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# 1 About the review

This commissioned study is a five-yearly review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Previous reviews were undertaken by the Council of Australian Governments' (COAG) Committee on Regulatory Reform in 1998 (CRR 1998) and by the Productivity Commission in 2003 (PC 2003).<sup>1</sup>

This document is the final report of the 2008 review of mutual recognition schemes. Its findings were presented to Australian Heads of Government and the New Zealand Prime Minister in early February 2009. Within three months of that date, in accordance with the study's terms of reference, a report responding to the Commission's findings is to be presented to Australian Heads of Government and the New Zealand Prime Minister by the Cross-Jurisdictional Review Forum.

## 1.1 What the Commission has been asked to do

Under the terms of reference, the Commission has been asked to:

- assess the coverage, efficiency and effectiveness of the MRA and TTMRA since their last review in 2003
- consider how administrative provisions can be amended and/or enhanced to support more efficient operation of the MRA and/or TTMRA
- examine whether any components of overseas models of mutual recognition or any other changes might be made to enhance the functioning of the MRA and TTMRA
- explore any possible implications for the operation of the TTMRA arising from participating jurisdictions' bilateral engagement with third countries.

The word 'coverage' in the terms of reference is interpreted by the Commission as including the goods and occupations subject to mutual recognition. But it is also given a broader meaning to indicate the 'scope' of the two schemes — the range of laws, regulations and activities that are within reach of mutual recognition.

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<sup>1</sup> Part IV of the MRA provided for the first review of the scheme. Part XII of the TTMRA subsequently established five-yearly reviews of both the MRA and the TTMRA schemes.

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‘Effectiveness’ measures how well the mutual recognition schemes achieve their intended outcome. ‘Efficiency’, in its broadest sense, refers to how well resources are used to benefit the whole community. Efficiency is affected by how well the MRA and TTMRA are managed, and the degree to which they cause goods and labour to be allocated to uses that generate the greatest net benefit to Australia and New Zealand. Net, rather than gross, benefit is the key indicator of efficiency, because the MRA and TTMRA impose compliance and administration costs that offset the potential efficiency gains generated by the schemes.

Undertaken by the Australian Productivity Commission, this review has been conducted independently of the Australian and New Zealand Governments, in accordance with the *Productivity Commission Act 1998* (Cwlth). Also in keeping with its Act, the Commission has performed this review using open, transparent and public processes, and with overarching concern for the wellbeing of the Australian and New Zealand communities as a whole, rather than just the interests of any particular industry or group.

## **1.2 This review is timely**

Most pieces of legislation reflect the political, economic and social circumstances that existed at the time that they were drafted. For this reason, periodic review of legislation to ensure its relevance is desirable. This is particularly warranted when the environment in which the laws or regulations operate is changing rapidly.

In recent times, reform of the regulatory burdens faced by Australian businesses has gained greater momentum, at Commonwealth and at state and territory level (box 1.1). In particular, there has been rising emphasis on reforms to facilitate the emergence of a so-called ‘seamless national economy’:

You know what actually hit me between the eyes, was this single undiluted call from the business community and those in our economic working group saying, ‘what we want most of all is a single, seamless national economy’. That is, a single national market. Whether it’s in labour, product, carbon, electricity, water. Because the costs of doing business nationally in what is still a relatively small economy by global standards are too great. (Rudd 2008a)

By moving towards a seamless national economy through the reform of business and other regulation, COAG’s reforms will make it easier for businesses and workers to operate across State and Territory ... borders. These reforms will make life simpler for businesses and consumers, while continuing to provide the necessary protections and access for consumers and the community. (COAG 2008d)

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**Box 1.1 Recent business regulation reform in Australia**

In 2005, the Australian Government appointed the Taskforce on Reducing Regulatory Burdens on Business to examine regulatory burdens in the Australian economy and identify practical options for alleviating the compliance burden on business. The focus of that review was on Australian Government regulation, but it identified burdens arising from the overlap of Australian Government regulations with those of other jurisdictions within Australia. The Taskforce handed its report to the Australian Government in January 2006.

Beginning in 2006, Australian states and territories, through the Council of Australian Governments (COAG), have committed to reviewing many regulatory 'hot spots'. This term refers to key areas of regulation where inconsistencies and duplication create the most compliance costs for business.

The list of hot spots identified by COAG has progressively expanded since 2006 and now includes the following areas: rail safety regulation; national trade licensing; payroll tax harmonisation; health workforce; occupational health and safety laws; national trade measurement; chemicals and plastics regulation; development assessment arrangements; building regulations; environmental assessment and approval processes; business name, Australian Business Number and related business registration processes; personal property securities; consumer product safety; standard business reporting; food regulation; a national mine safety framework; electronic conveyancing; upstream petroleum regulation; maritime safety; wine labelling; directors' liability reform; financial services delivery; trustee companies; mortgage credit and advice; margin lending; and non-deposit taking institutions.

In December 2007, COAG formed the Business Regulation and Competition Working Group to accelerate and deliver the regulatory hot spots agenda. Since that time, governments have agreed to specific actions across all areas of the agenda.

Major reforms set in train by COAG under the 'seamless national economy' objective include:

- uniform national legislation on occupational health and safety
- Ministerial Declarations on equivalence between skills-shortage trades
- national licensing of some trades
- national business name and Australian Business Number registration
- national consumer policy framework
- national building code
- national electronic conveyancing system (COAG 2008b).

