



IMPACT OF MUTUAL
RECOGNITION ON
REGULATIONS IN
AUSTRALIA:
A Preliminary Assessment

INFORMATION PAPER

January 1997

**OFFICE OF
REGULATION REVIEW**

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Forming the Productivity Commission

The Industry Commission, the former Bureau of Industry Economics and the Economic Planning Advisory Commission have amalgamated on an administrative basis to prepare for the formation of the Productivity Commission. Legislation formally establishing the new Commission is before Parliament. The Office of Regulation Review (ORR) is part of the Industry Commission.

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EXECUTIVE SUMMARY

Mutual recognition of regulations — which was introduced by Australian governments in March 1993 — aims to remove regulatory barriers to the free flow of goods and labour between Australian states and territories. It involves each jurisdiction recognising particular regulations created and administered by other jurisdictions, even where such regulations vary from their own rules and regulations. It enables most goods which are sold in accordance with the regulations of one jurisdiction to be sold freely throughout the country. In addition, members of registered occupations can now freely enter an equivalent occupation in other states and territories.

While there are some sound reasons for the regulation of certain goods and occupations, variations in regulations for identical or substantially similar goods and occupations can impose significant barriers to trade and inhibit labour mobility between jurisdictions. Mutual recognition in Australia resulted from an acceptance by the Commonwealth, state and territory governments that different regulations in each jurisdiction imposed significant and unnecessary barriers within Australia to both trade in goods and the mobility of people in registered occupations. These barriers can generate considerable economic and social costs.

There is a number of potential economic and social gains from the creation of a national market for goods and labour. By creating a national market, mutual recognition creates new opportunities for business. It can increase competition, reduce business costs and lead to a more dynamic and responsive economy, thus lifting Australian competitiveness. Consumers can also gain through greater competition, enhanced product choice and lower prices. Mutual recognition also increases labour market mobility, thus resulting in a more flexible and responsive labour market.

Mutual recognition does not require the establishment of a new bureaucracy. Indeed, it can reduce duplication and administrative costs by encouraging jurisdictions to adopt rules used in other jurisdictions and/or to develop national standards.

Importantly, mutual recognition can also facilitate more productive competition among jurisdictions, resulting in a better and more efficient regulatory environment in the long term.

This Information Paper discusses the impact of this major national regulatory reform on labour market mobility and interstate trade in goods since 1993. It

finds that the scheme appears to be working reasonably well and has achieved its primary goal of removing many regulatory barriers to the movement of people in registered occupations, and to interstate trade in goods. It does not appear to have had significant unintended consequences.

For occupations, the Office of Regulation Review (ORR) conducted a survey in 1995-96 of occupation registration agencies. This was the first time occupation registration agencies have been surveyed about the impact of mutual recognition. This survey found that there is considerable awareness about mutual recognition among such agencies and among people in registered occupations. There appears to have been a significant increase in mobility following the introduction of mutual recognition. In 1994-95 nearly 9000 people registered using mutual recognition, equal to 15 per cent of total occupational registrations in that year. In addition, by June 1995 a total of 15 194 people had registered using the scheme.

However, the data allow only a rough estimate of the impact of mutual recognition, because there is no data on the mobility of registered people prior to mutual recognition. Also, the data do not show if mobility is still impeded in some way by occupational regulations, such as licensing fees, that are not included in the mutual recognition agreement.

Nevertheless, mutual recognition has clearly contributed to the development of national standards for the registration of some occupations. Mutual recognition has put pressure on — or provided an opportunity for — some occupations such as lawyers and medical practitioners to move towards national standards. Mutual recognition has not led to an unacceptable reduction in standards in occupations. In addition, the Administrative Appeals Tribunal (AAT) appeals mechanism to resolve disputes between occupation registration agencies and applicants appears to be working effectively.

The impact of mutual recognition on interstate trade in goods is difficult to monitor, partly because the scheme operates in a decentralised manner and no systematic monitoring has been undertaken by governments. Nevertheless, it is likely that its impact would vary across different traded goods sectors of the economy. Available information suggests that mutual recognition has enhanced interstate trade in some sectors of the economy — particularly for food products — by removing regulatory impediments to such trade. It has contributed to the development of national standards in a range of sectors, such as game meats and pressure vessels. It does not appear to have resulted in the sale of goods with unacceptably low standards.

This ORR Information Paper provides a initial exploration of the impact of mutual recognition. More detailed research will be needed to fully assess the

scheme. Two major reviews of mutual recognition are planned for 1997-98, including a review by COAG and a review by the Commonwealth under the legislation review program. The ORR sees benefits in the two reviews being combined into one comprehensive national review in 1997-98 involving COAG, the Commonwealth, states and territories. In addition, with the ongoing implementation of the Trans Tasman Mutual Recognition Arrangement, the implications of the Australian experience could be further explored in this review.

A review of mutual recognition will help inform governments, industry and consumers about this scheme, providing scope for it to be modified and improved. Additional information about its impact will also be helpful in informing governments about the likely impact of extending mutual recognition arrangements to new areas of regulation, including international agreements. For example, the scheme could be extended in Australia to include services, especially business licensing and regulation of services that are provided across state and territory borders. The service sector is the fastest growing part of the Australian economy. Extending mutual recognition to services could generate considerable economic and social benefits for Australia.

Consideration could also be given to extending mutual recognition to some local government licensing, such as permits and registrations that applying to the sale of goods, registration of occupations and provision of services. Governments could also explore the scope to extend mutual recognition to areas of regulatory overlap between the Commonwealth, state and local governments.

1 INTRODUCTION

This Information Paper discusses the impact of a major national regulatory reform — the mutual recognition of regulations — on labour market mobility and interstate trade in goods. In this chapter, section 1.1 describes the key characteristics of mutual recognition of regulations in Australia, and discusses its use by overseas countries and in international agreements. A discussion of the rationale, implementation and review of mutual recognition (section 1.2) is followed by an analysis of the goals of this Information Paper (section 1.3).

1.1 What is mutual recognition?

Mutual recognition of regulations commenced in Australia in 1993 and became a national scheme in December 1995. It aims to remove barriers to the free flow of goods and labour that can arise from differences in regulations in each state or territory. Mutual recognition involves each jurisdiction recognising regulations created and administered by other jurisdictions, even where such regulations vary from their own rules and regulations. Therefore, it ensures that most goods which are sold in accordance with the regulations of one jurisdiction can be sold freely throughout the country. In addition, members of registered occupations can now enter an equivalent occupation in other states and territories.

Mutual recognition is based on the premise that regulations and standards covering goods and occupations in one state or territory meet community expectations and should be acceptable in other jurisdictions. A description of how mutual recognition works in Australia is provided in Box 1.1.

Mutual recognition arrangements in Australia are based on the “cross-border model” where the focus is on enhancing freedom of movement of goods and labour between different jurisdictions. It does not interfere with the regulation of goods within each jurisdiction. In addition, it does not impact on regulations governing entry to registered occupations, by new entrants resident *within* a jurisdiction. Nor does it directly affect international trade agreements.

When mutual recognition was first mooted by Australian governments in 1991, it was envisaged that for some regulations and standards a uniform (or common) national approach would be preferable to mutual recognition. The main rationale for the preference for uniform standards over mutual recognition in some cases is that the production and distribution of goods — and provision of services provided by registered occupations — can generate positive or negative ‘spin-offs’ that affect public safety or the public good.¹ For example, if a noxious weed that damages agricultural production was prohibited by regulation in all but one jurisdiction, over time it could range freely in more than one jurisdiction.

¹ These are sometimes also called externalities.

Uniform standards and mutual recognition can co-exist. Both approaches have the same goals, to remove regulatory impediments to trade between jurisdictions.

Box 1.1: Mutual recognition in Australia — how does it work?

An Australian scheme for mutual recognition of goods and occupations commenced in March 1993. It was implemented by each jurisdiction enacting legislation that recognised regulations made and administered by other jurisdictions.

Goods

Mutual recognition allows freer movement of goods across interstate borders and increased ease of interstate trade. It ensures that most goods initially produced or imported into one state or territory under the laws of that jurisdiction can be distributed and sold freely throughout the country, without restriction.²

The scheme provides a legal defence against prosecution for alleged sale of illegal goods. To inform consumers, “state of origin” labelling can be used for those goods which do not meet the standards of the jurisdiction in which they are sold. Where mutual recognition results in risks to health and safety, jurisdictions can enact a temporary (12 month) exemption to prevent sale of a good.

Occupations

Mutual recognition makes it easier for labour to move between jurisdictions. Members of registered occupations — such as dentists, pharmacists or builders — can apply to practise a substantially equivalent occupation in another jurisdiction. No additional testing is required for registration, licensing or certification. Conditions attached to registration in one jurisdiction automatically apply to registration in another jurisdiction. In addition, once registered, practitioners are subject to the disciplinary powers of the local registering authority. Practitioners must also satisfy the regulations placed on delivery of a service.

The occupation registration agency receiving an application from a registered person from another jurisdiction is required to register that person. If an agency refuses an application under mutual recognition, the applicant can request that the Administrative Appeals Tribunal (AAT) review the decision of that agency. The AAT can find in favour of the applicant and require the agency to register that person, or decide in favour of the agency. Decisions of the AAT can be appealed to the Federal Court of Australia.

Where an occupation is registered in some, but not all jurisdictions, a practitioner must obtain registration or a licence only in those jurisdictions where they are required to register.

Uniform standards and regulations — as an alternative to mutual recognition — are used for food, occupational health and safety, dangerous goods, trade measurement, registration and labelling of agricultural and veterinary chemicals, and boiler and pressure vessels. National standards setting bodies administering national standards include the Australia New Zealand Food Authority, Worksafe Australia and the National Registration Authority for Agricultural and Veterinary Chemicals.

Mutual recognition has also been extended to other areas of regulation. For example, the National Road Transport Commission (NRTC) aims to develop a nationally uniform system of road and vehicle regulations. In April 1996, the

² With the exception of goods specifically exempted from mutual recognition.

NRTC recommended a mutual recognition scheme for 39 areas of decision making under the national road transport law. In addition, a mutual recognition scheme is being considered for the regulation of the carriage of dangerous goods.

Mutual recognition is also used by many other countries, particularly those with federal systems of government. For example, in Canada on 1 July 1995 an 'Agreement on Internal Trade' came into effect. It provides for the elimination of many regulatory barriers to trade, investment and mobility within Canada. This includes mutual recognition of occupational qualifications and agreements for ten key economic sectors.

Other types of mutual recognition

There are other types of mutual recognition agreements. These were considered by Australian governments in 1991 but were not adopted and used in Australia. However, these types are used by overseas countries (Committee on Regulatory Reform 1991). These types of mutual recognition include the:

- *European Community (EC) approach.* The EC approach has been implemented by the European Court of Justice and European Community Commission. The European Court of Justice in its Cassis-de-Dijon ruling of 1979 found that — under Community law — a product legally brought to one country of the EC can automatically enter the markets of other countries, even if the technical or quality requirements differ. A European Community Commission 'White Paper' in 1985 implemented mutual recognition and extended mutual recognition to include the free movement of people and services. Exceptions to this rule are justified only by the need to protect public health and the environment, or to ensure effective fiscal supervision and fair financial transactions.³ The EC approach to mutual recognition is based on the concept of 'subsidiarity' where policy making powers are usually assigned to the lowest level of government, consistent with meeting the wishes and preferences of local communities. Central governments should only have a role in policy making where there is a clear net benefit in centralised decision-making. Mutual recognition recognises local and regional differences in regulations (Pelkmans and Sun 1994);⁴
- *'Local production' approach.* This involves local regulations related to the production and sale of particular goods or services being recognised in other participating jurisdictions. It allows producers in one jurisdiction to comply with the laws and standards of another jurisdiction to the exclusion of local regulations. This approach provides considerable freedom to producers to 'shop around' for the best regulatory environment, without physically moving their facilities. The major disadvantage of this approach is that it might not encourage competition between jurisdictions to create an

³ See Cecchini (1988) and Nicolaidis (1996) for a discussion of EC mutual recognition arrangements.

⁴ The European Union also have a number of directives in place designed to reduce or eliminate regulatory barriers to the free movement of professions.

effective regulatory environment. It also has a number of administrative problems, such as each regulator having to be familiar with the regulations of all other participating jurisdictions; and

- *'Administrative' approach.* This involves making mutual recognition agreements on a case by case basis for agreed areas and with an agreed time frame. This approach has been adopted in Canada. It requires strong political and bureaucratic commitment to ongoing reform in order to be successful. Its main disadvantage is that it can generate time-consuming administrative processes and therefore can be difficult to achieve. While such negotiations are taking place, this approach can also create uncertainty about the regulatory environment.

Use of mutual recognition in international agreements

Mutual recognition is also applied in various international treaties and agreements. The rationale for the inclusion of mutual recognition in international treaties and agreements is summarised by Sykes (1995, p. XXI):

Mutual recognition, like national autonomy, presumes decentralised decisions by national governments and relies on market competition to guide the process of international convergence.

Mutual recognition arrangements are used in a number of international treaties and agreements of which Australia is a participant. For example, in late 1993 the Committee on Regulatory Reform (CRR) produced a report for the Trade Ministers assessing possible New Zealand inclusion in the scheme through a Trans-Tasman Mutual Recognition Arrangement (TTMRA). A mutual recognition treaty between the Commonwealth of Australia, Australian states and territories and New Zealand was signed in June 1996, with the agreement taking effect when the Commonwealth, New Zealand and at least one state have passed TTMRA legislation. In NSW legislation was passed on 19 November 1996 and proclaimed on 4 December 1996. The Commonwealth's legislation was introduced into Parliament on 4 December 1996. In New Zealand legislation is currently in the Committee stage of its Parliament and is expected to be passed in mid-1997.

As noted in Box 1.2, the World Trade Organisation encourages member countries to eliminate regulatory barriers to trade and apply mutual recognition agreements for conformance assessment. Australia is currently developing comprehensive mutual recognition agreements on conformity assessment with the European Union and within Asia Pacific Economic Cooperation (APEC), covering a broad range of products. For example, APEC has the objective of extending the coverage of mutual recognition agreements in all areas of conformity assessment and across the widest possible range of industrial sectors. In the long term, the intention is to establish these arrangements on a multilateral rather than a bilateral level.

Box 1.2: World Trade Organisation and regulatory barriers to international trade

International variations in regulations for goods and services — including technical barriers to trade — impede international trade and impose significant economic costs on countries. Therefore, World Trade Organisation rules restrict the use of technical regulations which impede international trade.

The (multilateral) Agreement on Technical Barriers to Trade, signed in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994 recognises the impediments to trade from such regulatory barriers. The Agreement commits members to ensure that technical regulations are not prepared, adopted or applied which create unnecessary obstacles to international trade. Technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, such as protection of human health, safety or the environment. Where technical regulations are required and relevant international standards exist, members are to use them as a basis for their technical regulations, except where this would be inappropriate to fulfil the objective pursued (GATT Secretariat 1994, Article 2 of the Agreement).

In addition, this Agreement encourages members to mutually recognise the results of conformance assessment procedures of other members. Mutual recognition agreements on conformity assessment enable products to be assessed and certified in the country of production to ensure that they meet the standards of the importing country. It means that there is no need for further testing, inspection or certification at the point of sale to demonstrate compliance with local regulations.⁵

In addition, Australia and the European Union commenced negotiations on a mutual recognition agreement on conformity assessment in March 1994. It is likely that the agreements will be concluded soon. The negotiations have focused on ten sectors including telecommunications terminal equipment, low voltage appliances, motor vehicles and component parts, electromagnetic compatibility, machinery, aircraft and aircraft worthiness, pharmaceuticals, medical devices, personal protective equipment and pressure equipment. This agreement will oblige signatory governments to recognise the competence of nominated testing and certification agencies and the certification provided by those agencies (Department of Industry, Science and Technology 1995).

1.2 The rationale, implementation and review of mutual recognition in Australia

From an economic viewpoint, there are often cogent reasons for government registration of occupations and regulation of goods. For example, market forces may not work efficiently in certain areas. There can be problems caused by information failures, where businesses or consumers do not have sufficient information to make appropriate decisions. In addition, in certain circumstances there may be spillovers (externalities) from economic activities, so that in the absence of government action there would be inadequate or excessive provision

⁵ See Sykes (1995) and Leebron (1996) for a detailed discussion of the use of mutual recognition in the Uruguay Round agreements.

of particular occupations or consumption of goods. The regulation of occupations and goods seeks to address such market failures, as well as dealing with social concerns.

However, variations in regulations for identical or substantially similar goods and occupations can impose significant barriers to trade and labour mobility between jurisdictions. The significance of these regulatory costs to businesses was highlighted in 1994 in a survey undertaken by the Australian Chamber of Commerce and Industry (Australian Chamber of Commerce and Industry 1994). This surveyed asked firms to rank in order of importance ten impediments to reducing their costs. Lack of consistency between states and territories in regulations ranked number 6 out of the 10. Twenty three per cent of respondents said they would find greater regulatory consistency between states/territories a large or major benefit. In addition, according to Australian Quarantine and Inspection Service (AQIS), differences in both standards and inspection procedures in the meat industry created a number of problems, particularly in negotiations at international fora. These regulatory differences had hindered the acceptance of Australia's meat inspection standards at the international level (AQIS 1993, p. 13).

In July 1990 the then Prime Minister noted that, following the EC 1992 reforms, there would be more barriers to trade in goods and services within Australia than between the sovereign nations of the European Community. Indeed, Australian jurisdictions imposed significant barriers to interstate trade. For example, manufacturers were often required to put different labels and use different packages for the same products. Each state also had different design requirements for water meters. There were three different definitions of bread, Queensland bread producers of half-sized loaves could not sell them into NSW, as their sale was prohibited in NSW. One state demanded that margarine be sold only in a package shaped like a cube (Hawke 1990).

Mutual recognition in Australia resulted from an acceptance by Federal, state and territory governments that different regulations in each jurisdiction imposed significant and unnecessary barriers within Australia to both trade in goods and the mobility of people in registered occupations. These barriers were seen as generating considerable economic and social costs. Therefore, Australian governments agreed that there was a need to reduce regulatory restrictions on the movement of goods and of people in registered occupations.

There are a number of potential economic and social gains from the creation of a national market for goods and labour. By creating a national market, mutual recognition opens up new opportunities for business. Mutual recognition allows firms to reap economies of scale through product standardisation. It can reduce compliance costs on commerce and industry, leading to enhanced competitiveness and reduced prices. The availability of new markets can create incentives to innovate and improve the quality of goods and services. It can also increase certainty and predicability for firms wishing to sell goods in other

jurisdictions (Department of Industry, Science and Technology 1995). By generating such benefits, it can increase the ability of domestic firms to compete with imports and export their products.

