, hence, labour mobility. The

Commission considers that checks should occur during the deemed registration period and that they should only occur if they are also required of local applicants.

Responses to the Commission’s draft report suggest that there is widespread support for removal of criminal record checks from the coverage of the schemes. One study participant also suggested that checks of civil records and spent convictions be permitted (Australian Property Institute, sub. DR 78). The Commission’s view is that these checks should be permitted, but only to the extent that they are relevant to the occupation in question.

RECOMMENDATION 5.4

The mutual recognition Acts should be amended to allow criminal record checks, if they are required of local applicants.

5.3 Conditions — confusion over what is permitted

Mutual recognition entitles a person registered in one jurisdiction to practise an *equivalent* occupation in another jurisdiction. Equivalence occurs if ‘the activities authorised to be carried out under each registration are substantially the same’ (MR Act, s. 29(1)). Where the scope of activities authorised differs across jurisdictions, regulatory authorities can impose conditions in order to achieve equivalence. Around 10 per cent of respondents to a survey the Commission conducted of occupational regulators reported that they used conditions to achieve equivalence (appendix D).

The mutual recognition schemes contain a number of provisions that, read together, limit conditions on licences to restrictions on the *activities* that licence holders can carry out (for example, ss. 5(2)(4), 16(2)(b) and 28 of the TTMR Act (Cwlth)). There is evidence, however, of confusion about the types of conditions that may be imposed, and of regulators imposing conditions that go to the qualifications of licence applicants under mutual recognition (box 5.5).

The Commission acknowledges that regulators’ confusion in regard to conditions may stem, in part, from a lack of clarity in the legislation regarding the criteria for equivalence, and the types of condition that can legitimately be imposed. Legal advice from both Crown Law in New Zealand and the AGS supports the view that the mutual recognition legislation is not clear about the types of conditions that regulators may apply to registrants under mutual recognition (appendix B).

The mutual recognition Acts should be amended to make clear the types of condition (for example, around local knowledge or recency of practice requirements) that registration authorities may impose at the time of registration.

Box 5.5 Not all conditions are mutual recognition compliant

The New Zealand Government reported that:

Feedback from some New Zealand registration authorities suggests that acceptance of equivalence, and the use of conditions to achieve equivalence, are 'grey areas' in the practical application of the regime. Some authorities have reported being uncertain about whether an Australian and a New Zealand occupation are equivalent and when conditions might be imposed on registration. (sub. 53, p. 15)

In responding to a survey of registration authorities conducted by the Commission:

- the Plumbers Licensing Board of Western Australia reported that it requires plumbers from New Zealand to undertake a practical assessment because they do not hold the same level of training with respect to drainage plumbing. If successful at the assessment stage, New Zealanders are granted a licence conditional on completing a familiarisation course within six months of the licence being granted
- the Nurses and Midwives Board of Western Australia noted that it places conditions on nurses and midwives who do not meet the Board's five-year recency of practice requirement.

5.4 Scope differences — impeding labour mobility?

Licensing regimes sometimes differ significantly across jurisdictions. This is illustrated by the recent exercise to develop Ministerial Declarations that identify the conditions under which licences in priority trades across Australian jurisdictions are equivalent (discussed in section 5.8 below). The information covering plumbing licences, for example, runs to nearly 90 pages because of the variation between jurisdictions in the number of licences and scopes of activities covered by those licences.

Differences in the activities covered by licences complicate the task for registration authorities of granting licences under mutual recognition. There is evidence that authorities have not always fully executed their responsibilities in this regard (box 5.6).

