

# A U S E R S ' G U I D E

## To the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA)

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## Disclaimer

The material in this Guide is provided as general information and guidance only. It is not comprehensive, and it is not legal advice. Users should refer to the relevant legislation, and should consider seeking their own legal advice in relation to their own interests and circumstances.

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# Foreword

The Australian Mutual Recognition Agreement (MRA) commenced in 1993. The Trans-Tasman Mutual Recognition Arrangement (TTMRA), which came into effect in 1998, built on, and was a natural extension, of the MRA. The fundamental purpose of mutual recognition is to promote economic integration and increased trade between participants by reducing regulatory impediments to the movement of goods and people in registered occupations across jurisdictions.

In broad terms, under the MRA, goods produced in or imported into one State or Territory, that may lawfully be sold in that State or Territory may be sold in any other State or Territory. Similarly, a person registered to practise an occupation in one State or Territory is entitled to practise an equivalent occupation in another State or Territory.

The TTMRA broadly works in the same manner. Under the TTMRA, goods produced in or imported into Australia may be sold in New Zealand and vice versa. Likewise a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand and vice versa.

The TTMRA delivers greater flexibility, wider choice and lower business compliance costs to exporters on both sides of the Tasman through mutual recognition and harmonisation of product standards. It also facilitates the free movement of people in registered occupations across the Tasman. As such, the TTMRA has been and will continue to be a central instrument in driving deeper levels of regulatory policy coordination and integration between Australia and New Zealand. It facilitates a more seamless trans-Tasman market and underscores both governments' objectives for a single economic market.

This revised Users' Guide, prepared by the Council of Australian Governments (COAG) and the New Zealand Government, is designed to assist exporters, people in registered occupations, Ministers and policy makers across Australia and in New Zealand. The Guide is intended to ensure that the benefits of the mutual recognition arrangements are fully realised and to give users a greater understanding of the practical aspects of the MRA and the TTMRA.

# Introduction

## *About this Guide*

This is a guide for the administrators of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) and for those wishing to operate under the schemes. In particular, the guide contains information to help:

- those in registered occupations who wish to seek registration under the mutual recognition schemes;
- occupational registration authorities;
- professional associations and other occupational groups;
- business operators who wish to sell goods under the scheme;
- manufacturers' associations and other business groups;
- government agencies responsible for the regulation of goods; and
- Ministerial Councils.

## *Further Information*

For further information about the operation of the mutual recognition schemes, the contacts for each of the participating governments are as follows:

### **Commonwealth – Goods**

Standards and International Liaison Section  
Department of Industry, Tourism and Resources  
20 Allara St  
CANBERRA ACT 2601  
**Phone: 02 6213 6156**

### **Commonwealth – Occupations**

National Office of Overseas Skills Recognition  
Department of Education, Science and Training  
GPO Box 9880 CANBERRA ACT 2601  
**Phone: 1800 020 086**

### **New Zealand (TTMRA only)**

Director  
Regulatory and Competition Policy Branch  
Ministry of Economic Development  
PO Box 1473  
WELLINGTON NZ  
**Phone: 0064 4 472 0030**  
**Email: TTMRA@med.govt.nz**

### **New South Wales**

Policy Manager  
Intergovernmental and Regulatory Reform Branch  
The Cabinet Office  
GPO Box 5341  
SYDNEY NSW 2001  
**Phone: 02 9228 5414**

### **Victoria**

Executive Director  
Governance, Security and Intergovernmental Relations  
Department of Premier and Cabinet  
Level 1, 1 Treasury Place  
MELBOURNE VIC 3002  
**Phone: 03 9651 0736**

### **Queensland**

Director  
Intergovernmental Relations Branch  
Department of the Premier and Cabinet  
Executive Building  
100 George Street  
BRISBANE QLD 4002  
**Phone: 07 3405 6663**

### **Western Australia (MRA only)**

Executive Director  
Office of Federal Affairs  
Department of the Premier and Cabinet  
197 St Georges Terrace  
PERTH WA 6000  
**Phone: 08 9222 9888**

### **South Australia**

Director  
Policy, Cabinet Office  
Department of Premier and Cabinet  
GPO Box 2343  
ADELAIDE SA 5001  
**Phone: 08 8226 0903**

### **Tasmania**

Assistant Director  
Economic Reform Unit  
Department of Treasury and Finance  
GPO Box 147B  
HOBART TAS 7001  
**Phone: 03 6233 3407**

### **Northern Territory**

Senior Policy Advisor  
Policy and Coordination Unit  
Department of the Chief Minister  
GPO Box 4396  
DARWIN NT 0801  
**Phone: 08 8999 5403**

### **Australian Capital Territory**

Senior Manager  
Cabinet and Executive Support  
Cabinet Office  
GPO Box 158  
CANBERRA ACT 2601  
**Phone: 02 6205 0232**

## Internet

Copies of this guide, the MRA, the TTMR and the *COAG Principles and Guidelines for National Standard Setting* are available on the Internet at [www.coag.gov.au](http://www.coag.gov.au) . Copies of the New Zealand *Guide to Preparing Regulatory Impact Statements* are available at [www.med.govt.nz](http://www.med.govt.nz) .

Copies of the Australian MR and TTMR Acts are available at [www.comlaw.gov.au](http://www.comlaw.gov.au)

Copies of the State and Territory MR and TTMR Acts are available at:

- [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) (New South Wales)
- [www.dms.dpc.vic.gov.au](http://www.dms.dpc.vic.gov.au) (Victoria)
- [www.legislation.qld.gov.au/OQPCHome.htm](http://www.legislation.qld.gov.au/OQPCHome.htm) (Queensland)
- [www.slp.wa.gov.au/statutes/swans.nsf](http://www.slp.wa.gov.au/statutes/swans.nsf) (Western Australia)
- [www.parliament.sa.gov.au/dbsearch/legsearch.htm](http://www.parliament.sa.gov.au/dbsearch/legsearch.htm) (South Australia)
- [www.thelaw.tas.gov.au/index.w3p](http://www.thelaw.tas.gov.au/index.w3p) (Tasmania)
- [www.nt.gov.au/dcm/legislation/current.shtml](http://www.nt.gov.au/dcm/legislation/current.shtml) (Northern Territory)
- [www.legislation.act.gov.au](http://www.legislation.act.gov.au) (Australian Capital Territory)

A copy of the New Zealand TTMR Act is available at [www.brookersonline.co.nz](http://www.brookersonline.co.nz)



## Part I:

# Background

### *1.1 What is the background to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA)?*

The MRA between all Australian Governments commenced operation in 1993. It was introduced in response to concerns about the level of regulatory differences across Australia and the impact this was having on business and industry operating in more than one State or Territory, and on the ability of the nation to compete in the international economy. The aim of the mutual recognition legislation was to create a national market for goods and registered occupations, establishing a regulatory environment that would encourage enterprise, enable business and industry to maximise their efficiency, and promote international competitiveness.

The TTMRA is an arrangement between the Commonwealth, State and Territory Governments of Australia (with the exception of Western Australia) and the Government of New Zealand.<sup>1</sup>

The TTMRA is built upon, and is a natural extension of, the MRA. It represents a deepening of the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)<sup>2</sup>.