Consumers can also gain through greater competition, enhanced product choice and lower prices. Mutual recognition also increases labour market mobility, thus resulting in a more flexible and responsive labour market.

Mutual recognition does not require the establishment of a new bureaucracy. Indeed, it can reduce duplication and administrative costs by encouraging jurisdictions to adopt rules used in other jurisdictions. Jurisdictions that impose less costly regulations on producers may attract a greater number of producers in the longer term. Therefore, mutual recognition can also help generate competition between jurisdictions and result in a better and more efficient regulatory environment in the long term (Majone 1994, pp. 163-165).

Indeed, mutual recognition can help drive out bad regulations, resulting in better and more productive regulations. For example, mutual recognition can accommodate and encourage experimentation and innovation in regulatory arrangements. Because constituents of a particular region will be disadvantaged by having to comply with regulations more onerous than interstate competitors, the political economy of mutual recognition encourages jurisdictions to replace bad regulations with good regulations. This can be done by reforming regulations that do not achieve their goals or have unintended negative consequences. Better regulations can also be made by jurisdictions adopting uniform regulations, or by harmonising their regulations.

By removing regulatory impediments to the mobility of goods and of people in registered occupations, mutual recognition can reduce business costs and prices, and improve the efficiency of resource allocation. It can lead to a more dynamic and responsive economy and help lift Australia's efficiency and international competitiveness.

However, in certain circumstances these potential benefits can be limited. For instance, the benefits of mutual recognition can be undermined if administration, enforcement and reporting about the scheme is not transparent and accountable to participating jurisdictions, commerce, industry and the public. In addition, the benefits depend on how effectively the scheme is implemented by participating jurisdictions. It is also important to note that mutual recognition does not directly address problems and costs created by inappropriate or excessive regulation.

Implementation and review of mutual recognition in Australia

At the Special Premiers' Conference in July 1991, state and territory governments agreed — in principle — to enact a mutual recognition scheme for registered occupations and trade in goods. In May 1992 the Heads of Government signed an agreement to implement mutual recognition.

Mutual recognition was implemented progressively by Australian governments between 1992 and 1995. Following a referral under section 51 (xxxvii) of the Constitution by NSW and Queensland, the Commonwealth government passed the *Mutual Recognition Act 1992*. The Commonwealth Act was adopted under s. 51 (xxxvii) by the remaining states and under similar arrangements by the territories. Western Australia participated in the scheme from December 1995. The states and territories, in effect, ceded sovereignty to each other with regard to the matters covered in the Act. Table 1.1 shows the dates of implementation in different jurisdictions.

Table 1.1: The commencement of Mutual Recognition Acts in different Australian jurisdictions

<i>Jurisdiction</i>	<i>Name of mutual recognition legislation</i>	<i>Act number</i>	<i>Date of assent</i>	<i>Date of commencement</i>
NSW	Mutual Recognition (NSW) Act 1992	61	30 Oct 1992	2 November 1992
Qld	Mutual Recognition (Qld) Act 1992	67	7 Dec 1992	1 March 1993
Commonwealth	Mutual Recognition Act 1992 (C'th)	198	21 Dec 1992	1 March 1993
NT	Mutual Recognition (NT) Act 1992	78	18 Dec 1992	1 March 1993
ACT	Mutual Recognition (ACT) Act 1992	198	21 Dec 1992	25 February 1993
Vic	Mutual Recognition (Vic) Act 1993	2	20 Apr 1993	1 July 1993
Tas	Mutual Recognition (Tas) Act 1993	33	25 June 1993	1 September 1993
SA	Mutual Recognition (SA) Act 1993	72	16 Sept 1993	1 October 1993
WA	Mutual Recognition (WA) Act 1995	53	24 Nov 1995	15 December 1995

Source: Centre for Legal Education 1995, Table 1 & Bini 1994, p. 20

The Commonwealth-State Committee on Regulatory Reform (CRR) plays an important role in overseeing this scheme. This Committee comprises officials from each jurisdiction and is currently chaired by the Director-General of the NSW Cabinet Office. It provides a formal link between the Commonwealth and the states, and reports directly to the Council of Australian Governments (COAG). The secretariat to the CRR is provided by the NSW Cabinet Office and

deals with issues including dispute settlement and coverage of mutual recognition.

Ministerial Councils — comprising Ministers from each jurisdiction — also oversee the mutual recognition scheme in specific areas, such as consumer and environmental regulation. For example, the Consumer Product Safety Advisory Committee — which reports to the Ministerial Council of Consumer Affairs — monitors the effects of mutual recognition on product safety laws.

Ministerial Councils can also agree to national standards. Ministerial Councils covering goods employ two-thirds majority voting rules to decide about exemptions from the scheme (Agreement, sections 4.2.2, 4.3.2, 4.7.2 & 4.8.2). If there is more than one Ministerial Council covering a particular good or occupation, a decision must be supported by more than a two thirds majority of all the members combined (Agreement, section 4.5 & 4.9). The decisions of Ministerial Councils regarding standards or exemptions need to then be referred to the Heads of Government (Agreement, section 4.10.1). Unless one third or more of the Heads of Government disapprove of a decision of a Ministerial Council within three months, the decision can be implemented (Agreement, section 4.10.2).

Australian governments have agreed that the decisions of Ministerial Councils relating to mutual recognition are binding by convention on all participating states, territories and the Commonwealth.

The Agreement (section 7.1.4) calls for the Heads of Government to monitor the Agreement and make resolutions about the future of the scheme. They may request Ministerial Councils to report on particular matters. Ministerial Councils are also to report to the Heads of Government about the future of the scheme.

Ministerial Councils and goods

Under the Agreement permanent exemptions from the Act can be made where there is unanimous agreement of the Heads of Government of the Participating Parties, who can take advice from a Ministerial Council (Agreement, section 6.1.2).⁶ Temporary exemptions for twelve months can also be obtained by jurisdictions, who must then inform the relevant Ministerial Council (Agreement, section 4.1). In addition, a jurisdiction can refer to a Ministerial Council the question of a regulatory standard in another jurisdiction (Agreement, section 4.3.1).

The Agreement also calls for Ministerial Councils to align standards with commonly held international trade standards (Agreement, section 4.4). The Commonwealth is also bound by recommendations of the Commonwealth/State Consumer Affairs Product Safety Advisory Committee — approved by Ministers

⁶ A Party is not a Participating party under MRA (and able to vote on Ministerial Councils' determinations under the scheme) unless it has in place legislation implementing the scheme.

from each jurisdiction — with respect to standards to be prescribed for goods under the *Trade Practices Act 1974 (C'th)* (Agreement, section 5.1).

Ministerial Councils and occupations

Ministers from at least two different jurisdictions can deem occupations to be equivalent (s.32 of the Act). This decision may be independent of a Ministerial Council. Their decision overrides any decision of the Administrative Appeals Tribunal (s.30 of the Act). The jurisdictions to whom this decision applies then have to inform the Ministerial Council responsible for the occupation (Agreement, section 4.6). The Ministerial Council shall determine (Agreement, section 4.7.1) if agreed standards should apply to the activities in that occupation and what those standards should be. The Ministerial Council should decide these question before the equivalence decision ends (Agreement, section 4.7.1).

A jurisdiction can also refer to the relevant Ministerial Council (Agreement, section 4.8.1) the question of what, if any, changes to existing competency standards or registration requirements might be made. The Ministerial Council should decide within 12 months of getting such a referral (Agreement, section 4.8.1).

1.3 Goals and approach of this Information Paper

This Information Paper seeks to assess the impact of mutual recognition on the mobility of labour and goods since March 1993. This Information Paper provides a preliminary assessment of the impact of the Australian mutual recognition scheme. It does not discuss in detail the impact of mutual recognition in overseas countries and regions, such as the European Union. Nor does it discuss international mutual recognition arrangements, including the Trans-Tasman Mutual Recognition Arrangement (TTMRA) and the pending agreement with the European Union regarding mutual recognition for conformity assessment.

There are several reasons for monitoring the impact of mutual recognition. After operating for over three years, it is important to identify its social and economic impacts. There is a need to ascertain whether it has attained its goals and whether there have been any unintended side-effects. Indeed, to work properly, mutual recognition requires both transparency and accountability. It is important to know the strengths and weaknesses of existing mutual recognition arrangements, so that future government policy making can be better informed and more effective. Indeed, information about the impact of mutual recognition could be useful in shaping future changes to mutual recognition arrangements and other related regulation reform initiatives.

However, there is little information about the implementation and impact of mutual recognition in Australia. The scheme was designed to operate in a decentralised fashion without significant bureaucratic resources to monitor its operation. Much of the experience of mutual recognition is known only to the

parties involved. However, one of the architects of mutual recognition raised the lack of resources being invested in monitoring as a concern as early as 1994 (Sturges 1994).

Nevertheless, some Australian governments have monitored the social and economic impact of mutual recognition in specific jurisdictions and areas. For example, in February 1994 the CRR prepared a progress report on mutual recognition for COAG. This report focused primarily on NSW and concluded that the mutual recognition scheme was operating effectively, resulting in increased labour market mobility. It noted that its impact in the goods area was less clear. However, no systematic research and reporting across the jurisdictions has been undertaken. Therefore, it is unclear how the scheme has been implemented in each jurisdiction and what its impact has been on markets, consumers and regulatory organisations.

Future reviews of mutual recognition

There are a number of reviews of mutual recognition planned over the next few years. COAG has agreed to conduct a comprehensive review of mutual recognition within five years of the date of commencement of the scheme (ie. by 1997-98) (Agreement, section 2.1). As noted in section 1.2, COAG monitors the operation of the scheme through Ministerial Councils. In particular, the Ministerial Council of Consumer Affairs monitors the impact of the agreement on goods and the Ministerial Council for Vocational Education, Employment and Training (or its successor) monitors its impact on the registration of occupations (Agreement, section 1.2b). Section 7.1.4 (a) of the Act specifies that the Heads of Government *may* request Ministerial Councils having responsibility for goods and occupations to report on the effectiveness of the scheme. In addition, section 7.1.4 (b) of the Act indicates that the Heads of Government *will* request the Ministerial Council for Vocational Education, Employment and Training (or its successor) to monitor and report on the effectiveness of the scheme as it relates to occupations.

Both Victoria and South Australia have 5 year sunset clauses in their legislation, which is likely to trigger a review in these states by 1998. In addition, in Western Australia mutual recognition has a sunset clause effective on 1 March 1998.

The Legislation Review Program — implemented to meet some of the obligations of each jurisdiction under the Competition Principles Agreement (CPA) — also has a Commonwealth review of mutual recognition scheduled to commence in 1997-98. The goal of the legislation review program is to review and reform existing regulations which restrict competition, including legislation restricting the registration of occupations. The review and reform of each jurisdiction's legislation is to be conducted between June 1996 and June 2000.

In the meantime, in October 1995 the CRR gave its support to the ORR to conduct preliminary research into the social and economic impacts of mutual recognition.

The ORR's approach

Because of the lack of quantitative data about the impact of mutual recognition on occupations, the ORR conducted a survey of occupation registration agencies in 1995-96 to ascertain the number of people registering under the mutual recognition scheme. The ORR also focused on a number of examples to illustrate the impact of this scheme on goods markets.

The following indicators were seen as providing useful insights into the impact and performance of mutual recognition on occupations and goods:

- changes in institutional arrangements and behaviour;
- changes to the behaviour and characteristics of markets, prices, trade patterns and industry structures;
- changes in the mobility of labour between jurisdictions;
- awareness and acceptance of the scheme, particularly by government agencies regulating commerce and occupations;
- frequency and use of dispute resolution processes such as Ministerial Councils, the AAT and the courts; and
- changes in occupational and goods regulation.

Chapter two discusses the impact of mutual recognition on the mobility of people in registered occupations. This discussion is based primarily on the results of the ORR's 1995-96 survey of occupation registration agencies. Chapter three discusses the impact of mutual recognition on interstate trade, focusing on processed and unprocessed food and manufactured goods. Chapter four provides a summary of results of this research and makes a number of recommendations to improve the effectiveness of mutual recognition arrangements in Australia.

2 MUTUAL RECOGNITION OF REGISTERED OCCUPATIONS

2.1 Background

Occupation registration agencies have operated in Australia for over a century. Indeed, different requirements for registration often arose for historical reasons. For example, there are many registration boards for various health professions. In addition:

A barrister or solicitor of (say) New South Wales is technically a layman in Queensland unless and until he is 'admitted' afresh in Queensland. ... The legal professions of some states have taken advantage of the colonial pattern of the profession to erect barriers against competition from lawyers of other states. ... [This] has distributed legal talent unevenly among the states and has dissipated law-reforming energies, including those which might otherwise have been applied to the revision and renewal of the profession itself. (Forbes 1979 p. 29)

In addition, according to a Sydney chiropractor:

... the chiropractic profession in the early '80s embodied chequered standards of registration by qualification, varying from state to state. The position of registered chiropractors wishing to move interstate, or to practise in several states, was uncertain, difficult, and in some cases impossible. (Bolton 1994, p.101)

Occupational registration requirements apply for a large number of occupations and professions, including the legal and medical professions, builders and certain functions performed by accountants. However, the number and type of occupations that are registered changes over time, as occupation registration authorities respond to changes in labour markets and new technology. Therefore, there is no complete list of registered occupations across Australia. Appendix A lists some of the occupations that were fully and partially registered in each jurisdiction in mid-1996.

By the early 1990s Australian governments were concerned about the anti-competitive effect of variations in occupational registration requirements. The goal of mutual recognition of occupations is to create a national market for people in registered occupations. It is based on the premise that education and training processes for occupations are broadly equivalent in Australia. In other words, people who are competent in one jurisdiction should also be competent to practise in other jurisdictions.

Mutual recognition applies only to those occupations that are registered or licensed. Occupational registration, certification or licensing is a form of regulation that restricts competition by limiting entry to an occupation or profession to those people who meet requirements stipulated by a licensing authority. Requirements for registration can include educational qualifications or

membership of professional associations, absence of a criminal record, possession of appropriate professional resources and materials, and subjective personal tests, such as whether an applicant is a 'fit and proper' person. Partially registered occupations are occupations which are registered in some jurisdictions only.

The agencies registering an occupation can also provide an avenue for public complaints and a means of disciplining the members who do not adhere to conditions attached to their registration.

The regulation of occupations can reduce the likelihood of fraud by unscrupulous practitioners, and can address information failures by providing greater assurance to non-contracting parties who may be incidentally affected by decisions taken on professional advice. Indeed, the main rationale for the registration of occupations is to correct information failures.

Registration can, however, restrict competition by limiting the number of people who are registered to provide a good or service. This can enhance their market power, allowing them to charge higher prices to the disadvantage of consumers. Registration can also regulate and control the use of particular inputs such as the use of particular equipment, buildings, land or materials.

Section 2.2 discusses the scope and application of mutual recognition to registered occupations. Section 2.3 analyses the limitations of mutual recognition. This is followed in section 2.4 by a detailed analysis of the impact of mutual recognition on the mobility of people in registered occupations. This includes a discussion about whether this process has increased mobility, its impact on the formulation of national standards for occupations and the criteria for people to enter a registered occupation. Section 2.5 analyses the effectiveness of AAT dispute resolution processes.

2.2 Scope and operation of mutual recognition for occupations

Mutual recognition aims specifically to remove costs generated by regulatory restrictions on the mobility of people in registered occupations. Such restrictions are created by differences in regulations in each jurisdiction. They can prevent capable and suitably qualified people from entering an occupation. They can also protect registered practitioners from competition from qualified people registered in other jurisdictions.

The mutual recognition scheme for occupations includes licensing, approval, admission and certification. It also includes any other form of authorisation required for carrying out an occupation. With mutual recognition, if a person is registered in one jurisdiction he/she is eligible to register in any other Australian jurisdiction. Section 20(1) of the *Mutual Recognition Act 1992* states:

A person who lodges a notice under section 19 with a local registration authority of the second state is entitled to be registered in the equivalent occupation, as if the law of the

second state that deals with registration expressly provided that registration in the first state is a sufficient ground of entitlement to registration.

Appendix A lists the occupations that were registered in mid-1996 in each jurisdiction.

Under Sections 17(2) and 19 of the Act the approval of an applicant under mutual recognition is subject to:

- (a) disciplinary clearances;
- (b) compliance with certain formal procedures which includes the lodgement of a statutory declaration detailing relevant personal data with the registration authority where registration is sought;
- (c) practice rights not exceeding the applicant's existing practice rights;
- (d) compliance with practising restrictions in that state or territory. That is mutual recognition does not affect the laws that regulate the *manner* of carrying on an occupation in the second state. Nevertheless, it is important to note that a number of other regulatory reforms are underway that effect the manner in which an occupation is carried out. For example, from 21 July 1996 those occupations which operate as unincorporated businesses — which include many self-employed people carrying out registered occupations — will no longer be exempted from the competitive conduct rules of the *Trades Practices Act 1975 (C'th)*.⁷

In addition, under section 11(2) the Act excluded business licensing from the ambit of mutual recognition (Head 1995).

Mutual recognition overrides existing state legislation. It does not require the jurisdictions to make any further legislative changes. However since the Act came into effect the registration boards of many professions — particularly the health professions — have had their governing act amended to include the mutual recognition principle as a basis for accepting applications.

Under Section 20(5) of the Act a registration board may apply conditions to the registration of an applicant where the activities carried out in the practice of the occupation of the applicant is dissimilar to the occupation as it is performed in that jurisdiction. Such conditions impose limitations on how the applicant can perform an occupation, to ensure it is broadly equivalent to the occupation in that jurisdiction. For example, a nursing registration board recently placed conditions on the registration under mutual recognition of a mental retardation nurse and mothercraft nurse, as their 'educational preparation and occupation ...was considered not equivalent to an occupation in [that jurisdiction]' (ORR 1995-96 survey).

⁷ Constitutional limitations had prevented application of the competitive conduct rules to some unincorporated businesses. However, the Commonwealth's *Competition Policy Reform Act 1995* and state and territory legislation that substantially mirrors this Act have extended coverage of the competitive conduct code to unincorporated business operating within and between jurisdictions.

Where a registration board rejects an application on the basis that the applicant does not have an equivalent occupation, the applicant can appeal to the AAT. This Federal quasi-judicial body rules whether the registration should be permitted. The appeal must be lodged within 21 days of rejection by the registration board. In addition, decisions by the AAT can be appealed to the Federal Court.

