

## Review of Mutual Recognition Arrangements 2015

### Responses to Productivity Commission Issues Paper

The following questions are addressed in relation to the mutual recognition of occupations only. The mutual recognition of goods is undertaken by the Department of Industry and Science.

1. *What have been the benefits of mutual recognition under the MRA and TTMRA, and what evidence is there to support your assessment?*

The benefits of mutual recognition under the MRA and TTMRA are the ones stated within the Acts of improving the cross-border movement of goods and services. It seems clear that this has occurred to some extent (Review of Mutual Recognition Schemes January 2009 report, pages xxvi-xxvii). Licensees seeking to work in multiple jurisdictions, or move between jurisdictions, also receive a benefit in the form of a reduction of regulatory impost, as the processes for them to obtain an equivalent licence in a second jurisdiction should be streamlined significantly. However, the evidence for these benefits must largely be extrapolated from general labour mobility trends. Data collection on movement of licensed persons under the MTA and TTMRA rests with states and territories and New Zealand, is not always collected by jurisdictions and is not collected in a consistent and coordinated fashion, making it difficult to determine specific impact. As acknowledged in the previous review, it would be difficult to isolate the effects of these acts and any compliance costs saved.

2. *What have been the costs of implementing and maintaining mutual recognition under the MRA and TTMRA, and to what extent are these outweighed by the benefits?*

Overall costs are difficult to quantify, however the CJRF Secretariat, within the Department of Education and Training, incurred the following approximate costs in maintaining mutual recognition arrangements during the past year:

- Staff costs: just under \$200,000
- Meeting costs: approx. \$5,000
- Related staff costs: legal, website related etc - \$45,000

The Secretariat took on responsibility for the role in late-2013. As it was not provided with any resourcing for the work, the Department has absorbed the associated cost, however, lack of resources limits the level of support that can be provided.

Secretariat responsibilities include:

- Providing secretariat support to the CJRF, including:
  - convening meetings, preparing agenda papers
  - maintenance of supporting documents and manual, coordination of updates to ministerial declarations, including liaising with CJRF members and regulators, procurement of legal advice as required and preparation of documents for FRLI and gazette ( the most recent update took 8 months)
  - liaison with Department of Industry and Science in relation to the operation of goods recognition
  - initiation of five-yearly reviews of mutual recognition schemes, briefing ministers, coordinating formal CJRF response to reviews, publication of response

- Maintaining the currency of the website [www.licencerecognition.gov.au](http://www.licencerecognition.gov.au) (provides advice on mutual recognition including a search function for licences declared equivalent in ministerial declarations)

In addition, for the forthcoming year, the Secretariat has offered to provide information sessions to regulators to support the ministerial update process and the ministerial declarations are expected to be gazetted, incurring additional costs for this.

The Commonwealth Department of Industry and Science is responsible for the mutual recognition of goods and would incur additional costs, which may be provided in a separate submission. Jurisdictions would incur costs for coordination of ministerial declaration updates, education and processing.

The extent to which these costs are balanced by the benefits is unclear, as reliable data on the numbers of regulated persons using mutual recognition arrangements is not available in most jurisdictions.

3. *Are there further benefits that could be realised from extending mutual recognition? What are the likely costs of doing so?*

For occupations, mutual recognition could be 'extended' to include co-regulated occupations (legally, the MRA may already include this form of regulation, but jurisdictions do not currently recognise co-regulation for mutual recognition purposes). However, while some regulators still fail fully to understand the operation of mutual recognition for licensed occupations, such an extension is more likely to complicate that understanding. Formalising the recognition of co-regulated occupations would require agreement on which occupations would be considered as co-regulated, what evidence was acceptable for a recognition claim and how breaches of the recognition obligation were to be addressed.

4. *What evidence is there that interjurisdictional differences in laws for the sale of goods and registration of occupations would, without mutual recognition, significantly impede cross-border movement of goods and labour?*

The experience of the Secretariat is that, while mutual recognition appears to work quite well for occupations in most instances, a small number of regulators exhibit a marked reluctance to comply with all aspects of their obligations, particularly those who seek to impose additional tests on applicants or who continue to take into account the pathway by which the applicant obtained the licence. In a very few cases, a regulator has made it clear that they do not believe they need to abide by the Act, even if they have been advised of a breach, and, in one instance, their action has been attributed, correctly or incorrectly, to direction from quite a senior official in their jurisdiction. The issue is, put simply, one of trust in the standards to which the licence has been issued in the 'home' jurisdiction, augmented by the very natural loyalty each regulator feels to the regulatory standards of their own jurisdiction. Without mutual recognition, it would appear likely that this 'fear of the unknown' would strengthen and additional testing, or the requirement for specific training or experience, would proliferate. The regulatory barriers to the movement of skilled people would then increase, as would their associated costs.

Additionally, during the COAG work on improving the operation of mutual recognition by the making of ministerial declarations, which took place between 2006 and 2008, it quickly became apparent that some regulatory agencies had very limited understanding of their obligations under mutual recognition and had no procedures in place for an application to be made. As not all regulated occupations formed part of that work, it must be assumed that regulators still exist who are unaware of mutual recognition and who may be impeding the movement of labour by their additional requirements. However, the extent of the impact of this on cross-border movement would be impossible to quantify.

5. *For which goods and occupations is mutual recognition a better alternative than other forms of regulatory cooperation (for example, harmonisation) in the sense that it generates a greater net benefit to the community?*

Mutual recognition is a better alternative than harmonisation or national approaches for all occupations if the intention is that the differing requirements will provide an incentive for best practice, including decreasing regulatory requirements through competition. It is not entirely correct, however, to assume licensed persons can 'vote with their feet' as, in most cases, the person must take the trouble to move their business or residence to another jurisdiction in order to avail themselves of lighter touch regulation. They cannot simply choose to be registered in any state, while remaining in their 'home' state, at this time. Even for one of the limited situations where automatic mutual recognition is in place, it is expected that the licensed person will obtain a licence from the destination state if they choose to live there permanently.