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Some reforms, such as Ministerial Declarations and national licensing of trades, have direct implications for mutual recognition (chapter 5). Others, like the national consumer policy framework, have an indirect bearing (chapter 6).

This review of mutual recognition is timely, given the impetus towards building a seamless national economy. Under the MRA, Australian states and territories mutually recognise compliance with each others' laws for the *sale of goods* and the *registration of occupations*. This allows goods that can be lawfully sold in one jurisdiction to be sold in other jurisdictions without having to satisfy additional requirements. Similarly, people registered to practise an occupation in one jurisdiction are entitled to practise an equivalent occupation in other jurisdictions, after notifying the local occupation-registration body.

The aim of the MRA is, ultimately, to remove regulatory impediments to the mobility of goods and labour around Australia. Such impediments emerge as a result of the costs imposed on people and businesses by the duplication and potential inconsistency created by multiple jurisdictions enacting separate laws and regulations. As long as these impediments remain, a 'patchwork economy', rather than a 'seamless economy', prevails.

The TTMRA extends the principles of mutual recognition to economic relationships between Australian jurisdictions and New Zealand. In that respect also, the timing of this review is appropriate. Governments of Australia and New Zealand are actively pursuing the creation of a single economic market between the two countries, building on the free trading environment fostered by the 1983 Closer Economic Relations Trade Agreement. That agreement removed many of the tariff barriers that existed at the time. The implementation of the TTMRA, in 1998, removed many of the nontariff barriers to the movement of goods, services and people across the Tasman. Nonetheless, some impediments remained, and it is useful to take stock of the progress achieved since 2003 in their removal through mutual recognition. It is also useful to examine the future of the schemes in light of other international regulatory and trade developments that have recently occurred, involving Australia and New Zealand, but also other countries and other trading blocks.

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## 1.3 Other reviews in this area

This review of mutual recognition schemes is the latest in a series of studies the Productivity Commission has recently completed in areas related to the COAG regulatory reform agenda. This series includes:<sup>2</sup>

- potential benefits of the National Reform Agenda (February 2007)
- review of road and rail freight infrastructure pricing (April 2007)
- review of the Australian consumer product safety system (December 2007)
- annual review of regulatory burdens on business: primary sector (December 2007)
- review of Australia's consumer policy framework (April 2008)
- review of chemicals and plastics regulation (July 2008)
- annual review of regulatory burdens on business: manufacturing and distributive trades (August 2008)
- annual review of regulatory burdens on business: upstream petroleum (oil and gas) sector (December 2008)
- performance benchmarking of Australian business regulation: quantity and quality (December 2008)
- performance benchmarking of Australian business regulation: cost of business registrations (December 2008).

Several of these studies cover one or more aspects of mutual recognition.

Outside of the Productivity Commission, mutual recognition has also been the subject of a recent report by the Allen Consulting Group, commissioned by COAG and examining the effects of Ministerial Declarations on the equivalence of some occupations (ACG 2008).

## 1.4 Conduct of the study

On receipt of the terms of reference, the Commission informed interested parties by means of a circular and sought their input into the matters raised in the terms of reference. The review was also advertised in some major newspapers in both Australia and New Zealand.

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<sup>2</sup> These publications are available electronically at [www.pc.gov.au/publications](http://www.pc.gov.au/publications).

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The Commission met with a wide range of organisations in Australia and New Zealand with an interest in matters within the terms of reference, including business entities, industry organisations, unions, professional groups and Australian, state, territory and New Zealand government officials.

Roundtable discussions were held with interested parties in Canberra and Wellington to further assist the production of the final report.

A total of 97 submissions were received since this review was announced, from a variety of groups within, and related to, mutual recognition. These groups included industry organisations, unions, professional groups and other government agencies.

Appendix A provides details of the individuals and organisations that participated in the study through submissions, visits and/or appearances at roundtables.

The Commission records its thanks to all those who contributed to this review, especially those who provided written submissions.

## **1.5 Structure of the report**

The remainder of this report is structured in the following way:

- The next two chapters set the scene by providing an overview of the history and architecture of the mutual recognition schemes (chapter 2), together with an analysis of their rationale and how this study's terms of reference have been interpreted and applied (chapter 3).
- This is followed, in chapter 4, by an assessment of the economic impact of the schemes, in both the occupations and the goods areas.
- Chapters 5 to 9 evaluate in some detail the operation of the schemes, as they apply in a range of areas pertaining to occupations and goods. Those chapters respond specifically to the study's terms of reference regarding effectiveness, efficiency, coverage and administrative provisions.
  - Because the Commission has interpreted the term 'coverage' as extending to issues of scope, chapters 8 and 9 also contain a discussion of possible extensions to the mutual recognition schemes.
- In chapter 10, the schemes are considered in the wider context of Australia's and New Zealand's growing bilateral engagement with third countries. That chapter also examines features of other international legislative instruments linking Australia and New Zealand, that could serve to reinforce the operation of the schemes.

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- The final two chapters discuss practical ways to strengthen the operation of mutual recognition in Australia and New Zealand, including through awareness promotion, better oversight and legislative change.
    - Readers who would like to jump straight to the ‘to do’ list of legislative, regulatory and administrative changes recommended by this review are directed to chapter 12.
  - A series of appendices provides greater detail in some areas — including on overseas models of mutual recognition and types of registration — together with various technical and legal information underpinning the rest of the report.