Therefore, the occupation in the jurisdiction in which the practitioner is registered and the occupation in the jurisdiction to which he or she is applying must be substantially the same. Division 4 of Part 3 of the Act discusses equivalence of occupations. It authorises the AAT to make declarations that occupations carried on in two states are not equivalent and to specify or describe conditions that will achieve equivalence. It also says that Ministers from two or more states may jointly declare that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence. If a declaration made by the AAT and a declaration made by Ministers are inconsistent, the Ministerial declaration prevails. So far no declarations on equivalence of occupations have been made by either the AAT or Ministers.

2.3 Limitations of mutual recognition of occupations

The impact of mutual recognition is limited by a number of legal and institutional factors. For example, mutual recognition does not directly address many restrictions and costs created by the registration of occupations. These can include:

- restrictions on the degree and nature of the services provided by the licensed occupations (eg. advertising restrictions and partnership controls which may operate against the interests of the more efficient providers and consequently also be to the detriment of consumers);
- requirements for licensed providers to satisfy a minimum level of expertise (eg. in some jurisdictions conveyancing can only be provided by lawyers), which can restrict the supply of such services and raises their prices; and
- administrative costs to government involved in establishing and running a licensing scheme or, if they are recouped by government as licensing fees, they are likely to result in higher prices to consumers.

Therefore, mutual recognition does not affect restrictive practices and anti-competitive regulations that remain in the legislation and in the governing acts of some registration boards. For example, the Commonwealth places a limit on the numbers of students commencing study at medical schools each year. In addition, mutual recognition does not directly impact on regulations affecting the manner in which a service is provided. For example, in Victoria non-dentists — including as many contractors or other service providers — are forbidden from employing dentists.

In addition, many occupations are ‘partially registered’ with registration required in some — but not all — jurisdictions. Mutual recognition does not enhance the mobility for people from jurisdictions where there are no registration requirements, because they have no registration from their home state which may be recognised in another. Therefore, partially registered occupations can create a major impediment to the creation of a national labour market.

Where occupations are registered in some jurisdictions but not others, it is important to ask the question, ‘should registration be required at all?’ In some cases it is hard to justify the registration of such occupations. Therefore, Australian governments are currently assessing whether there is scope to deregister partially registered occupations. For example, the Vocational Education, Employment and Training Committee (VEETAC) Working Party on Mutual Recognition has recommended to the COAG that a large number of occupations be deregistered. This report, which has not been published, is currently being considered by COAG.

In the meantime, some jurisdictions have been active in deregistering partially registered occupations. For example, the NSW Government recently introduced a ‘Licence Reduction Program’ which aims to eliminate unnecessary licences and streamline requirements where licences are needed. Under the Victorian Government ‘Licence Simplification Program’ the number of licence types was reduced by 26 per cent in 1995 (Bureau of Industry Economics 1996). The Tasmanian Government is about to consider licensing arrangements for several partially registered occupations.⁸ In addition, several Ministerial Councils have reviewed anomalies in occupational registration.⁹

Mutual recognition also does not apply to an occupation that is not legally and separately registered in two or more jurisdictions. Indeed, in 1995 the AAT heard a case where a conveyancer from South Australia (Mr Sande) — where conveyancing is a registered occupation — applied unsuccessfully to practice in Queensland, where conveyancing is part of a (registered) solicitor’s work (see Appendix E for more information).

2.4 The impact of mutual recognition

The goal of mutual recognition is to remove regulatory restrictions on the mobility of people in registered occupations. As noted in the introduction of this paper, there are several ways to measure whether this goal has been attained. The following discussion focuses on whether:

- mobility has been enhanced by the mutual recognition scheme;

⁸ Including: hairdressers, real estate sales consultants, real estate managers, real estate auctioneers, land valuers, commercial agents, commercial sub-agents and process servers.

⁹ The VEETAC report to COAG included the recommendations of these two Ministerial Councils.

- it has contributed towards the development of national standards for occupations;
- it has changed the criteria for people to enter registered occupations; and
- the dispute resolution mechanism, the AAT, is working effectively.

Has mobility been enhanced?

Measuring the impact of mutual recognition

One way of assessing the impact of mutual recognition is to measure whether the mobility of people in registered occupations increased after its introduction. However, there is a lack of quantitative information about the impact of mutual recognition on the mobility of persons in registered occupations. In particular, there is no information about mobility between jurisdictions of persons in registered occupations before and after the introduction of mutual recognition.

Nevertheless, some indication of the impact of mutual recognition on mobility can be gained by surveying occupation registration agencies, and requesting information about the number of people registering through mutual recognition.

If mutual recognition is being used by a lot of people it would suggest that this process has attained its goal of reducing legal impediments to mobility. By contrast, if there are no registrations or only a small number of registrations under mutual recognition, then one could conclude that:

- few people in registered occupations wish to practise in other jurisdictions;
- registered people are successful in meeting the entry requirements of each jurisdiction and do not need to use the scheme to register;
- that registration agencies are not adhering to mutual recognition; and/or
- people in registered occupations do not know about mutual recognition and therefore are not using it to register in other occupations.

Available data on the impact of mutual recognition

Existing information about the impact of mutual recognition on registrations is incomplete. Some state and territory governments have surveyed the registration agencies in their jurisdiction to measure the impact of mutual recognition. However, this data has not been collected across the jurisdictions at the same time and the response to some of these surveys has been poor.

In addition, while some registration boards publish data on registrations in their annual reports, such data are available only for a relatively small number of occupations and jurisdictions. For example, some registration agencies for health professions in Queensland provide information on the number of people registering under mutual recognition. Table 2.1 provides information about the number and percentage of total registrations in 1994/95 that registered under mutual recognition. Excepting occupational therapists, for the nine health professions listed in Table 2.1, between 18 and 50 per cent of new registrations

occurred under mutual recognition. The average registration rate under mutual recognition was 24 per cent. Table 2.1 shows that in 1994-95 mutual recognition was used by a relatively large number of people in registered health occupations to register in Queensland.

Table 2.1: Registrations of health professionals in Queensland: 1994-95

<i>Occupation</i>	<i>Total registrations</i>	<i>Number of registrations under mutual recognition</i>	<i>Mutual recognition as % of total registrations</i>
Dentists	132	31	24
Dental Technicians & Dental prosthetists	154	30	19
Psychologists	198	35	18
Physiotherapists	243	59	24
Optometrists	51	10	20
Pharmacists	152	65	43
Podiatrists	26	7	27
Occupational therapists	102	2	2
Chiropractors & osteopaths	54	27	50
Average	124	30	24

Sources: Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995, Psychologists Board of Queensland 1995, Physiotherapists Board of Queensland 1995, Optometrists Board of Queensland 1995, Pharmacy Board of Queensland 1995, Podiatrists Board of Queensland 1995, Occupational Therapists Board of Queensland 1995 & Chiropractors and Osteopaths Board of Queensland 1995

The ORR 1995-96 survey

Because little quantitative data existed on the impact of mutual recognition — and occupation registration agencies had not been surveyed about the impact of mutual recognition — the ORR in 1995-96 surveyed the main occupation registration agencies in each jurisdiction, with the exception of WA.¹⁰

Survey methodology and response

This survey was done with the support of the various state and territory governments and inter-governmental bodies such as the CRR. In some cases survey data presented here are aggregated to protect confidentiality of occupation registration agencies in particular jurisdictions. The results of the survey are

¹⁰ Western Australia did not participate in the scheme until December 1995. The ORR did not survey occupation registration agencies in Western Australia because it was too early to measure the impact on mutual recognition.

presented in detail in Appendix B. A copy of the survey is contained in Appendix D.

The 1995-96 ORR survey was designed to ascertain whether records were being kept by occupation registration agencies about the impact of mutual recognition and, if so, whether such records were available. The goal was to collect and analyse registration figures for the financial year 1994-95 and for the period 1993 to June 1995.

The ORR sent the survey to 131 occupation registration agencies. Some 98 responded, equal to 75 per cent of agencies surveyed. Therefore, data on the proportions of people registering under mutual recognition are likely to provide a reasonable indication of the relative impact of mutual recognition. However, data on the number of people registering and the number of people registering under mutual recognition are likely to underestimate the total number of people in these categories, because 25 per cent of occupation registration agencies did not respond to the ORR survey.

Several agencies said that it was administratively simpler to register applicants from other jurisdictions under mutual recognition, even where such people would be eligible to register without mutual recognition. Therefore, in some cases the data could overestimate the impact of mutual recognition.

Given these limitations, the data yielded by the 1995-96 ORR survey should be seen as providing a broad picture of the impact of mutual recognition outside Western Australia.

Survey results

Table 2.2 shows that an average of 15 per cent of registrations in 1994-95 were made using mutual recognition. The percentage of registrations made under mutual recognition ranged across occupations, from 4 per cent for teachers to 57 per cent for dental prosthetists. The ORR survey shows that the mutual recognition scheme is being used by about one in every seven people registering in other jurisdictions. Given the high response rate to the 1995-96 ORR survey, data about the proportion of people using mutual recognition is likely to be robust. In other words, it provides a relatively accurate measure of the impact of mutual recognition on occupational registrations in participating jurisdictions.

Table 2.2: Total registrations under mutual recognition in 1994-95

<i>Occupation</i>	<i>Number registering under mutual recognition</i>	<i>Total number registering</i>	<i>Proportion registering under mutual recognition</i>	<i>Proportion registering under mutual recognition, with conditions</i>	<i>Jurisdictions</i>
Medical practitioners	1228	3410	36	3	NSW, Vic, SA, ACT & NT
Dentists	80	274	29	1	Vic, Qld, SA, Tas, NT & ACT
Dental technicians	49	151	32	16	NSW, Vic, Qld, SA & ACT
Dental prosthetists	21	37	57	19	Vic, NSW & Queensland
Nurses	4214	12 233	34	0	All
Physiotherapists	264	995	27	1	NSW, Vic, Qld, SA, ACT & NT
Chiropractor	66	235	28	0	NSW, Vic, Qld, Tas, ACT & NT
Optometrist	68	222	31	0	NSW, Vic, Qld, SA, ACT & NT
Psychologist ⁽¹⁾	93	954	10	0	NSW, Vic, Qld, Tas & NT
Pharmacists	138	408	34	0	Vic, Qld, SA, ACT, & NT
Podiatrists ⁽¹⁾	17	84	20	0	NSW, Qld, SA & ACT
Legal Practitioners	630	2227	28	3	NSW, Vic, Qld, SA, Tas & ACT
Real Estate agents	204	2349	9	5	NSW ⁽²⁾ , Vic, Qld & Tas
Valuers ⁽¹⁾	63	314	20	14	NSW, Qld & Tas
Builders	875	10 532	8	10	Qld, SA & ACT
Teacher ⁽¹⁾	139	3104	4	0	Qld & SA
Surveyors	12	58	21	0	Vic, Qld, ACT & NT
Others ⁽³⁾	815	22 085	4	8	All
Total	8976	59 672	15	3	-

- Notes:* (1) partially registered occupations.
(2) includes stock and station agents.
(3) includes twelve registered occupations where data are available for only one jurisdiction and/or where number of registrations under mutual recognition was relatively small and/or partially registered occupations. It includes architects; chiroprodists; osteopaths; occupational therapists; radiographers; speech pathologists; plumbers, gasfitters and drainers; electrical occupations; mining occupations; security and investigation agents; gaming industry employee; second hand dealer; and other real estate occupations.
- Sources:* ORR 1995-96 survey question three, Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995 & Optometrists Board of Queensland 1995

Conditions were applied to registrations under mutual recognition in only a small number of cases. For example, only four of the sixteen occupations identified in Table 2.2 had conditions attached for more than 5 per cent of people registering under mutual recognition. An average of 3 per cent of people registered under mutual recognition had conditions attached to their registration, ranging from 19 per cent for dental prosthetists to zero for a number of occupations such as optometrists and surveyors.

Table 2.3 provides information about the total number of people that had registered under mutual recognition in each jurisdiction by June 1995. To protect the confidentiality of responses from individual occupation registration boards, occupations have been grouped together in three broad categories. There are two categories for health professions and one for non-health professions. Appendix B provides detailed information about how the data in Table 2.3 were constructed.

Table 2.3 shows that 15 194 people were reported as having registered in participating jurisdictions under mutual recognition as at June 1995. Given that 25 per cent of registration agencies did not participate in this survey, this figure underestimates the total number of people using mutual recognition.

Table 2.3 also provides a broad indication of total registrations using mutual recognition in each jurisdiction. Data about the total number of registrations in each jurisdiction are unavailable. Table 2.3 illustrates that agencies in Queensland had the greatest number of registrations under mutual recognition, exceeding 6650 people, equal to 43 per cent of total registrations in participating jurisdictions. This is followed by NSW — about 3500 people, equal to 23 per cent of total registrations using mutual recognition.

The number of registrations using mutual recognition in each jurisdiction reflects a number of factors, including increased scope for people to register in other jurisdictions because of mutual recognition, the population of each jurisdiction and internal migration trends within Australia. In addition, Queensland was the only state that undertook a coordinated effort to spread information on mutual recognition to registration authorities. This strong effort to promote mutual recognition may account, in part, for relatively higher use of the scheme in

Queensland. It may also reflect — in part — partially registered occupations and the number of people registered in such occupations in each jurisdiction.¹¹

Table 2.3: Estimate of total number of people registered under mutual recognition by state/territory, as at June 1995

<i>Occupation group</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Total</i>
Category 1 - medical practitioners, dentists and dental technicians and prosthetists, nurses and physiotherapists	2834	1099	2762	427	325	560	957	8964
Category 2 - Other health professionals eg. optometrists, podiatrists ⁽¹⁾ , psychologists, chiropractors, pharmacists	117	79	206	59	20	30	92	603
Category 3 - Other professions/occupations eg. surveyors, architects, teachers ⁽¹⁾ , legal practitioners, valuers ⁽¹⁾ , builders, plumbers, gas fitters and drainers ⁽¹⁾ , electrical workers, real estate agents, mine managers ⁽¹⁾	552	330	3688	180	6	788	83	5627
Total	3503	1508	6656	666	351	1378	1132	15 194
Percentages	23	10	43	4	2	9	7	100

Notes: (1) denotes a partially registered occupation.

Sources: Responses to the ORR 1995-96 survey, Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995, Optometrists Board of Queensland 1995

Table 2.3 also shows that approximately two thirds of all registrations under mutual recognition are for health professions. However, it is important to note that there were no responses to the survey from some non-medical occupation registration boards which register relatively large numbers of people, such as Queensland barristers' and solicitors boards.

Also, most health professions are fully registered (ie. registered in all jurisdictions), while some non-health occupations are only partially registered (ie. not registered in some jurisdictions).

¹¹ See Appendix A for information about the number and type of occupations registered in each jurisdiction.

The information provided in Tables 2.1, 2.2 and 2.3 indicates that a relatively large number of people have registered in recent years using mutual recognition. However, important caveats about this data should be noted.

First, this information does not provide a concise measure of increases in mobility. The impact of mutual recognition could be measured by comparing ORR 1995-96 survey results with figures on interstate movements for people with registered occupations prior to mutual recognition. However such data are not available.

In addition, some people registering under mutual recognition might have been able to register in other jurisdictions anyway. For example, there has been mutual recognition of competency between the surveyors boards of the states and territories of Australia and New Zealand since 1892. Therefore, one would expect that mutual recognition would not be used by surveyors registering in other jurisdictions. However, in 1994-95, 21 per cent of people registering with the various surveyors registering authorities did so under mutual recognition. Nevertheless, many registration agencies continue to distinguish between applications using mutual recognition and applications from other jurisdictions who are registered and do not use mutual recognition. The number of interstate people not using mutual recognition is generally low, ranging between zero per cent of total registrations for mining occupations and builders, to 16 per cent for chiropractors (Table B.2).

Second, it is important to note that the information presented in these three tables does not show whether there are still regulatory impediments to mobility. The survey sought information on the number of applications made under mutual recognition that were rejected by the occupation registering agencies. Some 96 per cent of respondents indicated that there were either no rejections or only one rejection. This suggests that mutual recognition has overcome regulatory impediments to mobility. However, in most cases potential applicants contact the agencies before formally applying for registration. At this point they are told whether they are eligible to register under mutual recognition. Therefore, the number of *formal* rejections by occupation registration authorities might not provide an accurate indicator or measure of real number of rejections and thus the impact of any remaining regulatory impediments to mobility.

Other impediments to mobility were not measured by the survey. For example, application fees charged by occupation registration boards can impede mobility if they are excessive.¹² Section 40(1) of the Act permits fees for applications made under mutual recognition and charging applicants under mutual recognition for normal initial and annual registration fees is widespread across the range of occupations and jurisdictions. In some cases —such as the legal profession — the annual cost of practicing certificates (which includes professional indemnity

¹² The extent to which registration fees inhibit mobility depends — in part — on variations fees between different jurisdictions and fees vis-a-vis the present and expected future income of the applicant.

insurance) can be thousands of dollars per year.¹³ But some registration agencies do offer a concessional rate for applicants applying under mutual recognition. The impact of such registration fees on mobility is unclear, but is likely to vary between different occupations.

The movement to national standards

A number of factors — including mutual recognition — have contributed to the development of national standards for the registration of occupations. In Australia, the COAG agreement ‘Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies’ establishes rules for the development of such national standards.

Prior to the introduction of mutual recognition there was concern among jurisdictions about variations in minimum standards for some occupations. This concern persists among some occupation registration agencies. In response to these concerns, minimum national standards have been developed for some registered and non-registered occupations.

As noted in Box 2.1, national competency standards can be developed by the professions in different jurisdictions regarding minimum levels of knowledge, skill and experience required prior to registration. National competency standards increase the portability of educational qualifications. They can also enhance mutual recognition by reassuring registration boards that standards and assessment criteria between jurisdictions will be reasonably consistent.

The following examples — for the legal profession, teachers, medical practitioners and chiropractors — analyse further the relationship between mutual recognition and national standards.

Legal profession

In all jurisdictions — with the exception of the ACT — registration rules for the legal profession have been altered to ensure consistency with the mutual recognition scheme.

However, there remain some regulatory impediments to mobility. For example, interstate practitioners wishing to be admitted in Queensland have to make a choice to be admitted as either a barrister or a solicitor (Centre for Legal Education 1995). Tasmania admits barristers, but only if they are admitted as barristers somewhere else in the Commonwealth of Australia or New Zealand. The courts of other jurisdictions treat as equivalent occupations barristers and solicitors, legal practitioners or practitioners.

¹³ A proposal for automatic registration of practising certificates — which would require legislative amendments — is currently being considered by the Standing Committee of Attorneys-General.

Box 2.1: National competency standards

National competency standards increase the portability of qualifications, by recognising training and education undertaken in another jurisdiction. For example qualifications from an educational institute in Perth will be recognised by the relevant authorities in Brisbane.