Mutual recognition is greatly streamlined where a ministerial declaration of licence equivalency has been agreed for an occupation, which reduces the need for a regulator to make a case-by-case assessment of a licence. However, not all occupations are covered by ministerial declarations and intensive work is required to maintain the declarations.

'Harmonisation' attempts present their own difficulties as continuing agreement, without single legislation, is subject to state/territory changes to local approaches when situations arise which might provoke a regulatory approach by jurisdictional portfolio ministers. It is extremely hard to maintain a harmonised approach which is subject to jurisdictional legislative amendment, particularly where incumbents may have different views from their predecessors or might otherwise lack the context of, and rationale for, the original decision. It is hard to compare the cost of harmonisation with the cost of mutual recognition approaches for specific occupations as it is difficult to gain agreement on the costs to be included, and many costs are necessarily front-loaded and do not achieve full benefit until subsequent electoral cycles have been entered into.

A nationally consistent approach removes the need for mutual recognition but is difficult to achieve, as evidenced by the failure of the national licensing initiative. The combined national ongoing net benefit of the reforms across the four initial occupations proposed for national licensing was estimated (by an independent consultant) to be approximately \$222 million p.a., if the preferred options outlined in the relevant Decision Regulation Impact Statements had been agreed.

6. *Are there areas where changes to the current architecture of the MRA and TTMRA for goods exemptions, exceptions and exclusions are warranted? If so, where and why?*
7. *How significant would the impact of your proposed changes be on the efficiency and effectiveness of the MRA and TTMRA? What would be the costs of such changes?*
8. *Is there scope to further expand the coverage of risk-categorised foods? What would be the costs and benefits of doing so? Are there particular goods that should be given priority?*
9. *Is the removal of the exemption of ozone-protection legislation from the MRA but not the TTMRA still justified? How can a similar outcome be achieved for the TTMRA?*
10. *What are the costs and benefits of maintaining the permanent exemption for road vehicles and radiocommunication devices?*

11. *What are the barriers to Australia and New Zealand achieving mutual recognition or harmonisation for road vehicles and radiocommunication devices? How can these barriers be addressed?*
12. *Should other goods on the schedule subject to permanent exemption be removed? Which ones and why? Is it feasible and what would be the advantages and disadvantages of doing so?*
13. *Is the special exemption process for goods unnecessarily onerous, thereby creating unwarranted costs and discouraging efforts to expand the TTMRA's coverage? How could it be improved and what would be the costs and benefits of doing so?*
14. *Did the 2010 decision to remove all remaining special exemptions significantly reduce the impetus to expand coverage of the TTMRA? What other mechanisms or initiatives could provide an impetus for such reform?*
15. *Should there be a formal process to move goods from a permanent to special exemption and what would be the advantages and disadvantages?*
16. *Are the current exceptions and exclusions for goods under the MRA and TTMRA still justified? What, if any, changes do you recommend?*
17. *Given current efforts to align intellectual property laws in Australia and New Zealand, is there scope in the foreseeable future to remove the exclusion of intellectual property from the TTMRA? Would it yield a net benefit?*
18. *What are the barriers to implementing a single trans-Tasman register for trademarks and patents? How can they best be addressed?*
19. *In the absence of trans-Tasman registers for trademarks and patents, can mutual recognition of registration be a viable alternative? What would be the costs and benefits of mutual recognition?*
20. *To what extent are different requirements for the use of goods impeding interjurisdictional trade, and what would be the costs and benefits of extending mutual recognition to those use of goods requirements?*
21. *Are use-of-goods requirements being used to circumvent mutual recognition obligations? If so, please provide evidence and indicate how this problem can be addressed.*
22. *Do mutual recognition arrangements in countries other than Australia and New Zealand have features which could be used to address use-of-goods concerns under the MRA and TTMRA?*
23. *Are the mutual recognition arrangements for medical practitioners trained in Australia and New Zealand effective?*
24. *Is the exemption for medical practitioners in the TTMRA still required? What would be the costs and benefits of removing this exemption?*
25. *How effective has the National Registration and Accreditation Scheme been in improving the mobility of health professionals? In what ways can it be improved?*

26. *How well does mutual recognition between Australia and New Zealand work for health professionals other than doctors?*

[No response to questions 6-26 inclusive] .

27. *To what extent do interjurisdictional differences in laws for the ‘manner of carrying on’ an occupation hinder labour mobility within Australia and across the Tasman? Are such differences warranted because, for example, individual jurisdictions have to address significantly different risks and community expectations?*

Differences in laws for the manner of carrying on an occupation (licence conduct) are at least as variable, if not more so, as those for obtaining a licence. Their impact on labour mobility is likely to be less measurable, as the concern of most licensees is the ability to obtain a licence to work in the first instance, when they are considering mobility. It is only once they have a recognised licence that they must engage with the requirements of the second jurisdiction for carrying on the occupation. They may be aware from their peers or from occupational organisations and their media that there are specific aspects of carrying on the occupation in a specific jurisdiction which differ from their own, and these may be a disincentive to moving there, but it must be assumed that the decision to move will have already been made before most licensees seek to find out the conduct rules in the second jurisdiction. Naturally, where a licensee works close to a jurisdictional border, and decides to take an additional licence in the second jurisdiction, the ‘rules’ are more likely to be known in advance.

The costs to licensees of the differences in these requirements will depend on the extent of difference between any two jurisdictions and will generally go to the time needed by the licensee to understand the new requirements, together with the risk of non-adherence to the requirements, at least in the early stages of work in the second jurisdiction. Variables may include the work standard or code to be met, the type of work to be reported, the contract forms to be used, the type or level of insurance to be carried, the threshold above which work is carried out, liquidity to be maintained and so on, depending on the licence.