The impetus for the TTMRA came from government recognition that there were regulatory impediments to trade between New Zealand and Australia. These were often in the form of:

- different standards for goods;
- duplicative testing and certification requirements; and
- different regulatory requirements for those wishing to practise in registered occupations.

The TTMRA helps to support a seamless trans-Tasman market by allowing for the free movement of goods and of people in registered occupations across the Tasman.

The benefits of the TTMRA are particularly significant where regulatory differences mainly reflect national historical or institutional arrangements, rather than the objective assessment of risks to

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<sup>1</sup> The TTMRA was signed by the Prime Minister of Australia, State Premiers and Territory Chief Ministers at the meeting of the Council of Australian Governments (COAG) on 14 June 1996 and by the Prime Minister of New Zealand on 9 July 1996. The scheme commenced operation on 1 May 1998 on the coming into force of the Trans-Tasman Mutual Recognition (TTMR) legislation in Australia and in New Zealand. In the case of an Australian State or Territory, the scheme commenced operation on the date of proclamation of relevant State or Territory TTMR legislation.

<sup>2</sup> ANZCERTA came into effect on 1 January 1983 and covers almost all aspects of the Australia-New Zealand trade and economic relationship. As well as underpinning bilateral trade in goods and services, ANZCERTA is the umbrella for close collaboration across quarantine, customs, transport, regulatory and product standards and business law issues. For further information on ANZCERTA go to [www.fta.gov.au](http://www.fta.gov.au)

public health, safety and the environment. The benefits of trade liberalisation under ANZCERTA are unable to be fully realised until such impediments are reduced or removed.

Both the MRA and the TTMRA were reviewed in 2003. Information on the review can be found in section 5.7.

## *1.2 What is the purpose of the MRA and the TTMRA?*

The purpose of the mutual recognition schemes is to give effect to two mutual recognition principles relating to the sale of goods and the registration of occupations.

Under the MRA, the two basic principles are:

- a good that may legally be sold in one State or Territory can also be sold in another, regardless of differences in standards or other sale-related regulatory requirements; and
- a person registered to practise an occupation in one State or Territory can practise an equivalent occupation in another, without the need to undergo further testing or examination.

The TTMRA extends the application of these two principles to the trans-Tasman context. This means that:

- a good that may legally be sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia, regardless of differences in standards or other sale-related regulatory requirements between Australia and New Zealand; and
- a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and a person registered to practise an occupation in New Zealand is entitled to practise an equivalent occupation in Australia, without the need to undergo further testing or examination.

The mutual recognition principle applies only to occupations for which there is some form of legislation-based approval before a person can legally practise the occupation as discussed in Part II of this Guide.

Although the two mutual recognition schemes are broadly similar, there are some differences. The TTMRA excludes certain laws and also allows for 'Special Exemptions', where participating governments have decided to further examine each country's regulatory requirements before determining whether mutual recognition principles should apply. These provisions are discussed in more detail in Part III of this Guide. Both the MRA and the TTMRA allow for Permanent Exemptions, however these are different under each agreement.

In practical terms, the mutual recognition principles mean that businesses and persons seeking to take advantage of the schemes need to decide which scheme is most appropriate to their circumstances. For example a person living in Sydney seeking mutual recognition of their registered occupation in Melbourne must apply under the MRA, whereas a similar person seeking mutual recognition of their registered occupation in New Zealand must apply under the TTMRA. Likewise, a manufacturer from New South Wales seeking to sell goods into Victoria would choose to apply the mutual recognition principles under the MRA. If the same manufacturer wanted to sell goods into New Zealand, they would seek to apply the mutual recognition principles under the TTMRA.

## *1.3 What are the expected benefits of the MRA and the TTMRA?*

The mutual recognition schemes benefit consumers, businesses and people in registered occupations by reducing or eliminating regulatory impediments to trade in goods and the movement of skilled practitioners within Australia and across the Tasman.

The benefits of mutual recognition are significant and include:

- lower costs to business and improved competitiveness, reflecting longer production runs and lower compliance costs from being able to manufacture to a single standard;
- greater choice for consumers;
- increased opportunities for Australians to work across the country, and for Australians and New Zealanders to work in each other's country;
- an impetus for all jurisdictions to consider the appropriateness of existing regulation in light of the objectives of all participating governments to remove unnecessary barriers to trade;
- greater discipline on regulators contemplating the introduction of new standards, regulations and registration requirements;
- greater cooperation between regulatory authorities; and
- through the TTMRA, greater opportunities for Australia and New Zealand to enhance their influence internationally through bodies such as the Asia-Pacific Economic Cooperation (APEC) forum.

## Part II:

# Occupations and the MRA and TTMRA

**Under the MRA:** a person who is registered to practise an occupation in one State or Territory is entitled to practise an equivalent occupation in another State or Territory, after notifying the local registration authority.

**Under the TTMRA:**

- a person who is registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand after notifying the local registration authority; and
- a person who is registered to practise an occupation in New Zealand is entitled to practise an equivalent occupation in Australia after notifying the local registration authority.

A key strategic objective of the MRA and the TTMRA is to remove barriers to the movement of people in registered occupations across the Tasman and within Australia, with the aim of developing a trans-Tasman employment market and developing a shared skills pool.

## *2.1 What is meant by the term ‘equivalent occupations’?*

In implementing the MRA and the TTMRA, governments recognise that there may be potential differences between the jurisdictional requirements for the registration of occupations, for example educational qualifications. The mutual recognition schemes therefore focus on the activities authorised to be carried out under each registration and whether or not these are substantially the same, or ‘equivalent’. Mutual recognition does not require, for example, that all practitioners’ qualifications be the same.

Equivalence can be achieved through the imposition of conditions on registration (for example, restricting registration to certain activities) by a registration authority or, on appeal, by the relevant Appeals Tribunal (see sections 2.5 to 2.7).

An example of the application of conditions to achieve equivalence is that of pest controllers under the Australian MRA. States in cooler climates do not suffer from termite problems. Pest controllers from those States, therefore, are not required to have training in, or experience with, the use of chemicals for the control of termites. To achieve equivalence between occupations, conditions have been imposed on such persons seeking registration in States that have termites such that they are not allowed to use termite control chemicals unless they have fulfilled the requirements of the States where they intend to work.

## 2.2 What occupations are covered by the MRA and the TTMRA?

The MRA and the TTMRA cover all occupations for which some form of legislation-based registration, certification, licensing, approval, admission or other form of authorisation is required by individuals in order to practise legally the occupation. No occupations are exempt from the MRA. The only occupation exempt from the TTMRA is medical practitioners. However, doctors with primary medical qualifications obtained in New Zealand are automatically granted general registration in Australia and vice-versa under separate arrangements. It is only overseas trained doctors whose registration is not mutually recognised.

## 2.3 Are any requirements relating to occupations not affected by the MRA and the TTMRA?

The MRA and the TTMRA do not affect the operation of laws that regulate **the manner of carrying on an occupation**. These laws include requirements relating to, for example, trust accounts, fees and continuing education.

However, these laws must:

- apply equally to all persons carrying on or seeking to carry on the occupation (ie they cannot be applied only to persons registered through mutual recognition); and
- not be based on the attainment or possession of some qualification or experience relating to fitness to practise the occupation. For example, it is a requirement for registration as a real estate agent in NSW that a person be a 'fit and proper person' and also that they hold certain qualifications – these requirements cannot be imposed on persons registering through mutual recognition.<sup>3</sup>

This means that mutual recognition does not affect any requirements of a jurisdiction that regulate the ongoing activities of persons registered to practise an occupation. To continue the example provided above, in NSW it is a requirement that real estate agents hold clients' funds in a trust account kept at an authorised deposit-taking institution in NSW. This requirement would apply to persons registered under mutual recognition.