Box 5.6 Different licence scopes impede mutual recognition

A range of stakeholders commented on the impact of licensing differences on mutual recognition:

... settlement agents licensed in Western Australia [are] being denied registration in those state and territory jurisdictions where the legislation has created equivalency issues. (Settlement Agents Supervisory Board of Western Australia, sub. 5, p. 2)

It would appear that the confusion in connection with the principles of equivalence is leading to the adoption of a conservative approach that in some states unnecessarily restricts access to comprehensive optometric care. (Optometrists Association of Australia, sub. 42, p. 5)

Mutual recognition is complex, and the differing licensing and testing regimes which exist across all Australian jurisdictions means that finding equivalence and demonstrating it is difficult for the tradesperson. (Plumbing Trades Employees Union, sub. 43, p. 2)

The Mutual Recognition principle works well, [except] it appears to fail when the incoming jurisdictional requirements are different from the originating state, especially when the licence categories [do not] match exactly. (NT Department of Justice, Licensing, Regulation and Alcohol Strategy, response to Commission's survey of registration authorities)

In some instances, differences in licensing regimes may reflect jurisdictions' initiatives to improve labour market flexibility and address skills shortages. Some trade licences, for example, may cover subsets of the full range of skills relating to a trade. Because the training underpinning these licences can be acquired relatively quickly, licences of this type might help ease skill shortages. Whatever the reasons, differences in the scope of licences have the potential to impede the operation of mutual recognition. As a number of study participants observed, mutual recognition works better the greater the degree of licence harmonisation between jurisdictions (for example, Tasmanian Department of Treasury and Finance, sub. 34; Optometrists Association of Australia, sub. 42).

By establishing requirements for equivalence, the Ministerial Declarations have, at least in part, resolved the problems faced by regulators of many occupations. Ongoing application and maintenance of the Declarations will be needed to keep these problems at bay. Potential concerns in this regard are discussed in section 5.8.

However, the use of conditions to achieve equivalence has the potential to create an impediment to labour mobility. The effect of conditions is to limit the activities a licence holder can perform. This may make a person with a licence restricted by conditions less attractive to employers than someone with a 'full' licence. As the NSW Government noted, '[t]he use of restrictions in jurisdictions where they are not usually applied creates confusion and uncertainty for both administrators and consumers' (sub. 55, p. 11).

On the other hand, some employers may favour a person with restricted registration on cost grounds. That is, they may only require the activities covered under the restricted registration and the holder of that registration may represent a cheaper option than someone with a full licence.

Another potential problem arises when the scope of a licence in one jurisdiction is narrower than in another. People may be reluctant to migrate to the more restricted environment if they are precluded, post-migration, from using their full skill set. As the Optometrists Association of Australia noted:

... optometrists are less inclined to practise in jurisdictions that do not allow them to practise to the full extent of their capabilities. All the optometry schools in Australia are on the east coast: the limitations on their practising in, for example, Western Australia discourages young graduates from moving to restrictive jurisdictions. (sub. 42, p. 3)

Greater commonality of licensing requirements between jurisdictions is required to address problems arising from differences in the scope of licensed activities. Moves to national licensing (discussed in section 5.8) will help in this regard.

In summary, differences between jurisdictions in the scope of activities covered by licences have the potential to impede mutual recognition and labour mobility. By clarifying equivalence between licences, Ministerial Declarations have gone some way towards resolving this problem. However, agreement on national licensing categories is required to address fully the potential impediments to labour mobility associated with interjurisdictional licence variations.

5.5 Mutual recognition machinery — working well?

Information gathering and privacy concerns

Some stakeholders raised a concern around identity checking of applicants for registration under mutual recognition. The Physiotherapists Board of Western Australia was:

... concerned that physiotherapists seeking registration in Western Australia pursuant to the MRA are not required to establish their identity or to have their identity independently confirmed [and that] [t]his deficiency in the process allows for the possibility of identity theft and for the Board to register a person who is not, in reality, qualified as a physiotherapist. (sub. 1, p. 1)

Similarly, the Teachers Board of South Australia had ‘concerns about the provision of certified evidence of proof of identity and proof of qualifications. This is

currently outside mutual recognition requirements and is an issue that must be addressed given the potential for identity fraud’ (sub. 35, p. 5).

These concerns appear to be unfounded. There is no provision in the mutual recognition legislation that precludes a regulator from checking the identity of an applicant for registration.

Issues with deemed registration

Study participants raised two issues relating to deemed registration.