The cost to government is less easily calibrated. Each jurisdiction must fund the maintenance of its separate regime in terms of policy and operational requirements. The different compliance and disciplinary regimes involve the maintenance of differing pathways and processes to ensure standards are upheld, breaches investigated and penalties enforced. These are undoubtedly a cost, but they could be considered essential for the operation of regimes with differing priorities.

The *core* risks of any occupation tend to be similar, wherever it is carried out, and community expectations can be managed – it is the broadly standard nature of community expectations which underpins the mutual recognition approach. Significant differences in requirements can be the result of the regulatory framework of a particular jurisdiction or reactions to specific events and, once in place, may be difficult to change because change, in itself, is often costly and may also carry risk.

Differences in the way an occupation is carried out can be warranted: as an example, construction of a building in an earthquake or termite prone area may need to be the subject of more rigorous scrutiny than would occur in an area not subject to such challenges, however these differences are more the exception than the rule.

Significantly different risks and community expectations in different jurisdictions are valid concerns and so the ability to address such issues locally should be available. The means of ensuring that individual practitioners have appropriate local knowledge should not be more burdensome than necessary.

Harmonisation of elements of the requirements tends to arise where national codes or approaches apply or come into being, such as the national construction code or the introduction of the Australian Consumer Law. Apart from these national agreements, there is no impetus for jurisdictions to harmonise.

28. *What, if anything, should be done to reduce barriers to labour mobility caused by different laws for the 'manner of carrying on' an occupation, and what would be the costs and benefits of doing so?*

In 2009, the Ministerial Council on Consumer Affairs approved a project for the Standing Committee of Officials of Consumer Affairs (SCOCA) to review conduct provisions of occupations subject to the work on national licensing, and report on the feasibility of harmonising these provisions. Conduct provisions are the requirements relating to the manner of carrying on the licensed work. A SCOCA working group was convened, chaired by NSW, and agreed to progress harmonisation in the property sector as a first stage. Initial work found that 'it would be beneficial and reasonably practical to progress harmonisation of requirements in a number of conduct elements to varying degrees'. It is unclear how far this work progressed, or what evidence it amassed, if any, but it appeared to have been suspended before the demise of the national licensing reform.

Addressing some of these differences in conduct would undoubtedly remove some of the complexity for licensees, reducing costs however it is not the case that licensees are likely to 'vote with their feet', as indicated in the previous review, as they are less likely to seek to understand the regulatory model until they have already committed to move. A first step in streamlining requirements would need to be to identify elements that could more readily be harmonised. Funding and clear central agency oversight would be a prerequisite for any approach, as would an understanding that such work is a long-term goal in a complex environment. These laws are often quite different between jurisdictions and tied in to differing regulatory structures, approaches and, sometimes, funding.

29. *To what extent could cross-border provision of services by particular occupations be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement?*

No comment.

30. *Are coregulatory, de facto and negative licensing arrangements covered by the mutual recognition schemes? Should they be? Why or why not? What issues would arise as a result of their inclusion?*

Crown Law advice contained in the January 2009 report by the Productivity Commission following the previous review appears to confirm that co-regulatory arrangements are covered by the schemes, but does not fully consider de facto and negative licensing. The advice on co-regulation indicates that having registration governed by multiple bodies does not preclude the application of mutual recognition. However, the advice is provided in response to the question whether 'there are models of co-regulation of occupations that will be occupations under the TTMRA' and the question goes on to provide the (potentially leading) example of approval by professional bodies. Not all co-regulatory models include the involvement of professional bodies: example, employers are required, by government,

to adhere to the requirements for responsible service of alcohol by ensuring staff are appropriately trained, although there is no list of those holding the relevant certificate. The advice may be incomplete as it does not address which models of co-regulation are *not* covered.

While there may be benefits to the inclusion of co-regulation under mutual recognition, it is likely that the costs will outweigh the benefits obtained as the operation of such recognition could be challenging: procedures would need to be established relating to the form of evidence to be provided by the licensee; employers would need to be informed of their obligations and the current appeals channels would need to incorporate means to respond to breaches of the obligation, together with enforcement mechanisms. Even for such 'simple' forms as professional registration or the holding of a training certificate, the costs may exceed the benefits and a case has yet to be made for regulatory intervention in these situations.

31. *Are there other areas in which the occupations covered by the MRA and TTMRA are unclear?*

No.

32. *Which occupations require registration by some, but not all, practitioners? What would be the costs and benefits of expanding the MRA and TTMRA to these occupations?*

Some teachers in NSW do not need to be registered and the case may presumably apply to other occupations where there is a grandfathering arrangement. It would appear logical to include registered teachers in the mutual recognition arrangements, however, this would require legislative amendment as, currently, mutual recognition does not apply if not all practitioners are required to be licensed. There would appear to be a small benefit, and no significant cost, to include them.

33. *Is there still a case for expanding mutual recognition to business registration, given that there is now a national system of business registration within Australia and authorities are working towards a single entry point for registering businesses operating on both sides of the Tasman?*

It is unclear whether there are aspects of business registration that would provide a benefit if they were included in the mutual recognition arrangements, given the introduction of the national business registration. Individual businesses, such as sole traders, are already covered by the arrangements.

34. *Are marked differences between jurisdictions in the nature (or even existence) of licences for specific occupations hindering the assessment of occupation equivalence? If so, how can these differences be resolved?*

As the assessment of equivalence is based on the activities authorised by the licence, the differences in scope or existence between licences should not prove an insurmountable barrier. Where regulation does not exist, and occupations are only partially regulated, licence holders should face no barrier to engaging in their occupation in jurisdictions that do not regulate the work. Where ministerial declarations have been made, regulators do not have to assess equivalence as this has already been determined. For occupations, or licences, where there is no ministerial declaration, and the licensing approach taken by the two relevant jurisdictions is very different, assessment necessarily requires a longer timeframe as the regulator from the second jurisdiction must locate, and understand, the information on the activities covered by the licence. During the COAG process to improve

mutual recognition, it was found that regulators quite often *assumed* they understood the scope of work of an originating jurisdiction and the terms used, only to find, in active discussion at face to face meetings, that at least parts of their understanding were incorrect. Contact by phone, email or govdex does not engender the same degree of engagement and discussion, and even videoconferencing cannot provide the same degree of information exchange.

