

First print



New South Wales

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

Explanatory note

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

Overview of Bill

General

This Bill consists of a series of clauses together with a Schedule that contains a proposed Commonwealth Act.

The object of this Bill is to enable the enactment of legislation (in the form of the proposed Commonwealth Act) applying uniformly throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations.

The Northern Territory and the Australian Capital Territory are treated as States for the purposes of this explanatory note, and accordingly references to a State extend to either Territory.

Overall legislative scheme

The Bill forms part of a larger legislative scheme that involves the enactment of Bills by the States, the Commonwealth and New Zealand. The larger legislative scheme has two components:

- an Australian component, and
- a New Zealand component.

This Bill is concerned with the Australian component of this larger legislative scheme. It provides or contributes to the legislative power for the enactment of the proposed Commonwealth Act.

The *Trans-Tasman Mutual Recognition Bill 1996* of New Zealand is concerned with the New Zealand component of this total legislative scheme. That Bill was introduced into the Parliament of New Zealand on 18 July 1996.

Background

The Trans-Tasman Mutual Recognition Arrangement was signed by the Commonwealth and the States on 14 June 1996 and by New Zealand on 9 July 1996.

The purpose of the Arrangement is to give effect to a scheme implementing mutual recognition principles between the parties relating to the sale of goods and the registration of occupations, consistent with the protection of public health and safety and the environment.

The objective of the Arrangement is to remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand, and to thereby facilitate trade between the two countries.

The Arrangement recognises that it builds on, and is a natural extension of, the 1992 Mutual Recognition Agreement between the Commonwealth and the States. The Arrangement states that, as far as possible, the mutual recognition scheme contemplated by the 1996 Arrangement should be consistent with the scheme established by the 1992 Mutual Recognition Agreement.

The 1992 Mutual Recognition Agreement was the basis for a scheme for legislation applying uniformly throughout Australia for the mutual recognition by the States of each other's differing regulatory standards regarding goods and occupations. The *Mutual Recognition Act 1992* of the Commonwealth was enacted as the result of State legislation. In the case of New South Wales, power was given for the enactment of the Act by the *Mutual Recognition (New South Wales) Act 1992*.

The scheme contemplated by the 1996 Arrangement is similar to the scheme under the 1992 Agreement in many respects. However, whereas the 1992 scheme principally affects the States, the 1996 scheme affects the Commonwealth and New Zealand as well as the States.

The terms of the proposed Commonwealth Act are based on and similar to the *Mutual Recognition Act 1992*.

Policy result to be achieved by the Commonwealth, State and New Zealand Bills (the overall legislative package)

The Commonwealth, State and New Zealand Bills will implement the 1996 Trans-Tasman Mutual Recognition Arrangement. The Arrangement is based on two key principles in relation to goods and occupations:

- (a) if goods may be legally sold in New Zealand they may be sold in an Australian jurisdiction, and vice versa, and
- (b) if a person is registered to practise an occupation in New Zealand, he or she will be entitled to practise an equivalent occupation in an Australian jurisdiction, and vice versa.

The State Bill

This Bill refers to the Parliament of the Commonwealth under paragraph (xxxvii) of section 51 of the Commonwealth Constitution the power to enact an Act in the terms, or substantially in the terms, set out in the Schedule to the Bill.

The proposed Schedule contains a Bill for a Commonwealth Act with the short title of the *Trans-Tasman Mutual Recognition Act 1996*. Amendment of the proposed Commonwealth Act is not referred to the Commonwealth. However, Schedules 1–4 to the proposed Commonwealth Act will be able to be amended by regulations in accordance with the proposed Commonwealth Act.

The referral of power to the Commonwealth may be terminated by the Governor by proclamation, but only after the period of 5 years after the commencement of the proposed Commonwealth Act.

The citation of the proposed Commonwealth Act will be able to be changed to include “1997” in the event that the Commonwealth Bill does not complete its parliamentary passage in 1996, as the Commonwealth Bill would still be “substantially in the terms” set out in the Schedule to the State Bill.

The Commonwealth Bill

The Commonwealth Bill set out in the State Bill gives effect to the two key principles in relation to goods and occupations within Australia:

- (a) if goods may be legally sold in New Zealand they may be sold in an Australian jurisdiction, and
- (b) if a person is registered to practise an occupation in New Zealand, he or she will be entitled to practise an equivalent occupation in an Australian jurisdiction.

The Commonwealth Bill provides the mechanics for recognising these principles. The Schedules to the Commonwealth Bill detail exemptions and exclusions in relation to laws, goods and occupations and also provide for privacy of information collected under the proposed Commonwealth Act.

Legislative result to be achieved by the Commonwealth and State Bills

The new national scheme for mutual recognition will involve at least one State enacting legislation referring or requesting the enactment of a Mutual Recognition Act to the Parliament of the Commonwealth. The Commonwealth Parliament will then enact the *Trans-Tasman Mutual Recognition Act 1996* in substantially the same terms as those set out in the proposed State Act.

The *Trans-Tasman Mutual Recognition Act 1996* of the Commonwealth will apply to those States that:

- refer power to enact the Commonwealth Act or request enactment of it, or
- adopt the Commonwealth Act afterwards (under paragraph (xxxvii) of section 51 of the Commonwealth Constitution).

The Commonwealth Act will provide a comprehensive scheme for mutual recognition in relation to New Zealand goods and occupations, which will operate independently of other State laws and therefore will not require modification of those laws to enable its implementation. This is achieved through section 109 of the Commonwealth Constitution, which provides that a Commonwealth Act prevails over a State Act to the extent of any inconsistency.

