

Passed by both Houses



New South Wales

# Mutual Recognition (New South Wales) Amendment Bill 2021

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*I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.*

*Clerk of the Legislative Assembly.  
Legislative Assembly,  
Sydney,*

*, 2021*



New South Wales

## **Mutual Recognition (New South Wales) Amendment Bill 2021**

Act No \_\_\_\_\_, 2021

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An Act to amend the *Mutual Recognition (New South Wales) Act 1992* to refer certain additional matters relating to mutual recognition of occupations and goods to the Parliament of the Commonwealth for the purposes of the Constitution of the Commonwealth, section 51(xxxvii); and for related purposes.

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*I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.*

*Assistant Speaker of the Legislative Assembly.*

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Mutual Recognition (New South Wales) Amendment Act 2021*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## **Schedule 1      Amendment of Mutual Recognition (New South Wales) Act 1992 No 61**

### **[1] Section 4 Enactment of uniform mutual recognition legislation**

Omit “fixed under subsection (4)” from section 4(1).

Insert instead “provided under section 5B”.

### **[2] Section 4(4)–(6)**

Omit the subsections.

### **[3] Sections 5A–5C**

Insert after section 5—

#### **5A Reference of matters concerning amendment of Commonwealth Act**

- (1) The mutual recognition matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by making express amendments of the Commonwealth Act.
- (2) The *mutual recognition matters* are—
  - (a) the matter of providing for individuals lawfully authorised to carry on an occupation in a State to carry on the occupation in another State, and
  - (b) the matter of providing for goods that may be sold lawfully in a State to be sold lawfully in another State, whether with or without the need to comply with some or all of the applicable legal requirements of the other State.
- (3) However, subsection (2)(b) does not include the matter of providing for—
  - (a) an alteration of the process specified by the Commonwealth Act, section 47(2) and (3), as in force when this section commences, for making regulations amending the Commonwealth Act, Schedule 1 or 2, or
  - (b) the repeal or amendment of exemptions from the operation of the Commonwealth Act, Part 2, specified in the Commonwealth Act, Schedule 1 or 2.
- (4) The operation of each of section 4(1) and subsection (1) is not affected by the other subsection.
- (5) The reference of a matter under subsection (1) has effect only if and to the extent that—
  - (a) the matter is not included in the legislative powers of the Parliament of the Commonwealth otherwise than by a reference under the Constitution of the Commonwealth, section 51(xxxvii), and
  - (b) the matter is included in the legislative powers of the Parliament of the State.
- (6) To avoid doubt, it is the intention of the Parliament of the State that the Commonwealth Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this section by—
  - (a) provisions of Commonwealth Acts the operation of which are based on legislative powers that the Parliament of the Commonwealth has apart from the reference under subsection (1), and

- (b) provisions of instruments made or issued under the Commonwealth Act or under provisions referred to in paragraph (a).
- (7) Despite any other provision of this section, a reference under subsection (1) has effect for, but no longer than, the period—
- (a) beginning when this section commences, and
  - (b) ending at the end of the day fixed under section 5B as the day on which the reference is to terminate.
- (8) In this section—
- applicable legal requirements***, in relation to goods that are sold, means requirements, prohibitions, restrictions or conditions imposed by or under law that apply to the goods or their sale.
- express amendment*** of the Commonwealth Act means the direct amendment of the text of that Act, whether by the insertion, omission, repeal, substitution or relocation of words or matter, by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth Act.
- goods*** means goods of any kind, and includes animals.
- lawfully authorised***, in relation to carrying on an occupation, means to hold or have a licence, permit, certificate, registration or other form of qualification or authorisation required by or under law to carry on the occupation.
- occupation*** means an occupation, trade, profession or calling of any kind.
- sold*** includes—
- (a) sold by wholesale or retail, and
  - (b) distribution for sale or have in possession for sale, and
  - (c) agree to sell, and
  - (d) barter, and
  - (e) expose or offer for sale, and
  - (f) supply by way of exchange, lease, hire or hire-purchase.
- State***, when used in relation to a State other than New South Wales, includes a Territory.