The challenge of different licensing approaches can be lessened by ensuring that the ministerial declarations work effectively, that is, that they are updated on a regular basis. This requires the process to be properly resourced so that regulators for particular occupations can convene, at least annually, to discuss any changes and issues with the mutual recognition process. Additional occupations could become the subject of ministerial declarations, as was originally intended by COAG, if this is supported by jurisdictions.

35. *To what extent have Ministerial Declarations had a positive impact on geographic labour mobility? How could the declarations process be made more efficient and what would be the advantages and disadvantages of any change?*

The extent of data collected by jurisdiction on those using mutual recognition, including through ministerial declarations, is unclear and lack of data has been the subject of earlier reviews. The degree to which regulators use the declarations as the basis to issue equivalent licences, thereby saving unnecessary assessment costs, is unknown. Unfortunately, historical data on those using the licence recognition website are also not available, due to the movement of the Secretariat between government departments. The Secretariat is seeking to remedy this for the future. The data for very recent months, which is available, indicates there was an average of 190 separate visitors to the site daily. Quite recently the [www.licencerecognition.gov.au](http://www.licencerecognition.gov.au) website was out of commission for a 24-hour period, and 3 regulators sought advice on equivalency from the CJRF Secretariat in that time. From queries received, it is clearly being used by licensees seeking to be licensed in another jurisdiction and/or by regulators as part of the assessment process. The process could be made more efficient if adequately resourced so that, firstly, regulators could be better informed of the mutual recognition and declaration process and, secondly, regulators were provided with the ability to spend dedicated time on the process. The advantages of both proposals are that licensed applicants are more likely to experience a streamlined, more efficient service while regulators would have more confidence in the process and would be more likely to understand the different licences issued in other jurisdictions, leading to more accurate assessment outcomes. Beyond modest resourcing costs, there are no disadvantages of such a change.

36. *Have current arrangements ensured that Ministerial Declarations are kept up to date? If not, what changes are required, and what would be the costs and benefits?*

No, only one of the ministerial declarations has been updated since they were originally agreed (the builders' schedule, in 2009). However, under new Secretariat arrangements, an update process for a number of specified occupations commenced in May 2014 and is now near completion. Updates to a further tranche of occupations will commence soon.

From 2006, the COAG decision to make more effective the operation of mutual recognition arrangements was overseen by the COAG Skills Recognition Steering Committee, chaired by the Commonwealth and with members from each state and territory. The Steering Committee was concerned to ensure that the results of the extensive work undertaken to reach agreement on the declarations was not lost over time, and that a process was developed to maintain the currency of the declarations. Under direction from the Steering Committee, the Skills Recognition Taskforce developed a suite of supporting documents to



underpin an update process, which was to be undertaken annually from the date each declaration was made. The documentation included draft letters from jurisdictions' central agencies to their regulators, a regulator checklist (for regulators to report changes to their responsible central agency during the update process), flow charts and timeframes and a full procedural manual. The Steering Committee agreed that the existing Cross Jurisdictional Review Forum (CJRF), which was responsible for overseeing mutual recognition in each jurisdiction, would be responsible for the update process and CJRF minutes of May 2009 indicate they accepted this responsibility. There were some queries on the initial supporting documentation and it is unclear whether they were formally agreed as final by the Steering Committee.

Work to maintain the declarations was not undertaken subsequently, presumably because work on the national licensing reform commenced in 2008 with the first occupations of focus drawn from those that had been the subject of the mutual recognition work. National licensing was, at that time, not scheduled for implementation until 2012 and it remains unclear why the initial updates did not proceed. There may have been a perception that work on updates was not warranted in the expectation that a more unified approach would make the investment unnecessary.

Additionally, in 2010, the responsibility for supporting the work of the CJRF became uncertain. NSW, which had provided coordination and secretariat support, indicated that it was no longer in a position to continue. The June 2010 meeting of the CJRF agreed that New Zealand would become responsible for the work, but the Commonwealth Department of Finance and Deregulation, in late 2010, sought jurisdictional agreement that support would be provided by the Business Regulation and Competition Working Group. No further CJRF meetings were held for more than two years and the record of any such agreement is unclear. No work on the mutual recognition of occupations appears to have taken place in that time.

The current Secretariat, now based in the Commonwealth Department of Education and Training, was asked to take responsibility for providing CJRF support in late 2013 and reconvened the CJRF group in March 2014. Two further meetings have since taken place and the Secretariat is actively engaged with all jurisdictions in the update process and in other mutual recognition issues. No resourcing has been provided to the Secretariat for its role and the costs had to be absorbed by the Department. As noted elsewhere, resources for the coordination and update process, and for the provision of information and training to regulators, would greatly assist in their understanding of mutual recognition and in supporting the maintenance of the currency of ministerial declarations.

*37. Are there registered occupations not currently subject to a Ministerial Declaration — including occupations registered in New Zealand — which should be? Are there any barriers to this occurring?*

During the initial COAG work to promote the more effective operation of the mutual recognition arrangements, broad criteria were used to determine which occupations should be the focus of work to develop ministerial declarations. The criteria included the numbers of regulated persons within the occupation, the likely frequency of mobility for that occupation and the economic 'risk' if labour mobility was impeded. Occupations which, after investigation, did not meet these criteria, were not the subject of ministerial declarations due to resourcing constraints. These included regulated occupations such as private investigators, jockeys, drillers, fishing hands, greyhound trainers, insurance agents and others.

