



# Premier & Cabinet

Reference: A1131508

Peter Harris AO  
Chairman  
Productivity Commission  
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Collins St East  
MELBOURNE VIC 8003

Dear Mr Harris

I welcome the opportunity to respond to the Productivity Commission's Issues Paper on Mutual Recognition Schemes. I am pleased to provide this written submission on behalf of the NSW Department of Premier and Cabinet (DPC).

DPC continues to support the operation of the *Mutual Recognition Act* and the *Trans-Tasman Mutual Recognition Act* and believes that they provide substantial economic and social benefits by enabling the movement of goods and skilled occupations across borders. By and large, DPC considers that these schemes are operating effectively. However, as the attached submission outlines, there are some specific areas for improvement. I look forward to hearing the Productivity Commission's views on these issues, as well as the broader findings of the review.

DPC is encouraged that the Terms of Reference for the review will examine automatic mutual recognition as a way of streamlining existing mutual recognition arrangements. As the Issues Paper notes, NSW is a leader in adopting automatic mutual recognition for occupational licences, and we would be happy to contribute further detail about how the scheme operates in NSW.

If you would like further information on the matters raised in the NSW DPC submission, please contact Michelle Dumazel, A/Executive Director, Government Secretariat

Yours sincerely

Stephen Brady  
Deputy Secretary

4 March 2015



February 2015

**NSW Department of Premier and Cabinet Submission  
Productivity Commission Issues Paper on Mutual Recognition Schemes**

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**Introduction**

The NSW Department of Premier and Cabinet (DPC) continues to support the operation of both the *Mutual Recognition Act* (MRA) and the *Trans-Tasman Mutual Recognition Act* (TTMRA), and welcomes the Productivity Commission's review of mutual recognition schemes.

DPC recognises the importance of mutual recognition schemes and is committed to ensuring the continuing effectiveness of the MRA and TTMRA. Both schemes extend economic and social opportunities for businesses and individuals in NSW and other jurisdictions by broadening access to goods and services and reducing associated regulatory costs.

This submission responds to the Productivity Commission's January 2015 Issues Paper on Mutual Recognition schemes. Overall, DPC considers that mutual recognition schemes appear to be operating effectively. However, there are specific areas which could be identified for further investigation and improvement, and we have outlined these in further detail below.

DPC is encouraged by the new provisions in the 2014 review's Terms of Reference, particularly the examination of automatic mutual recognition. The Issues Paper highlights NSW's experience with automatic mutual recognition and we support further examination of the scope for automatic mutual recognition by the Productivity Commission as part of its inquiry. Further information on the NSW framework for automatic mutual recognition is provided in this submission.

Options identified in this submission should be regarded solely as possibilities for further investigation. NSW will give further consideration to these matters following publication of the Productivity Commission's draft and final reports.



## 1. Mutual Recognition of Goods

### 1.1 Electrical Articles

NSW Fair Trading has raised some concerns about the sale of electrical articles in NSW, which has been impacted by safety schemes introduced in other jurisdictions.

In NSW, consumer electrical equipment is regulated by the *Electricity (Consumer Safety) Act 2004* (NSW). The Act divides electrical equipment and appliances into two groups – declared and non-declared.

“Declared articles” must be tested and approved by NSW Fair Trading or by a “recognised external approval scheme (REAS)” before they can be sold. These articles must carry the appropriate approval mark and comply with the relevant safety standard to enable the product to be sold.

The remaining appliances and equipment (“non-declared articles”) must comply with minimum safety requirements contained in Australian Standard AS/NZS 3820:1998 *Essential safety requirements for low voltage electrical equipment* as amended.

There is no requirement in NSW to register as a supplier of electrical goods, or for the goods themselves to be registered. All retailers, importers and hire firms dealing in electrical goods must ensure they are safe and meet minimum safety requirements.

During 2011/12, NSW Fair Trading finalised 1,673 approvals for declared articles and its REAS conducted about 3,500 approvals for declared articles. NSW is responsible for close to 90% of all approvals. Jurisdictions recognise approvals from other jurisdictions through existing mutual recognition arrangements.

NSW also carries out far more extensive compliance activities than any other jurisdiction.

Other jurisdictions have introduced requirements whereby suppliers of electrical articles must be registered. This approach removes the utility that mutual recognition legislation has provided and places an additional requirement on suppliers.

In addition, this action has disrupted the supply in Australia of approved electrical equipment and appliances because:

- Suppliers must take time to understand and comply with other systems (or face the risk of prosecution) and pay external regulators to register themselves and numerous articles, each at a separate cost. As a result, these costs are passed onto all consumers in Australia via the pricing of the affected goods;

- It negates the operation of the mutual recognition legislation insofar as a requirement for registration of sellers is exempt under the legislation.