The July 1991 Special Premiers' Conference agreed that the development of competency standards should be accelerated for all registered occupations, so that national competency standards would be in place by the end of 1992, prior to the implementation of the Mutual Recognition Scheme.

The Australian National Training Authority is responsible for encouraging the development of national competency standards for occupations requiring training up to and including the TAFE level. For occupations that require training at the higher education level, the National Office of Overseas Skill Recognition (NOOSR)— a Commonwealth body located within the Department of Employment, Education, Training and Youth Affairs — has encouraged a number of professions to develop competency standards.

In the past few years the Commonwealth has provided over \$3m in funding to some professions to develop national competency standards to assist in improving recognition processes for overseas skills and to assist mutual recognition objectives. NOOSR's role has been one of facilitation rather than one of regulation. Over twenty professions have been funded by NOOSR to develop national competency standards (Department of Employment, Education and Training 1995, Table 1).¹⁴

NOOSR sought information from the members of project steering groups, and some other interested parties nominated by Chairs of steering groups, on the benefits of developing national competency standards. One of the questions NOOSR asked was whether national competency standards facilitated mutual recognition arrangements across states and territories. The majority view by respondents on this issue was that national competency standards support mutual recognition. According to a NOOSR report released in April 1995:

... Mutual recognition has existed in some professions for many years, but national competency standards are perceived to have brought consistency to assessment criteria between states/territories and to have allayed concern about mutual recognition processes. (NOOSR 1995, p. 34)

The Council of Australian Governments (COAG) at its February 1994 meeting requested the Working Group on Micro-Economic Reform to report with detailed proposals for further reform of the legal profession. The objectives of such reform include removing remaining constraints on the development of a national market in legal services.¹⁵ This Working Group presented its report to COAG in

¹⁴ These include: accountancy, agriculture, architecture, chiropractic, osteopathy, dietetics, engineering, medical, radiation science, medical science, nursing, occupational therapy, optometry, pharmacy, physiotherapy, podiatry, psychologist, social work, welfare work, speech, pathology, surveying, veterinary science.

¹⁵ Meanwhile, in July 1994 the Law Council of Australia released a paper addressing the issue which included a recommendation that lawyers admitted in any State or Territory of Australia be able to practise law throughout Australia. It also suggested that existing constraints on a lawyer's ability to practise throughout Australia without restriction be

December 1995. It recommended that a national scheme be established which allows a practising certificate issued in one state or territory to be accepted in all others without further admission protocol.

COAG has requested the Standing Committee of Attorneys-General to identify the legislative changes necessary to achieve this recommendation and to ensure that appropriate arrangements exist for complaints and discipline, professional indemnity insurance, fidelity funds, trust accounts and similar consumer protection mechanisms. In September 1996 a meeting of all state and territory law societies, the Law Council of Australia and officials from all governments agreed on draft uniform national legislation (Cumming 1996).

In the meantime, the National Competition Council is also examining restrictions on competition in the legal profession.

Teachers

In the early 1990s teachers were a 'partially registered' occupation, being registered in Victoria, Tasmania, Queensland and South Australia. The response of registration agencies in these jurisdictions to the introduction of mutual recognition has varied. For example, since 1993 teachers have not had to be registered in Victoria and Tasmania. By contrast, teachers still need to be registered in Queensland and South Australia. However, the Queensland, South Australian and New Zealand teacher registration boards have reached agreement among themselves regarding the applications of mutual recognition. In particular, the Queensland and South Australian Teacher Registration boards are collaborating with government and non-government education authorities in the states and territories which do not register teachers. Such collaboration includes the development and implementation of mutually acceptable standards and procedures for the acceptance of teacher education programs (Queensland Board of Teacher Registration, Undated). Furthermore, a mutual recognition agreement for teachers has been signed by the Teachers Registration Board of South Australia and the NSW Department of School Education.

Medical practitioners

The medical profession anticipated mutual recognition and created a national registration scheme with minimum national standards. Medical registration boards have developed a computer link among themselves with summary details of medical practitioners registered, as a mechanism to enable quick confirmation of interstate registration.

Chiropractors

In some cases occupation registration boards have been unsuccessful in agreeing on national standards. For example, according to Bolton (1994, p. 103)

removed, in order to facilitate the development of a national market in legal services (see Middleton 1995 and Law Council of Australia 1994).

... the mutual recognition principle, in one move, ended years of heated discussions by chiropractors, lobbying by chiropractic sectional interests, and varying judgements by state chiropractic boards on this issue, so far as registration authorities are concerned. It has effectively removed argument on qualifying educational standards between state boards in the registration process and, by implication, has recognised the lowest state qualifying denominator as the minimum educational standard nationally for registration of chiropractors by qualification in Australia.

A chiropractic registration agency noted in its response to the ORR survey:

A peak national body is essential to regulate chiropractic practice in Australia as mutual recognition legislation provisions effectively by passes some state qualifications, thus standards.

By mid-1996 chiropractor registration boards had been unable to agree on national standards for qualifications, domestic and overseas, despite repeated attempts to reach agreement.

The criteria for people to enter a registered occupation

Where some registration boards have lower standards than others — such as accepting the completion of a course of study that other boards consider insufficiently rigorous — mutual recognition can effectively establish a minimum national standard. Indeed, prior to the introduction of mutual recognition, a major concern of some jurisdictions was that mutual recognition could lower registration standards below acceptable minimum standards.

The ORR survey illustrates that a number of registration agencies — including an agency which registers pest control operators and fumigators, a dental registration board and a mining registration agency — remain concerned about this issue. This raises an important question, as to whether mutual recognition has led to an unintentional and unacceptable reduction in occupational registration standards.

In many cases jurisdictions have addressed this potential problem by agreeing on national standards. For example, one dental board responding to the ORR survey noted that mutual recognition ensures that the lowest standards apply, but also claimed that ‘In dentistry this has not been a great problem because standards are fairly uniform’. Indeed, national standards may involve some jurisdictions raising their standards. So where mutual recognition is the catalyst for national standards, the scheme can bring about higher standards in some jurisdictions and ensure that minimum standards are acceptable to all jurisdictions. It can also put pressure on jurisdictions with unjustifiably high standards to adopt national standards.

While it is possible for mutual recognition to result in an unacceptable lowering of standards, the ORR is not aware of any instances of this occurring. However, three agencies commented that mutual recognition could cause standards to decline to unacceptable levels. For example, some agencies registering mining personnel and real estate agents said they were uncertain whether the applicants they registered under mutual recognition had sufficient grasp of their jurisdictions law to be able to competently perform their work.

Some people with insufficient qualifications — but considerable practical experience — are registered in particular jurisdictions under ‘Grandfathering clauses’. Registration boards can be obliged under mutual recognition to accept applicants who are registered in other jurisdictions under grandfathering clauses. For example, some people in the health sector registered under ‘grandfathering clauses’ have used mutual recognition to register in Queensland (Letter from Queensland Health in May 1996). This issue was also raised as a concern by some boards in other jurisdictions responding to the ORR’s survey.

Some groups have raised concerns about the scope for people with overseas qualifications using mutual recognition to register in a jurisdiction, with special conditions attached, then registering in other jurisdictions. For example, overseas doctors recruited specifically to work in outback NSW or Queensland hospitals have sought to register to practise in other states/territories. However, such applications have been rejected as their initial registration was conditional to a specific employer and/or location. In such cases mutual recognition has not allowed overseas applicants to bypass Australian registration standards.

Moreover, in many cases the key issue is whether a person is eligible to register in an Australian jurisdiction, not whether he or she has overseas qualifications. If any person from overseas is eligible to register in an Australian jurisdiction, then there is no clear rationale for inhibiting them from moving to and registering in other jurisdictions.

2.5 Is the AAT working effectively as a dispute resolution mechanism?

Under the *Mutual Recognition Act 1992* the Administrative Appeals Tribunal (AAT) has the role of reviewing cases where agencies reject applications under mutual recognition.¹⁶ In particular, people can appeal to the AAT where their applications are rejected on the grounds that:

- their occupation is not equivalent; and
- equivalence cannot be achieved by the imposing of conditions.

Decisions of the AAT can be appealed to the Federal Court of Australia.

The AAT provides a relatively low cost, relatively quick and transparent appeals process. For example, in May 1996 the cost of lodging an application with the AAT was \$368, with concessions available.¹⁷ In addition, the pre-hearing process

¹⁶ Appendix E provides information on the processes of the AAT, applications made to the AAT for review of agencies decisions and details of the three cases where substantial issues were considered by the AAT.

¹⁷ Section 35 of the Act also empowers the Tribunal to order a party in any proceedings to pay costs if the party has acted unreasonably. The Act does not call for costs to be paid by an unsuccessful party. In only one case to date — *Wright vs Nurses Board of the Australian Capital Territory (1996)* — has the AAT awarded costs. In this case, the respondent was ordered to pay costs.

facilitates rapid resolution of the matter before the hearing stage is reached. Table E.1 in Appendix E shows that about one half of cases that have been concluded by the AAT were resolved before the hearing stage was reached.

In four key cases the AAT has clarified the scope of mutual recognition. In the first, a security industry firearms instructor in the ACT applied to register in NSW. The AAT found that a security industry firearms instructor was not an 'occupation' under the Act and the applicant could not use mutual recognition.

In the second case a conveyancer registered in South Australia applied to register in Queensland, where conveyancers are not registered and conveyancing work is undertaken by the legal profession. The AAT decided that — for there to be equivalence of occupation and for mutual recognition to apply — an activity that is legally and separately registered in one state or territory must also be legally and separately registered in the other state or territory (AAT 1994(b), AAT, 1995(b)). In this case, conveyancing is a registered occupation in South Australia, but not in Queensland. The decision of the AAT was appealed to the Federal Court, which upheld it (Federal Court of Australia 1996).

The third case involved a nurse registered in NSW and the Nurses Board of Northern Territory. The AAT decision was that though nurses are registered using different classifications in the Northern Territory and in NSW, the occupation is substantially equivalent, and therefore mutual recognition applies (AAT 1996a).

In the fourth case the applicant had been registered as a general nurse in NSW since 1990 and had also practised as a mental health nurse. He applied in February 1995 to the Nurses Board of the Australian Capital Territory seeking registration as a general nurse and as a mental health nurse in the ACT. He was granted registration as a general nurse, but refused registration as a mental health nurse on the basis that he did not possess suitable qualifications and experience.

2.6 Summary

Responses to the ORR survey show that there is considerable awareness about mutual recognition among occupation registration agencies and people in registered occupations. In addition, there is clear evidence of mutual recognition reducing impediments to registration. Indeed, the survey results suggest an increase in mobility due to mutual recognition. For example, in 1994-95, nearly 9000 people — equal to 15 per cent of all registrations — registered under mutual recognition.

In addition, the survey shows that by June 1995 a total of 15 194 people had registered using the scheme. Conditions were applied in only a small proportion of applications for registration.¹⁸

Registration agencies in Queensland received by 30 June 1995 about 43 per cent of all registrations in Australia. This relatively high figure is likely to be a result of net inter-state migration to Queensland, and because Queensland was the only state that undertook a coordinated effort to spread information about mutual recognition. By contrast, there were relatively few registrations in Tasmania, South Australia and the ACT. The data does not show if mobility is still impeded in some way by occupational regulations such as registration fees etc.

Mutual recognition has clearly contributed to the development of national standards for the registration of some occupations. Mutual recognition has put pressure on — or provided an opportunity for — some occupations to move towards national standards. It provided impetus for medical practitioners and nurses to agree on national standards prior to the introduction of mutual recognition. Teachers have national standards in those jurisdictions where they are registered. Registration rules for legal practitioners have been altered in most jurisdictions to implement mutual recognition. In addition, the legal profession is implementing national standards. By contrast, the chiropractic profession has been unsuccessful in agreeing on national standards.

There remains a perception amongst some occupation registration agencies that mutual recognition *could* lead to unacceptable reductions in standards. However, the ORR is not aware of any specific instances where there has been an unacceptable reduction in standards. National standards have been developed for a number of occupations, especially in the health area. While there are specific examples of registration agencies failing to agree on national standards, there is no evidence that this has led to an unacceptable reduction in standards in those occupations. Finally, there is no evidence that overseas people not eligible to register in Australia have been able to use mutual recognition to register in Australian jurisdictions.

The AAT appeals mechanism is transparent and relatively low cost and quick — especially if the matter in dispute is resolved at the pre-hearing stage. The AAT has heard a number of appeals about the decisions of occupation registration boards. Overall, it appears to be working well in resolving disputes between applicants and occupation registration boards. No complaints about this appeals process were made by respondents to the ORR's 1995-96 survey.

¹⁸ There are also a number of specific examples of this processes reducing impediments to registration. For instance, the Chiropractors Registration Board (Tasmania) notes that two people operating illegally as unregistered chiropractors prior to mutual recognition were able to register as chiropractors under mutual recognition (Department of Community and Health Services Tasmania 1994, p. 196).

3 A NATIONAL MARKET FOR GOODS?

Mutual recognition of goods traded interstate seeks to create a national market by removing regulatory barriers that prevent trade throughout Australia. The scheme is based on the premise that each jurisdiction has confidence that the other parties have broadly equivalent regulatory regimes. Therefore, goods that satisfy regulations in one jurisdiction should be readily available in other jurisdictions. The mutual recognition scheme for goods traded across jurisdictional boundaries is brought into effect by Part 2 of the *Mutual Recognition Act 1992*.

3.1 Background

Regulation seeks to protect consumers by ensuring that the quality of goods exceeds minimum standards of safety and hygiene, and to provide consumers with basic information to assist them make appropriate decisions. Regulations can also attain other goals, such as enhancing the sustainability of natural resources by prohibiting harvesting of undersized fish.

However, such regulations often differ between jurisdictions, sometimes reflecting different attitudes to the best way of protecting the public. However, in some cases it has also been used to protect local industries from competition from producers in other states/territories. For example, the Report of the Committee of Inquiry into Australia's Standards and Conformance Infrastructure noted that:

... standards, whether developed by industry interests or by regulators, have also been used for industry protection purposes, as have associated arrangements developed to demonstrate compliance with them. (Department of Industry, Science and Technology 1995, p. 173)

The mutual recognition for goods means that goods produced in or imported for sale in one jurisdiction may be lawfully sold in other jurisdictions. The rationale for extending mutual recognition to goods is discussed briefly in section 1.2. Examples of regulations where there were variations between jurisdictions prior to the introduction of mutual recognition included:

- grading requirements for types of food, such as fresh fruit and vegetables and dried fruit;
- standard size requirements (eg. bread);
- minimum size requirements (eg. seafood);
- hygiene requirements (eg. meat, seafood, eggs);
- technical specifications for manufactured goods sold in jurisdictions. Manufactured goods may be used for production of other goods, such as plant, tools and protective clothing or final consumption goods such as highchairs and toys;

- banning of different types of manufactured goods, such as restrictions on folding chairs or food products; and
- labelling and packaging requirements (eg. margarine to be only packaged in cube shaped containers).

3.2 The legislative framework

The mutual recognition principle for goods is broadly that goods produced in or imported for sale in one jurisdiction may be lawfully sold in other jurisdictions. Under section 10 of the *Mutual Recognition Act (C'th) 1992*, mutual recognition overrides the regulations of the states and territories where there is:

- a requirement that the goods satisfy standards of the second state/territory relating to the goods themselves, including for example, requirements relating to their production, composition, quality or performance;
- a requirement that the goods satisfy standards of the second state/territory relating to the way the goods are presented, including, for example, requirements relating to their packaging, labelling, date stamping or age;
- a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the second state/territory;
- a requirement that any step in the production of the goods not occur outside the second state/territory; and
- any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting the sale of the goods in the second state/territory.

In contrast to the role of the AAT in the case of occupations, there is no designated court or tribunal to hear disputes about the scope or application of the Act with regard to goods. Disputes can be heard in magistrate or district courts. Section 12 of the Act allows for mutual recognition to be a defence where a seller is prosecuted for selling goods in another jurisdiction, unless it is shown that the mutual recognition principle does not apply (for example, if the goods did not comply with the requirement imposed by the law of the first state/territory).

3.3 The limitations of mutual recognition for goods

There are a number of factors that limit the scope and impact of mutual recognition for goods (Wright 1993 & Bini 1994). These include exceptions and exemptions specified in the Act. In addition, some regulatory factors limit its application and use by commerce and industry.

Exceptions

The regulatory coverage of mutual recognition is subject to exceptions, which are listed in Section 11 of the Act. This includes laws that regulate the manner of the

sale of goods or the manner in which sellers conduct — or are required to conduct — their businesses. This includes laws regulating the transportation, storage or handling of goods as long as those laws are directed at the protection of health, safety or the environment. Exceptions also include laws regarding the inspection of goods where the requirement for inspection is not a prerequisite to the sale of the goods. In other words, such regulations fall outside the scheme because they relate to the manner of sale of a good.

For example, section 11(2) of the Act excludes business licensing, including exceptions for regulations that apply to ‘the manner of the sale of goods’, including circumstances in which goods may or may not be sold. According to the Proprietary Medicines Association of Australia (PMAA), mutual recognition does not apply to therapeutic goods because regulations apply to the circumstances of their sale. In addition, under section 11(4), mutual recognition does not apply to regulations regarding the inspection of goods, where they are directed at matters affecting the health and safety of people (PMAA 1995, p. 64).

Clearly, these exceptions can impede trade in goods. For example, until March 1996 exceptions in the Act allowed NSW health regulators to prohibit the sale of game meat from premises selling non-game meat, because of health and safety concerns about the quality of game meat. This regulation effectively banned the sale of both local and interstate game meat in NSW. In addition, regulations in several states and territories about the use of safety footwear are contained in occupational health and safety legislation. Because mutual recognition applies to the sale of goods and not to their use, these regulations are unaffected by mutual recognition. However, in NSW safety footwear regulations are contained in the Product Safety Regulations of the *Fair Trading Act 1987* and are therefore subject to mutual recognition.

Exemptions

Some goods are exempted from mutual recognition, because a national market is not considered by governments as appropriate. Permanently exempted goods are listed in Schedule 1 of the Act and are few in number. They include weapons, fireworks, gaming machines and pornographic material. Exemptions also apply to regulations covering quarantine, protection of fauna or flora from extinction, censorship laws, state ozone protection laws and the *Environment Protection Act 1993 (SA)*.

There have been at least two additions to the list of exemptions. First, the Tasmanian Government sought a temporary exemption in October 1994 for the sale of pesticides, veterinary medicines and drugs in order to impose limitations on their sale. Second, the Commonwealth has been granted a permanent legislative exemption for the Agvet Code, which formalises a process whereby the National Registration Authority for Agricultural and Veterinary Chemicals registers Agvet products to control their sale.