The scope of this initial work was confined to Australian jurisdictions, however, New Zealand regulators were invited to be observers at the regulator and industry meetings taking place

as part of this work and there was some discussion with New Zealand, through the CJRF, about the potential for ministerial declarations to include New Zealand in the future.

There are no legislative or other barriers to this occurring. At the March 2014 meeting of the CJRF, it was agreed that the priority was for the existing declarations to be updated before any consideration by New Zealand, or by other members, of an extension to New Zealand.

38. *How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?*

No comment – insufficient data.

39. *Are the systems for setting conditions on occupations effective and efficient? If not, what changes are required, and what would be the costs and benefits?*

No comment – insufficient data and/or resources for monitoring to occur.

40. *Have the review processes available through the Administrative Appeals Tribunal and Trans-Tasman Occupations Tribunal been effective in addressing disputes about conditions imposed on occupational registrations?*

Information provided by the AAT indicates that only a small number of applications for review are made and that more than half of these are subsequently withdrawn. Between the financial years 2009-10 and 2013-14, there were a total of 53 applications finalised. This figure includes 20 applications made in 2010-11 regarding the security industry. Taking out this number, there have been between 5 and 8 applications annually over the past five years. Of the applications, 35 were withdrawn and 27 dismissed by consent. Only 8 applications were set aside and none varied. Apart from the security industry, there is no evidence identified of particular occupations giving rise to appeal applications.

The New Zealand TTOT indicates that there were only five cases brought to its attention between 2002 and 2009, all of which were withdrawn and did not make it to the hearing stage or even a direction conference which might have led to a hearing.

A scan of online information available on jurisdictional websites shows that very little information is usually provided on central or occupational sites about the avenue for appeal of a regulator decision. It is assumed that regulator responses to applications would provide this information.

It should be noted that some licensees who have disagreed with a regulator decision have indicated to us that they are unwilling to pursue an appeal path, even if aware that this is an option, expressing concern that the relevant regulator could subsequently subject them to additional scrutiny or even 'make life difficult'. Such comments have been provided verbally and are somewhat rare, and there is certainly no evidence that this is the case, however it does raise the issue of how such a perception could be avoided.

41. *Should people registered under mutual recognition be subject to the same ongoing requirements as other licence holders in a jurisdiction? Why or why not?*

Subjecting those registered under mutual recognition to the same ongoing requirements as others in the jurisdiction is equitable, as these requirements relate to the conduct of the licensee, not to the obtaining of a licence. However, more information is needed on which requirements are specifically imposed on mutually recognised licensees within the first twelve months and how jurisdictions define these requirements currently, and at what stage they are imposed.

Ongoing requirements such as continuing professional development are an important means of providing orientation to a new working environment, progressively upgrading skills and reducing risk to the public. The pathway by which registration/licensing was granted should not exempt practitioners from full participation in their chosen profession, but the requirement should not be imposed at the time the licence is granted, and should not be more onerous than is imposed on other regulated persons for the same licence type.

42. *Are amendments to mutual recognition legislation needed to clarify whether requirements for ongoing registration apply equally to all registered persons within an occupation? Are there alternative options? What are the costs and benefits of these approaches?*

The Mutual Recognition Act (s17 (2)) states that the principle does not affect the regulation of the manner of carrying on an occupation, so long as those laws apply equally to all persons carrying on, or seeking to carry on, that occupation in the state *'and are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation'*. This would imply that the attainment or possession of such a qualification, including requirements for compulsory professional development, if they apply, may not be imposed at any time, not just at the time of licence application and grant. Some regulator responses to specific issues appear to suggest that a small number of regulators may disregard this provision but it is difficult to gain evidence of this. A legislative amendment could address this issue, but there is a risk that re-opening too much of the policy underpinning mutual recognition would result in regulators seeking to impose more state-specific restrictions, undermining the original policy rationale for the schemes. The issue, here as elsewhere, is the lack of transparent information on regulator action in respect of mutual recognition applicants and grantees.

43. *Is there any evidence of jurisdiction 'shopping and hopping' occurring for occupations which is leading to harm to property, health and safety in another jurisdiction via mutual recognition? If so, what is the extent of the problem and is it a systemic issue affecting an entire occupation? Is there evidence of any benefits, such as regulatory competition and innovation between jurisdictions?*

There has been long-standing concern in relation to perceived low standards required for licensed security occupations in at least one jurisdiction. Other jurisdictions have indicated that applicants seek to obtain a licence in this jurisdiction, because the requirements are substantially lower than required elsewhere in Australia. They then apply for licence recognition in the other jurisdictions and regulators are obliged to recognise these licences. The Attorney General's Department has been seeking to harmonise licensing requirements for some years and would have more evidence of this situation. There have been concerns that a small number of licensed security staff may have links to organised crime, therefore there may be risks associated with poor standards in particular jurisdictions.

Newly-arrived migrants and temporary visa entrants can be more mobile at the time of applying for their initial licence and there is anecdotal evidence that those seeking an electrical licence, who do not hold a full Australian qualification, may choose particular jurisdictions for that purpose, where the pathway appears to be 'easier'. A number of on-line sites provide for the exchange of information by migrants about their experiences in obtaining a licence in Australia, across a number of occupations. While requirements and processes differ, it is logical that applicants will apply where they have most chance of success.

In general, jurisdiction 'shopping and hopping' does not appear to be very widespread but does affect specified sectors, where information on the 'easy' pathway tends to be communicated quickly. During consultation on the COAG mutual recognition processes, taxi drivers in WA expressed concern that a licence was too easy to obtain in certain jurisdictions on the eastern seaboard and that many licence seekers would deliberately seek out the jurisdictions with lower standards, prior to seeking recognition in WA. WA had increased its own standards in response to the suspected involvement of someone driving a taxi in the Claremont murders.

Such cases do not seem to drive a reduction in regulation in the jurisdictions requiring higher standards. Instead, they are more likely to cause regulators to distrust the operation of mutual recognition and lead to a search for more or less discreet ways to circumvent its operation.