First, the Valuers Registration Board of New Zealand claimed that ‘[t]here is no recourse against the non-equivalent valuer for work undertaken during the deemed registration period, even if registration is refused because the valuer’s registration is not considered to be equivalent’ (sub. 6, p. 4).

It is not clear what the basis for this claim is, given that the mutual recognition legislation specifies that individuals with deemed registration ‘may not carry on the occupation in the second state without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others’ (MR Act, s. 27(3)(a) and, in slightly different wording, TTMR Act (NZ), s. 26(1)(e)). These protections would continue to apply following a decision not to register a valuer under mutual recognition.

Second, the Builders Registration Board of Western Australia suggested that ‘it is possible for a builder to make a substantial impact on consumers and the building industry in a one month period’ (sub. 40, p. 2) and that deemed registration should be abolished to remove this risk to consumers. The Board also raised the possibility of a potential for legal problems ‘if a builder with deemed registration enters into contracts but is subsequently refused substantive registration’ (sub. 40, p. 3).

The Commission has no evidence of events of this type having occurred since the mutual recognition schemes were implemented. It would appear, therefore, that the risk is too low to merit abolition of deemed registration.

Accessibility of the appeals process

People whose application for registration under mutual recognition is refused by a regulator can apply to the AAT or TTOT for a review of that decision. This process is of little assistance, however, to people who do not get as far as applying because initial contact with a regulator left them with a belief that they were not eligible for mutual recognition. The Commission was contacted by someone in this situation

during the course of this study. On the basis of information provided by the Commission, the person approached the regulator again and successfully argued that her circumstances were covered by mutual recognition.

In the light of the evidence that mutual recognition has not been working as effectively as it might have, the number of applications for a review of decisions concerning mutual recognition is surprisingly low. Since the MRA took effect in 1993, the AAT has received about 65 applications for review of a decision of a registration authority, or an average of five a year. The TTOT has received five applications since 2002. It is noteworthy that applications to the AAT from professionals have outnumbered applications from other occupations in a ratio of about 2.5 to 1. This calls into question the accessibility of the tribunal appeals process for members of other occupational groups.

It may be that the costs of appealing to the AAT or TTOT deter potential applicants. While the filing fee for an appeal to the AAT costs \$639, for example, many applicants retain legal representation, even for a matter that is resolved in the early stages. This significantly increases the potential cost of an appeal.

The capacity of individuals to dispute or appeal regulator decisions could be improved by the creation of a standing unit with good knowledge of the mutual recognition schemes. This unit could provide advice to individuals and regulators about their rights and obligations, and assist in resolving simpler matters. This suggestion is taken up in chapter 11. In addition, as discussed in chapter 8, the unit should include a mediation function which would provide a lower cost means of resolving disputes. Steps would have to be taken to ensure information about this body was readily available to anyone searching for assistance with mutual recognition issues.

FINDING 5.5

Mutual recognition would work more effectively if a point of contact existed where individuals could cheaply and easily obtain advice about their rights under the schemes.

An anomaly around requirements for continued registration?

The MR Act provides that:

- (4) Continuance of registration is otherwise subject to the laws of the second state, to the extent to which those laws:
 - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second state; and

(b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation. (MR Act, s. 20(4))

A similar provision exists in the TTMR Act (Cwlth).

As noted by the NSW Government, this provision leaves open the possibility that ‘a licence holder who was granted their licence under mutual recognition arguably cannot generally be required to undertake training at anytime during which they hold that licence’ (sub. 55, p. 13). This view is supported by legal advice from the AGS, to the effect that ongoing conditions, including those relating to further study and upgrading of professional skills are probably not permitted, although the MR Act and TTMR Act (Cwlth) are ambiguous (appendix B).

The wording of this provision also suggests that criminal record checks conducted as a prerequisite for registration renewal cannot be required of registrants under mutual recognition, even if such checks are required of other registrants as a condition of continued registration.