Regulatory limitations of mutual recognition

Mutual recognition does not impact on many regulations that directly affect the production and movement of goods. In particular where:

- firms produce goods in two or more jurisdictions, mutual recognition does not overcome the need for producers to deal with different regulatory regimes in each jurisdiction. Such firms must comply with the regulations in each jurisdiction, even where they are different and they cannot use mutual recognition to override such regulations;¹⁹ and
- state or territory statutory marketing authorities apply restrictions on competition, such as quotas or price fixing arrangements.

Other impediments to its use

Mutual recognition does not remove some economic impediments to the sale of goods in two or more jurisdictions. For example, local preference schemes operated by state and local governments — which give local producers an advantage in the supply of products to state/territory and local governments — can impede interstate trade. This in turn can limit the use of mutual recognition by firms competing in such markets.²⁰

3.4 The impact of mutual recognition

Little is known about the impact of mutual recognition on goods markets because:

- data about its impact is dispersed among various Commonwealth, state and territory government agencies and firms that have used this process to sell goods in other jurisdictions; and
- this process was established — and is able to operate — in a decentralised fashion without ongoing monitoring by governments. Most regulators in each jurisdiction are only aware of its impact in the particular market they regulate. Research into particular sectors of the Australian economy sometimes probe the impact of mutual recognition in particular areas, such as the Industry Commission's inquiry into packaging and labelling (Industry Commission 1996b). The Federal Bureau of Consumer Affairs is responsible for monitoring the impact of mutual recognition on the goods part of the Commonwealth Act. This responsibility does not extend to publishing research focusing on the impact of mutual recognition.

In addition, there are inherent difficulties in collecting information on the impact of mutual recognition on goods markets. Unlike the occupation registration agencies who keep information on the registration of practitioners under mutual

¹⁹ See section 1.1 for discussion of local production approach to mutual recognition which was considered by Australian governments in the early 1990s but rejected.

²⁰ See Industry Commission (1996a) for discussion of preference schemes and other industry assistance arrangements provided by Australian governments.

recognition, authorities regulating goods do not keep statistical information on movement or the impact of mutual recognition. Information about its impact is usually based on qualitative data, such as specific case studies.

Therefore, there is no quantitative data on the impact of mutual recognition on goods. Further and more comprehensive research needs to be undertaken before the impact of this process can be accurately and comprehensively measured.

Nevertheless, some qualitative information about the impact of mutual recognition on the interstate trade of goods can be obtained by addressing the following questions:

- are businesses and regulators aware of mutual recognition and, if so, what has been its impact on interstate trade and markets?
- has it contributed towards the development of uniform regulatory standards for industries?
- has there been an unacceptable lowering of standards? and
- are dispute resolution mechanisms working?

Awareness of mutual recognition and its impact on interstate trade

Awareness amongst businesses

Different industries are likely to have different levels of awareness of mutual recognition. Some of the businesses involved in the industries listed in Table 3.1 — such as eggs, meat, packaging and labelling — are aware of this process, because it impacts on their ability to sell produce into other jurisdictions.

Carroll (1995) suggests that within an industry there would be a range of responses by producers to mutual recognition. Some more entrepreneurial businesses would greet mutual recognition as an opportunity to trade interstate, while others might be hostile or uncomfortable with the increased competition from interstate.

The limited information available suggests that awareness of mutual recognition is relatively high in industries that produce food products. By contrast, some state and territory government departments with oversight over mutual recognition and some industry associations have reported that there is little awareness amongst industries producing manufactured goods. For example, in public hearings for the Industry Commission's Packaging and Labelling Inquiry (1995b), representatives from the Queensland Chamber of Commerce & Industry Ltd commented:

We can't give you any definitive information as to what firms may or may not be affected by it but we're just getting feedback that people don't seem to know too much about what mutual recognition is and what the benefits of mutual recognition are. (Transcript, Brisbane 18 May, 1995)

Such lack of awareness could result from a range of factors, such as failure by governments and industry associations to inform business about mutual recognition. Indeed, the Commonwealth has done very little to publicise this

process, leaving it to the states and territories to inform commerce and industry. By contrast, Queensland publicised mutual recognition directly and through industry bodies.

However, awareness of this process does not mean that businesses will automatically use it to overcome regulatory barriers to their goods in other jurisdictions. Indeed, even where commerce and industry is aware of mutual recognition it might not be used, especially where business is of the view that regulators may not be sympathetic to mutual recognition. In such cases business may wish to eschew a potentially costly and protracted legal dispute with a regulator about mutual recognition. Alternatively, they might simply fail to take up new business opportunities resulting from mutual recognition.

Awareness amongst regulatory authorities

Available information suggests that regulatory authorities generally are aware of the mutual recognition scheme. Awareness appears to be greatest where an agency — such as the NSW Department of Health — has had a dispute with a business concerning mutual recognition. Overall, state/territory consumer affairs departments, primary industry departments and authorities also appear to be aware of mutual recognition.

Mutual recognition appears to have increased communication and/or co-operation between agencies within and between jurisdictions, particularly to clarify regulatory arrangements under mutual recognition.

Some regulatory agencies have tried to circumvent mutual recognition by using exemptions to continue to inhibit movement of goods from other jurisdictions. Indeed, by August 1993 evidence suggested that some agencies had exploited the exemptions in the *Mutual Recognition Act 1993*. Examples included the New South Wales Meat Industry Authority, the dried fruit marketing boards in the southern states, health departments in several states and National Parks in Queensland (Sturgess 1994, p. 28).

Impact on goods markets

For this information paper, the ORR contacted a number of regulatory agencies in each jurisdiction and requested information about the impact of mutual recognition.

Table 3.1: Examples of products with interstate regulatory trade barriers and regulatory/market changes since 1993

<i>Product type</i>	<i>Relevant regulatory agencies</i>	<i>Description of barrier to trade between jurisdictions</i>	<i>Regulatory/market changes after 1993</i>
Bread	Various regulators	Different standard sizes	Non-standard sizes can be sold
Eggs	state/territory egg boards	Different grading and stamping requirements	Deregulation of the egg market continued
Dried fruits	state/territory dried fruit boards	Different grading requirements	Accelerated the negotiations for national standards
Abattoir meats	state/territory Departments of Health or meat authorities	Some jurisdictions such as Queensland required a fee to be paid and/or permission from a regulator before meat could be sold	No longer need permission or have to pay a fee
Game meat	state/territory Departments of Health, meat authorities or equivalent	Interstate meat could not be sold. Production often banned within jurisdictions	These meats are now sold in NSW, Victoria and Queensland following agreement about uniform minimum standards. But production still banned in some states eg. NSW
Oysters	state/territory Department of Fisheries	In NSW, interstate oysters had to be soaked (deuration) for 36 hours before sale	This requirement has been dropped
Fruit & vegetables	Various regulators	Fruit and vegetables imported into Queensland had to meet grading and packing requirements before sale permitted	Queensland Act repealed in 1993
Pressure vessels	Various regulators, NSW Workcover Authority in NSW etc	state/territory regulatory authorities differed on the design, construction and testing of equipment.	National standards developed and in process of being implemented through legislation in various state/territories
Packaging & labelling	Various regulators	Different requirements	National standards being developed
Consumer products	state/territory departments of consumer affairs or equivalent	Product bans	Cases where bans have been removed, such as repeal of NSW product safety regulation for safety footwear

Sources: Information provided by various state and territory regulatory agencies, Sturgess 1994 and Wilkins 1995

As illustrated in Table 3.1, prior to its introduction there were a range of regulatory impediments to interstate trade in goods. Following the introduction of mutual recognition in 1993 there have been some regulatory reforms and changes

in markets resulting from greater interstate trade. For example, mutual recognition has removed regulatory impediments in markets such as bread, oysters, game meats, fruit and vegetables, resulting in increased interstate trade. As discussed below, in other markets — such as dried fruits, pressure vessels, and packaging and labelling — it has encouraged or accelerated the development of national standards.

There are also cases where business has used mutual recognition to reduce costs. For example, submissions to the Industry Commission Packaging and Labelling Inquiry (1996b) refer to the additional costs imposed by variations between state/territory regulation of labelling. For example, Amcor stated:

Mutual recognition in Australia has for some products enabled some rationalisation of artwork and longer production runs and/or more frequent ordering with associated reduced stock holdings. (Amcor, Sub. 69, p. 78)

Movement to uniform national standards

Uniform regulations can be desirable where they remove obstacles to interstate trade, promote competition and facilitate specialisation and international trade. However, there are some cases — such as environmental regulations — where regulatory differences reflect unique circumstances in particular jurisdictions and uniform regulations might not be desirable. There is also the potential for uniform regulations to increase the regulatory burden by imposing more onerous regulations. Therefore, uniform regulations are desirable only in some areas of the economy.

In practice, agreement between jurisdictions about uniform regulations is difficult to achieve and maintain over time. Agreement often requires complex and time consuming negotiations to resolve any differences, and the agreement of all jurisdictions is usually required.

Nevertheless, mutual recognition has encouraged the development of national standards in some markets. For example, as noted in Table 3.1, mutual recognition has contributed to uniform standards being developed in the dried fruits, pressure vessels, and packaging and labelling. The mutual recognition scheme has also liberalised attitudes to interstate trade by the state/territory authorities responsible for meat regulation. Gary Sturgess commented in 1994:

... Meat continues to be a difficult area but mutual recognition has accelerated the production of national standards which will bring down the final barriers to interstate trade in time. (Sturgess 1994, p. 29)

In 1995 and 1996 uniform standards for meat processing were developed which will ensure free interstate trade in abattoir and game meat. These standards when implemented will raise the overall hygiene standards of the meat industry.

Mutual recognition has also contributed to uniform grading requirements for dried fruits. Mutual recognition has encouraged a rationalisation of consumer product regulation and further regulatory co-operation. As the Federal Bureau of Consumer Affairs points out:

With the introduction of the mutual recognition agreement, state and territory consumer affairs agencies have undertaken to rationalise laws relating to safety and labelling in their jurisdictions. (1995, p. 2)

As part of the National Strategic Plan for Consumer Affairs, the Ministerial Council on Consumer Affairs has directed that reviews of all mandatory safety and information standards be conducted by Commonwealth, state and territory consumer affairs agencies. The scope of these reviews — to be conducted in line with the Council of Australian Governments principles and guidelines on national standards setting — will include rationalisation and simplification of the requirements under the *Trade Practices Act 1974 (C'th)* and state and territory fair trading legislation. In addition, the Industry Commission inquiry into packaging and labelling found that mutual recognition had encouraged the domestic food industry to develop national standards through the National Food Authority.²¹

Mutual recognition has also led to some jurisdictions repealing bans on particular products. For example, NSW has decided to repeal its product safety regulation for safety footwear as it had been rendered ineffective by mutual recognition.

Has there been a lowering of standards?

Mutual recognition is based on the premise that the level of regulation in any jurisdiction is acceptable in all others. However, a major criticism of mutual recognition is that goods from a jurisdiction with unacceptably low standards could be sold in other jurisdictions.

However, there is no evidence that mutual recognition has led to the sale of goods with unacceptably low standards. The ORR is not aware of any media reports about products which have been traded interstate — due to the mutual recognition scheme — posing a risk to health and safety. Indeed, the Consumer Products Advisory Committee, a sub-committee of the Ministerial Council on Consumer Affairs, had by mid-1996 had no complaints reported to it regarding product safety problems due to mutual recognition.

Also, the ORR is aware of only one jurisdiction (Tasmania) which has used provisions in the Act that allow for a one year exemption from mutual recognition for a particular good. This suggests that mutual recognition has not resulted in goods with unacceptably low standards being sold in Australia. It also suggests that any unacceptable variations in regulations have been resolved by jurisdictions agreeing on national standards or revising their own standards.

Is dispute resolution working?

Section 12 of the Act allows for mutual recognition to be a defence to a prosecution in relation to the sale of any goods in another jurisdiction. As noted, there is no designated court or tribunal to hear disputes about mutual recognition

²¹ In 1996, New Zealand agreed to participate in the developments of food standards and the National Food Authority was renamed as the Australia New Zealand Food Authority.

and goods. Local magistrate's or district courts are the appropriate legal forum to resolve such disputes. However, it is unknown whether any cases have been taken to court. There have been a number of disputes between regulators, government departments and firms about the application of mutual recognition. But these appear to have been resolved by government departments in each jurisdiction, prior to legal action being taken by a regulator.²²

3.5 Summary

The extent of use of mutual recognition can be expected to vary according to whether particular goods are included in the Act as an exception or exemption, whether national standards apply, whether other regulations impede movement and/or sale of goods, and whether there are other economic impediments to interstate trade in goods.

The impact of mutual recognition on goods is difficult to monitor, because data about its impact is dispersed among regulatory agencies and firms, and the process operates in a decentralised manner. In addition, previous research into mutual recognition has focused on particular case studies and there have been few studies of its impact. While little is known about the impact of this process on interstate trade in goods, it is likely that its impact would vary between different traded goods sectors of the economy.

The information that is available suggests that mutual recognition has enhanced interstate trade in some sectors of the economy — particularly food industries — by removing regulatory impediments to such trade. It has contributed to the ongoing development of national standards in a range of sectors, such as packaging and labelling. It does not appear to have resulted in the sale of goods with unacceptably low standards. Some disputes have been resolved by state or territory government departments. But little is known about the use of mutual recognition as a legal defence.

Overall, it is difficult to monitor the impact of mutual recognition on goods markets. Future research into its impact is likely to be based, in part, on analysing specific examples and case studies. In addition, surveys of government agencies regulating goods could help identify its impact. Surveys of commerce and industry — perhaps with the participation and support of peak business organisations such as the Australian Chamber of Commerce and Industry — could also be useful in identifying its impact on business and markets.

²² If such cases have been heard they have not been discussed in the media. In addition, it is very difficult to collect information on whether any cases involving mutual recognition have been addressed by a magistrate's court. While most magistrates courts keep case summary information on computer about the cases they have heard, they do not keep records of defences such as the mutual recognition. The collection of information about the use of mutual recognition would therefore require each case file to be examined separately.

It is important to assess further the impact of mutual recognition on goods markets, so that better data can be prepared and analysed. This would help future reviews of mutual recognition, allowing informed consideration of possible changes to exemptions, exceptions and the overall scope of mutual recognition.

4 CONCLUSIONS

The mutual recognition scheme in Australia appears to be working reasonably well and has achieved its primary goal of removing or overcoming many regulatory barriers to the movement of people in registered occupations, and to interstate trade in goods. It does not appear to have had any significant unintended consequences.

For *occupations*, the ORR 1995-96 survey — the first survey of occupation registration agencies to have focused on mutual recognition — found that there is considerable awareness about mutual recognition among occupation registration agencies and people in registered occupations. There appears to have been a significant increase in mobility due to mutual recognition. For example, in 1994-95 nearly 9000 people — equal to 15 per cent of all registrations — registered under mutual recognition. In addition, by June 1995 a total of 15 194 had registered using the scheme. However, the data does not show if mobility is still impeded in some way by occupational regulations such as registration fees or state-specific regulation of, for example, the way a service must be provided.

Mutual recognition has contributed to the development of national competency standards for over twenty occupations, such as nurses, optometrists and physiotherapists. Mutual recognition has also put pressure on — or provided an opportunity for — some occupations to move towards national standards. Indeed, mutual recognition is an important force for the reform of costly or inappropriate regulation.

The ORR is not aware of any cases where mutual recognition has led to an unacceptable reduction in standards for occupations. In addition, the AAT appeals mechanism works well and no complaints about this appeals process were made by respondents to the ORR's 1995-96 survey.

For *goods*, mutual recognition does not impact on many regulations that directly affect the movement (ie. transport) and manner of sale of goods (ie. advertising etc). Nor does it impact on regulations covering how goods are used, such as pharmaceutical products. In addition, there remain a number of economic impediments to its use by commerce and industry. Therefore, the use and impact of mutual recognition is likely to vary between different goods markets.

The overall impact of mutual recognition on goods is difficult to monitor, because information about its use is dispersed among regulators and firms, and the scheme operates in a decentralised manner. However, its impact in particular markets can be assessed by analysing examples and case studies.

Mutual recognition has enhanced interstate trade in some sectors of the economy by removing regulatory impediments to such trade. It has contributed to the development of national standards in some sectors. It has not resulted in the sale of goods with unacceptably low standards. Some disputes between jurisdictions

have arisen, but these have been resolved by state or territory government departments. But little is known about the use of mutual recognition as a legal defence in the court system. More research and analysis of case studies will need to be undertaken before the impact of mutual recognition of trade in goods can be accurately measured and assessed.

Preliminary analysis by the ORR clearly indicates the need for more research into the impact of mutual recognition, especially on goods markets. Preparation and analysis of case studies, and surveys of regulators and business, could provide better information about its impact. Such research could inform governments, the public and commerce and industry about this scheme, providing scope for it to be modified and improved. Additional information about its impact would also be helpful in informing governments about the likely impact of extending mutual recognition arrangements to new areas of regulation.

A number of reviews of mutual recognition are planned in 1997-98, including a review by COAG and a review by the Commonwealth under the legislation review program. It seems sensible for these two reviews to be amalgamated into one comprehensive national review in 1997-98 involving the COAG, the Commonwealth, states and territories. In addition, with the implementation of the Trans Tasman Mutual Recognition Arrangement (TTMRA), the implications of mutual recognition for the TTMRA could be explored in this review.

In conducting a comprehensive national review, consideration could be given to extending the scheme in other international agreements and arrangements. For example, the Financial System Inquiry (1996, p. 296) found that mutual recognition regimes could be one way of developing international consumer protection regulations in the global market. The current negotiations with the European Union on conformity assessment might form a model for negotiating extensions internationally to mutual recognition of regulations. There would, of course, in the Australian context, remain some goods and services which would be exempted from international mutual recognition agreements, such as pornographic material.

Mutual recognition does not specify how service providers deliver their services. Local registration bodies continue to specify how services are delivered, including codes of conduct, discipline etc. The service sector is the fastest growing sector of the economy and removing regulatory restrictions on services could generate considerable economic and social benefits for Australia. The Competition Principles Agreement provides for a program of review of regulations that restrict competition by the year 2000. Many regulatory restrictions may be removed as part of this program.

Nevertheless, consideration could be given to extending mutual recognition to some remaining regulations, covering the manner of carrying out an occupation and how services are delivered in Australia. Mutual recognition could be extended to business licensing, reporting and other regulations of services that are provided across state and territory borders.