44. *How effective are current informal and formal processes — dialogue between jurisdictions, referral of occupational standards to Ministerial Councils, and recourse to a tribunal — in addressing concerns about differing standards across jurisdictions?*

These processes, whether formal and informal, do not appear to be very effective. Even where concerns are raised at a national forum, such as has happened with the security occupations, the jurisdiction with the lower standards may choose to maintain its current approach, for a variety of reasons. The Secretariat is unaware of a standards issue being raised with the tribunal or ministerial councils, although this may have occurred. The Mutual Recognition Agreement (4.6) outlines the opportunity to have standards issues resolved by a ministerial council however the Mutual Recognition Act does not include reference to this avenue and focuses on the actions of the Tribunal. A reference within the Act might be helpful, as regulators are not always aware that a separate Agreement exists. Those seeking such recourse might sometimes have difficulty in identifying the relevant ministerial council for this purpose.

45. *What are the costs and benefits from jurisdictions working on reducing differences in their registration requirements? How significant are they? What is the evidence?*

No comment.

46. *Is there a strong case for adopting automatic mutual recognition more widely? What would be the implications for the MRA and TTMRA?*

The jurisdictions that have introduced automatic mutual recognition (AMR), Queensland and NSW, have done so for one occupational group (electrical) and for a limited range of licences within that occupational group, although NSW has flagged an intention to extend the occupations covered. (Further, should a licensed person seek to move to NSW permanently, it would appear that they must still seek a NSW equivalent licence, which restricts the coverage of the AMR.) This cautious approach is deliberate; the main electrical licences are already effectively harmonised between jurisdictions, and have been for some time, therefore the risk in managing those licensed from other jurisdictions is minimised. This is not the case for occupations where there are sometimes widely divergent approaches to licensing and the skills expected.

AMR would provide an excellent solution to reduce or remove existing barriers to the mobility of skilled labour, from the perspective of the licensee. Effectively, there would be no borders affecting their operation and the licensed person would be able to capitalise on

opportunities for employment wherever they arose, at the current market rates. Licensees would not need to notify their presence or pay any additional fee. They would simply need to familiarise themselves with the conduct requirements of the jurisdiction in which they chose to work.

The challenges of AMR fall on the regulator and, to some extent, on the employer. Both would need to become more familiar with the licensed work of up to eight jurisdictions, whereas they now need to understand only one. A regulator cannot determine, for instance, if a person is working outside their authorisation unless they understand the scope of work covered by each licence. Effectively, the current mutual recognition arrangements 'translate' the original licence into a licence that is understood in the jurisdiction in which the licensee is seeking work. This does not happen under AMR.

Different licensing approaches tend to work as a complete model, including the requirement for obtaining the licence plus the obligations under which the licence is held. Under AMR, the regulator must provide, to some extent, an interface or 'interpreter' function between the external licence and the conduct requirements of their own regime to ensure that the model is complete and there are no gaps which would give rise to risk. An example might be where the regulators of the home jurisdiction would require a lesser degree of training in order to obtain a licence but would actively monitor all work in a given range but the destination jurisdiction might have higher up-front standards and/or continuing professional development and would therefore monitor only 10% of the same work.

The implications for the MRA and TTMRA would depend on whether they continued in parallel with AMR or were deemed to be replaced by AMR. During the COAG work on mutual recognition, the supporting Taskforce was advised that a percentage of electrical licence holders moving to Queensland, where AMR was available for their licence, still chose to apply for a Queensland licence, because the local licence was more acceptable to Queensland employers. If the MRA and TTMRA were to be entirely replaced, consideration would need to be given to the need for the CJRF and its role. Policy issues may still need to be resolved where AMR failed to work effectively or, alternatively, a laissez faire approach could prevail, with attendant risk.

However, it is unlikely that AMR would apply to all occupations and jurisdictions, at least for some considerable time, given that the Council for the Australian Federation (CAF) approach is for jurisdictions to work out AMR approaches on a bilateral basis rather than a national one. In this situation, AMR would apply to some jurisdictions, for some licences, for some occupations. The MRA and TTMRA would then need to work in parallel with AMR and remain as a mobility safety-net, even where AMR is in place. This would both provide an element of choice for licensees, and a more formal safeguard where mutual recognition did not work well and would also address situations where jurisdictions might decide to withdraw a bilateral/multilateral AMR agreement in the future.

*47. What are the advantages and disadvantages of the 'external equivalence' model being considered by the Council for the Australian Federation?*

'External equivalence' is a term used by CAF and it is not entirely clear what is intended by the term. We assume that it means any agreement by two jurisdictions to equivalence, which may or may not have features of the AMR model. If so, it is difficult to see how it differs from the operation of current mutual recognition arrangements or AMR arrangements, for which comments are provided at questions 46 and 48.

*48. What are the strengths and weaknesses of the different models of automatic mutual recognition adopted by New South Wales and Queensland for electrical occupations? Would it be desirable to expand either of these approaches to other occupations and*

*jurisdictions? Are there better models of automatic mutual recognition in place elsewhere?*

Both schemes would work well for licensees for the specific occupation and licences agreed but even within the electrical group of occupations there are other licence types not subject to AMR so that the MRA/TTMRA would need to work in parallel, creating an element of complexity. It appears that a licensed person using AMR to work in NSW would still be required to apply for a NSW licence if they were to move permanently to NSW and this is not the case in Queensland. Differing approaches by jurisdictions to AMR, different processes for recognition (e.g. some jurisdictions may choose to require notification while others may not) and arrangements that may include some jurisdictions/occupations and not others, threatens to introduce additional regulatory complexity to recognition, even while ostensibly seeking to streamline processes.