Outline of provisions

State Bill

Clause 1 sets out the name (also called the short title) of the proposed Act, as well as the purpose of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day to be appointed by proclamation of the Governor.

Clause 3 defines *the Commonwealth Act* to mean the Act to be enacted by the Parliament of the Commonwealth as referred to in clause 4.

Clause 4 refers power to enact the Bill set out in the Schedule to the State Bill. The clause does so by referring certain matters to the Parliament of the Commonwealth. The matters are those to which the Schedule relates, but only to the extent of the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule to the State Bill. The referral of those matters has effect from the commencement of the State Act until a day (occurring at least 5 years after the commencement of the Commonwealth Act) fixed by the Governor by proclamation.

Clause 5 enables the Governor to make regulations for the purposes of section 46 of the proposed Commonwealth Act (Temporary exemptions).

Commonwealth Bill

Part 1—Preliminary

Clause 1 provides for the proposed Act to be cited as the *Trans-Tasman Mutual Recognition Act 1996*.

Clause 2 provides for Part 1 of the proposed Act to commence when the Act receives the Royal Assent. The remaining provisions of the Act are to commence on a day or days to be fixed by Proclamation of the Governor-General.

Clause 3 sets out the principal purpose of the proposed Act, which is to enact legislation for the purpose of recognising within Australia regulatory standards adopted in New Zealand regarding goods and occupations.

Clause 4 contains definitions of expressions used in the proposed Act. In particular:

- (a) *goods* means goods of any kind (including animals, plants, material of microbial origin, a package containing goods, and a label attached to goods), and

Explanatory note

- (b) **local registration authority** of a participating jurisdiction for an occupation means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with their carrying on that occupation in the jurisdiction, and
- (c) **occupation** means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted, and
- (d) **participating jurisdiction** refers to clause 50, and covers New Zealand, the Commonwealth, or a State while the State has the appropriate legislation in force to give effect to the scheme.

This clause also states that a law specified in a Schedule to the proposed Act includes any regulations or other statutory instruments under the law and amendments to the law, unless the Schedule states otherwise.

Clause 5 states that the proposed Act does not affect the operation of any other law of the Commonwealth, and generally does not affect the operation of the *Mutual Recognition Act 1992* of the Commonwealth.

Clause 6 provides that the proposed Act applies to a State while it is a participating jurisdiction and does not affect the operation of a law of the State so far as it can operate concurrently with the proposed Act.

Clause 7 states that the Governor-General may declare by Proclamation that the Act will cease to have effect on a specified day if New Zealand is or will become a non-participating jurisdiction.

Clause 8 states that the proposed Act binds the Crown in right of the Commonwealth and of each of the States (while a participating jurisdiction).

Part 2—Goods

Clause 9 states that the mutual recognition principle in relation to goods is as set out in this Part. The Part deals with goods produced in or imported into New Zealand and their sale in Australia.

Clause 10 provides that goods produced in or imported into New Zealand that may lawfully be sold in New Zealand may be sold in an Australian jurisdiction without the need to comply with the requirements set out in clause 11 (Requirements that do not need to be complied with).

Clause 11 specifies the requirements relating to sale that are imposed by an Australian jurisdiction and that do not need to be complied with. Those requirements are as follows:

- (a) requirements relating to the goods themselves, for example, requirements relating to their production, composition, quality or performance,
- (b) requirements relating to the way the goods are presented, for example, requirements relating to their packaging, labelling, date stamping or age,
- (c) requirements that the goods be inspected, passed or similarly dealt with in or for the purposes of the jurisdiction,
- (d) requirements that any step in the production of the goods not occur outside the jurisdiction,
- (e) any other requirements relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the jurisdiction.

Clause 12 contains exceptions to the mutual recognition principle. The principle does not affect the operation of any laws of an Australian jurisdiction, so long as those laws apply equally to goods produced in or imported into the Australian jurisdiction and are laws which fall into one of the following three classes:

- (a) laws that regulate the manner of sale of goods or the manner in which sellers conduct their business in the jurisdiction (examples include laws relating to contractual aspects of the sale of goods, registration of sellers or other persons carrying on occupations, requirement for business franchise licences, the persons to whom, and the circumstances in which, goods may or may not be sold),
- (b) laws that relate to the transportation, storage or handling of goods and are directed at matters affecting the health and safety of persons within the jurisdiction or at environmental pollution matters,
- (c) laws that relate to the inspection of goods (other than laws providing that inspection is a prerequisite to the sale of the goods in the jurisdiction) and are directed at matters affecting the health and safety of persons within the jurisdiction or at environmental pollution matters.

Clause 13 provides that it is a defence to a prosecution for an offence against sale of goods laws in an Australian jurisdiction if a person claims that the mutual recognition principle applies and establishes that the goods concerned were labelled at the point of sale with a statement that they were produced in or imported into New Zealand and also establishes that the person had no reasonable grounds for suspecting that the goods were not so produced or imported. The defence cannot be used if the prosecution proves that the mutual recognition principle did not apply in the particular case (because for example the laws did not comply with requirements imposed by the law of New Zealand).

Clause 14 provides that nothing prevents goods from being sold in an Australian jurisdiction if they comply with the law of the jurisdiction in which they are sold.