## 2.4 How does a person obtain registration under the MRA or the TTMRA?

To apply for registration under MRA or the TTMRA, individuals must forward written details of their registration in their home jurisdiction to the registration board in the second jurisdiction and sign a consent form enabling the registration board to undertake reasonable investigations relating to their application.

The written notice must:

- contain the person's full personal particulars including name, address and telephone number;

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<sup>3</sup> Recognition under the MRA or the TTMRA focuses on whether or not a person is registered in their home jurisdiction – not on the requirements for registration (eg, possession of a qualification). This means that the requirements for *initial* registration in the recipient jurisdiction cannot be imposed on persons seeking registration under the MRA or TTMRA. For example, a person cannot be required to up-grade their qualifications to bring them into line with local registration requirements – unless they are required to do so to achieve equivalency of occupation.

- state the occupation for which the person is seeking registration, noting that the person is currently registered to practise an equivalent occupation and specifying all the participating jurisdictions in which the person is already registered;
- confirm that the person's existing registration is not cancelled or suspended due to disciplinary action and that the person is not the subject of any such action, or in any other way prohibited or restricted from practising the occupation;
- if applicable, specify any conditions imposed on the person's existing registration in any of the participating jurisdictions in which registration is held; and
- give consent to the registration authority to make enquiries and exchange information with other registration authorities regarding the person's existing registration.

The notice must be accompanied by a person's registration papers or include a copy and a statement certifying that the papers are authentic. The statements and other information contained in the notice must also be verified by statutory declaration. As a practical matter, registration authorities should provide individuals with an acknowledgment that the written notice has been received.

## *2.5 What happens after lodgement of a written notice seeking registration?*

Registration authorities have one month from the date of lodgement of the notice to formally grant, postpone or refuse registration. If a registration authority neither grants, postpones nor refuses registration before the expiry of the one month period, the person is entitled to immediate registration. When granted, registration takes effect from the date of lodgement of the notice. Figure 1 outlines the registration process.

### **Deemed registration**

A person is eligible for deemed registration from the date of lodgement of the notice and can carry on their occupation pending the granting or refusal of registration. A person with deemed registration may carry on their occupation as if they have been granted substantive registration subject to any conditions attached to their existing substantive registration in their original jurisdiction or to any requirements of substantive registration (for example, regarding insurance, fidelity funds and trust accounts) in the new jurisdiction.

Deemed registration occurs automatically and continues until it is cancelled, suspended or is otherwise terminated under the conditions set out in the MR Act or the TTMR Act. For example, deemed registration ends if a person is granted substantive registration or refused registration.

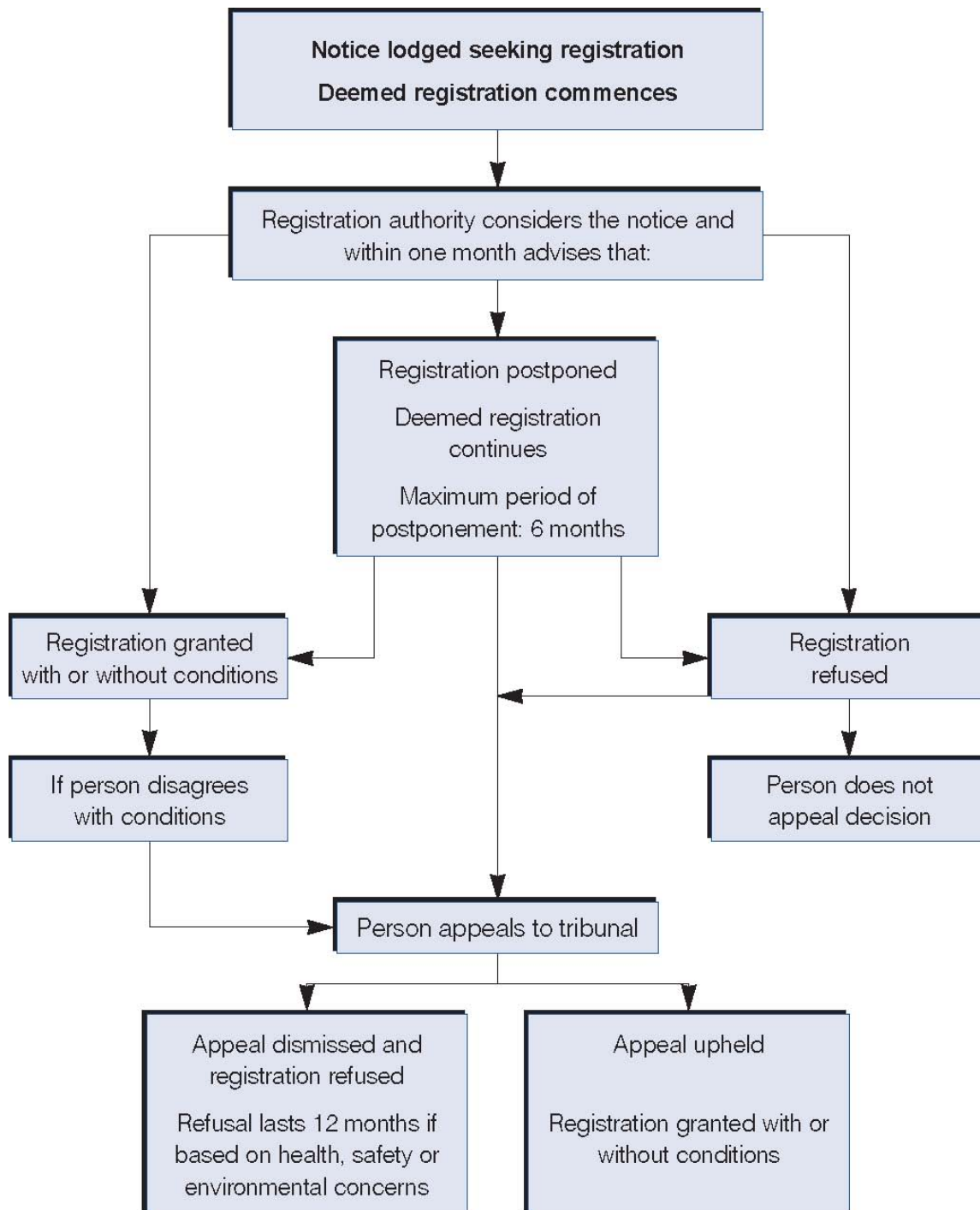
### **Substantive registration**

Substantive registration is generally granted within one month of the date that written notice seeking registration under the MRA or the TTMR Act is lodged. Registration may be renewed and, subject to the laws of the registering jurisdiction, the entitlement to registration continues whether or not the person's registration in his or her original jurisdiction ceases.

### **Imposing conditions on registration**

A registration authority may impose similar conditions on registration to any that already apply to a person's original registration or which are necessary to achieve equivalence between occupations. Individuals should be advised in writing if conditions on registration are to be imposed. The registration authority is required to advise the person of his or her right to appeal to the relevant Tribunal against the decision. The person may also seek a statement setting out the registration authority's reasons in full.

