



New South Wales

# Mutual Recognition (New South Wales) Amendment Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

In 1992, New South Wales and Queensland (the *initial referring States*) referred the matter of the enactment of the text of a uniform mutual recognition Act to the Parliament of the Commonwealth for the purposes of the Constitution of the Commonwealth, section 51(xxxvii) (the *existing reference*).

The Commonwealth enacted the *Mutual Recognition Act 1992* of the Commonwealth (the *Commonwealth Act*) based on the references made by the initial referring States. South Australia, Tasmania, Victoria and Western Australia subsequently adopted the Commonwealth Act for the purposes of the Constitution of the Commonwealth, section 51(xxxvii). The Commonwealth Act applies to the Australian Capital Territory and the Northern Territory by virtue of the Constitution of the Commonwealth, section 122. All States and Territories are currently *participating jurisdictions* for the purposes of the Commonwealth Act.

The initial referring States and Tasmania also referred the matter of the amendment of the Commonwealth Act to the Parliament of the Commonwealth (the *existing amendment reference*).

The objects of this Bill are to amend the *Mutual Recognition (New South Wales) Act 1992* (the *NSW Act*) to—

- (a) terminate the existing amendment reference, and
- (b) replace the existing amendment reference with a new reference to enable the Commonwealth Parliament to make express amendments of the Commonwealth Act with respect to certain matters relating to the mutual recognition of occupations and goods (the *new amendment reference*).

The proposed Act will be enacted for the purposes of the Constitution of the Commonwealth, section 51(xxxvii), which enables State Parliaments to refer matters to the Commonwealth Parliament.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

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

**Schedule 1[2]** omits provisions in relation to the termination of the existing reference and the existing amendment reference and a redundant provision.

**Schedule 1[3]** provides for the following—

- (a) the new amendment reference,
- (b) the termination of the existing reference and the new amendment reference,
- (c) the consequences of terminating the new amendment reference before the existing reference.

The new amendment reference extends to the making of express amendments of the Commonwealth Act if the amendments are with respect to—

- (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 or Territory, and
- (b) the matter of providing for goods that may be sold lawfully in a State or Territory to be sold lawfully in another State or Territory, whether with or without the need to comply with some or all of the applicable legal requirements of the other State or Territory.

The new amendment reference does not affect the operation of the existing reference. The new amendment reference supports the making of express amendments of the Commonwealth Act on the condition that the amendments are within the scope of the matters referred.

The matters referred do not extend to the matter of providing for an amendment to the process of making regulations to amend the Schedules of the Commonwealth Act or the repeal or amendment of exemptions specified in the Commonwealth Act, Schedule 1 or 2. This exception is to ensure that the existing process for the making of regulations to amend the Schedules to the Commonwealth Act is retained. The repeal or amendment of the exemptions specified in the Schedules must be by regulations made by the Governor-General and supported by a request from each jurisdiction that is a participating jurisdiction at the time of the repeal or amendment.

The separate termination of the period of the new amendment reference does not affect laws already in place. Accordingly, the new amendment reference continues to have effect to support those laws unless the period of the existing reference is also terminated.

**Schedule 1[1]** makes a consequential amendment.