Provisions in the TTMR Act (NZ) governing continuance of registration are worded slightly differently. An individual:

(c) Keeps or loses his or her entitlement to registration or renewal of registration in accordance with any law dealing with registration of that kind, to the extent that any such law —

(i) Applies equally to all individuals carrying on or seeking to carry on the occupation under the law of New Zealand; and

(ii) Does not require an individual carrying on or seeking to carry on that occupation under the law of New Zealand to have any particular qualification **before doing so.** (emphasis added) (TTMR Act (NZ), s. 17(2))

Crown Law’s advice on the question of whether ongoing requirements can be imposed on people registered under mutual recognition noted the potential for conflicting interpretations of the TTMR Act (NZ):

... a New Zealand court may find, that those requirements are likely to meet the definition of ‘qualification’ [within the meaning of the mutual recognition legislation] ... and therefore cannot be imposed ... However, I consider that there are circumstances where a New Zealand court would accept that ongoing requirements can be imposed. (appendix B, Crown Law advice, para. 67-8)

On balance, Crown Law was of the opinion that a New Zealand court would determine that an ongoing requirement designed to circumvent the goal of the TTMRA was prohibited, but one that: applied equally to all registrants; targeted public safety; and did not involve significant compliance costs, could be imposed.

It may be that the Australian and New Zealand legislation differ sufficiently that courts in each country will make different findings on the question of whether an ongoing requirement can be imposed. Nonetheless, the fact that Crown Law cites two possible interpretations of the TTMR Act (NZ) suggests that there is ambiguity in the legislation that could usefully be clarified.

FINDING 5.6

Legal advice indicates that an Australian registration authority can probably not impose ongoing requirements (for example, around training or criminal record checks) on people who are registered under mutual recognition, but that a New Zealand authority might not be similarly constrained. However, there is ambiguity around this issue in each of the three mutual recognition Acts that could usefully be clarified.

If the legislation does mean that ongoing training or criminal record checks cannot be required of individuals who obtain registration via mutual recognition, but are deemed necessary for other registrants, then the legislation runs contrary to community interest. There does not appear to be a good argument for exempting people who gain registration under mutual recognition from ongoing requirements, provided regulators apply those requirements equally to all registration holders.

This issue was canvassed in the 2003 review, with the Commission suggesting that ‘[c]larity may emerge over time as contentious cases are heard by the AAT and TTOT’ (PC 2003, p. 97). It does not appear that the tribunals have been asked to review a decision involving this issue. Given the reservations expressed above about the effectiveness of the tribunals as an appeal mechanism, an alternative approach to resolving this issue is desirable.

RECOMMENDATION 5.6

The mutual recognition Acts should be amended to make it clear that requirements for ongoing registration, including further training, continuing professional development and criminal record checks, apply equally to all registered persons within an occupation, including those registered under mutual recognition.

Clarity on undertakings and disciplinary action could be improved

Study participants from the health professions identified two further areas in which the mutual recognition legislation appears to lack clarity, with the potential for public harm — undertakings and the meaning of disciplinary actions.

Section 27 of the MR Act (and similar sections of the TTMR Acts) sets out the rights and obligations of individuals with deemed registration. These include the provision that a person may carry on his or her occupation ‘subject to any conditions or undertakings applying to the person’s registration in the first state, unless waived by the local registration authority of the second state’ (MR Act s. 27(2)(c)).²

However, undertakings are not mentioned in the sections of the mutual recognition Acts covering disciplinary action (s. 33 of the MR Act and s. 32 of the TTMR Acts). The MR Act (s. 33) provides that if a person’s registration in one state is cancelled, suspended or subject to a condition ‘on disciplinary grounds, or as a result of, or in anticipation of, criminal, civil or disciplinary proceedings, then the person’s registration in the equivalent occupation in another state is affected in the same way’. The TTMR Acts are worded slightly differently but have similar effect. As the Medical Practitioners Board of Victoria noted:

... section 33 [of the MR Act] ... does not provide that undertakings are to be given in the second state in the manner in which they are in the first state. Therefore, the situation may arise, where a medical practitioner has given undertakings in one jurisdiction and if that practitioner also holds registration in a second jurisdiction, the undertakings (which were given in the first state) do not automatically apply to the registration he/she holds in the second state. (sub. 28, p. 1)

The absence of the term ‘undertakings’ from s. 33 (or s. 32 of the TTMR Acts) leaves open the possibility that an individual’s scope of practice could be limited in one jurisdiction, but unlimited in other jurisdictions.