Figure 1: The registration process



### **Postponement of registration**

A registration authority can postpone the granting of registration. It must do so within one month of the date of lodgement of a notice seeking registration. A registration authority may postpone a grant of registration if:

- statements or information in the written notice are materially false or misleading;
- documents or information required to be provided have not been provided or are materially false or misleading;
- the person's circumstances have materially changed since the lodgement date; or
- the registration authority decides that the occupation for which registration is sought is not an equivalent occupation.

Postponement can apply for a maximum of six months. A person's deemed registration is not affected by a registration authority's decision to postpone the grant of registration – ie a person's deemed registration continues during the postponement.

### **Refusal of registration**

A registration authority can refuse to grant a person registration. Registration may be refused if:

- statements or information in the written notice are materially false or misleading;
- documents or information required to be provided have not been provided or are materially false or misleading; or
- the authority decides that the occupation is not an equivalent occupation and equivalence is unable to be achieved by imposing conditions or limits on registration.

Individuals should be advised in writing of any decision to refuse, postpone or impose conditions on registration. The registration authority is required to advise the person of his or her right to appeal to the relevant Tribunal against the decision. The person may also seek a statement setting out the registration authority's reasons in full. A decision to refuse registration on the grounds of lack of equivalence only does not affect a person's deemed registration for two weeks after the person has been notified of the decision.

### **Suspension or termination of registration**

If a person's initial registration is cancelled, suspended or subject to a condition on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration under the MRA or the TTMRA is affected in the same way. However, a registration body may reinstate any cancelled or suspended registration or waive any conditions if it thinks it appropriate in the circumstances.

## ***2.6 Can a decision of a registration authority be appealed?***

When notifying a person of its decision to refuse, postpone or impose conditions on registration, a registration authority must advise the person that application for review may be made to the relevant appeals tribunal. Applicants who disagree with the decision of a registration authority can seek a review of that decision.

A person appealing against a decision to refuse registration cannot practise their occupation during the appeals process, as their deemed registration ceased when the local registration authority made this decision (or two weeks after if the notice period discussed in 2.5 applies). Similarly, if the local registration authority decided to impose conditions on a person's registration, these conditions must be complied with while the appeals process is underway.

However, a person whose application has been postponed can continue to practise, as their deemed registration is not affected by the postponement.



The Australian Administrative Appeals Tribunal (AAT) hears appeals relating to decisions of Australian registration bodies made under the MRA or the TTMRA. The Trans-Tasman Occupations Tribunal hears appeals relating to decisions of New Zealand registration bodies. The Australian and New Zealand appeal tribunals are low cost review mechanisms which, wherever possible, conduct reviews with as little formality and technicality as possible.

Appeals against decisions of **Australian** registration authorities should be addressed to:

Registrar Administrative Appeals Tribunal  
Level 7  
55 Market Street  
SYDNEY NSW 2000

GPO Box 9955  
SYDNEY NSW 2001  
Phone: 02 9391 2497 Fax: 02 9267 5538

Appeals against decisions of **New Zealand** registration authorities should be addressed to:

Registrar  
Trans-Tasman Occupations Tribunal Tribunals Unit  
Ministry of Justice  
PO Box 5027  
Wellington  
NEW ZEALAND  
Phone: 0064 4 918 8300

To promote consistency between the decisions of the two tribunals, each tribunal is required to have regard to decisions made by the other.

## *2.7 What are the possible outcomes of the appeal process?*

After reviewing a decision of a registration authority, a tribunal may decide:

- that the person is entitled to registration and, if relevant, specify or describe conditions to achieve equivalence; or
- that the two occupations are not equivalent and the person is not entitled to registration.

However, in the second instance, the tribunal must be satisfied that:

- the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
- by allowing the person to practise, registration could pose a real threat to public health and safety or the environment.

Registration authorities are required to give effect to tribunal declarations and act in accordance with these declarations when considering other applications for registration. Tribunal declarations refusing the grant of registration on the basis of a threat to public health, safety or the environment have effect for 12 months. During this period, the party in whose jurisdiction the declaration applies must refer the matter to the relevant Ministerial Council to examine the registration requirements for the occupation in question and determine whether any changes to the standards applying to the occupation should be made.

## Part III:

# Goods and the MRA and TTMRA

**Under the MRA:** goods produced in or imported into one State or Territory, which may lawfully be sold in that State or Territory, may be sold in any other State or Territory.

**Under the TTMRA:**

- a good that is produced in or imported into Australia that may legally be sold in Australia may be sold in New Zealand; and
- a good that is produced in or imported into New Zealand that may legally be sold in New Zealand may be sold in Australia.

Subject to exceptions (see section 3.3), this principle applies regardless of the differences in sale-related regulatory requirements applying in participating jurisdictions. Goods need only comply with the standards or regulations applying in the jurisdiction in which they are produced or through which they are imported before they can be sold in another participating jurisdiction.

### *3.1 What laws are affected by the MRA and the TTMRA?*

Legislation implementing the MRA and the TTMRA overrides any laws, with certain exceptions (see section 3.3), that regulate the manufacture or the sale of goods. Examples of **laws overridden** by the scheme include:

- requirements relating to the production, composition, quality or performance of a good (such as **product standards**);
- requirements that a good satisfy certain standards relating to presentation (such as **packaging and labelling**);
- requirements that goods be inspected, passed or similarly dealt with (such as **conformance assessment requirements**); or
- any other requirement that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the good.

It is important to note that the mutual recognition principle applies to regulatory requirements relating to the good itself and requirements relating to and leading up to the point of sale. The scheme does not impact on post point of sale requirements, including those relating to the use of goods.

### *3.2 What laws are not affected by the MRA and the TTMRA?*

The MRA and the TTMRA do not affect the operation of any laws to the extent that they regulate:

- the **manner of sale** of goods or the manner in which sellers conduct or are required to conduct their business, so long as those laws apply equally to both locally produced and imported goods. Examples include:

- the **contractual aspects** of the sale of goods (for example, contractual arrangements between the seller and purchaser of a good);
- the **registration of sellers** or other persons carrying on occupations (for example, liquor licences);
- requirements for **business franchise licences** (for example, tobacco licences);
- the persons **to whom goods may or may not be sold** (for example, the sale of liquor to minors); and
- the **circumstances** in which goods may or may not be sold (for example, health/hygiene requirements);
- the **transportation, storage or handling of goods**, so long as those laws apply equally to both locally produced and imported goods and they are directed at matters affecting public health or safety or at preventing, minimising or regulating environmental pollution; or
- the **inspection of goods**, provided inspection is not a prerequisite to the sale of goods, the laws apply equally to both locally produced and imported goods and the laws are directed to protecting public health, safety or the environment.

In addition, the TTMRA does not affect the operation of laws prohibiting or restricting the export of goods from a participating jurisdiction.

### *3.3 Are there any goods or laws that are exempt from the MRA and the TTMRA?*

The MRA and the TTMRA contain various types of exemptions for goods and laws for which mutual recognition is not appropriate but which would otherwise be affected by the MRA and the TTMRA.