Consideration could also be given to extending the scheme in Australia by reviewing exceptions, particularly as they apply to occupational health and safety standards, including the conditions of sale or use of a good.

Australian governments could also explore scope for extending mutual recognition in certain circumstances to local government licensing regulations, that apply to the sale of goods, registration of occupations and provision of services.²³ This could involve regulations — such as permits — for trading in public places, including the provision of public entertainment. For example, a local government licence permitting busking could be recognised in other local government areas, by agreement with other local councils. Mutual recognition could also include some local building controls, including the registration of builders. Extending mutual recognition to some local government regulations would require the support of local government in Australia.

The mutual recognition principle could also be extended to areas of regulatory overlap between state and local governments, such as town planning, health control, environmental and fire safety. It could also be extended to areas of regulatory overlap between the Commonwealth and the states, including business licences.²⁴ Such regulatory overlap has already received considerable attention through various mechanisms and reviews, such as the Small Business Deregulation Task Force (1996). Indeed, the Task Force made a number of recommendations, including accelerating mutual recognition and accreditation procedures and processes to streamline government decision making in relation to the environment.

²³ According to one study, local council business regulations cost \$70 million in investment, added 4.5 per cent to the cost of development and 3 per cent to proposed business developments (Productive Culture Australia 1993). A number of initiatives are underway to reduce regulatory duplication or conflict in regulatory activity, including the Local Approvals Review Program (LARP).

²⁴ See Stenning and Associates (1994) for discussion of regulatory overlap between the Commonwealth and states for business and other licensing.

APPENDIX A: REGISTERED OCCUPATIONS

Appendix A lists some of the main occupations that are fully and partially registered in mid-1996. In 1995-96, state and territory governments provided the ORR with mailing lists for registered occupations by all jurisdictions — excepting Western Australia — to conduct the survey of registration agencies. In addition, a Tasmanian consulting firm — Stenning & Associates — provided in 1996 details of registered occupations for South Australia, Western Australia, Tasmania and Northern Territory and the ACT.

The information provided below — in Tables A1 to A7 and for Western Australia — is broadly indicative of registered and partially registered occupations in each jurisdiction in mid-1996, rather than providing a complete and accurate list.²⁵

New South Wales

Table A.1: **Registered occupations and the relevant registration agency in New South Wales**

<i>Agency</i>	<i>Registration Authority</i>
Architects	Board of Architects of NSW
Business agents	Department of Fair Trading
Cadastral surveyors	Board of Surveyors
Chiropractors, osteopaths	NSW Chiropractors and Osteopaths Registration Board
Dental technicians, dental prosthetists	NSW Dental Technicians Registration Board
Dentists	Dental Board of NSW
Legal practitioners	Supreme Court of NSW
Medical practitioners	NSW Medical Board
Mine manager (underground and open cut), under manger, deputy manager, electrical engineer, mechanical engineer, surveyor and open cut examiner	Department of Mineral Resources
Nurses	Nurse Registration Board of NSW
Optical dispensers	Optical Dispensers Licensing Board (NSW)
Optometrists	NSW Board of Optometrical Registration
Pharmacists	Pharmacy Board of NSW
Physiotherapists	Physiotherapists Registration Board
Podiatrists	NSW Podiatrists Registration Board
Psychologists	Psychologists Registration Board (NSW)
Radiographers	Environment Protection Authority
Real estate agents	Department of Fair Trading
Stock and station agents	Department of Fair Trading
Valuers	Department of Fair Trading
Veterinary surgeons	Board of Veterinary Surgeons

Source: New South Wales Migrant Employment and Qualifications Board

²⁵ A fairly comprehensive list of all occupations registered by either the Commonwealth, States or territories was also prepared by NOOSR to assist in negotiation of the TTMRA.

Victoria

Table A.2: **Registered occupations and the relevant registration agency in Victoria**

<i>Agency</i>	<i>Registration Authority</i>
Architects	Architect Board of Victoria
Building practitioners	Building Practitioners Board
Cadastral/title surveyors	Surveyors Board of Victoria
Chiropractors	Chiropractors Registration Board
Dental technicians	Dental Technicians Licensing Committee
Dentists	Dental Board of Victoria
Medical practitioners	Medical Board of Victoria
Nurses	Nurses Board of Victoria
Optometrists	Optometrists Registration Board
Pharmacists	Pharmacy Board of Victoria
Physiotherapists	Physiotherapists Registration Board
Plumbers, drainers and gasfitters	Plumbers, Drainers and Gasfitters Registration Board
Psychologists	Psychologists Registration Board of Victoria
Real estate agents	The Estate Agents Licensing Authority
Solicitors	Supreme Court of Victoria

Source: Information supplied by Department of Premier, October 1995

Queensland

Table A.3: Registered occupations and the relevant registration agency in Queensland

<i>Occupation</i>	<i>Registration Agency</i>
Architects	Board of Architects of Queensland
Auctioneers	Office of Consumer Affairs (Qld)
Barrister	Supreme Court of Qld
Builders	Building Services Authority
Casino employees, machine gaming employees	Queensland Office of Gaming Regulation
Chiropractors, Osteopaths	Chiropractors and Osteopaths Board of Queensland
Dental technicians, dental prosthetists	Dental Technicians and Dental Prosthetists Board of Queensland
Dentists	Queensland Dental Registration Board
Electrical workers	Electrical Workers and Contractors Board
Medical practitioners	Medical Board of Queensland
Mine managers, mine electricians, mine surveyors, mine deputies, open cut examiners, mine winding licence holders	Department of Minerals and Energy
Nurses	Queensland Nursing Council
Occupational therapist	Occupational Therapists Board of Queensland
Pest control operators, fumigators	Qld Department of Health
Pharmacists	Pharmacy Board of Queensland
Physiotherapists	The Physiotherapists Board of Queensland
Plumbers, Drainers	The Plumbers and Drainers Examination and Licensing Board
Podiatrists	The Podiatrists Board of Queensland
Psychologists	Psychologists Board of Queensland
Real estate agents	Office of Consumer Affairs (Qld)
Real estate valuers	Valuers Registration Board of Queensland
Secondhand dealers	Office of Consumer Affairs (Qld)
Security providers	Office of Consumer Affairs (Qld)
Solicitor	Supreme Court of Qld
Speech pathologists	Speech Pathologists Board of Queensland
Surveyors	Surveyors Board of Queensland
Teachers	Board of Teacher Registration
Veterinary surgeons	Veterinary Surgeons' Board of Qld

Source: Information provided by Department of Business, Industry and Regional Development, August 1995

Western Australia

Limited data are available for Western Australia. The following occupations are registered, but no information is available about occupation registration boards. As noted in section 2.3 and Appendix B, the ORR's survey of occupation registration boards did not include Western Australia.

- Architect
- Beekeeper
- Boxing industry participant
- Boxing promoter
- Builder
- Chiropractor
- Dental therapist
- Dentist
- Hairdresser
- Medical practitioner
- Nurse
- Occupational therapist
- Optometrist
- Pharmaceutical chemist
- Physiotherapist
- Painter
- Plumber
- Podiatrist
- Professional boxer
- Psychologist
- Real estate and business sales representative
- Surveyor

Source: Stenning and Associates 1996

South Australia

Table A.4: Registered occupations and the relevant registration agency in South Australia

<i>Occupation</i>	<i>Registration Agency</i>
Apiarist	Primary Industries (SA)
Architect	Architect Board of SA
Bookmaker	Bookmakers Licensing Board
Builders and building work supervisor	Office of Consumer and Business Affairs
Chiropodists	Chiropody Board of South Australia
Chiropractor	Chiropractors Board of South Australia
Clinical dental technician	Dental Board of South Australia
Conveyancers	Commissioner for Consumer Affairs
Doorkeepers	Primary Industries (SA)
Dental hygienist	Dental Board of South Australia
Dentist	Dental Board of South Australia
Driving instructor	Department of Transport
Fire alarm (smoke and thermal) installer	SA Metropolitan Fire Service
Gas fitting worker	Office of Consumer and Business Affairs, Business & Occupational Services Branch
Land agents	Commissioner for Consumer Affairs
Legal practitioners	Supreme Court of South Australia
Medical practitioner	Medical Board of South Australia
Mine managers, quarry managers	Department of Mines & Energy
Nurse	Nurses Board of South Australia
Occupational therapist	Occupational Therapists Registration Board of SA
Optical dispenser	Optical Dispensers Registration Committee
Optometrist	Optometrist Board
Pest control operators	SA Health Commission
Pharmacist	Pharmacy Board of South Australia
Physiotherapist	Physiotherapist Board of South Australia
Plumbers/gas fitters/electrical workers	Office of Consumer and Business Affairs
Psychologist	South Australian Psychological Board
Public trainer, owner trainer	Greyhound Racing Board
Open trainer, owner trainer	Harness Racing Board
Radiographers	SA Health Commission
Security and investigation agents	Office of Consumer and Business Affairs
Sprinkler fitter registration	SA Metropolitan Fire Service
Teacher	Teachers Registration Board
Tow truck driver/operator	Department of Transport
Veterinary surgeon	Veterinary Surgeons Board of SA

Sources: Information supplied by the SA Department of the Premier and Cabinet, February 1996 & Stenning and Associates 1996

Tasmania

Table A.5: Registered occupations and the relevant registration agency in Tasmania

<i>Registered occupation</i>	<i>Agency</i>
Advanced plumber registration: sanitary or mechanical services, water or roof plumbing, draining	Plumbers and Gasfitters Registration Board
Journeyman registration: sanitary or mechanical services	Plumbers and Gasfitters Registration Board
Approved engine installer	Department of Transport
Architect	The Board of Architects of Tasmania
Auctioneer	Auctioneers and Real Estate Agents Council
Autogas installer	Tasmania Development & Resources - Industry Safety and Mines
Beekeeper	Primary Industry & Fisheries
Bookmaker	Tasmanian Racing Authority
Chiropractor/osteopath	Chiropractors Registration Board
Dangerous goods vehicle driver	Development & Resources - Industry Safety and Mines
Dental mechanic	Dental Mechanics' Registration Board
Dentist	The Dental Board of Tasmania
Electrical contractors	Hydro-Electric Commission
Legal practitioner	Supreme Court of Tasmania
Medical practitioner	Medical Council of Tasmania
Nurses	Nursing Board of Tasmania
Optometrists	Optometrists Registration Board
Pharmaceutical chemist	Pharmacy Board of Tasmania
Physiotherapist's	Physiotherapists' Registration Board
Podiatrist	Podiatrists Registration Board
Psychologist's	Psychologists Registration Board
Radiographer	Radiographers Registration Board
Real estate agent, real estate auctioneer, real estate manager, real estate sales consultant	Auctioneers and Real Estate Agents Council
Surveyor	Surveyors Board of Tasmania
Travel agent	Travel Agents Licensing Board
Valuers	Valuers Registration Board of Tasmania
Veterinarian	Primary Industry & Fisheries

Sources: Information supplied by Department of Treasury and Finance, October 1995 & Stenning and Associates 1996

Northern Territory

Table A.6: Registered occupations and the relevant registration agency in Northern Territory

<i>Occupation</i>	<i>Registration Agency</i>
Aboriginal health worker	Aboriginal Health Workers Board (NT)
Advanced tradesman, journeyman	Plumbers and Drainers Licensing Board
Agents representative	Northern Territory Attorney General's Department
Architects	NT Architects Board
Building certifier	Building Practitioners Board
Certifying structural engineer	Building Practitioners Board (NT)
Chiropractor or osteopath	Chiropractors and Osteopaths Registration Board (NT)
Dentist, dental specialist, dental therapist and hygienist	Dental Registration Board (NT)
Electrical worker	Electrical Workers & Contractors Licensing Board (NT)
General nurse, child welfare nurse, mental deficiency nurse, midwifery nurse, psychiatric nurse	Nurses Board (NT)
Legal practitioners	Legal practitioners Admission Board
Licensed surveyor	Surveyors Board of the Northern Territory
Medical practitioner	Medical Board (NT)
Occupational therapist	Occupational Therapists Registration Board (NT)
Optometrist	Optometrists Registration Board (NT)
Pharmacist	Pharmacy Registration Board of the NT
Physiotherapist	Physiotherapists Registration Board (NT)
Psychologist	Psychologists Registration Board (NT)
Radiographer	Radiographers Board (NT)
Surveyors	Surveyors Board of the NT
Veterinary surgeon	NT Veterinary Board

Sources: Information supplied by Department of Chief Minister, August 1995 & Stenning and Associates 1996

Australian Capital Territory

Table A.7: **Registered occupations and the relevant registration agency in the ACT**

<i>Occupation</i>	<i>Registration Agency</i>
Architect	Architects Board
Beekeeper	Not available
Builders	Building Electrical and Plumbing Control
Business agent	Not available
Chiropractor/osteopath	Chiropractor and Osteopath's Registration Board
Dental technician/dental prosthetist	Dental Technician & Dental Prosthetist Registration Board
Dentist/dental hygienist	Dental Technician & Dental Prosthetist Registration Board
Electricians	Building Electrical and Plumbing Control
Legal practitioners	Supreme Court of the ACT
Medical practitioner	Medical Practitioner Registration Board
Nurse	Nurses Registration Board
Optometrist	Registration Board
Pharmacist	Pharmacy Registration Board
Physiotherapist	Physiotherapist Registration Board
Plumbers, drainers & gasfitters	Plumbers, Drainers and Gasfitters Board
Printer	Not available
Real estate agent	Not available
Stock and station agent	Not available
Surveyor	Surveyors Board of the ACT
Veterinary surgeon	Veterinary Surgeons Registration Board

Sources: Information supplied by ACT Business Regulation Review Unit, November 1995 & Stenning & Associates 1996

APPENDIX B: THE ORR 1995-96 SURVEY OF REGISTRATION AGENCIES

Between December 1995 and March 1996 the Office of Regulation Review (ORR) — with the support of the various state and Territory governments — surveyed the main occupation registration agencies in each jurisdiction, with the exception of WA which joined the scheme in December 1995. The mailing lists of the occupation registering agencies were provided to the ORR by the state and territory governments.

In 1995-96, 131 agencies were sent survey forms and 98 replies were received, equal to 75 per cent of agencies surveyed. For individual jurisdictions the response rate varied from a low of 68 per cent for South Australia to a high of 90 per cent for Victoria and Queensland. Appendix C lists the agencies which responded to the survey, while Appendix D contains a copy of the survey form.

Caveats regarding data

Some caveats regarding the accuracy of this data should be noted. Several agencies contacted the ORR saying that it was administratively simpler to register an applicant from another jurisdiction under mutual recognition, rather than registering an applicant with interstate qualifications through the normal approval channels. Some of these people may have been eligible to register without mutual recognition. Indeed, some 31 of the 98 respondents registered applicants with qualifications from other states or territories under the category ‘not due to mutual recognition’ (see Table B.4 for further information). In other words, many people with interstate qualifications have registered without use of mutual recognition. This could result, in Table B.1, in a slight overestimation of the proportion of total people registering under mutual recognition

In addition, some registering agencies with large memberships did not return the survey. For example, the ORR received information on builders registration in the ACT but not from Queensland or Victoria. Therefore, while 75 per cent of agencies responded to the ORR 1995-96 survey, these agencies might register less than 75 per cent of people in registered occupations. Nevertheless, given that the survey was voluntary the overall response rate of 75 per cent was relatively high and yielded relatively robust and useful data on the impact of mutual recognition on the registration of people for other jurisdictions.

Finally, it should be noted that the numbers presented in Tables B.1 to B.6 are a minimum because not all the relevant agencies participated in the survey, and in some cases agencies did not keep records of registration under mutual recognition.

The copy of the information received from this survey will be passed onto the department responsible for mutual recognition legislation in the same state or

territory. For example, survey information from agencies in Tasmania was given (only) to the Tasmanian Department of Treasury and Finance. This is done to prevent duplication of effort by Commonwealth and relevant state or territory government agencies.

Tables B1 to B6 below present the data gathered by the ORR 1995-96 survey in an aggregated format. The ORR would have preferred to have presented the data by each occupation by jurisdiction. However, to encourage the agencies to respond to the survey, the ORR provided an undertaking to aggregate the data across jurisdictions, thus protecting the confidentiality of individual occupation registration boards. The data was aggregated across jurisdictions by occupation only when there was a sufficient response rate across all participating jurisdictions. The data was also aggregated by jurisdictions into three broad categories: two consisting of health professions and one of the non-health professions.

B.1 Survey results

B.1.1 Registrations for the period 1994-95

Table B.1 shows the survey data aggregated by occupation across the jurisdictions where registering agencies responded to the survey and kept records. It shows that in 1994-95 for occupations that are registered, approximately 9000 people registered under mutual recognition. The number of registrations made under mutual recognition ranged across the occupations from 4 to 36 per cent. An average of 15 per cent of registrations occurred under mutual recognition. Generally the health professions had a higher registration rate under mutual recognition.

Table B.2 shows the percentage of people in each occupation registering for 1994/95 with qualifications from their home state or territory, people registering under mutual recognition and people registering under mutual recognition but with conditions attached.

Table B.1: Estimate of number of people registering under mutual recognition during 1994-95, by occupation

<i>Occupation</i>	<i>Total number registering</i>	<i>Total registered under mutual recognition</i>	<i>Percentage registered under mutual recognition</i>	<i>Data sources</i>
Medical practitioners	3410	1228	36	NSW, VIC, SA, ACT & NT
Dentists	274	80	29	VIC, SA, TAS NT & ACT
Dental technicians	151	49	32	NSW, VIC, SA & ACT
Dental Prosthetists	37	21	57	NSW, Vic
Nurses	12 233	4214	34	All participating jurisdictions
Physiotherapists	995	264	27	NSW, VIC, QLD, SA, ACT & NT
Chiropractor	235	66	28	NSW, VIC, QLD, TAS, ACT & NT
Optometrist	222	68	31	NSW, VIC, QLD, SA, ACT & NT
Psychologists	954	93	10	NSW, VIC, QLD, TAS & NT
Pharmacists	408	138	34	VIC, QLD, SA, ACT, & NT
Podiatrists	84	17	20	NSW, QLD, SA & ACT
Legal Practitioners	2227	630	28	NSW, VIC, SA, TAS & ACT
Real Estate agents	2349	204	9	NSW, VIC, QLD & TAS
Valuers	314	63	20	NSW, QLD & TAS
Builders	10 532	875	8	QLD, SA & ACT
Teachers	3104	139	4	QLD & SA
Surveyors	58	12	21	NSW, VIC, QLD, ACT & NT
Others ⁽¹⁾	22 085	815	4	
Total	59 672	8976	15	-

Sources: ORR 1995-96 survey question three, Dental Board of Queensland 1995, Dental technicians and Dental Prosthetists Board of Queensland 1995, Optometrists Board of Queensland 1995

(1) includes other occupations where responses were received for only one jurisdiction and/or only a small number of people registered under mutual recognition. Data for each jurisdiction is not provided to protection confidentiality of survey responses.