Part 3—Occupations

Division 1—Preliminary

Clause 15 states that the mutual recognition principle as applying to occupations is as set out in this Part. The Part deals with the ability of a person who is registered in connection with an occupation in New Zealand to carry on an equivalent occupation in Australia.

Clause 16 provides that a person who is registered in New Zealand for an occupation is entitled to be registered for an equivalent occupation in an Australian jurisdiction after notifying the local registration authority in the Australian jurisdiction. Pending registration, the person may carry on the equivalent occupation in the Australian jurisdiction. The mutual recognition principle does not affect the operation of laws that affect the manner of carrying on an occupation in the Australian jurisdiction so long as those laws apply equally to all persons seeking to carry on the occupation or carrying it on and are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

Clause 17 deals with aspects of how the Part applies. It applies to individuals and occupations carried on by them. It extends to each system of registration for an occupation in cases where more than one such system is involved (for example, admission as a legal practitioner by a court and issue of a practising certificate by another body).

Division 2—Entitlement to registration

Clause 18 enables a person who is registered in New Zealand for an occupation to lodge written notice with the local registration authority of an Australian jurisdiction seeking registration in an equivalent occupation. The clause specifies certain matters that must be contained in the notice and requires the notice to be accompanied by documentary evidence or information as to the person's existing registration.

Clause 19 provides that once a person lodges a notice under clause 18 (Notification to local registration authority) in an Australian jurisdiction the person is entitled to be registered in the equivalent occupation and the entitlement continues (even if the registration in New Zealand ceases) so as to enable renewal of registration in the Australian jurisdiction. Continuance of registration is otherwise subject to the law of the Australian jurisdiction. The local registration authority of the Australian jurisdiction cannot impose conditions on registration that are more onerous than would be imposed in similar circumstances (having regard to qualifications and experience) unless they are conditions that apply to the person's registration in New Zealand or that are necessary to achieve equivalence of occupations. The clause states that it has effect subject to the Part (for example, clause 32—Disciplinary action).

Clause 20 provides that registration must be granted within one month of lodging a notice under clause 18 and when granted takes effect from the date of lodgment of that notice. Within that month the local registration authority may postpone or refuse the grant of registration. If the registration authority does neither within that month, registration is automatic at the end of that month.

Clause 21 specifies the circumstances in which the local registration authority of the Australian jurisdiction may postpone registration. The postponement may not extend beyond 6 months and if it does registration is automatic at the end of that 6-month period unless registration was refused at or before the end of that period. Earlier registration may be granted on a review by the Administrative Appeals Tribunal of the Commonwealth.

Clause 22 specifies the grounds on which the local registration authority of the Australian jurisdiction may refuse registration. Those grounds are that a statement or information in the notice under clause 18, or documentary evidence or information provided as to existing registration, is materially false or misleading or that the registration sought is not for an equivalent occupation and equivalence cannot be achieved by imposing conditions. A

Explanatory note

decision to refuse to grant registration on the ground that an occupation is not an equivalent occupation takes effect at the end of a specified period of not less than two weeks after the person concerned has been notified unless it has been previously revoked or an application for review made to the Administrative Appeals Tribunal. On such an application, the Tribunal may make whatever orders it considers appropriate.

Clause 23 requires a local registration authority to give notice in writing of its decision as to registration.

Division 3—Interim arrangements

Clause 24 provides that pending determination of a notice under clause 18 the person lodging the notice has *deemed registration*. Deemed registration does not of itself provide a basis for registration in another Australian jurisdiction.

Clause 25 deals with the duration of a person's deemed registration. It ceases when the person is registered by the local registration authority of an Australian jurisdiction, or if that authority refuses registration, or if substantive registration in every other participating jurisdiction ceases. It may be cancelled or suspended in accordance with this Part and is not affected by postponement of the grant of substantive registration.

Clause 26 enables a person with deemed registration in an Australian jurisdiction to carry on the equivalent occupation in the jurisdiction but subject to certain limitations. Those limitations include the limits conferred by the person's substantive registration in New Zealand as well as by the person's deemed registration.

Division 4—Equivalent occupations

Clause 27 states that the equivalence of occupations carried on in different participating jurisdictions is to be determined in accordance with this Part.

Clause 28 provides that occupations for which persons may be registered in New Zealand are to be taken as equivalent if the activities authorised under the registration for the occupation in an Australian jurisdiction are substantially the same. This equivalence may be achieved by the imposition of conditions.

Clause 29 provides that this Part is to be given effect to in accordance with relevant declarations under this Division regarding equivalent occupations. If an inconsistency arises between a declaration of the Administrative Appeals

Tribunal (see clause 30) and a declaration of Ministers (see clause 31), the ministerial declaration prevails. A declaration does not affect the registration of a person already registered unless it is made by the Administrative Appeals Tribunal in relation to that person specifically.

Clause 30 enables the Administrative Appeals Tribunal to make an order, on a review of a decision of a local registration authority under the proposed Act, that a person registered in an occupation in New Zealand is or is not entitled to registration in an Australian jurisdiction in a particular occupation. On such a review, the Administrative Appeals Tribunal may also specify conditions that will achieve equivalence and may make a declaration that occupations carried on in New Zealand and in an Australian jurisdiction are not equivalent if it is satisfied as to certain matters. Such declarations must be published and notified to appropriate authorities in other participating jurisdictions. The local registration authority must give effect to the decision on the review.

Clause 31 enables a Minister from New Zealand and a Minister from one or more Australian jurisdictions to declare jointly that specified occupations are equivalent and to specify conditions that will achieve equivalence. Such a declaration has effect only in relation to the participating jurisdictions concerned and must be given effect to by the appropriate local registration authorities.