Legal advice from the AGS is that legally binding undertakings constitute conditions, those that are not legally enforceable do not. In the opinion of Crown Law, an undertaking may be imposed as a condition of registration if it ‘restricts or limits the person’s ability to carry out an authorised activity’ (appendix B, para. 2.3.3).

Given that undertakings are used when practitioner performance is substandard, the Commission considers that jurisdictions should be able to exchange information on all undertakings, whether legally binding or not. Furthermore, if a person is willing to give undertakings in one jurisdiction, he or she should be willing to give them in another.

The Nurses and Midwives Board, New South Wales (sub. 10, p. 2) suggested that ‘[t]he public would be protected if all information regarding complaints, practise, character, health, convictions etc could be shared with registering authorities in all other participating jurisdictions’. The Commission agrees with this suggestion.

² The wording in the TTMR Act (NZ) is slightly different, but has similar effect.

RECOMMENDATION 5.7

The mutual recognition Acts should be amended to define undertakings and provide that they are transferable between jurisdictions.

A related issue about the use of the term ‘disciplinary grounds’ was raised by the Australian Medical Council:

All Medical Boards conduct a variety of regulatory programs, in addition to their complaints and disciplinary systems. These programs include health or impairment programs, and programs designed to address questions of substandard performance. On a literal reading of Section 33 of the Mutual Recognition Act, it could be argued that conditions or sanctions imposed as a result of Health or Performance programs (which are described as nondisciplinary or remedial) would not automatically apply in other jurisdictions. However as a practical matter, medical boards take a broad view of the word ‘disciplinary’ in this provision, and are prepared to apply all conditions across jurisdictional boundaries. (sub. 37, p. 3)

As with undertakings, the Commission supports the notion that jurisdictions should be able to exchange information about nondisciplinary or remedial action.

RECOMMENDATION 5.8

The mutual recognition Acts should be amended to ensure that information on nondisciplinary or remedial action can be shared between jurisdictions, where such action arises from a regulator’s concern about an individual’s fitness to practise.

5.6 Regulator expertise and public awareness could be improved

Regulator expertise

While most regulators appear to have sufficient expertise to fulfil their obligations under the mutual recognition schemes, a significant minority do not.

A lack of expertise is suggested, for example, by the absence of information about mutual recognition on a regulator’s website. The mutual recognition legislation contains the provision that:

It is the duty of each local registration authority to prepare and make available guidelines and information regarding the operation of [the scheme] in relation to the occupations for which the authority is responsible. (for example, MR Act, s. 39(2))

In some instances, regulators' websites contain no reference to mutual recognition. In others, there may be an application form, or reference to mutual recognition in a form, but no guidelines or information on the schemes. Further evidence of a lack of expertise comes from examples that illustrate that some regulators do not comply with their mutual recognition obligations (box 5.7).

Box 5.7 Not all regulators fulfil their mutual recognition obligations

... it appears that while skills and experience have been mutually recognised, persons are being refused registration under mutual recognition in other jurisdictions on the grounds that they do not meet those jurisdictions' character checks. (Tasmanian Department of Treasury and Finance, sub. 34, p. 4)

... [t]he NSW Board has experienced difficulties with applicants for registration under the mutual recognition scheme where some interstate physiotherapy registration Boards have not advised registration Boards in other jurisdictions of conditions placed on a physiotherapists registration. (NSW Physiotherapists Registration Board, sub. 3, p. 1)

... [t]he ANMC [Australian Nursing and Midwifery Council] notes that there have been instances in some jurisdictions, in clear contradiction of the legislation, whereby applicants have lodged their application but their application has not been considered for several months, rather than the legislative requirement of one month. (Australian Nursing and Midwifery Council, sub. 17, p. 1)