49. *What additional issues would need to be considered for a trans-Tasman model of automatic mutual recognition? Would there be a net benefit from such a model? To what extent would it be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement? Are there specific occupations particularly suited to the model? What are the implications for the TTMRA?*

As most professional-level occupations covered by the MRA and TTMRA are nationally regulated, the benefits of wider adoption of automatic mutual recognition are unclear, especially within Australia. From the examples provided, it appears that additional or alternative legislative measures may be required to implement such a system, which may reduce flexibility in recognition and have resource implications. It is not clear at present that the current arrangements cannot meet the established need.

The Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement would help underpin the operation of AMR, as disciplinary outcomes could be enforced across borders. As for AMR within Australia, the most obvious candidate occupations are those which are most harmonised and have easily comparable scopes of work.

The benefits are difficult to estimate without data on the movement of licence holders between New Zealand and Australia.

50. *Are there any aspects of the governance arrangements for the MRA and TTMRA which reduce the effectiveness and efficiency of the schemes? If so, what are they and how large are the negative impacts? How could the deficiencies best be addressed and what would be the cost relative to the benefits?*

The oversight mechanisms for mutual recognition are not always optimal. Currently, the CJRF reports to COAG SOM which does not appear to have remarked on the lack of operation of the CJRF between late 2010 and late 2013. It is likely that SOM officials would need significant briefing on the operation of the acts if matters were brought to their attention. There is considerable detail to be understood in the arrangements affecting particular issues for both goods and occupations across jurisdictions. Regulation of this type covers a very broad range of interests, which might include, for occupations alone, everything from skills standards to free trade agreements.

Although the CJRF Secretariat service is now operating out of a Commonwealth line agency, an oversight role is still required from a Commonwealth central agency, such as the Department of the Prime Minister and Cabinet. CJRF members are from the central agencies of their jurisdictions and there can be a disconnect if a responsible line agency should seek

to resolve an intractable issue, without being able to elevate it. 7.14 of the Agreement states that Heads of Government of the participating parties will monitor the effectiveness of the scheme and may request ministerial councils with responsibility to report to them. In relation to occupations, the ministerial council 'responsible for vocational education, employment and training' is identified as the responsible body to monitor and report to the Heads of Government.

Not all CJRF members have an equally strong background in mutual recognition policy and operation; this can cause a difficulty where strong jurisdictional agency views are represented to them and they may not always be confident of the legal position or the technical operation of particular licences. Responsibility for mutual recognition is only a small part of members' overall responsibilities, so it is difficult for the work to gain the attention it needs, on occasion and the day to day work may be delegated, which may dilute historical knowledge.

Additionally, some members and regulators have admitted, off the record, that long-standing breaches of the mutual recognition arrangements continue in some agencies, with their knowledge, because the regulators have 'done it that way for years' or they do not want to have to challenge a regulatory agency head. In one case, the Secretariat was told that a senior officer in a regulatory agency has directed staff not to meet mutual recognition obligations in the assessment process in particular situations, even while the person understood those obligations. Obviously, the majority of such alleged occurrences are hearsay, are not documented and would be difficult to prove, nevertheless they point to the difficulties that the CJRF members and Secretariat have in ensuring adherence to the mutual recognition obligations. It is very difficult to elevate these matters to the point where they would gain the attention and proactive involvement of senior parties, because they would need to be elevated beyond the CJRF. Some jurisdictional officers have expressed the view that the absence of activity on occupations between 2010 and 2013, when 'no real problems occurred', means that there is no real need to pay close attention to mutual recognition. However, while mutual recognition may work properly in many areas, it appears likely that problems occur, and proliferate, in just those situations where scrutiny does not exist, for whatever reason.

*51. Have there been any inconsistencies within or across jurisdictions in how the MRA and TTMRA have been applied to goods and occupations? If so, what has been the nature and extent of the problem? How could this best be addressed?*

Yes, there appear to be some inconsistencies in how the MRA/TTMRA are applied for occupations, both within and across jurisdictions, as some agencies seem to persist in imposing testing of mutual recognition applicants. This may be a particular problem for fit and proper checks where there is sometimes regulator anxiety that offenders of a particular type may not have been adequately screened in the originating jurisdiction. It is difficult to estimate the extent of this problem and it must be assumed that most regulators comply with their obligations.

*52. Are enforcement mechanisms — including options available through tribunals and the courts — effective in cases where a jurisdiction or regulator fails to meet its mutual recognition obligations?*

It is not clear that these mechanisms are effective. Review mechanisms do not seem to be widely used and, anecdotally, as stated earlier, some licensees appear reluctant to pursue appeals paths because, even if successful, those they challenge have the potential to affect their livelihood, whether that potential is realised or not. There is an unequal power

relationship. In most other spheres, an independent review does not leave the applicant subject to the agency they have appealed against, to the same extent.

53. *To what extent are potential benefits from the MRA and TTMRA not being achieved because individuals and firms are unaware of the rights they can exercise under the schemes? How, if at all, should this issue be addressed?*

It is difficult to establish the extent of licensees' awareness of their rights as those unaware of their rights are unlikely to contact the CJRF Secretariat. The [www.licencerecognition.gov.au](http://www.licencerecognition.gov.au) website does invite queries on any aspect of mutual recognition and we can say that those we respond to often have little understanding of the mutual recognition processes and what they are entitled to expect.

Under the terms of reference for the CJRF (both older and current versions), each member has a responsibility to 'provide a clear point of contact for mutual recognition matters' in their jurisdiction, to promote policy discussion concerning the arrangements (the recent terms of reference include promotion of awareness to industry) and to 'receive and share information on any non-compliance with existing mutual recognition arrangements with a view to better targeting any necessary information campaigns'. The Secretariat provides information on its department's website and maintains the [www.licencerecognition.gov.au](http://www.licencerecognition.gov.au) website. Resourcing of the secretariat function would allow the secretariat to develop and distribute an improved range of information, such as fact sheets.