## 1.2 Barriers Posed by Use-of-Goods Requirements

The Terms of Reference ask the Productivity Commission to consider cases where goods can be exported to another jurisdiction and sold under mutual recognition but cannot be legally used.

NSW Fair Trading has advised that this can occur with the sale of some gas appliances. Each jurisdiction requires that a gas appliance is a *certified gas appliance*, meaning that a gas appliance or type of gas appliance is an appliance in respect of which a certification by the holder of a certification authority is in force.

If this provision is not applied, then there can be inconsistencies between jurisdictions and the approval system. NSW is aware of cases where new appliances have been introduced which are banned from use in NSW but approved for sale in other jurisdictions.

Other inconsistencies may also arise due to geographical, social and economic differences between jurisdictions.

## 2. Mutual Recognition of Occupations

NSW supports the current coverage of mutual recognition of occupations under the MRA and TTMRA. In seeking advice on the Issues Paper, NSW sought feedback from its key occupational regulatory agencies. The following issues were raised as potential areas for further investigation by the Productivity Commission.

### 2.1 Measures that Limit Occupational Coverage

On the whole TTMRA works well for health professional other than doctors, and facilitates the inter-jurisdictional movement of both the registered and unregistered health workforce.

The TTMRA for the Nursing and Midwifery Professionals under the National Registration and Accreditation Scheme (NRAS) has been positive in enabling the inter-jurisdictional movement of this workforce. NSW has no major concern with the content or processes that currently exist for mutual recognition of New Zealand Nurses and Midwives seeking registration in Australia.

The mutual recognition for the registered Allied Health professions under the NRAS has been positive in the inter-jurisdictional movement of this workforce. The Australian Health Practitioner Regulation Agency (AHPRA) has a formal process for application under the TTMRA.

For the allied health professional workforce that is not a registered profession, the professional associations have a recognition policy for membership into the relevant Australian associations. Unregistered allied health professionals are required to be members of their professional association or 'eligible' for membership to enable employment within NSW Health. This means that their qualifications must be recognised by the TTMRA. Some examples of mutual recognition through relevant associations working well are as follows:

- The Board of the Australian Association of Social Workers (AASW) and the New Zealand Social Workers Registration Board (NZSWRB) entered into an agreement to facilitate the mutual recognition of eligible social workers who are already credentialed or registered in either Australia or New Zealand.
- Speech Pathology Australia was signatory to the Mutual Recognition of Professional Association Credentials Agreement. The agreement includes not only the American Speech-Language Hearing Association (ASHA), Speech-Language and Audiology Canada (SAC), The Royal College of Speech and Language Therapists (RCSLT) and Speech Pathology Australia, but also the Irish Association of Speech and Language Therapists (IASLT) and the New Zealand Speech-Language Therapists' Association (NZSTA). This Agreement came into force on 1 January 2009.

With respect to the Oral Health workforce, the TTMRA provides Australia with an opportunity to recruit New Zealand registered dentists, dental therapists, dental hygienists and dental prosthetists. This has proved particularly useful to rural Local Health Districts when recruiting Australian trained dentists and therapists has been difficult. It also promotes movement of specialists for training of clinicians in both jurisdictions.

There is, however, some concern that the TTMRA may lead to health professionals not suitable for registration in Australia seeking registration via New Zealand as a pathway into Australia. For example, with respect to the Oral Health Workforce it should be noted that dental therapists, dental hygienists and dental prosthetists who are registered in New Zealand are eligible for general registration in Australia. The Dental Board of Australia websites notes: "*This applies irrespective of where training was carried out and qualifications held*".

A key issue therefore is reassuring both Australia and New Zealand that the standards for general registration in both jurisdictions are equally rigorous. While it can be argued that this is the responsibility of the relevant health professions boards, care should be taken to ensure the TTMRA continues to enable local review of the registered workforce. This would include ensuring that dental professionals have appropriate clinical experience in the country first offering general registration: neither jurisdiction should be perceived to be an easier pathway into the other's health care system. This issue would be relevant to all of the registered health professions.

## 2.2 Differences in Occupational Standards Across Jurisdictions

There are ongoing concerns in NSW around the potential for 'jurisdiction shopping and hopping' to occur through the MRA occupational licencing provisions. NSW agencies have raised two examples where this has been occurring.

The first example relates to applications made under the MRA for NSW security licences. Since 2008, the volume of applications for new NSW security licences made under the MRA has increased significantly and, at times, has exceeded applications made purely under the *NSW Security Industry Act 1987*.