Division 5—General provisions

Clause 32 provides that if a person's registration in an occupation in New Zealand is cancelled or suspended, or subject to a condition, on disciplinary grounds or as a result of or in anticipation of criminal, civil or disciplinary proceedings, the person's registration in an equivalent occupation in an Australian jurisdiction is affected in the same way (whether or not the registration was effected under the proposed Act). The local registration authority of the Australian jurisdiction may in such cases reinstate the registration or waive conditions if it thinks it appropriate.

Clause 33 allows a person to apply to the Administrative Appeals Tribunal for review of a decision of a local registration authority under the proposed Act.

Clause 34 empowers the Administrative Appeals Tribunal to order a party in proceedings to pay costs if the party has acted unreasonably.

Clause 35 provides for consistency of decisions made by the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal of New Zealand.

Explanatory note

Clause 36 states that residence or domicile is not to be a prerequisite or factor in a person's entitlement to registration under the proposed Act.

Clause 37 requires a local registration authority of an Australian jurisdiction to promptly furnish information about a person registered in that jurisdiction reasonably required by a local registration authority of another participating jurisdiction. The request for information must be in connection with the seeking of registration by the person in the jurisdiction, the person's deemed registration, or actual or possible disciplinary action against the person. The information may be furnished despite any law relating to secrecy, confidentiality or privacy.

Clause 38 provides that once information is received by a local registration authority under clause 37 the information is subject to any law relating to secrecy, confidentiality or privacy applicable to information provided under the law of the jurisdiction under which that authority is constituted or exercises its functions.

Clause 39 sets out the general duties of local registration authorities under the proposed Act. They must facilitate the operation of this Part in relation to the relevant occupations and make use of the power to impose conditions in such a way as to promote the mutual recognition principle. They must prepare guidelines and information as to the operation of this Part. Such guidelines and information are to be available within six months of the commencement of the clause. The clause also requires local registration authorities to have regard to the privacy principles set out in Schedule 5. The principles do not create separately enforceable rights or duties.

Clause 40 enables a local registration authority of an Australian jurisdiction to impose fees in connection with registration under the proposed Act but not fees greater than those imposed for registration apart from the proposed Act. The authority may impose a condition on substantive or deemed registration that a person may not carry out activities authorised by the registration until the fees have been paid.

Clause 41 provides that registration or entitlement to registration under this Part does not require compliance with any requirements as to personal attendance in the relevant Australian jurisdiction.

Clause 42 states that nothing prevents a person from seeking registration in an occupation apart from the Act.

Part 4—Exclusions and exemptions

Clause 43 is a definitional clause, and provides that for the purposes of this Part a jurisdiction endorses a regulation by publishing a notice in the Gazette of that jurisdiction. However, a recommendation by a Commonwealth Minister to the Governor-General for a regulation amounts to endorsement of it by the Commonwealth.

Clause 44 provides for the exclusion from the proposed Act of laws of an Australian jurisdiction to the extent set out in Schedule 1 (Exclusions). The Governor-General may make regulations amending Schedule 1 but all participating jurisdictions must endorse the regulation, unless the regulation merely omits or reduces the effect of a law as set out in Schedule 1 or adds a consistent law of a State to the Schedule (in which case only the endorsement of the State is needed).

Clause 45 provides for the permanent exemption from the proposed Act of laws of an Australian jurisdiction to the extent set out in Schedule 2 (Permanent exemptions). The Governor-General may make regulations amending Schedule 2. Any such regulation must be made with the endorsement of all participating jurisdictions. However, that requirement does not apply to a regulation that merely omits or reduces the extent of an exemption from the law of a State (in which case only the endorsement of the State is needed).

Clause 46 provides for the temporary exemption from the proposed Act of the sale of particular goods in an Australian jurisdiction or of laws of Australian jurisdiction relating to particular goods. Such exemptions only have effect if they are substantially for the protection of the health and safety of persons within the jurisdiction or directed at environmental pollution matters. The exemption only has effect for 12 months (either continuously or as an aggregate).

Clause 47 provides for a continuation of temporary exemptions referred to in clause 46. The purpose of the clause is to create a mechanism to provide an additional period not exceeding 12 months for legislative or other action to be taken to implement a ministerial agreement arising out of consideration (generally in the context of a ministerial council) of an exemption under clause 46. The Governor-General may make regulations for the purposes of this clause if they have the effect of continuing or reviving the effect of an exemption, with or without modification. However, endorsement of at least two-thirds of the participating jurisdictions is required before the regulation may be made. An exemption under this clause (together with the period of any previous exemption) can only operate for 12 months (either continuously or as an aggregate).

Clause 48 provides for the special exemption from the proposed Act of laws of an Australian jurisdiction to the extent set out in Schedule 3 (Special exemptions). Such an exemption only operates for 12 months after the clause commences but this may be extended by regulations made by the Governor-General. Endorsement of all of the participating jurisdictions is required before a regulation is made under this clause. However, that requirement does not apply to a regulation that relates solely to a law specified in Schedule 3 and will not take effect until after 5 years after the commencement of the clause (in which case only the endorsement of two-thirds of the participating jurisdictions is needed), or to a regulation that merely omits expired matter (in which case only Commonwealth endorsement is needed).

