
Findings and recommendations

4 Economic impacts of mutual recognition

FINDING 4.1

The Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) have increased the mobility of goods and labour around Australia and across the Tasman.

- *In the goods area, mutual recognition has led to lower regulatory compliance costs for firms arising from jurisdictional differences. There is some evidence that this has contributed to the expansion of interstate and trans-Tasman trade.*
- *Increased labour mobility and reduced wage dispersion are consistent with the expected effects of mutual recognition of occupational registration.*

5 Registration of occupations

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.

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.

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.

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.

RECOMMENDATION 5.2

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.

RECOMMENDATION 5.3

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.

FINDING 5.4

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.

RECOMMENDATION 5.4

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

RECOMMENDATION 5.5

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.

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.

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.

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.

RECOMMENDATION 5.7

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

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.

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.

RECOMMENDATION 5.9

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

RECOMMENDATION 5.10

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

6 Temporary exemptions

RECOMMENDATION 6.1

The foreshadowed new Australian consumer product safety regime should include provisions to ensure it is closely integrated with the temporary exemption processes under the MRA and TTMRA. In particular, the new consumer law should ensure that:

- *when an interim product ban is imposed on a good under Australia’s new consumer product safety regime, the MRA does not apply to that good until the ban is either resolved by a Commonwealth decision or lapses — in order to avoid duplication and inconsistency between the product safety regime and the temporary exemption process under the MRA*
- *when an interim product ban is imposed by any Australian jurisdiction, the temporary exemption process under the TTMRA is automatically invoked and the resultant temporary exemption for the relevant jurisdiction is automatically revoked when the interim product ban ends*
- *if and when an interim product ban within Australia is resolved by a national permanent ban, a national temporary exemption under the TTMRA is automatically invoked for Australia.*

7 Special exemptions

RECOMMENDATION 7.1

Following completion of the five year work plan for industrial chemicals in 2009, Australian and New Zealand Governments should consider converting the TTMRA special exemption for hazardous substances, industrial chemicals and dangerous goods into a permanent exemption, and/or applying mutual recognition to some areas. This should involve a cost–benefit analysis, based on a realistic assessment of the likelihood of achieving mutual recognition or harmonisation in the foreseeable future, given the slow progress to date.

RECOMMENDATION 7.2

The New Zealand Government should advise the Australian Government within three months of receiving this report whether the foreshadowed trans-Tasman regulatory regime for therapeutic goods is likely to be enacted by the New Zealand Parliament within the following nine months. If it advises that enactment is unlikely within this period, therapeutic products should be granted a permanent exemption from the TTMRA as soon as possible. If it advises that enactment is likely, but the parliaments fail to enact the legislation within twelve months of governments receiving this report, a permanent exemption should also be adopted as soon as possible.

RECOMMENDATION 7.3

The TTMRA special exemption for road vehicles should remain because there are opportunities for Australia and New Zealand to harmonise their vehicle standards and associated procedures in advance of, and in some cases to a greater extent than, the harmonisation expected to eventually be achieved at a global level. To ensure that the special exemption delivers results, the Australian and New Zealand Governments should develop a reinvigorated cooperation program for road vehicles that has clear objectives and deadlines, and is supported by a clear intent to reduce impediments to trans-Tasman trade in vehicles.

FINDING 7.1

The Commission notes the progress made by the Australian and New Zealand Governments towards harmonised regulations for natural gas appliances. It supports the move towards a permanent exemption for ‘nonuniversal’ LPG appliances, subject to a cost–benefit analysis of the change.

RECOMMENDATION 7.4

Because of the different historical paths of Australian and New Zealand spectrum allocation and use, a permanent exemption should be considered for short-range and spread-spectrum devices, once opportunities for harmonisation of standards are exhausted. A special exemption should remain where there is a possibility of harmonisation of spectrum allocation, including for the high frequency citizen band, in-shore boating devices and digital electrical cordless telephones. Devices likely to become obsolete in the near future should also remain as a special exemption until the exemption is no longer needed.

RECOMMENDATION 7.5

The TTMRA legislation should be amended so that special exemptions can have a maximum duration of three years, and can be extended for one or more further periods, each not exceeding three years. This reform should be reflected in the administrative procedures that governments use when considering special exemption rollovers, including that cooperation reports only need to be prepared every three years.

8 Scope of mutual recognition — goods

RECOMMENDATION 8.1

Consideration should be given to narrowing the permanent exemption for risk-foods from the TTMRA to include only those for which harmonisation of risk-food lists and equivalence of import-control measures are not achievable in the long term. Other risk-foods should be reclassified as a special exemption. Efforts should be made to achieve equivalence of import-control systems and third-country arrangements through a cooperation program, undertaken by a trans-Tasman working group, consisting of regulatory bodies and policy officials.

RECOMMENDATION 8.2

The permanent exemption for ozone-protection legislation should be removed from the MRA. Governments should also consider removing the ozone-protection exemption from the TTMRA, subject to both countries aligning their respective regulatory systems while ensuring consistency with international obligations.

RECOMMENDATION 8.3

A new provision should be included in the Trans-Tasman Mutual Recognition Acts which would allow, through regulation, exempted legislation to be moved from Schedule 2 (permanent exemptions) to Schedule 3 (special exemptions).