A significant proportion of these applications were made by NSW residents who are believed to have obtained their interstate licences as a way of circumventing NSW regulatory requirements. According to NSW Police, it appears that prospective security licence applicants, who are incapable of meeting NSW competency standards, are taking advantage of weaknesses in other jurisdictions' regulation of security training.

The second example of 'jurisdiction shopping and hopping' relates to the field of contaminated land site auditors in NSW. Statutory site auditor schemes operate in NSW, Victoria, South Australia, Western Australia and Queensland. The various auditor schemes are established and administered through a combination of legislation, regulations and guidance specific to each jurisdiction.

In NSW, the site auditor scheme is established under the *Contaminated Land Management Act 1997* (NSW) and administered by the NSW Environmental Protection Authority. Traditionally, the standard for auditor accreditation has been roughly equivalent in most jurisdictions and mutual recognition has allowed for easy cross-border practise and has functioned reasonably well.

However, more recent schemes introduced in other jurisdictions have established systems for approving contaminated land auditors with significantly lower standards of entry. NSW is aware of a number of individuals indicating that they are planning to become accredited auditors in other jurisdictions so they can become accredited in NSW under the MRA. This has the potential to undermine the integrity of the NSW site auditor scheme.

## 2.3 Conditions

It is paramount to ensure that occupational mutual recognition schemes are safely regulated through the application of conditions to achieve equivalence between jurisdictions. Conditions should not only ensure an applicant for mutual recognition is suitability qualified and/or skilled within a particular occupation, but also other factors such as national security.



National security concerns are an increasingly important consideration for regulators in today's heightened national security environment.

NSW supports further investigation of the application of conditions concerning national security for particular occupational licences. It is recommended that consideration is given to the drafting of conditions concerning national security/probity checks for inclusion in section 27 of the *Mutual Recognition Act 1992*. National security conditions are also a particularly important consideration in deciding whether or not a particular occupation would be a suitable candidate for automatic mutual recognition.

## 2.4 Automatic Mutual Recognition of Occupational Licences

A new area of examination introduced in the 2014 review's Terms of Reference is automatic mutual recognition of occupations. NSW supports the inclusion of this provision in the Terms of Reference and encourages the Productivity Commission to continue investigating the scope for automatic mutual recognition in Australia throughout this process.

As the Issues Paper notes, NSW recently adopted the *Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014*. This legislation establishes a framework for automatic mutual recognition for certain occupational licences in NSW, but it requires reciprocal arrangements with neighbouring States and Territories in order to be effective.

By allowing recognised licence holders to work across State/Territory borders without needing to hold licences in each jurisdiction, this system can improve labour mobility and cut red tape, particularly in cross border areas. It is a simpler, decentralised alternative to the now defunct National Occupational Licensing System.

NSW established automatic mutual recognition for the holders of certain electrical licences from Queensland, Victoria and the Australian Capital Territory, meaning that these licence holders can work temporarily in NSW without needing to obtain an additional NSW licence. NSW is also keen to explore opportunities to expand this scheme to other categories of occupational licences, such as plumbers, drainers and gas-fitters.

## 3. Mutual recognition governance arrangements

As the Issues Paper highlights, the governance arrangements for the MRA and TTMRA are a key determinant of their effectiveness and efficiency. However, the decentralised nature of the MRA and TTMRA has made it challenging to ensure that there is coordination among governments and regulators (within and across jurisdictions) and ensuring effective monitoring and enforcement of the schemes.

The inter-jurisdictional Cross Jurisdiction Review Forum (CJRF) plays an important role in overseeing the implementation of mutual recognition schemes. However, the challenge for



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the CJRF is that mutual recognition is in many respects a “victim of its own success” – because mutual recognition schemes are perceived to be largely effective (as evidenced by the findings of the 2009 Productivity Review) – there is a risk that governments lose focus on mutual recognition and assume there is no more to be done. Arguably this is reflected in the CJRF itself, responsibility for which has been moved between Commonwealth Government agencies, and it has met infrequently in recent years.

NSW supports maintaining an intergovernmental body with responsibility for mutual recognition, such as the CJRF, but thinks that its role needs to be more client-focused. Its main task should be helping to ensure that consumers, businesses and governments understand mutual recognition schemes, that mutual recognition schemes are properly implemented, and emerging issues are identified and addressed. The membership of the CJRF may need to be changed on this basis, to shift more to frontline agencies (who have a better understanding of community and business needs).

The CJRF should also undertake a review and update of existing mutual recognition public guidance material. This material should better communicate the conditions, requirements and expectations of mutual recognition to the public and businesses. An important step in understanding the effectiveness of these materials would be for governments to share and publish data about the numbers of occupational licence holders who make use of mutual recognition arrangements.

NSW also encourages more regular updates to Ministerial declarations of occupational licence equivalence.