Clause 49 provides for the exemption from the proposed Act of laws of an Australian jurisdiction to the extent set out in Schedule 4 (Exempt laws relating to occupations). The Governor-General may make regulations amending Schedule 4 and the endorsement of all participating jurisdictions is required, unless the regulation omits a law of a State (in which case only the endorsement of the State is needed).

Part 5—General

Clause 50 defines *participating jurisdiction* for the purposes of the proposed Act as being New Zealand (while there is an Act in force that corresponds to the proposed Commonwealth Act), the Commonwealth, or a State (while it has an Act sustaining or adopting the proposed Commonwealth Act).

Clause 51 provides that the mutual recognition principle and the proposed Act may be taken into consideration in proceedings of any kind and for any purpose. The clause also ensures that a person may rely on the mutual recognition principle in relation to more than one Australian jurisdiction.

Clause 52 enables conditions or undertakings imposed on the registration of a person in an occupation in New Zealand to be construed with necessary adaptations for the purposes of registration in the relevant Australian jurisdiction.

Clause 53 provides a method for determining where goods are produced for the purposes of the proposed Act.

Clause 54 empowers the Governor-General to make regulations for the purposes set out in clause 46.

Schedule 1 Exclusions

The Schedule excludes specified laws relating to goods from the mutual recognition principle, as referred to in clause 44.

Schedule 2 Permanent exemptions

The Schedule permanently exempts specified laws relating to goods from the mutual recognition principle, as referred to in clause 45.

Schedule 3 Special exemptions

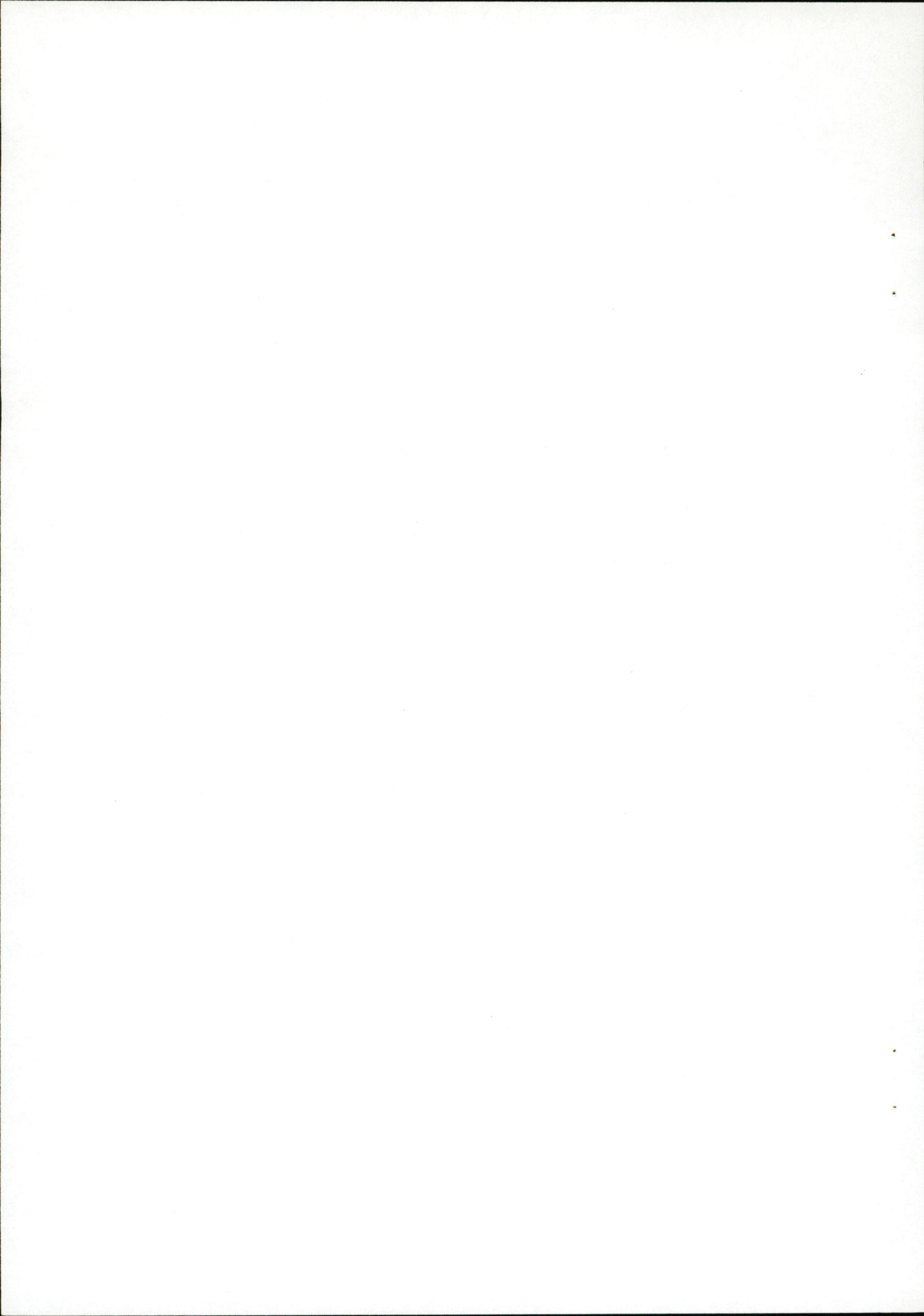
The Schedule provides limited exemptions for specified laws relating to goods from the mutual recognition principle, as referred to in clause 48.