RECOMMENDATION 8.4

The exceptions for goods in the mutual recognition Acts should be retained.

Impediments to trade arising from the exceptions should be dealt with via direct negotiation with regulators on a case-by-case basis. A central point of contact should be made available to facilitate this process.

The implications of regulation for mutual recognition should feature as one of the factors to be taken into consideration in jurisdictions' respective regulatory guidelines.

FINDING 8.1

Use of goods requirements have the potential to unnecessarily impede the sale of goods across jurisdictions. Provisions in the Acts appear to exclude use requirements from the scope of mutual recognition.

FINDING 8.2

The Acts currently provide for mutual recognition as a defence to a prosecution in relation to the sale of goods. Even if the mutual recognition Acts had explicitly covered use of goods requirements, the existing provisions would not have provided an adequate mechanism for sellers of goods to challenge a use requirement, given that it is unlikely that a prospective user would buy the product in the first instance.

RECOMMENDATION 8.6

Requirements relating to the use of goods, insofar as they prevent or restrict the sale of goods, should be explicitly brought into the scope of the mutual recognition schemes.

An exception should be made where mutual recognition of use provisions could expose persons in another jurisdiction to a real threat to health or safety or cause significant harm to the environment.

RECOMMENDATION 8.7

An effective, accessible administrative mechanism should be made available to sellers of goods, regulators and other interested parties (including industry and consumer associations) to obtain information and guidance on the application of the mutual recognition legislation to individual cases, and to assist in the resolution of disputes.

RECOMMENDATION 8.8

A judicial mechanism should be made available for sellers of goods and other interested parties to:

- ***obtain advisory opinions from a body such as the Administrative Appeals Tribunal***

-
- *appeal regulator decisions to enforce requirements where the parties believe mutual recognition should apply.*

RECOMMENDATION 8.9

The existing mechanism for referral of issues relating to jurisdictional requirements for goods standards to Ministerial Councils should be extended to all issues of significant dispute relating to goods.

9 Exemptions and extensions — occupations

RECOMMENDATION 9.1

The permanent exemption for registered medical practitioners should become a special exemption, and be limited to third-country trained medical practitioners (that is, practitioners with primary and/or postgraduate qualifications obtained outside Australasia). Harmonisation of competency standards for overseas-trained medical practitioners could then be pursued through a cooperation program.

RECOMMENDATION 9.2

Mutual recognition should apply to registered medical practitioners who have gained their medical qualifications only within Australia or New Zealand.

FINDING 9.1

The mutual recognition legislation could be amended to ensure that mutual recognition is available to people registered under schemes in which registration is not compulsory for all practitioners, provided those schemes meet the other requirements for registration specified under the mutual recognition legislation.

FINDING 9.2

Business licences held by sole traders, that include at least one requirement relating to an individual's 'fitness' to hold a licence, are likely to fall within the coverage of the mutual recognition schemes.

FINDING 9.3

Mutual recognition could be extended to business registration requirements where similar requirements would result in an individual being registered for mutual recognition purposes.

Following the implementation of the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement, Australian jurisdictions and New Zealand could conduct a comprehensive and transparent stocktake of their legislation, similar to the mutual evaluation process under the European Union Services Directive. This stocktake would aim to identify major barriers to service provision across borders, and could be initiated and managed by the Cross-Jurisdictional Review Forum.

If, based on the outcomes of that stocktake, regulatory action is deemed to be warranted, the jurisdictions could consider the types of initiative that would facilitate trade in services.

10 Mutual recognition in the wider context

The US–Australia Free Trade Agreement and the New Zealand–China Free Trade Agreement do not significantly increase the risk to consumers of lower quality products or registered persons with lower qualifications entering New Zealand or Australia under the TTMRA.

Free trade agreements generally include commitments by the parties to engage in further cooperation, recognition and harmonisation agreements that may create opportunities and may pose risks for a mutual recognition partner:

- *Opportunities arise if the cooperation agreement extends recognition or harmonisation to the mutual recognition partner, or if the agreement provides a platform for discussions between the mutual recognition partner and the third country.*
- *Risks arise if the cooperation agreement results in lower quality goods being sold or less qualified persons carrying on occupations in the free trade partner that subsequently flow into the mutual recognition partner.*
- *Opportunities can be increased and risks can be mitigated if Australia and New Zealand consider mutual recognition implications when future cooperation agreements are negotiated.*

RECOMMENDATION 10.1

Australia and New Zealand should take into account the possible impacts that international agreements will have on the mutual recognition framework when negotiating future initiatives with third countries.

FINDING 10.3

Recent trans-Tasman agreements may provide alternative or complementary approaches for improving the operation of mutual recognition. The new agreements apply mutual recognition to some services and strengthen trans-Tasman enforcement and dispute resolution. It is important that these new instruments be considered alongside other options when modifying the mutual recognition schemes.

11 Awareness, expertise and oversight

RECOMMENDATION 11.1

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

The functions of the two units should include:

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

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

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

RECOMMENDATION 11.2

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

RECOMMENDATION 11.3

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

12 The next steps for mutual recognition

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.