#### **Exclusions – TTMRA only**

Some laws that may indirectly relate to the sale of goods are excluded from the TTMRA. The reason for these exclusions is that, in developing the scheme, the parties identified a number of laws which could be unintentionally affected by the application of mutual recognition principles. These laws include those relating to:

- **customs controls and tariffs** – to the extent that laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing duties) and the prohibition or restriction of imports (for example, firearms);
- **intellectual property** – to the extent that laws provide for the protection of intellectual property rights;
- **taxation** – to the extent that laws provide for the imposition of taxes on the sale of locally produced and imported goods in a non-discriminatory way (for example, Goods and Services Tax (Commonwealth), Goods and Services Tax (New Zealand) and stamp duties (States and Territories)); and
- **specified international obligations** – to the extent that laws implementing those obligations deal with the requirements relating to the sale of goods.

#### **Permanent Exemptions**

Certain laws relating to the sale of goods are permanently exempt from the MRA and the TTMRA in areas where the parties considered that the application of mutual recognition principles would not be appropriate.

Laws permanently exempted from both the MRA and the TTMRA include those relating to: firearms and other offensive weapons; fireworks; the classification of publications, film and computer games; gaming machines; and pornographic material.

Laws permanently exempted from the TTMRA only include those relating to quarantine and endangered species legislation. Currently laws relating to ozone protection, agricultural and veterinary chemicals and certain risk-categorised food are also exempt from the TTMRA, but these are scheduled for reconsideration at the next review of the mutual recognition schemes. See section 5.7 for further details about reviews of the mutual recognition schemes. For further details on Permanent Exemptions see section 5.3.

### **Special Exemptions and Cooperation Programs – TTMRA only**

Special Exemptions to the TTMRA apply in a number of areas where further examination of each country's regulatory requirements was deemed desirable in order to determine the appropriateness or otherwise of allowing mutual recognition principles to operate. There has been some progress in this since the introduction of the TTMRA, with the Special Exemption for Consumer Product Safety Standards being removed.

Special Exemptions currently apply to regulatory requirements in the areas of:

- therapeutic goods;
- hazardous substances, industrial chemicals and dangerous goods;
- radiocommunications standards;
- road vehicles; and
- gas appliances.

Australia and New Zealand will continue to work together on Cooperation Programs in each of these areas with a view to developing complementary regulatory arrangements across the Tasman. Special Exemptions last for 12 months in each instance, but can be rolled over until each Cooperation Program is completed, with the agreement of two-thirds of the Heads of Government of the participating jurisdictions. For further details on Special Exemptions and Cooperation Programs see section 5.4.

### **Temporary Exemptions**

The regulatory requirements relating to certain goods or classes of goods can be temporarily exempted from the operation of the MRA and/or the TTMRA for a period of up to 12 months. If a jurisdiction considers that the standards or regulatory requirements applying to a good are such that the sale of the good could give rise to a threat to public health, safety or the environment, it may unilaterally invoke a Temporary Exemption to either the MRA, the TTMRA, or both.

Temporary Exemptions are invoked by the gazettal of a regulation by a participating party. For further details on the Temporary Exemption process see section 5.3. Guidelines on Temporary Exemptions can also be found at [www.coag.gov.au](http://www.coag.gov.au).

## Part IV:

# Roles and Responsibilities of Key Stakeholders

### *4.1 What is the role of the Council of Australian Governments (COAG) Committee on Regulatory Reform?*

The Committee on Regulatory Reform (CRR) is a standing committee of COAG made up of officials from central agencies of the Commonwealth, the States and Territories and New Zealand. On behalf of COAG, CRR has overseen the operation of both the MRA and the TTMRA and reported to Heads of Government as appropriate on the operation of the schemes.

On the recommendation of the CRR, COAG and the New Zealand Government have established a Cross-Jurisdictional Review (CJR) Forum to monitor the operation of the mutual recognition schemes and implement the findings of the 2003 review of Mutual Recognition Schemes. Forum members act as the point of contact for mutual recognition matters within their jurisdiction. The CJR Forum reports to COAG through the CRR.

The review of the mutual recognition schemes and the role of the CJR Forum are discussed in section 5.7.

### *4.2 What is the role of Ministerial Councils?*

Ministerial Councils<sup>4</sup> have an important role to play under the MRA and the TTMRA, particularly in relation to TTMRA Special Exemptions (and related Cooperation Programs) which are designed to give regulators on both sides of the Tasman time to develop regulatory outcomes that support mutual recognition or harmonisation of the respective regulatory regimes thereby facilitating trade in goods between the two countries. Ministerial Councils also have a special role in relation to the invoking of Temporary Exemptions under both the MRA and the TTMRA. Through these mechanisms, Ministerial Councils, together with the relevant regulatory authorities, may be called upon to examine the regulatory requirements applying to certain goods or occupations covered by the scheme. When TTMRA issues arise, New Zealand has full membership and voting rights on Ministerial Councils. In dealing with issues relating to the MRA and the TTMRA, Ministerial Councils operate under the authority of Heads of Government.

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<sup>4</sup> Ministerial Councils comprise Ministers from the Commonwealth, the States and Territories and in some cases New Zealand, dealing with a particular area of responsibility, for example, agriculture, health and industry. New Zealand has full membership of any Ministerial Council when it is dealing with TTMRA issues.

In order for Ministerial Councils to discharge their duties effectively, it is important that they have a clear understanding of the objectives and obligations of the MRA and the TTMRA. This is particularly the case given the key role Ministerial Councils have in supporting the objectives of the mutual recognition schemes.

Ministerial Councils should also familiarise themselves with the processes under the MRA and the TTMRA. In particular, they should be aware of the need for trans-Tasman consultation as set out in the COAG Principles and Guidelines (see section 4.4), as well as the processes to effect and roll over Temporary Exemptions and follow up procedures. Guidelines on Temporary Exemptions are available at [www.coag.gov.au](http://www.coag.gov.au). It is also important for jurisdictional mutual recognition contact points to be kept informed of Ministerial Council determinations that relate to mutual recognition and that they, in turn, in co-ordinating with regulators ensure that Ministerial Councils are informed on issues of mutual recognition.

In some instances, Ministerial Councils will decide to develop a national or trans-Tasman standard. Where this is the case, and a jurisdiction either does not intend to adopt this standard, or realises at some later point that they can no longer commit to implementing the national standard, the relevant Minister from that jurisdiction should advise the Ministerial Council of this as soon as possible. This will allow for differences to be resolved at an earlier point in the process.

### *4.3 What is the role of regulators and government departments?*

As discussed in Part 5, the mutual recognition schemes are implemented by way of overarching legislation in both Australia and New Zealand.

In order to avoid unnecessary conflicts between the objectives of the schemes and other policy objectives, policy and regulation makers need to consider the implications of the MRA and the TTMRA early in the policy development process. This includes putting in place appropriate processes for policy and regulation development, early consultation with trans-Tasman and interstate counterparts, and processes for trans-Tasman coordination. Regulation makers also need to be aware that provisions covering the use of products, while outside the scope of the mutual recognition schemes, can have significant trade implications and can, if not carefully managed, undermine the objectives of the mutual recognition schemes.

Under mutual recognition a good that can legally be sold in one jurisdiction can be legally sold in another jurisdiction without the need for further compliance testing. However, mutual recognition is being impeded by some regulators applying approval requirements as a prerequisite for offering goods for sale or as conditions of use. With regard to goods offered for sale, the mutual recognition obligations apply. With regard to provisions for use, regulators are encouraged to recognise approvals or conformity assessments made by their counterparts or accepted third-party conformity assessment bodies.