Schedule 4 Exempt laws relating to occupations

The Schedule exempts specified laws relating to occupations from the mutual recognition principle, as referred to in clause 49.

Schedule 5 Privacy of information collected under the Act

The Schedule sets out requirements relating to privacy of information collected under the proposed Act to which local registration authorities are required to have regard, as referred to in clause 39.





New South Wales

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

Contents

	Page
1 Name of Act and purpose	2
2 Commencement	2
3 Interpretation	2
4 Enactment of uniform mutual recognition legislation	2
5 Regulations for temporary exemptions	3
Schedule Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)	 4

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

Contents

Page

Trans-Tasman Mutual Recognition Bill 1996 of the Commonwealth

Contents

Part 1—Preliminary

1	Short title	4
2	Commencement	4
3	Principal purpose	4
4	Interpretation	5
5	Operation of this Act in relation to the Commonwealth	8
6	Operation of this Act in relation to the States	8
7	Operation of this Act in relation to New Zealand	8
8	Crown bound	9

Part 2—Goods

9	Trans-Tasman mutual recognition principle	9
10	Entitlement to sell goods	9
11	Requirements that do not need to be complied with	9
12	Requirements that do need to be complied with	10
13	Defences to offences regarding sale	11
14	Goods that comply with local law	12

Part 3—Occupations

Division 1—Preliminary

15	Trans-Tasman mutual recognition principle	12
16	Entitlement to carry on occupation	12
17	Application of this Part	13

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

Contents

	Page
Division 2—Entitlement to registration	
18 Notification to local registration authority	13
19 Entitlement to registration and continued registration	14
20 Action following notice	15
21 Postponement of registration	16
22 Refusal of registration	16
23 Notification of decision	17
Division 3—Interim arrangements	
24 Deemed registration	17
25 Duration of deemed registration	17
26 Activities under deemed registration	18
Division 4—Equivalent occupations	
27 Equivalent occupations	19
28 General principle	19
29 Declarations as to equivalent occupations	20
30 Declarations by Australian Tribunal	20
31 Declarations by Ministers	21
Division 5—General provisions	
32 Disciplinary action	21
33 Review of decisions	22
34 Costs	22
35 Co-operation with and membership of Trans-Tasman Occupations Tribunal (NZ)	23
36 Residence or domicile	24
37 Furnishing information	24
38 Receiving information	24
39 General responsibilities of local registration authorities	25
40 Fees	25
41 Formalities requiring personal attendance	26
42 Saving	26
<hr/> Part 4—Exclusions and exemptions	
43 References to endorsing a proposed regulation	26
44 Exclusions	26

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

Contents

	Page
45 Permanent exemptions	27
46 Temporary exemptions	27
47 Continuation of temporary exemptions to enable implementation of Ministerial agreements	28
48 Special exemptions	29
49 Exemptions relating to occupations	30

Part 5—General

50 References to participating jurisdictions	31
51 Application of Trans-Tasman mutual recognition principle	31
52 Machinery provisions regarding limitations etc.	31
53 Determining place of production	32
54 Commonwealth regulations for temporary exemptions	32

Schedules

1 Exclusions	33
2 Permanent exemptions	36
3 Special exemptions	41
4 Exempt laws relating to occupations	44
5 Privacy of information collected under the Act	45



New South Wales

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996

No. , 1996

A Bill for

An Act to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations.

The Legislature of New South Wales enacts:**1 Name of Act and purpose**

- (1) This Act is the *Trans-Tasman Mutual Recognition (New South Wales) Act 1996*.
- (2) The purpose of this Act is to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations. 5

2 Commencement

This Act commences on a day to be appointed by proclamation. 10

3 Interpretation

In this Act:

the Commonwealth Act means the Act of the Parliament of the Commonwealth, enacted as referred to in section 4 (1).

4 Enactment of uniform mutual recognition legislation 15

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth, namely, the matters to which the Schedule relates but only to the extent of the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule. 20
- (2) The reference has effect for a period commencing on the day on which this Act commences and ending on the day fixed under subsection (3) as the day on which the reference under this Act terminates, but not longer. 25
- (3) The Governor may, at any time, fix by proclamation a day as the day on which the reference terminates.
- (4) The day so fixed must be no earlier than the end of the period of 5 years commencing on:
 - (a) the day fixed under section 2 of the Commonwealth Act; 30
or
 - (b) if more than one day is fixed under that section, the earlier or earliest of those days.

-
- (5) The reference does not extend to amendments to the Commonwealth Act made after its original enactment, other than amendments to a Schedule to the Commonwealth Act made by regulations in accordance with the Commonwealth Act.

5 Regulations for temporary exemptions

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Without limiting any other power under any other Act, the Governor may make regulations for the purposes mentioned in section 46 of the Commonwealth Act.

**Schedule Trans-Tasman Mutual
Recognition Bill 1996 (Cwlth)**

**A Bill for an Act to provide for the recognition within
Australia of regulatory standards adopted in New Zealand
regarding goods and occupations** 5

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Trans-Tasman Mutual Recognition Act 1996*. 10

2 Commencement

- (1) This Part commences on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation. 15

3 Principal purpose

- (1) The principal purpose of this Act is to enact legislation authorised by the Parliaments of States under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, and requested by the legislatures of the Australian Capital Territory and the Northern Territory, for the purpose of recognising within Australia regulatory standards adopted in New Zealand regarding goods and occupations. 20

- (2) The legislation is as contemplated by the Trans-Tasman Mutual Recognition Arrangement entered into on 9 July 1996 between the Commonwealth of Australia, New Zealand, the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania, the Australian Capital Territory and the Northern Territory. 5

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

Australia means Australia in a geographical sense, and does not include the external territories. 10

Australian jurisdiction means a participating jurisdiction, other than New Zealand.