Table B.2: Registrations by local and interstate qualifications for 1994-95

<i>Occupation</i>	<i>Local qualifications (%)</i>	<i>Under mutual recognition (%)</i>	<i>Conditions attached to registration under mutual recognition (%)</i>	<i>Interstate qualifications but not under mutual recognition (%)</i>
Medical practitioners ⁽¹⁾	58	36	3	3
Dentists ⁽²⁾	58	29	1	12
Nurses	59	34	0	6
Chiropractor ⁽³⁾	56	28	0	16
Physiotherapists ⁽²⁾	58	27	1	15
Pharmacists ⁽⁴⁾	58	34	0	8
Legal Practitioners ⁽⁵⁾	69	28	3	3
Mining occupations ⁽⁶⁾	63	38	27	0
Valuers ⁽⁷⁾	80	20	14	0
Builders ⁽⁸⁾	92	8	10	0
Teachers ⁽⁹⁾	91	4	0	5
Surveyors ⁽¹⁰⁾	79	21	0	0

Notes: (1) denotes no data received from Queensland and Tasmania. (2) no data from NSW and Queensland (3) no data from South Australia. (4) no data from NSW and Tasmania. (5) No data from Queensland and Northern Territory. (6) Data from NSW, Qld. and SA. Mining occupations includes mine managers, under managers, electrical engineer, mechanical engineers and open cut examiners (87 Data from Queensland, Tasmania and NSW. (8) Data from Queensland, South Australia and the ACT. (9) Data from Queensland and South Australia, the only two states which register teachers. (10) No data from Tasmania and New South Wales as the respective boards do not keep this information.

Source: Responses to the ORR 1995-96 survey question three

Table B.2 shows that most people registering in each occupation group have qualifications from the same jurisdiction. People registering with local qualifications ranged from 56 per cent for chiropractors to 92 per cent for builders. On average 70 per cent of people that were registered had their qualifications from that jurisdiction.

In participating jurisdictions, for 19 agencies the number of applicants under mutual recognition exceeded the number of applicants from their own jurisdiction. These agencies were generally in Tasmania, the ACT and the Northern Territory. Some of these less populated jurisdictions do not have education or training facilities for some registered occupations. Therefore, the

applications they receive are usually from people with interstate qualifications. Across registered occupations, few applicants had conditions attached to their registration. Across most occupations conditions were attached to registration in less than 5 per cent of cases.

Table B.3: Estimate of the number of people registering under mutual recognition for 1994-95, by jurisdiction

<i>Occupation group (1)</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>Tas.</i>	<i>ACT</i>	<i>NT(2)</i>	<i>Total</i>
Category 1 - Medical practitioners, dentists and dental technicians and prosthetists, nurses and physiotherapists	1418	697	1844	251	140	559	920	5829
Category 2 - Other health professionals eg. optometrists, podiatrists ⁽³⁾ , psychologists, chiropractors pharmacists	86	56	119	20	15	30	51	377
Category 3 - Other professions/occupations eg. surveyors, architects, teachers ⁽³⁾ , legal practitioners, valuers ⁽³⁾ , builders, plumbers, gas fitters and drainers ⁽³⁾ , electrical workers, real estate agents, mine managers ⁽³⁾	358	149	1692	128	107	320	5	2759
Others ⁽⁴⁾	-	-	-	-	-	-	-	11
Total	1862	902	3655	399	262	909	976	8976

- Notes:*
- (1) The figures for each category are a minimum as the ORR did not receive information on registrations in each occupation in each jurisdictions and some of the occupation are partially registered.
 - (2) NT has few teaching facilities for the health professions so almost all new applicants are from interstate and register under mutual recognition.
 - (3) denotes a partially registered occupation.
 - (4) includes other occupations where responses were received for only one jurisdiction and/or only a small number of people registered under mutual recognition. Data for each jurisdiction is not provided to protect confidentiality of survey responses.

Sources: ORR 1995-96 survey question three, Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995 & Optometrists Board of Queensland 1995

Table B.3 provides information on the geographical spread of people using mutual recognition. The occupations have been grouped together into three categories: two groups of health professions and one of non-health professions. It shows that movement to Queensland of people in registered occupations is greater than the other participating jurisdictions. This reflects in part internal migration from other jurisdictions to Queensland.

Table B.4: Minimum estimates of people with interstate qualifications registered, not under mutual recognition, by state/territory, for 1994-95

<i>Occupation group⁽¹⁾</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>Tas.</i>	<i>ACT</i>	<i>NT⁽²⁾</i>	<i>Total</i>
Category 1 - Medical practitioners, dentists and dental technicians and prosthetists, nurses and physiotherapists	185	118	224	189	30	52	226	1024
Category 2 - Other health professionals eg. optometrists, podiatrists ⁽³⁾ , psychologists, chiropractors and osteopaths, speech pathologists ⁽³⁾ and occupational therapist ⁽³⁾ , pharmacists	19	21	50	26	13	0	36	165
Category 3 - Other professions/occupations eg. surveyors, architects, teachers ⁽³⁾ , legal practitioners, valuers ⁽³⁾ , builders, plumbers, gas fitters and drainers ⁽³⁾ , electrical workers, real estate agents, mine managers ⁽³⁾	32	80	676	148	Nil	20	2	958
Total	236	219	950	363	43	72	264	2147

Notes: (1) the figures for each category are a minimum as the ORR did not receive information on registrations in each occupation in each jurisdictions and some of the occupation are partially registered.

(2) NT has few teaching facilities for the health professions so all new applicants are from interstate and register under mutual recognition.

(3) denotes a partially registered occupation in regards to these seven jurisdictions.

Source: Responses to the ORR 1995-96 survey, question three

Indeed, some of the less populated jurisdictions — such as Tasmania — do not have teaching institutions for some occupations. Therefore, all practitioners in these occupations qualifications from another jurisdiction. Table B.4 shows the

number of people with interstate qualifications that were registered outside of the mutual recognition scheme. It is included here for comparison with Table B.3.

B.1.2 Registrations as at June 1995

Table B.5: **People registered under mutual recognition by occupation, for certain jurisdictions, as at June 1995**

<i>Occupation</i>	<i>Total number of people registered</i>	<i>Total number of people registered under mutual recognition</i>	<i>Percentage registered under mutual recognition</i>	<i>Jurisdictions</i>
Medical practitioners	42 281	1941	5	NSW, Vic, SA, NT & ACT
Dentists	3610	61	2	NSW, Vic, SA, TAS NT & ACT
Dental technicians	1113	36	3	NSW, Vic, SA & ACT
Optometrist	2575	115	4	NSW, Vic, Qld, SA, ACT & NT
Nurses	173 120	6523	4	All participating jurisdictions
Chiropractor	2162	93	4	NSW, Vic, Qld, Tas, ACT & NT
Physiotherapists	7273	334	5	NSW, Vic, Qld, SA, NT & ACT
Psychologists	8456	144	2	NSW, Vic, Qld, Tas & NT
Pharmacists	8801	202	4	NSW, Qld, SA, ACT, & NT
Legal Practitioners	18 974	608	3	Vic, SA & ACT
Real Estate agents	10 660	506	5	NSW, Vic, Qld & Tas
Valuers	8815	175	2	NSW, Qld & Tas
Builders	71 750	1865	3	Qld, SA & ACT
Teachers	83 902	272	<1	Qld & SA
Surveyors	3811	144	4	NSW, Vic, Qld, Tas, ACT & NT

Sources: ORR 1995-96 survey question three, Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995 & Optometrists Board of Queensland 1995

The purpose of question four of the ORR 1995-96 survey was to gather information on the number and proportion of total registered people that had registered under mutual recognition by June 1995. The response to this question was lower than to question three, because some registration agencies did not keep

records. Where agencies were unable to answer this question, the total number of registrations in 1994-95 was used as an estimate of the total number of registration by June 1995. Therefore, the data provided in Tables B.5 and B.6 are likely to underestimate the number of people registered as at June 1995. Table B.5 provides information on the total number of registered people in each occupation group and the total number of people registered under mutual recognition as at June 1995.

Table B.6: Estimates of people registered under mutual recognition by state/territory, as at June 1995

<i>Occupation group</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Total</i>
Category 1 - medical practitioners, dentists and dental technicians and prosthetists, nurses and physiotherapists	2834	1099	2762	427	325	560	957	8964
Category 2 - Other health professionals eg. optometrists, podiatrists ⁽¹⁾ , psychologists, chiropractors, pharmacists	117	79	206	59	20	30	92	603
Category 3 - Other professions/occupations eg. surveyors, architects, teachers ⁽¹⁾ , legal practitioners, valuers ⁽¹⁾ , builders, plumbers, gas fitters and drainers ⁽¹⁾ , electrical workers, real estate agents, mine managers ⁽¹⁾	552	330	3688	180	6	788	83	5627
Total	3503	1508	6656	666	351	1378	1132	15 194
Percentages	23	10	43	4	2	9	7	100

Notes: (1) denotes a partially registered occupation.

Sources: ORR 1995-96 survey question three, Dental Board of Queensland 1995, Dental Technicians and Dental Prosthetists Board of Queensland 1995 & Optometrists Board of Queensland 1995

Table B.6 provides information on the total number of registered people in three aggregated occupational groups for each jurisdiction in June 1995. Table B.6 includes a larger number of occupations than those provided in Table B.5. Therefore, the total numbers of people in Table B.6 are larger than total numbers of people in Table B.5.

Table B.6 shows that by June 1995, 15 194 people had registered using mutual recognition. Given that approximately 15 200 people were registered by June 1995 and approximately 9000 registered in 1994-95, an estimated 6200 people

registered using mutual recognition between 1993 and 30 June 1994. Given that the scheme had been operating for about 2 years by June 1995, the percentage and numbers of people registered under mutual recognition is likely to continue to rise over the next decade.

B.1.3 Rejection of applications under mutual recognition

Question five of the ORR 1995-96 survey requested information on the number of applications under mutual recognition that had been rejected. For most occupation registration agencies either none — or only one — application had been rejected. Potential applicants usually contact agencies to discuss the entry requirements before formally applying for registration. At this point they are told whether they are eligible under mutual recognition. Those told they are not eligible usually do not apply for registration.

B.1.4 Record keeping by registration agencies

Some state and territory governments have requested registration agencies to keep records of applications made under mutual recognition. Nevertheless, it is unclear how many occupation registration agencies do so.

Some agencies indicated in response to the ORR's 1995-96 survey that such records were not kept. Often records were kept on the number of people approved under mutual recognition for the period 1994/95, but not for the total number of people approved under mutual recognition as at 30 June 1995. For example, 5 per cent of occupation registration agencies indicated that they could not provide information on the number of registrations made under mutual recognition for 1994/95, while 21 per cent said they could not provide information on the number of registrations made under mutual recognition as at June 1995.

B.2 General comments on mutual recognition by survey participants

The ORR 1995-96 survey — question seven — sought information about the attitudes and views of occupation registration agencies to mutual recognition. It also requested information about any practical problems agencies experienced in applying mutual recognition.

About a third of the respondents answered this question. Many respondents commented that they experienced few problems with mutual recognition, noting that it had resulted in quicker processing of applications, less paperwork and less onerous requirements for checking applicants' qualifications. By contrast, a small number said checking applicants' qualifications with boards in other jurisdictions increased their workload. In addition, they sometimes noted that proof of registration provided by other jurisdictions was inadequate.

Three agencies commented that mutual recognition could cause standards to decline to unacceptable levels. For example, agencies registering mining personnel and real estate agents said they were uncertain the applicants they registered under mutual recognition had sufficient grasp of their jurisdiction's law to be able to competently perform their work.

Legal and medical practitioner registering agencies raised the issue of overseas entrants which have been accepted into one jurisdiction then seeking to register in others under mutual recognition. For example, overseas doctors recruited specifically to work in outback NSW or Queensland hospitals seeking entry into other states/territories. Another example was three lawyers from Hong Kong registering in a smaller jurisdiction then seeking registration in NSW.

APPENDIX C: ORR 1995-96 SURVEY PARTICIPANTS

The 98 agencies which answered the survey are listed below by their jurisdiction.

New South Wales

Chiropractors and Osteopaths Registration Board

Dental Technicians Registration Board

Medical Board

Nurses Registration Board of NSW

Supreme Court

Optical Dispensers Licensing Board

Board of Optometrical Registration

NSW Physiotherapists Registration Board

Podiatrists Registration Board

Psychologists Registration Board

Board of Surveyors

Radiation Control, Environmental Protection Authority

Coal Mining Qualifications Board

Victoria

Architect Board of Victoria

Chiropodists Registration Board

Chiropractors and Osteopaths Board of Victoria

Dental Technicians Licensing Committee

Nurses Board of Victoria

Optometrists Registration Board

Physiotherapists Registration Board

Plumbers Drainers and Gasfitters Registration Board

Psychologists Registration Board of Victoria

Registered Schools Board

Law Institute of Victoria

Dental Board of Victoria

Medical Board of Victoria

Pharmacy Board of Victoria

Real Estate Agents Licensing Board

Surveyors Board (Vic)

Travel Agents Licensing Authority

Queensland

Queensland Health & Environmental Health Branch

Plumbers and Drainers Examination and Licensing Board

Board of Examiners (Mine Officials)

Electrical Workers' and Contractors' Board

Queensland Building Services Authority

Board of Nursing Studies (Qld)

Board of Teacher Registration

Psychologists Registration Board

Physiotherapists Board of Queensland

Speech Pathologists Board

Podiatrists Board of Queensland

Valuers Registration Board of Queensland

Occupational Therapists Board of Queensland

Chiropractors and Osteopaths Board of Queensland

Pharmacy Board of Queensland

Queensland Office of Gaming Regulation

Surveyors Board of Queensland

South Australia

Medical Board of South Australia

Chiropody Board of South Australia

Pharmacy Board of South Australia

Board of Examiners (legal profession)

Physiotherapists Board of South Australia

Nurses Board of South Australia

Dental Board of South Australia

Board of Examiners for Mine Mangers, Department of Mines and Energy

Radiation Protection Branch, South Australian Health Commission

Teachers Registration Board of South Australia

Department of Industrial Affairs

Optometrists Board of Registration

Registration and Licensing (for driving instructors)

Business and Occupational Services (for gas fitting workers)

Northern Territory

Physiotherapists Registration Board

Occupational Therapist Registration Board

Chiropractors and Osteopaths Registration Board

Northern Territory Architects Board

Surveyors Board of the NT

Medical Board

Radiographers Registration Board

Psychologists Registration Board

Optometrists Board

Pharmacy Board

Dental Board

Nurses Board

Australian Capital Territory

Barrister's and Solicitor's Admission Board

ACT Building Electrical and Plumbing Control

Surveyors Board of the ACT

Chiropractor and Osteopath's Registration Board (ACT)

Dentist Registration Board (ACT)

Dental Technicians and Dental Prosthetists Board of the ACT

Nurses Registration Board (ACT)

Optometrists Registration Board (ACT)

Pharmacy Registration Board (ACT)

Medical Practitioner Registration Board (ACT)

Plumbers, Drainers & Gasfitters Board of the ACT

Physiotherapists Board of the ACT.

Veterinary Surgeons Board of the ACT

Architects Board

Tasmania

Podiatrist Registration Board

Chiropractors Registration Board (Tasmania)

Valuers Registration Board of Tasmania

Dental Board of Tasmania

Auctioneers and Real Estate Agents Council of Tasmania

Law Society of Tasmania

Psychologists Registration Board

Tasmanian Radiographers Registration Board

Surveyors Board of Tasmania

Nursing Board of Tasmania

Travel Agents Licensing Board

APPENDIX D: COPY OF SURVEY FORM

A hard copy of the survey form is available from the Office of Regulation Review on request.

APPENDIX D: COPY OF SURVEY FORM

MUTUAL RECOGNITION SURVEY 1996

Fax or post to

Fax from:

Ms Tracy Gardiner

Office of Regulation Review

Fax 9 06 240 3355

Q1. What is the name of this agency?

.....
.....

Q2. Please list the broad occupation groups registered with this agency as at 30 June 1995; for example nurses, plumbers, psychologists.

.....
.....
.....
.....

For Q.3, Q.4 and Q.5, if this agency does not keep the records needed to answer any of these questions please provide best estimates and indicate the numbers estimated. If you are unable to provide best estimates please write n/av in the applicable box.

If your agency registers more than one occupation please give figures for each occupation (if available).

Q3. **How many people registered with the agency for the first time during the period 1994-95 ?**

1 July 1994
to June 1995

From your State/Territory

From other States/Territories which register this occupation
due to mutual recognition

Of these - how many people were granted registration
under mutual recognition with conditions attached

From other States/Territories which register this
occupation **not due to mutual recognition**. For example, the applicant
already met your agency's registering requirements

Total number of people

Q4. **On 30 June 1995 how many people were registered with the agency?**

As at the
30 June 1995

From your State/Territory

From other States/Territories which register this occupation
due to mutual recognition

Of these - how many people were granted registration
under mutual recognition with conditions attached

From other States/Territories which register this occupation
not due to mutual recognition, For example, the applicant
already met your agency's registering requirements

Total number of people

Q5. How many registration applications have been rejected by this agency since April 1993 (when mutual recognition legislation was adopted in Victoria)?

	<i>During 1994-95</i>	<i>As at 30 June 1995</i>
<i>From your State/Territory</i>	<input type="text"/>	<input type="text"/>
<i>From other States and Territories which register this occupation under mutual recognition.</i>	<input type="text"/>	<input type="text"/>

Q6. Where people applied to your agency to register under mutual recognition and were rejected, in your opinion what are the most common reasons for rejection. For example, one reason may be the applicants having a non equivalent occupation.

.....

.....

.....

.....

Q7. Please write any general comments or observations about the effect of mutual recognition below. If there is insufficient space please write your comments on an A4 page and attach.

.....

.....

.....

.....

Q8. Please nominate a contact person and telephone number to contact if we need to clarify any survey information.

Q9. Do you wish to receive a copy of the ORR's review of the impact of mutual recognition? Yes/No

Thank you for completing this survey.

APPENDIX E: APPLICATIONS TO THE ADMINISTRATIVE APPEALS TRIBUNAL (AAT)

The *Mutual Recognition Act 1992* provides for the Administrative Appeals Tribunal (AAT) to hear appeals regarding the decisions of occupation registration agencies. For example, the AAT can review the rejection of applications under mutual recognition by occupation registration agencies, where the basis for rejections is that the occupations are not equivalent and equivalence cannot be achieved by imposing conditions. In addition, the AAT can hear cases where parties disagree about the nature or existence of any conditions.