Jurisdictional mutual recognition contact points can provide advice on and assistance with addressing mutual recognition issues that may arise in the policy development process. It is therefore important to contact the jurisdictional contact points early in the process and draw to their attention any problems that may arise. Contact details for each of the participating governments' contact points are listed in the Introduction to this Guide.

#### ***4.4 How do the COAG Principles and Guidelines for National Standard Setting and Regulatory Action and the New Zealand Guide to Preparing Regulatory Impact Statements relate to the MRA and the TTMRA?***

In June 2004, COAG agreed to amend its *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies*. The *Principles and Guidelines* are a set of best-practice requirements for developing regulatory proposals and for preparing Regulatory Impact Statements on those proposals. Ministerial Councils and regulatory bodies are to use the *Principles and Guidelines* when developing regulatory requirements. Ministerial Councils and national (that is, intergovernmental) regulatory bodies involved in the development of regulatory requirements for goods and occupations under the auspices of the MRA or TTMRA must comply with the *Principles and Guidelines*. The Australian Government's Office of Regulation Review (ORR) monitors compliance and provides assistance to Ministerial Councils and regulatory bodies in relation to the *Principles and Guidelines*. A protocol exists between the ORR and its New Zealand counterpart that requires consultation with New Zealand on Regulatory Impact Statements for proposals that may have trans-Tasman implications.

A copy of the *Principles and Guidelines* can be found at [www.coag.gov.au](http://www.coag.gov.au)

In New Zealand, the Ministry of Economic Development has published a *Guide to Preparing Regulatory Impact Statements*. This Guide is currently under review with the intention to include trans-Tasman mutual recognition considerations within the New Zealand RIS framework. This will include specific guidance on identifying and managing TTMRA issues which should enable policy makers to address these early in the policy development process and ensure adequate trans-Tasman consultation.

A copy of the New Zealand *Guide to Preparing Regulatory Impact Statements* can be found at [www.med.govt.nz](http://www.med.govt.nz)

#### ***4.5 What is the role of occupational registration authorities?***

It is the duty of occupational registration authorities across Australia and New Zealand to facilitate the operation of the MRA and the TTMRA, in particular, by using their ability to impose conditions on registration in such a way as to promote mutual recognition principles. All registration authorities are required to provide guidelines and information about the operation of the MRA and the TTMRA in relation to the occupations for which they are responsible.

Registration authorities must provide, without delay, any information reasonably required by another registration authority about a person seeking registration under the MRA or the TTMRA. This obligation only applies where the authority seeking the information notifies the other authority that the information is required in connection with:

- a notice lodged by a person seeking registration under mutual recognition;
- a person's deemed registration; or
- actual or possible disciplinary action against the person.

Any information provided in these circumstances is subject to any law relating to secrecy, confidentiality or privacy in the jurisdiction of the authority receiving the information. Registration boards should aim to provide this information in a timely manner, whether by electronic or other means.

In addition, registration boards should also give consideration as to how improved information sharing may assist the needs of people in registered occupations who want to practise temporarily in another jurisdiction (such as a sports physiotherapist travelling with a sporting team), for short notice applications for registration.

Due to the paperwork and registration costs involved for individuals who need to seek registration in multiple jurisdictions, registration boards that experience frequent requests for persons to practise temporarily across jurisdictional borders are encouraged to give consideration to developing national or trans-Tasman registration systems or administrative arrangements.

Registration authorities should also look to better coordinate their approaches to ensure that requirements or standards for registration are not so divergent as to encourage jurisdiction 'shopping and hopping' – where individuals 'shop around' to find the jurisdiction with the easiest or cheapest requirements for registration and then use the MRA or TTMRA to move to their preferred jurisdiction.

It is therefore important for registration authorities to engage in early and regular consultation with their cross-jurisdictional counterparts as a means of coordinating their registration policies and to avoid and/or address issues with jurisdictional 'shopping and hopping' and to avoid creating unnecessary barriers to the movement of people across jurisdictions.



## Part V:

# Implementation and Review

### *5.1 How have the MRA and the TTMRA been implemented into law?*

All Australian Governments have implemented the MRA through legislation. They are referred to as 'participating' parties to the Agreement.

Similarly, all Australian Governments (with the exception of Western Australia) and the Government of New Zealand have enacted legislation in order to give the TTMRA the force of law in their jurisdiction. This legislation prevails over any inconsistent laws relating to the sale of goods or the registration of occupations. Jurisdictions that have passed the necessary legislation are referred to as 'participating' parties and continue to be covered by the scheme while their TTMR legislation remains in force.

### *5.2 What mechanisms are available if a registration authority has concerns about another jurisdiction's registration requirements?*

In the case of most occupations, registration requirements across Australia and in New Zealand are broadly equivalent and registration authorities have confidence in each other's requirements. However, if registration authorities have concerns about the registration requirements applying in another jurisdiction, they are urged to commence discussions with a view to resolving areas of concern.

There are two other more formal approaches to resolving concerns using mechanisms available under the MRA and the TTMRA. These are:

- refer the matter to the relevant Ministerial Council; or
- invoke a Ministerial Declaration.

#### **Referral to a Ministerial Council**

Sometimes the issue of the appropriate competency standards needed to gain registration to practise a particular occupation may arise. If the issue substantially concerns the protection of public health, safety or the environment, a participating government may refer the matter to the relevant Ministerial Council for determination (see section 4.2 for further details regarding the role of Ministerial Councils).

The Ministerial Council must endeavour to make a determination within 12 months of receiving a referral. Ministerial Council determinations require a vote in favour by not less than two-thirds of the total number of participating parties to the MRA or the TTMRA.

Ministerial Council determinations must be made in accordance with the COAG *Principles and Guidelines for Standard Setting and Regulatory Action* (see section 4.4). Determinations are to be submitted to Heads of Government for approval. Unless the determination is revoked by one third or more of Heads of Government within three months, the participating parties are required to take action to implement the determination.

## Ministerial Declarations

A Minister from two or more States or Territories (for the MRA) or a Minister from New Zealand and a Minister from at least one Australian participating jurisdiction (for the TTMRA) may jointly declare that specified occupations (in their two jurisdictions) are equivalent. They may also specify or describe conditions to achieve equivalence. Ministerial Declarations only have effect in the jurisdictions of the parties making them and prevail over any inconsistent decisions of either of the appeal tribunals.

## 5.3 How can the exclusions and exemptions to the MRA and TTMRA be amended?

### Permanent Exemptions

Both the MR Act and the TTMR Act contain a Schedule that lists those laws that are permanently exempt from each Act. Both Acts allow for permanently exempt laws to be amended or replaced providing this does not increase the scope of the exemption. For example, a permanently exempt law may be repealed and the relevant provisions included in a new Act.

### Removing or reducing a Permanent Exemption

The MRA does not have an explicit process for the removal of Permanent Exemptions, and all jurisdictions would be required to agree to an amendment to remove a Permanent Exemption being made and gazetted. Under the TTMRA, a participating party can unilaterally remove or reduce the extent of its permanently exempt laws at any time.