The result of a survey of State Marine Authorities in late 2005 indicates there is no consistent approach to considering the mutual recognition of Australian/New Zealand marine qualifications across jurisdictions, and that marine authority obligations under the TTMRA may not be fully implemented in all cases. (Queensland Treasury, sub. 52, p. 3)

Moreover, an evaluation by Allen Consulting Group (ACG 2008) of the COAG initiative to achieve full and effective mutual recognition in certain occupations (discussed in section 5.8) concluded that improved regulator expertise was a key output from the exercise, suggesting that there were problems before the exercise commenced:

Many regulators reported an improved understanding of the principles and purpose of mutual recognition as a result of their participation in occupational Action Groups. Some regulators admitted that they had realised they were not correctly fulfilling their obligations under the Act. For example, one regulator reported recognising qualifications rather than equivalent licences. Several other regulators reported applying additional processes that were not consistent with the purpose of mutual recognition. (ACG 2008, p. 26)

Lack of regulator expertise was a key issue raised by the Commission's 2003 review. Evidence of ongoing problems identifies this as an area in continuing need of attention. This point is taken up again in chapter 11.

FINDING 5.7

There is evidence that a significant minority of regulators do not comply with their obligations under the mutual recognition schemes. Initiatives to enhance regulators' awareness in this area could address this issue.

Public awareness

In a survey of registration authorities for this study, the Commission asked regulators for their opinion on the awareness of potential registrants of mutual recognition. Many regulators reported that applicants were aware of the existence of mutual recognition, but not the details of the process.

Evidence on public awareness was also collected recently by the ACG. It concluded that '[t]here is a low level of awareness in industry bodies and among employees of mutual recognition initiatives, including rights under mutual recognition and available information sources' (ACG 2008, p. 25).

Sustainable strategies to develop and maintain awareness of mutual recognition should be implemented. Potential strategies are canvassed in chapter 11.

5.7 Local knowledge requirements

Some study participants expressed concern that individuals can register under mutual recognition without first having gained relevant local knowledge (box 5.8).

On the issue of local knowledge requirements, the Commission supports the conclusion of the 1998 review (CRR 1998), reiterated by the 2003 review (PC 2003, p. 94), that 'the skills and competencies held by a registered person should also give them the ability to understand and interpret the legal and other requirements needed to carry out their occupation'. These other requirements should be interpreted as covering local knowledge, where necessary for the satisfactory practice of an occupation.

The mutual recognition legislation makes it clear that a registrant under mutual recognition must comply with the laws of a host jurisdiction that govern the work of practitioners in his or her occupation. The Commission suggests that, as a matter of good practice, registration authorities should provide information about local conditions and laws to applicants for registration under mutual recognition.

Box 5.8 A lack of local knowledge troubles some regulators

There is a wide range of specific legislation to each of Australia and New Zealand that affects the valuation of property. For example, there is no equivalent in Australia of the Resource Management Act or the Treaty of Waitangi. There is no requirement under TTMRA for a registered valuer to become conversant or to remain conversant with changes to legislation. (Valuers Registration Board of New Zealand, sub. 6, p. 4)

New Zealand has a unique mix of cultures. Although European and Maori populations are still predominant, we have very rapidly growing populations of Asian and Pacific peoples. The Board is concerned about the lack of any requirement for TTMRA applicants to provide evidence of cultural competence relevant to the jurisdiction where they intend to practise. (New Zealand Psychologists Board, sub. 25, pp. 2)

Whilst the applicants under TTMRA in New Zealand may receive conditions ... this does not address their knowledge of the legislation that REINZ [Real Estate Institute of New Zealand], as the prescriber of the real estate profession's qualifications, believes are prerequisites to holding a license. Therefore the licensing regulator must also have the capacity to impose conditions on an applicant to address this gap of requisite knowledge. (Real Estate Institute of New Zealand, sub. 26, p. 3)

5.8 Recent COAG initiatives relevant to occupations

Review of occupations licensed in only one or two jurisdictions

In May 2008, after reviewing Australia's consumer policy framework, the Commission recommended that COAG's Business Regulation and Competition Working Group (BRCWG):

... should instigate and oversee a review and reform program for industry-specific consumer regulation that ... would [among other things] identify and repeal unnecessary regulation, with an initial focus on requirements that only apply in one or two jurisdictions. (Productivity Commission 2008f, p. 97)

The BRCWG work program announced in July 2008 included a review focused on trades licensed in only one or two jurisdictions (COAG 2008d). As part of this initiative, New South Wales is reviewing the need for licensing in 11 selected occupations (NSW Department of Premier and Cabinet 2008).