Australian Tribunal means the Administrative Appeals Tribunal or a successor to that body.

conditions, when used in relation to occupations, means conditions, limitations or restrictions. 15

deemed registration means deemed registration as defined in section 24.

designated person means:

(a) for New Zealand—a Minister of the Crown for New Zealand; or 20

(b) for the Commonwealth—the Governor-General of Australia; or

(c) for a State (other than a Territory)—the Governor of the State or a Minister of the Crown for the State; or 25

(d) for the Australian Capital Territory—the Chief Minister of the Territory; or

(e) for the Northern Territory—the Administrator of the Territory.

equivalent, when used in relation to occupations, has a meaning affected by Division 4 of Part 3. 30

goods means goods of any kind, and includes:

- (a) animals or plants; or
- (b) material of microbial origin; or
- (c) a package containing goods; or
- (d) a label attached to goods.

5

grant, when used in relation to registration, means grant, issue or otherwise confer registration.

import into an Australian jurisdiction means import from outside Australia.

labelling of goods includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them.

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local registration authority of a participating jurisdiction for an occupation means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with their carrying on that occupation in the jurisdiction.

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New Zealand has the meaning given by the *Acts Interpretation Act 1924* of New Zealand, as in force from time to time.

New Zealand Act means the Act of the Parliament of New Zealand (as amended and in force from time to time) that deals with Trans-Tasman mutual recognition and corresponds to this Act, and includes any Act replacing that Act (as amended and in force from time to time).

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New Zealand Tribunal means the Trans-Tasman Occupations Tribunal of New Zealand or a successor to that body.

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occupation means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted.

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participating jurisdiction has the meaning given by section 50.

- produce** includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production.
- registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation. 5
- requirements**, when used in relation to goods, means requirements, prohibitions, restrictions or conditions.
- sell** includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase. 10
- State** includes the Australian Capital Territory or the Northern Territory. 15
- substantive registration** means registration under a law of a participating jurisdiction, but does not include deemed registration.
- (2) A law specified or described in a Schedule to this Act includes (unless otherwise stated in the Schedule) any relevant regulations or other statutory instruments under that law. 20
- (3) A law specified or described in a Schedule to this Act, including any relevant regulations or other statutory instruments under that law, includes (unless otherwise stated in the Schedule) any amendment or replacement of that law, but only to the extent that the effect of the amendment or replacement does not restrict the scope of this Act. 25
- (4) A reference in this Act to the designated person is, in relation to a participating jurisdiction for which there is or can be more than one designated person, a reference to any one of them. 30
- (5) This Act is to be interpreted in accordance with the *Acts Interpretation Act 1901* as in force at the date on which this Act receives the Royal Assent.

5 Operation of this Act in relation to the Commonwealth

- (1) Subject to this section:
- (a) this Act has effect despite anything in any other law of the Commonwealth enacted or made before the commencement of this section; and 5
 - (b) any law of the Commonwealth enacted or made after the commencement of this section is to be construed as having effect subject to this Act, except where that law expressly overrides this Act.
- (2) Subject to subsection 51 (2), nothing in this Act affects the operation of the *Mutual Recognition Act 1992*. 10

6 Operation of this Act in relation to the States

- (1) This Act applies to a State, but only while it is a participating jurisdiction.
- (2) Accordingly, a reference in this Act to a State is a reference to a State that is a participating jurisdiction, and this Act does not affect the operation of the laws of a State that is not a participating jurisdiction. 15
- (3) This Act does not affect the operation of a law of a State so far as it can operate concurrently with this Act. 20

7 Operation of this Act in relation to New Zealand

- (1) The Governor-General may declare by Proclamation that this Act will cease to have effect on a specified day, if satisfied that:
- (a) New Zealand is not a participating jurisdiction and is not likely to become a participating jurisdiction in the near future; or 25
 - (b) New Zealand is a participating jurisdiction but is likely to cease to be a participating jurisdiction in the near future.
- (2) Such a Proclamation cannot be made unless the designated person for each of the participating jurisdictions (other than New Zealand and the Commonwealth) has published a notice in the official gazette of the jurisdiction requesting the making of the Proclamation. 30
- (3) Such a Proclamation is effective according to its terms.

8 Crown bound

Subject to section 6, this Act binds the Crown in right of the Commonwealth and of each of the States.

Part 2—Goods

9 Trans-Tasman mutual recognition principle

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- (1) The Trans-Tasman mutual recognition principle as applying to goods is as set out in this Part.
- (2) This Part deals with goods produced in or imported into New Zealand and their sale in Australia.

10 Entitlement to sell goods

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The Trans-Tasman mutual recognition principle is that, subject to this Part, goods produced in or imported into New Zealand, that may lawfully be sold in New Zealand, either generally or in particular circumstances, may, by virtue of this Act, be sold in an Australian jurisdiction either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements imposed by or under the law of that jurisdiction as described in section 11.