### Adding new Permanent Exemptions

Amendments seeking to add laws to the Permanent Exemption schedule to the MR Act or the TTMR Act require the unanimous agreement of the participating parties, unless they are laws listed in the TTMR Act's Special Exemption schedule, in which case they can be converted into Permanent Exemptions on the agreement of not less than two-thirds of the participating parties (see sections 3.3 and 5.4 for further details on Special Exemptions)

Permanent Exemptions should not be seen by regulators as an 'easy option'. Permanent Exemptions can undermine the potential benefits of the mutual recognition schemes and should not be considered until all alternative options have been exhausted or where the implementation of such a measure is the only means of protecting public health, safety and the environment. The analysis of whether or not to seek a Permanent Exemption should be based on the *COAG Principles and Guidelines for National Standard Setting and Regulatory Action* (for Australia) or *The Guide to Preparing Regulatory Impact Statement* (for New Zealand) (see section 4.4)

### Temporary Exemptions

As noted in section 3.3, a Temporary Exemption to either the MRA, TTMRA or both can be invoked **for a period of up to 12 months only** in circumstances where a jurisdiction considers that there would otherwise be a threat to public health, safety or the environment. For instance, in 2004 NSW invoked a Temporary Exemption from both the MRA and TTMRA for its summer petrol volatility regulations because petrol volatility impacts on the air quality in Sydney.

Temporary Exemptions are invoked by the gazettal of a regulation by the designated person (for example, the Governor-General, State Governor or relevant Minister) of a participating party. Temporary Exemption regulations can be made under the MR Act or the TTMR Act of the relevant jurisdiction or the specific legislation that implements the standards or regulatory requirements for which exemption is being sought. However, to enable the ongoing coordination of Temporary Exemptions, Heads of Government prefer that Temporary Exemption regulations be made under the relevant jurisdiction's MR or TTMR legislation.

Guidelines setting out the process for invoking a Temporary Exemption are available at [www.coag.gov.au](http://www.coag.gov.au) .

### Coverage of Temporary Exemptions

Temporary Exemptions apply only in the jurisdiction which invokes the exemption. However, goods from New Zealand that are temporarily exempted by an Australian jurisdiction under the TTMRA could still enter that jurisdiction through other jurisdictions participating in the MRA. Accordingly, if *all* Australian participating parties did not invoke a Temporary Exemption under the TTMRA, Australian jurisdictions seeking to use the TTMRA Temporary Exemption mechanism might also consider invoking a Temporary Exemption under the MRA. For instance, if NSW had not invoked a Temporary Exemption under the MRA as well as the TTMRA in the example given above, petrol that did not meet the NSW summer petrol volatility limits could still have been sold in NSW by virtue of the MRA.

In cases where a good being imported from New Zealand is of concern to all Australian jurisdictions, a coordinated approach to the use of the Temporary Exemption mechanism will be required. This may mean, for example, the simultaneous gazettal of a regulation invoking a Temporary Exemption by all Australian jurisdictions. This situation will only arise in relation to regulatory requirements imposed at the State and Territory level. For requirements imposed by the Commonwealth, a single regulation made by the Governor-General under the Commonwealth TTMR Act would be sufficient.

### What should be exempted?

The MRA and the TTMRA affect most regulatory requirements relating to the manufacture or sale of a good, for example, the standard of the good itself, as well as requirements relating to packaging, labelling, testing and inspection. Only the particular regulatory requirements that are of concern to the jurisdiction invoking the exemption should be covered by a Temporary Exemption regulation. Hence, a Temporary Exemption regulation should not generally refer to a specific product by name. For example, if only the labelling of the good is of concern, only provisions of the law relating to labelling should be exempted. Other regulatory requirements that are not of concern (for example, those relating to the standard of the good itself) should not be covered by the exemption. This allows the sale of goods that meet the labelling standard (thereby allaying the invoking jurisdiction's concerns on that score), while the benefits of mutual recognition can be realised in respect of other regulatory requirements applying to the good.

### Ministerial Council Determinations

As noted, a Temporary Exemption for a specific good or law may not apply for more than an aggregate maximum of 12 months. Before the exemption period expires, the relevant Ministerial Council must endeavour to determine whether the regulatory requirement subject to the exemption should be amended and, if so, what the new regulatory requirements should be. Where goods are exempted under both the MRA and the TTMRA there should ideally be a single, combined process through which the relevant Ministerial Council reaches a determination in relation to the regulatory requirements applying to the good both within Australia under the MRA and between Australia and New Zealand under the TTMRA.

As with the Special Exemption mechanism, there are three possible outcomes from a Ministerial Council determination:

- the good under examination does not pose a real threat to public health, safety or the environment and mutual recognition should be allowed to operate;
- the regulatory requirements applying to the exempt good should be harmonised or in some other way brought into alignment. For example, Ministers could agree that identical standards should apply in all jurisdictions or, alternatively, it could be agreed that the regulatory requirements applying in the jurisdiction from which the exempt goods emanate should be amended in a way that resolves the concerns that led to the invoking of the Temporary Exemption; or

- Ministers agree that the good or law in question should be exempt from the MRA and/or the TTMRA. In these circumstances, Ministers may seek the agreement of Heads of Government to have the good permanently exempted from the scheme. Application for Permanent Exemption should be made in writing from the chair of the relevant Ministerial Council to the chair of COAG (that is, the Australian Prime Minister).

Ministerial Council determinations are made by a vote in favour by not less than two-thirds of the participating parties to the MRA and/or the TTMRA. They must be made before the 12 month exemption period expires. Once a Ministerial Council has made its determination it needs to seek approval for the determination from Heads of Government. The approval of two-thirds of Heads of Government is required. However, the *active* approval of Heads of Government is not necessary – silence is taken as support after three months has expired from when the request for approval was made – jurisdictions should then take action to implement the determination as soon as practicable.

The parties have agreed that, when examining regulatory requirements and developing regulatory proposals under the Temporary Exemption mechanism, Ministerial Councils should comply with the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies* (see section 4.4). In addition, when developing regulatory proposals, Ministerial Councils should, wherever possible, align regulatory requirements with those commonly accepted in international trade.

#### **Implementation of Ministerial Council Determinations**

Ministerial Council determinations define the extent to which a good is to be covered by the scheme. For example, if Ministers were to agree that a good should meet a certain standard in order to be sold under the MRA and/or the TTMRA, then only goods meeting that standard could be sold under the scheme. However, as the Agreement/Arrangement itself (as opposed to the MR Act and the TTMR Act) is not a legal instrument, determinations also need to be given the force of law.

If, for example, Ministers were to determine that mutual recognition should continue to apply to the good, then no further action is required as the legislation will continue to apply to the good when the 12 month Temporary Exemption period expires. However, if Ministers were to agree that different regulatory requirements should apply to the exempt good, these requirements would need to be given legal effect through jurisdictions' legislation regulating the sale of the exempt good. If Ministers agree that the good should not be able to be sold under the MRA and/or the TTMRA at all, there would need to be action taken to seek an amendment to the MR and the TTMR legislation so as to add the good to the Permanent Exemption Schedule.

The MR legislation does not provide for any addition to the Temporary Exemption period beyond the 12 months. So any legislative or other action required to give legal force to a Ministerial Council determination regarding a good temporarily exempted from the MRA would need to be completed within this 12 month timeframe.