Ministerial Declarations

In response to government and industry concerns about skill shortages, COAG, in February 2006, set in place an initiative to achieve full and effective mutual

recognition of selected trades occupations. The initiative was subsequently extended to all vocationally trained registered occupations.

This initiative led to the development of a set of tables for the selected occupations that describe the conditions under which occupations are equivalent across jurisdictions. These form the basis of a set of Ministerial Declarations around equivalence, and have been published on a licence recognition website to provide information to licence holders seeking to move jurisdictions.³

As noted above, ACG evaluated this work in 2008. It concluded that the equivalence tables have assisted regulators in making decisions on licence applications under mutual recognition — regulators have granted more licences with conditions as a result (ACG 2008).

Maintaining the currency of the tables will be an issue. An annual protocol for updating the tables has been developed and is being refined. The updating process will work most effectively if regulators come together on a regular basis. There would be benefits from this process, including a greater awareness of regulatory moves in other jurisdictions and, potentially, a shift towards greater harmonisation. It is not yet clear how the updating process will be coordinated. This issue is addressed in chapter 11.

There is evidence that some regulators have customised the tables. It appears that:

... there are cases where processing officers consider the matrices to be incorrect and are applying exclusions and/or conditions. (NSW Government, sub. 55, p. 15)

Unilateral modification of licence categories or customising of equivalence conditions defeats the purpose of Ministerial Declarations.

This raises a key issue in this area — the effective operation of mutual recognition relies on individuals operating consistently, albeit in relative isolation. An effective appeals mechanism would reduce concern that licence seekers are not being treated equally or as the mutual recognition Acts dictate. This issue is also considered further in chapter 11.

The Ministerial Declarations only cover Australian jurisdictions. Provision for the making of Declarations exists within the TTMR Acts. As noted by the Real Estate Institute of Australia:

The effective operation of the TTMRA would be enhanced by Ministerial Declarations being extended to include New Zealand licensing. (Real Estate Institute of Australia, sub. 8, p. 3).

³ The website can be accessed at: <http://www.licencerecognition.gov.au>.

The New Zealand Government was also in favour of such an extension:

... in the longer term, it would be worthwhile exploring the feasibility and implications of extending to New Zealand the current Australian process of Ministerial Declarations of equivalence for licensed occupations as a means of providing additional certainty for registering authorities and those seeking registration. (sub. 53, p. 15)

RECOMMENDATION 5.9

Consideration should be given to extending the Ministerial Declarations to occupations regulated in New Zealand.

National licensing

There have been significant moves towards national licensing of some occupations since the Commission's 2003 review. In April 2006, the Australian Safety and Compensation Council released a *National Standard for Licensing Persons Performing High Risk Work* (ASCC 2006). All jurisdictions have now adopted that standard. As a consequence, licences held by people engaged in high risk work (including crane and hoist, load shifting and pressure equipment operators) are now nationally recognised.

Following a recommendation made by the Commission in a study of the health workforce (PC 2005), COAG has agreed to an *Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions* (COAG 2008c). The Agreement committed jurisdictions to establishing a national registration scheme for the nine health professions currently registered in all jurisdictions (physiotherapy, optometry, nursing and midwifery, chiropractic care, pharmacy, dental care, medicine, psychology and osteopathy) by 1 July 2010.

In July 2008, COAG agreed to the development of a national licensing system in a range of other occupations including: air conditioning and refrigeration mechanics; building; electrical; land transport; maritime; plumbing; and property agent occupations (COAG 2008d). The regulation impact statement for this initiative was released for public comment in early October 2008, and the intergovernmental agreement is due with COAG in early 2009.