Table E.1 below lists the applications dealing with mutual recognition that were lodged with the AAT and their outcomes, between 1993 and mid-1996. Such applications and most other documents lodged with the Tribunal by either party in a case are public documents. The Tribunal's hearings and decisions are also publicly available.

By mid-1996 some 17 people had lodged applications with the AAT, with a significant proportion of these dealing with the occupation of legal practitioner. The cases awaiting hearings as at mid-1996 are an application against a ruling by the Registrar of the Supreme Court of NSW.

The AAT has a pre-hearing process whereby the parties concerned are brought together to discuss the case in the presence of a member of the Tribunal. Several of the applications made under mutual recognition did not proceed past this initial stage because the application was either set aside by the consent of both parties, dismissed by consent or withdrawn. The AAT does not record the reason for decisions made at the pre-hearing stage.

As at the end of May 1996 only seven cases had proceeded to the hearing stage, including the case of Mr Sande. In this case the applicant sought registration as a conveyance/solicitor in Queensland which involved two hearings by the AAT.

Table E.1 provides a summary of the cases brought before the AAT, including the date of application, occupation of the applicant, whether the case was resolved at the pre-hearing stage or heard by the AAT and the outcome of each application.

Table E.1: Summary of applications to AAT for a review of decisions concerning mutual recognition

<i>Date application lodged</i>	<i>Applicant & Respondent (occupation of applicant)</i>	<i>Was there a hearing?</i>	<i>Outcome</i>
31/05/93	Re. Mr G. R. Duncan Coal & Mining Qualifications Board	No - it was set aside by consent of the parties 30/09/93	Application for registration accepted
10/06/93	Re. Ms S. J. Currie & Coal Mining Qualifications Board	No - it was set aside by consent of the parties 03/09/93	See previous column
17/08/93	Re. Mr W. C. Pickstone & Coal Mining Qualifications Board	No- dismissed by consent or withdrawal 29/09/93	See previous column
15/11/93	Re. Mr J. C. Wearne & NSW Police Service	Yes - 27.6.94	AAT ruled applicant was not registered as a weapons trainer, as registration not required to be a weapons trainer in the ACT
12/01/94	Re. Mr P. A. Sande & Queensland Law Society	Yes - 26/07/94	AAT ruled the correct procedure for applicant was to apply to Qld Supreme Court to register as a conveyancer
26/07/94	Re. Mr R. J. Foley & Building Control Commission	No - dismissed at the request of the applicant 04/11/94	See previous column
12/08/94	Re. Mr P. A. Sande & Registrar Supreme Court of Queensland	Yes - 15/08/94	AAT ruled that conveyancer is not an equivalent occupation to a Qld solicitor The applicant appealed to the Federal Court, which rejected his appeal.
25/10/94	Re. Dr N. M. Thomas & Medical Board of SA	No - dismissed by consent or withdrawal, 07/12/94	See previous column
12/12/94	Re. Mr M. Cleary & Nurses Board of the NT	Yes - 29/4/96	AAT ruled in favour of applicant

Table E.1: Summary of applications to AAT for a review of decisions concerning mutual recognition (continued)

<i>Date application lodged</i>	<i>Applicant & Respondent (occupation of applicant)</i>	<i>Was there a hearing?</i>	<i>Outcome</i>
11/01/95	Re. Institute of Security Studies v. Queensland Police Service (Security Industry Firearms Instructor)	No - dismissed by consent or withdrawal 04/07/95	See previous column
29/03/95	Re. Mr B. A. Laurie & Crown Solicitor's Office (NSW)	Yes - 06/07/95	AAT ruled that it was 'Heard and set aside' (in favour of applicant)
31/07/95	Re. Ms E. Y. Chow & Supreme Court of NSW	No - dismissed at the request of the applicant	See previous column
31/07/95	Re. Ms J. M. Ho & Supreme Court of NSW	No - dismissed at the request of the applicant	See previous column
31/07/95	Re. Ms S. M. Wu & Supreme Court of NSW	No - dismissed at the request of the applicant	See previous column
09/10/95	Re. Mr D. Lavery & Registrar Supreme Court of Queensland	Yes - 26/4/96	AAT ruled that applicant registered in the Northern Territory could not register as a solicitor and barrister in Queensland
28/11/95	Re. Mr S. Wright & Nurses Registration Board ACT	Yes - 16-17/4/96	AAT decision in favour of applicant
16/01/96	Re. Ms F. MacDonald & Supreme Court of NSW	No - case open	See previous column
26/04/96	Ms K. M. Gardner & Supreme Court of NSW	No - case open	See previous column

Source: AAT 1994a, 1994b, 1995a, 1995b, 1996a & 1996b

As mentioned above there have been four substantial cases before the AAT. As discussed below, the decisions in these cases have clarified the scope of the *Mutual Recognition Act 1992*.

E.1 Security industry firearms instructor

The first case (*Re. Wearne and NSW Police Service 19 AAR 473*) involved the applicant who carried on the activity of a security industry firearms instructor in the ACT, providing training courses for security guards in the handling of firearms. The applicant completed a course approved by the ACT Registrar of Weapons which gave him a Dangerous Weapons Licence. The applicant also received a certificate purporting to appoint him an authorised instructor. He applied to the NSW Police to be recognised as a security industry firearms instructor under the *NSW Firearms Act 1989*. The NSW Police refused his application and the AAT upheld that decision.

The mutual recognition principle is that a person specifically registered to carry on a specific occupation in one state is to be entitled to be registered in the second state/territory to carry on the same occupation provided there is equivalence of occupation or that such equivalence is achievable through the imposition of conditions. The NSW Police argued there was no equivalence.

The Tribunal found it unnecessary to declare that the two occupations were not equivalent, holding that the business carried on by the applicant was not an occupation within the definition of the Act. The ACT Register of Weapons did not include the functions of a registry of security industry firearms instructors. The activity of the applicant was ‘not an occupation that could be carried on only by registered persons’(AAT 1994(a) para. 5, p.16). There are no licences specifically designed for a security industry firearms instructor in NSW either, though security industry firearms instructors normally hold ‘a business pistol licence’. Since there was no provision in the first and second state/territory for the specific registration of a security industry firearms instructor, then there could be no right of mutual recognition.

E.2 Conveyancer

Conveyancing is a registered occupation in some jurisdictions such as South Australia. In other states/territories — such as Queensland — it is performed solely by legal practitioners. While there are no conveyancers in Queensland, the Supreme Court of Queensland prior to 1940 had issued conveyancers practising certificates and fines were imposed for practising conveyancing without certificates. In 1940 the law was changed so that no new people could be issued with certificates although people with existing certificates were allowed to keep practising conveyancing and some continued to practice until 1986.

Evidence was presented to the AAT by a Queensland lawyer that conveyancing work made up about 30 per cent of work done by most legal firms (*Re. Sande and Queensland Law Society Incorporated 20 AAR 107*). Mr Sande is a registered conveyancer in South Australia. In December 1993 Mr Sande applied to the Queensland Law Society for registration as a conveyancer in Queensland. The Law Society refused registration upon the basis that the registration function extended only to solicitors and not to any other occupation. It could not accept the application because the occupation of conveyancer was not an equivalent occupation to that of solicitor.

In January 1994 Mr Sande applied to the AAT for review of the decision by the Law Society. In July 1994 the AAT confirmed that the Law Society is not the registration authority in relation to conveyancers. The relevant authority, the AAT held, if there were one, would be the Supreme Court of Queensland. The AAT had no jurisdiction until Mr Sande had applied to the Supreme Court of Queensland.

In the meantime, in June 1994, the Law Society issued summonses against Mr Sande and his operating company in the Southport Magistrates Court. The substance of the complaint was that he was practising as a conveyancer without appropriate registration.

In July 1994 Mr Sande applied to the Registrar of the Queensland Supreme Court for registration in Queensland as a conveyancer, pursuant to the *Mutual Recognition (Queensland) Act 1992*. A separate application was lodged with the Registrar on the same day, seeking admission as a solicitor. Both applications were refused by the Registrar on 2 August 1994. Later in August 1994 Mr Sande applied to the AAT for a review of both decisions.

In October 1994 the Law Society brought proceedings against Mr Sande which were heard in the Southport Magistrates court. Mr Sande pleaded guilty and he and his company were ordered to pay a total of \$1400 by way of fines and \$1000 in costs.

On 1 November 1994 Mr Sande and the Institute of Conveyancers applied to the Queensland Supreme Court for declarations that the occupation of conveyancer still existed in Queensland and that the local registration authority was the Registrar of the Supreme Court. The crux of Mr Sande's argument was that there was legislation underpinning the earlier issuing of conveyancing certificates prior to 1941.

In March 1995 Judge Fryberg of the Queensland Supreme Court delivered his decision that there was insufficient evidence to conclude that conveyancing was an occupation, that is a full-time activity, in the past in Queensland, rather than

just an activity performed as part of another occupation. Therefore, he could not register Mr Sande as either a solicitor or conveyancer.

In the meantime, in January 1995, the Law Society filed a summons in the (Federal) Supreme Court seeking a declaration that the occupation of conveyancer was not equivalent to that of solicitor. Judge Derrington refused to rule on the application because of the pending AAT proceedings. His Honour considered that the AAT, being the designated review body under the legislation was the appropriate forum for determining the issues which had been raised in that case.

On 31 March 1995 the Law Society issued a summons against Mr Sande in the Queensland Supreme Court for contempt of Court. In April 1995 a further summons was issued against him seeking an injunction restraining him from acting as a solicitor or conveyancer in Queensland. In June 1995 that injunction was granted.

In August 1995 the AAT handed down its decision on the rejection of Mr Sande's applications for registration as conveyancer and solicitor with the Queensland Supreme Court. In the words of the AAT decision 'the story of Mr Sande's attempts to obtain registration in Queensland as a conveyancer, or alternatively as a solicitor, is gaining epic proportions' (AAT, 1995(b) para 10, p. 5).

The AAT dealt with both issues together in its decision. The AAT decision affirmed the Queensland Supreme Court decision. A key part of the decision follows:

The mere fact that no person is currently engaged in a particular calling does not, as Fryberg J commented, necessarily indicate that no such occupation exists.

However when one looks at the legislative and actual history of conveyancers in Queensland, everything suggests that by 1990 the 'occupation' of conveyancer, if it had ever existed as a separate entity, had by then ceased to do so. Not only were there no persons registered as conveyancers by then, but the effluxion of time since the door had been closed on registration rendered it impossible, for a practical point of view, that any new registrations would ever be made. Accordingly, for the reasons given by [the Queensland Supreme Court] and for the additional reasons relating to the effluxion of time, we cannot be satisfied that there is an 'occupation, trade, profession or calling' within the meaning of the mutual recognition act in Queensland.

It follows from this finding that Mr Sande's application for registration as a conveyancer in Queensland must fail. The mutual recognition legislation is clearly predicated upon the existence of an equivalent 'occupation' in the second state. (AAT 1995(b) paras 43 & 44, pp. 16 & 17)

On Mr Sande's application for registration as a solicitor with conditions attached, so he could perform only conveyancing work, the AAT also found

against. The AAT decided that restricting Mr Sande's activities to this extent would 'render him something other than a solicitor'.

Mr Sande appealed AAT's decision to the Federal Court; the case was heard in November 1995 and the decision handed down in February 1996.

The separate decisions by the three judges upheld the AAT's ruling affirming the Queensland Supreme Court decision not to register Mr Sande as either a conveyancer or a solicitor.

Judge Davies said that the 'Act should be applied in a practical, commonsense manner, regard being had to the substance of the matter and to the substantial equivalence of occupations'. All three judges looked to the factual presence or absence of conveyancers in Queensland, notwithstanding the terms of the regulatory mechanisms in that state. Judge Davies decision said in part:

... It is fundamental that the carrying on of the occupation in the state in which registration is sought is lawful and that there is in place a system of registration of practitioners...By the end of 1987, the occupation of conveyancer had been phased out and was no longer a lawful occupation in Queensland... In my opinion, had Mr Sande applied for registration when the occupation existed in Queensland, he would have been entitled to registration, subject to there being a finding of equivalence between the occupation of a land broker in South Australia and that of a conveyancer in Queensland. (Federal Court of Australia, 1996, p. 7 & 8 Davies J decision)

Judge Lockhart in his decision points to Sections (17) and (20) of the *Mutual Recognition Act* which preserves the right of the state or territory in which the applying person seeks to practise to regulate the manner of carrying on or seeking to carry on the occupation under the law of the second state/territory. Under legislation passed in 1940 Queensland effectively brought to an end the entitlement of conveyancers to practise as a separate and distinct occupation.

To uphold the submissions of Mr Sande would be to transform the Act from one which seeks to facilitate the right of Australian's entitlement to practise in one state or territory to pursue their vocations throughout Australia without submitting themselves to examinations or obtaining qualifications required by another region, into an Act which forces the will of one state upon another, when the historical development of each has been different, in some cases profoundly different. This is not a conclusion which the Act requires. It may be that in years to come the trend to promote competition and to remove restrictive practices will produce again in Queensland a class of conveyancers. If it does, then the Act will apply, and respond accordingly. At present it is not attuned to do so. (Federal Court of Australia 1996, p.35 Lockhart J decision.)

Judge Spender in his decision said

... there is no occupation in Queensland that is the equivalent of Mr Sande's occupation of conveyancer in South Australia. In my opinion, it would be a farcical consequence of the *Mutual Recognition Act* if the only persons entitled to carry on the occupation of conveyancer in Queensland were non-Queenslanders. (Federal Court of Australia 1996, p.2 Spender J decision)

Meanwhile, according to a February 1996 Australian Financial Review article, the Law Society is seeking the jailing of Mr Sande for continuing to practise as a conveyancer.

E.3 NSW Nurse seeking registration in the Northern Territory

The applicant was registered as a nurse in NSW and applied in April 1994 to the Nurses Board of the Northern Territory (NT) seeking registration as a general nurse, mental deficiency nurse and psychiatric nurse in the Northern Territory (*Re. Cleary and Nurses Registration Board of the Northern Territory 23 AAR 239*). He was granted registration as a psychiatric nurse, but not as a general nurse or as a mental deficiency nurse.

The nursing register in the Northern Territory is compiled in a different way to the register in NSW. Until 1985, the NSW nursing register was subdivided into categories of general, psychiatric, midwifery, infants and mothercraft nurses. In 1985, the Board's legislation was changed so as to allow nurses registered in any of the previously existing categories to practise generally as a nurse throughout NSW. The NSW government was satisfied that a sufficient standard of nursing would be guaranteed by the requirements of an employer in interviewing and assessing an applicant, and in supervising him or her in their work.

The Northern Territory continues to adhere to the system which resembles that operating in NSW prior to 1985. While there is one register there are different categories which a nurse is registered under. The applicant had been registered as a psychiatric nurse in NSW prior to legislative changes in 1985. The NT Board's reason for its decision not to register the applicant as a mental deficiency nurse and psychiatric nurse was concern that doing so would mislead employers. The Board reasoned that employers would assume that someone who is registered in a particular category of nursing was qualified to work in that area.

So the central question in the case was whether the different categories of nursing had enough similarities to be considered one occupation, or whether the categories are a sufficiently different so that being qualified in one meant one

was unsuitable to practice any others. Witnesses for the applicant provided evidence supporting the proposition that:

‘... the profession, calling or occupation of registered nurse has always been regarded as one profession or calling or occupation’.

The AAT reasoned that no hospital or other medical organisation will be likely to employ a nurse in areas beyond his or her capacity or expertise. An employer selecting a candidate will be governed by these factors and work experience. The AAT also noted that all three Federal Court judges in the Sande case looked to the factual presence or absence of conveyancers in Queensland, not just the regulatory mechanisms in that state and said similar criteria applied in this case.

The AAT ruled that the applicant is entitled to be registered in the Northern Territory for the occupation of registered nurse (in terms of relevant categories), subject to a condition, to ensure equivalence, that he is not entitled to practise midwifery.

E.4 NSW Nurse seeking registration in ACT

The applicant had been registered as a general nurse in NSW since 1990 and practised as a mental health nurse (*Re. Wright and Nurses Registration Board of the ACT 23 AAR 231*). Mr Wright applied in February 1995 to the Nurses Board of the Australian Capital Territory seeking registration as a general nurse and as a mental health nurse in the ACT. He was granted registration as a general nurse, but refused registration as a mental health nurse on the basis he did not possess suitable qualifications and experience.

The format of the NSW nursing register is described in the preceding case. In the ACT there is one register but the nurses are registered specifically as a general nurse, mental health nurse or midwife under the *Nurses Act 1988 (ACT)*.

At the hearing, the respondent indicated that it was not arguing that a registered general nurse in NSW was not equivalent to a registered mental health nurse in the ACT. The respondent raised the issue that the applicant’s profession is not an occupation as defined by s4.(1) of the *Mutual Recognition Act 1992* and therefore, does not fall within the ambit of the mutual recognition principles. This was argued on the basis there was nothing in the *Nurses Act 1991(NSW)* prohibiting the activities carried out by the registered nurse from being lawfully carried out by unregistered nurses.

The senior AAT Member hearing the case found that the term ‘registered’, in the sense defined in the *Mutual Recognition Act 1992*, was applicable for example to ‘enrolled’ nurses who are not entitled to call themselves ‘registered

nurses' under the NSW Act. They are still registered for the purpose of s4(1) of the *Mutual Recognition Act 1992* in the sense of being 'licensed, approved, admitted or certificated' to practise that occupation. This Senior AAT Member disagreed with the respondent's argument and indicated that it was inconsistent with the fact the ACT Nursing Board had registered the applicant as a general nurse, stating:

Registered nurses practise their profession throughout Australia. The tasks they perform cover similar activities. It would be contrary to the spirit of the mutual recognition principles if registered nurses in any one state were excluded from participating in the mutual recognition scheme as a result of some technical interpretation or argument relating to the application of the MRA. Davies J. said in *Sande v Registrar, Supreme Court of Queensland And Anor* (1995) 134 ALR 560 at 565 'the MR Act should be applied in a practical, common sense manner..'.(AAT, 1996(b) para. 19)

The Senior Member ordered that the applicant be registered in the ACT as a mental health nurse. The applicant sought an order that his costs be paid by the respondent. The Senior Member so ordered, on the basis that:

The applicant incurred the cost of legal representation to meet a case which was quite a different case from the one which was argued before this tribunal, and one which the applicant could not reasonably have anticipated given the respondent's previous conduct. (AAT, 1996(b) para. 20)

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