#### **5B Termination of references**

- (1) The reference made by section 4(1)(b) is terminated on the commencement of section 5A.
- (2) The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which—
  - (a) the references made by section 4(1)(a) and 5A(1) both terminate, or
  - (b) the reference made by section 5A(1) terminates.
- (3) The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (2), in which case the revoked proclamation is taken, for the purposes of sections 4 and 5A, never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (2).
- (5) The revocation of a proclamation published under subsection (2) does not prevent publication of a further proclamation under that subsection.

**5C Effect of termination of amendment reference before other reference**

- (1) If the reference made by section 5A(1) (the *amendment reference*) terminates before the reference made by section 4(1)(a), the termination of the amendment reference does not affect—
  - (a) laws that were made under that reference before that termination, whether or not they have come into operation before that termination, or
  - (b) the continued operation in the State of the Commonwealth Act as in operation immediately before that termination or as subsequently amended or affected by—
    - (i) laws referred to in paragraph (a) that come into operation after that termination, or
    - (ii) provisions referred to in section 5A(6).
- (2) Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the reference under section 4(1)(a) is terminated.

**5D Minister required to seek exclusions for certain occupations**

- (1) The Minister must, before or no later than 1 month after section 42T of the amended Commonwealth Act commences, make a declaration using section 42T (a *temporary exclusion declaration*) to exclude each relevant occupation from the operation of automatic deemed registration.
- (2) If a temporary exclusion declaration for a relevant occupation is not revoked before the end of the initial exclusion period, the Minister must make a declaration using section 42S of the amended Commonwealth Act (a *significant risk exclusion declaration*) to continue its exclusion from the operation of automatic deemed registration.
- (3) The Minister must make further significant risk exclusion declarations for an occupation mentioned in subsection (2) each time a previous significant risk exclusion declaration for the occupation ends for a reason other than revocation.
- (4) The Minister must comply with subsections (2) and (3) before the previous declaration ends.
- (5) The Minister must consult with relevant trade unions and industry groups at least once during each 12-month period during which a significant risk exclusion declaration for a relevant occupation is in force about whether the continued exclusion of the occupation is appropriate having regard to the purpose of the amended Commonwealth Act specified by section 3 of that Act.
- (6) The Minister must not revoke a temporary exclusion declaration or significant risk exclusion declaration for a relevant occupation before it is due to end unless the Minister—
  - (a) has tabled a revocation proposal in each House of Parliament, and
  - (b) the disallowance period for the proposal has ended or all motions to disallow the proposal have been defeated.
- (7) A revocation proposal for a relevant occupation must state—
  - (a) the trade unions and industry groups the Minister has consulted about the proposal, and
  - (b) the reasons why the Minister is satisfied the end of the exclusion of the occupation from the operation of automatic deemed registration would not—

- (i) place the public at risk of harm, or
  - (ii) compromise the effective regulation of the occupation in the State.
- (8) The *Interpretation Act 1987*, sections 40 and 41 apply to a revocation proposal in the same way as they apply to a statutory rule.
- (9) This section does not limit or prevent the Minister making or revoking temporary exclusion declarations or significant risk exclusion declarations for occupations other than relevant occupations.
- (10) In this section—
  - amended Commonwealth Act*** means the Commonwealth Act as amended by the *Mutual Recognition Amendment Act 2021* of the Commonwealth, as in force from time to time.
  - automatic deemed registration*** has the same meaning as in the amended Commonwealth Act.
  - initial exclusion period*** means the period of 12 months beginning when section 42T of the amended Commonwealth Act commences.
  - relevant occupation*** means any occupation for which an individual must be lawfully authorised under a law of the State to carry on activities involving—
    - (a) teaching work, or
    - (b) electrical work, or
    - (c) mining work, or
    - (d) the work of a diesel mechanic, or
    - (e) building, maintenance or construction work, including the following—
      - (i) engineering work,
      - (ii) gasfitting work, including medical gasfitting work and medical gas technician work,
      - (iii) mechanical services and medical gas work,
      - (iv) air-conditioning work,
      - (v) the work of a refrigeration mechanic,
      - (vi) plumbing work,
      - (vii) tunnelling work,
      - (viii) welding work,
      - (ix) drilling work,
      - (x) the work of a fitter and turner,
      - (xi) the work of a shotfirer,
      - (xii) the work of a rigger or dogger,
      - (xiii) the work of a machine and heavy plant operator,
      - (xiv) fire protection work.