National schemes will address many of the problems raised by study participants, including those associated with variations in the standards required for registration and in the scope of activities covered by licenses. While there may be problems with the implementation of these schemes — such as defining a joint standard — these will not be mutual recognition problems.

Study participants expressed mixed views about the proposed systems (box 5.9).

National licensing raises a question over the ongoing role of mutual recognition. Because it will be some time before national licensing is implemented in some areas and because it will not have universal coverage of occupations, mutual recognition will still be needed. It seems unlikely that national licensing will be appropriate for occupations registered in only a few jurisdictions, or cost effective for small occupations or those for which cross-border relocations are not large.

Unless or until New Zealand is brought into the schemes, the TTMRA will remain important. New Zealand stakeholders are watching the moves towards national licensing with interest. As the New Zealand Government noted:

... there could ... be value in assessing the feasibility of Australian and New Zealand registering authorities working closely together as Australia's national frameworks are developed, to ensure that trans-Tasman implications are fully understood, and that the new frameworks in Australia and those in New Zealand are as closely aligned as possible. (sub. 53, p. 16)

Given the importance of regulator cooperation to the operation of the TTMRA, engagement of New Zealand regulators in the development of new systems in Australia appears highly desirable.

RECOMMENDATION 5.10

Relevant New Zealand regulators should be included in consultations around the development of national licensing systems in Australia.

Box 5.9 Input from study participants on national licensing

Some participants were positive about proposed national systems:

The REIA [Real Estate Institute of Australia] preferred model is a national licence system for real estate professionals. (Real Estate Institute of Australia, sub. 8, p. 3)

The [Australian Property] Institute would strongly support the option of a national licensing system provided the issues of educational and experience requirements were resolved ... Successful implementation of such is critical to eliminating the current inadequacies caused by Mutual Recognition. (Australian Property Institute, sub. 41, p. 13)

The current system of Ministerial Declarations appears to be cumbersome ... A national licensing system could provide a solution. (Plumbing Trades Employees Union, sub. 43, p. 4)

Notwithstanding the benefits provided by Ministerial Declarations, most of the occupations covered by the declarations raise a range of difficulties associated with lack of consistency of approach by the different states ... These difficulties are expected to be ameliorated by the introduction of national licensing. (NSW Government, sub. 55, p. 17)

Others expressed reservations about national licensing:

... there is a concern that some of the unique features of registration within Western Australia (for example, specialty title in psychology) could be lost under the new scheme ... it is important that the new scheme ... be consistent with the current state legislation that sets a more stringent standard. (Western Australian Department of Health, sub. 20, p. 1)

... many of these variations [in legislative provisions and administrative practices] appear to have arisen in response to particular local/jurisdictional issues and it is unclear how the new national arrangements will accommodate these 'local' needs/responses within a nationally consistent framework. (Australian Medical Council, sub. 37, p. 3)

Some saw value in alternative approaches:

Every jurisdiction in Australia has different legislation governing their building industry and there is a need for some uniformity in order for the principle of mutual recognition to deliver successful outcomes ... The [Builders Registration] Board supports a national harmonised framework regulated by individual jurisdictions. (Builders Registration Board, Western Australia, sub. 40, p. 3)

A national licensing framework may not always be the most appropriate and efficient means to approach cross jurisdictional harmonisation, particularly in small industries or where this is little movement of licence holders across jurisdictions. In such circumstances, mutual recognition may prove to be the most efficient and cost effective approach to facilitating labour mobility. (Queensland Treasury, sub. 52, p. 4)

... centralising registration functions ... is more beneficial to some occupations than others. In some cases, some local registration related functions may be required for certain occupations ... The Land Transport Division of DIER [the Division] has stated that the primary benefit from national licensing of land transport occupations would be consistency in skills and eligibility criteria. However, the Division stated that this could be achieved more cost effectively through improved harmonisation ... implementation costs and associated impacts of moving to a national licensing system for land transport occupations would be very significant. (Tasmanian Department of Treasury and Finance, sub. 34, pp. 2-3)