Information on the operation of mutual recognition differs substantially between jurisdictions and between different agencies in the same jurisdiction in terms of access and level of information. Sometimes it is provided mostly within occupation-specific sites (and usually not in all of them) and sometimes on broader government platforms which also directs people to some of the occupational websites, the information not always being consistent between them. Website information is often difficult to find, even for those who understand the mutual recognition acts. Most sites do not reference the appeals processes and only a few seem to link to the licence recognition website. It may be useful for jurisdictions to examine, revise, and streamline, the information provided on the various websites they have available.

54. *To what extent are regulators failing to meet their obligations under the MRA and TTMRA because they find it difficult to maintain the necessary expertise? Is this issue particularly evident for smaller regulators? What, if any, changes do you recommend?*

During the COAG work on mutual recognition (2006-08), regulator and industry representatives for a number of occupations came together for a series of meetings to develop and agree a matrix of licence equivalency. It became very apparent during this process that many regulators, from both large and small jurisdictions, had a poor understanding of the mutual recognition principles or their obligations and, where there was understanding, this often varied between agencies within a jurisdiction and between jurisdictions. For one major industry, all jurisdictional agencies were surprised to find they had been consistently breaching the Act. This is largely attributable to the low cost, light touch, approach to the introduction of mutual recognition where it was essentially left to each jurisdiction to implement the agreement and to ensure the understanding of regulators.

Consistent with the CJRF role outlined in the terms of reference for the forum, each jurisdiction may find it useful to provide regular training to their regulators and to review



their internal information on government websites and the accessibility of such information for licensees. The Secretariat is very willing to support this process, if resourced.

55. *How effective is the users' guide developed by the CJRF in making individuals and firms aware of their rights under the MRA and TTMRA, and regulators of their obligations? Could it be improved and, if so, how?*

The Users' Guide to the TTMRA is currently being revised by New Zealand and an outline for a web-based guide was distributed for members' comment in December 2014. Following agreement to this, a revised MRA guide will be developed. A web-based guide, with an easy search function and clear English, will provide better assistance to those seeking information. The challenge will be to make sure it is placed to make it readily accessible, including on agency websites. Fact sheets and trade and professional news sheets could promote the existence of the guide.

56. *Does the licence recognition website for occupations subject to Ministerial Declarations ([www.licencerecognition.gov.au](http://www.licencerecognition.gov.au)) adequately address potential concerns about awareness and expertise on the MRA and TTMRA for those occupations? If not, what changes do you recommend?*

A google search on mutual recognition brings up this website as the first response. The website provides clear information on mutual recognition, a search function for licence equivalency, where a ministerial declaration exists, and the opportunity to email enquiries. This information has been recently updated. Not all licensees might seek information online, however, and other sources of information should be provided in each jurisdiction. Additionally, within each jurisdiction, it would be preferable to have one site identified as the major source of information and other, occupational, sites monitored for their content. Jurisdictional websites do not always link to the licence recognition website and it would be useful if jurisdictions reviewed their mutual recognition information and provided such a link.

57. *How effective are the options of having a court review of a specific regulator decision for a good, and COAG review the standards for a particular good? To what extent have they been used? How significant are any barriers to their use, such as their cost or a lack of awareness? What, if any changes, do you recommend?*

No comment.

58. *Should regulatory decisions made under the MRA and TTMRA for goods be open to review by a tribunal, such as the Administrative Appeals Tribunal, similar to what is available for occupations? What would be the costs and benefits?*

No comment.

59. *Should the process for amending TTMRA legislation in Australia be streamlined so that, like the MRA, states refer to the Commonwealth their power to make legislative changes, while reserving the right to approve changes before they are made?*

This would be desirable as, currently, the amendment process is complicated and time consuming, arising from the different ways in which jurisdictions passed the legislation. A simplified approach was recommended in the last review and the June 2010 meeting of the CJRF agreed that it may be more efficient to consider simplifying the legislative amendment process before progressing other review recommendations that required legislative amendments. At the March 2014 meeting of the CJRF, members agreed that they would

consider alternative approaches to the 2009 review recommendation, however no alternatives have been suggested to the Secretariat. The complexity of the amendment process is a particular issue for the Secretariat which is not resourced, as it would need to procure, and pay for, legal assistance or have states and territories take on, and resource, the preparation of legislative amendment to the Acts.

60. *Are there features of mutual recognition schemes used by countries other than Australia and New Zealand which could be adopted to improve the MRA and the TTMRA?*

No comment.

61. *Are there any lessons relevant to this review from the other approaches to international regulatory cooperation identified by the OECD?*

Recent OECD reports on international regulatory cooperation note that such cooperation 'represents a critical opportunity to foster sustainable and inclusive growth that lowers barriers to international flows' and draw attention to the potential for international organisations to become standard setters for their occupations. Not all occupations have international organisations in place, however.

To maximise the benefits of globalisation, it would be useful for Australia to become more involved in initiatives to improve regulatory cooperation, although these are longer term objectives and not necessarily lessons specifically relevant to this review. Nevertheless, a statement from the OECD report, *International Regulatory Co-operation: Addressing Global Challenges (2013)*, could be seen as pertinent, in broad terms: '*Perceived regulatory failures related to poor articulation of regulation across borders, limited enforcement of rules and regulatory capture have raised questions regarding the role of the State as a regulator and, specifically, how and where it should intervene to achieve key policy objectives in an increasingly globalised world*'.

62. *What is the potential for greater acceptance of international standards and conformity assessments by Australia and New Zealand? What would be the implications for the MRA and TTMRA?*

Some professional organisations, such as for engineers, have their own international mutual recognition agreements, however such bodies do not always exist at the trades and technical levels. It is a greater challenge to agree a single standard between Australia/New Zealand and other countries when Australia is often unable to agree a single standard nationally. Work on recognition of qualifications may help regulatory recognition into the future.

63. *Have there been implications for the TTMRA from Australia or New Zealand entering bilateral, regional and multilateral trade agreements in recent years? Are there examples of inferior quality goods or less qualified persons entering either country as a result of the interaction between the TTMRA and the trade agreements?*

No comment.