The TTMR legislation does provide for an additional 12 month period during which the mutual recognition principle would not apply to a temporarily exempt good so that legislative or other action can be taken to give legal force to a Ministerial Council determination. Agreement to the additional 12 month temporary exemption period must be obtained by a vote in favour of not less than two-thirds of the participating parties represented on the relevant Ministerial Council. Those jurisdictions affected by a Ministerial Council determination need to take whatever action is necessary in order to implement the determination before the expiry of this 12 month implementation period.

The implementation period is invoked by way of a regulation made under the Commonwealth and/or New Zealand TTMR legislation and requires the agreement of not less than two-thirds of the Heads of Government of the participating parties.

## Referrals

A participating jurisdiction may, at any time, refer the matter of the standard applicable to a good to the relevant Ministerial Council. This must be substantially for the purpose of protecting public health, safety or the environment. When a Ministerial Council receives a referral it should make a determination in respect of the standards applying to the good within 12 months. Referrals set in train Ministerial Council processes similar to those under the Temporary Exemption mechanism. The key difference is that the good to which the referral relates is not exempted from the scheme during the period in which a Ministerial Council determination is developed. Ministerial Council decisions arising out of a referral should be implemented by the relevant jurisdictions as soon as practicable.

## Exclusions – TTMRA only

As noted at section 3.3, some laws that may indirectly relate to the sale of goods are excluded from the TTMRA, including laws relating to customs controls and tariffs, intellectual property, taxation and specified international obligations.

The laws listed in the Exclusions schedule to the TTMR Act may be amended unilaterally by any party as long as the amendment merely removes or reduces the extent of one of that party's excluded laws or substitutes another of that party's laws that falls within the categories described above. The categories of laws excluded from the scheme can only be amended if all the participating parties agree.

## *5.4 How are the Special Exemptions to the TTMRA being resolved?*

As noted at section 3.3, Cooperation Programs have been established to work on resolving the issues associated with the Special Exemptions to the TTMRA.

Cooperation Programs can lead to three possible outcomes:

1. that mutual **recognition** should be allowed to operate because the regulatory requirements applying in each country for the goods in question are adequate from the point of view of protecting public health, safety or the environment;
2. that the regulatory requirements applying in each jurisdiction to the goods in question be subject to **harmonisation**, or in some other way brought into alignment. For example, Ministers could agree that identical standards should apply in both countries or, alternatively, it could be agreed that the regulatory requirements applying in each country should be brought into closer alignment. Once harmonisation or closer alignment was achieved, the mutual recognition principle would apply; or
3. that a good or certain regulatory requirement should not be able to be sold under the scheme. In these circumstances, Ministers may seek Heads of Government agreement to have the good added to the **Permanent Exemption** schedule.

In each of these cases, agreement is obtained by a vote in favour of not less than two-thirds of the participating parties represented on the relevant Ministerial Council. Permanent Exemptions are regarded as a last resort.

Because Special Exemptions must be rolled over every 12 months, annual Cooperation Reports are prepared outlining progress in relation to each Special Exemption. Three months before each 12 month Special Exemption period expires, the regulatory authorities responsible for pursuing the various Cooperation Programs must submit to Heads of Government a jointly agreed Annual Cooperation Report through the relevant Ministerial Council. The Chair of the relevant Ministerial Council should write to the Prime Minister of Australia enclosing the Cooperation Report which will then be passed on to the Heads of Government of the other participating parties. The Report should set out the progress that has been achieved over the previous year in progressing the

Cooperation Program and, if relevant, provide a justification as to why a further 12 month extension to the Special Exemption period is needed. In addition, the report should:

- list any laws or parts of laws currently on the Special Exemption Schedule which can be removed; and
- set out a timetable for the completion of the Cooperation Program.

On the basis of the progress achieved and the timetable for completion, Heads of Government decide whether a further 12 month Special Exemption period should be granted. Cooperation Reports will need to be submitted annually until the Cooperation Program is completed. When examining regulatory requirements and developing proposals under Cooperation Programs, the Parties must have regard to:

- the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies* (see section 4.4);
- international regulatory best practice; and
- the level of risk to public health and safety and the environment.

### ***5.5 What is the relationship between the TTMRA and Food Standards Australia New Zealand?***

The Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Agreement) was signed in 1995. The Agreement facilitated the establishment of the Trans-Tasman food standards setting agency now known as Food Standards Australia New Zealand (FSANZ).

FSANZ is charged with developing food standards for composition, labelling and contaminants that apply to foods produced or imported for sale in Australia and New Zealand. The Agreement states that the provisions of the TTMRA apply to food, subject to any exemptions (certain risk categorised food are exempt from the operation of the TTMRA). Work is underway to resolve the outstanding issues in relation to the high risk food products with a view to bringing these products within the scope of the TTMRA.

The CJR Forum considered the joint Food Standards Code, which came into effect in 2002, to be an effective force in promoting trade and helping to integrate the Australian and New Zealand economies.

### ***5.6 Can a jurisdiction withdraw from the MRA or the TTMRA?***

Under the MRA, a jurisdiction can terminate their involvement following any of the five-yearly reviews of the scheme.

Parties are able to withdraw from the TTMRA if they give 12 months written notice to the other participating parties. A jurisdiction wishing to withdraw must give a notice in writing to the other parties which:

- advises them of the decision to withdraw from the scheme; and
- sets out the reasons for the decision.

There is no similar provision in the MRA for a party to withdraw with 12 months notice.

## 5.7 Reviews of the MRA and the TTMRA

Both the MRA and the TTMRA require the parties to the agreements to conduct five-yearly reviews.

In October 2003 the Productivity Commission (PC) completed an evaluation of the mutual recognition schemes. The PC report found that the schemes had been effective in achieving their objectives of assisting the integration of the Australian and New Zealand economies, and promoting competitiveness. The report also found that mutual recognition has increased goods and labour mobility across jurisdictions, led to greater activity to harmonise standards of registered occupations, and reduced costs to industry. Finally, the PC report also made some suggestions for improving or extending the operation of the MRA and the TTMRA.

A copy of the PC report is available at [www.pc.gov.au/study/mra/finalreport.mra.pdf](http://www.pc.gov.au/study/mra/finalreport.mra.pdf) .

COAG and the New Zealand Government established the Cross Jurisdictional Review (CJR) Forum, consisting of senior officers from all of the participating jurisdictions, to review and provide advice on the PC findings. The CJR Forum's final report and recommendations were endorsed by COAG in September 2005. A copy is available at: [www.coag.gov.au/mra/evaluation\\_mutual\\_recognition\\_schemes.pdf](http://www.coag.gov.au/mra/evaluation_mutual_recognition_schemes.pdf) .

The key recommendations of the CJR Forum include:

- to establish an ongoing role for the CJR Forum in:
  - receiving and sharing information on mutual recognition issues as they arise;
  - considering and making recommendations on matters that may be limiting the effectiveness of the schemes; and
  - promoting broader policy discussion in areas where the schemes could be extended;
- to undertake an information/education campaign on mutual recognition to promote better awareness of the objectives and obligations of the mutual recognition schemes; and
- to put in place mechanisms which ensure mutual recognition issues are considered early in the policy design process.

The CJR Forum also made recommendations relating to improving occupational mobility and exclusions and exemptions relating to goods.

The next review of both the MRA and the TTMRA will be undertaken in 2008, in accordance with the requirement for five-yearly reviews of the schemes.