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11 Requirements that do not need to be complied with

The further requirements referred to in section 10 are any one or more of the following requirements relating to sale that are imposed by or under the law of the Australian jurisdiction concerned:

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- (a) a requirement that the goods satisfy standards of the jurisdiction relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance;
- (b) a requirement that the goods satisfy standards of the jurisdiction relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;
- (c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the jurisdiction;

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- (d) a requirement that any step in the production of the goods not occur outside the jurisdiction;
- (e) 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 jurisdiction. 5

12 Requirements that do need to be complied with

- (1) The Trans-Tasman mutual recognition principle is subject to the exceptions specified in this section.
- (2) The first exception is that the principle does not affect the operation of any laws of an Australian jurisdiction that regulate the manner of the sale of goods in the jurisdiction or the manner in which sellers conduct or are required to conduct their business in the jurisdiction (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the jurisdiction. 10
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Examples: Laws relating to the following:

- (a) the contractual aspects of the sale of goods;
- (b) the registration of sellers or other persons carrying on occupations;
- (c) the requirement for business franchise licences; 20
- (d) the persons to whom goods may or may not be sold;
- (e) the circumstances in which goods may or may not be sold.
- (3) The second exception is that the principle does not affect the operation of any laws of an Australian jurisdiction regarding the transportation, storage or handling of goods within the jurisdiction, so long as: 25
 - (a) those laws apply equally to goods produced in or imported into the jurisdiction; and
 - (b) those laws are directed at matters affecting health and safety of persons in the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction. 30

- (4) The third exception is that the principle does not affect the operation of any laws of an Australian jurisdiction regarding the inspection of goods within the jurisdiction, so long as:
- (a) inspection or the requirement for inspection is not a prerequisite to the sale of the goods in the jurisdiction; and 5
 - (b) those laws apply equally to goods produced in or imported into the jurisdiction; and
 - (c) those laws are directed at matters affecting the health and safety of persons in the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction. 10

13 Defences to offences regarding sale

- (1) It is a defence to a prosecution for an offence against a law of an Australian jurisdiction in relation to the sale of any goods if the defendant expressly claims that the Trans-Tasman mutual recognition principle applies and establishes that: 15
- (a) the goods were labelled at the point of sale with a statement to the effect that the goods were produced in or imported into New Zealand; and 20
 - (b) the defendant had no reasonable grounds for suspecting that they were not so produced or imported.
- (2) The defence is not available if the prosecution proves that the Trans-Tasman mutual recognition principle did not apply in the circumstances of the alleged offence (because for example the goods did not comply with requirements imposed by the law of New Zealand). 25
- (3) Any relevant presumptions or evidentiary procedures under the law of New Zealand are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under subsection (2). 30
- (4) Any relevant defences under the law of New Zealand are available to the defendant in relation to matters sought to be proved by the prosecution under subsection (2).
- (5) This section does not affect any defence that is available apart from this section. 35

14 Goods that comply with local law

Nothing in this Part prevents goods from being sold in an Australian jurisdiction if (apart from this Act) they comply with the relevant requirements of the law in force in the jurisdiction.

Part 3—Occupations

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Division 1—Preliminary

15 Trans-Tasman mutual recognition principle

- (1) The Trans-Tasman mutual recognition principle as applying to occupations is as set out in this Part.
- (2) This Part deals with the ability of a person who is registered in connection with an occupation in New Zealand to carry on an equivalent occupation in Australia. 10

16 Entitlement to carry on occupation

- (1) The Trans-Tasman mutual recognition principle is that, subject to this Part, a person who is registered in New Zealand for an occupation is, by virtue of this Act, entitled after notifying the local registration authority of an Australian jurisdiction for the equivalent occupation: 15
 - (a) to be registered in the jurisdiction for the equivalent occupation; and 20
 - (b) pending such registration, to carry on the equivalent occupation in the jurisdiction.
- (2) However, the Trans-Tasman mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in an Australian jurisdiction, so long as those laws: 25
 - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the jurisdiction; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation. 30

17 Application of this Part

- (1) This Part applies to individuals and occupations carried on by them.
- (2) This Part extends to an occupation carried on by an individual, where the individual is subject to more than one system of registration or more than one local registration authority in a participating jurisdiction, and accordingly this Part applies in relation to each such system of registration and each such authority. 5
- (3) Without limiting subsection (2), an example of such an occupation is that of a legal practitioner, which involves both the admission as a legal practitioner by a court and the issue of a practising certificate by another body. 10

Division 2—Entitlement to registration

18 Notification to local registration authority 15

- (1) A person who is registered in New Zealand for an occupation may lodge a written notice with the local registration authority of an Australian jurisdiction for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the Trans-Tasman mutual recognition principle. 20
- (2) The notice must:
 - (a) state that the person is registered for the occupation in New Zealand; and
 - (b) state the occupation for which registration is sought and that it is being sought in accordance with the Trans-Tasman mutual recognition principle; and 25
 - (c) specify all the participating jurisdictions in which the person has substantive registration for equivalent occupations; and
 - (d) state that the person is not the subject of disciplinary proceedings in any participating jurisdiction (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and 30

- (e) state that the person's registration in any participating jurisdiction is not cancelled or currently suspended as a result of disciplinary action; and
 - (f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any participating jurisdiction, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any participating jurisdiction; and 5
 - (g) specify any special conditions to which the person is subject in carrying on any such occupation in any participating jurisdiction; and 10
 - (h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any participating jurisdiction regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice. 15
- (3) The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration). 20
- (4) As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original. 25
- (5) The statements and other information in the notice must be verified by statutory declaration.
- (6) The local registration authority may permit the notice to be amended after it is lodged. 30
- 19 Entitlement to registration and continued registration**
- (1) A person who lodges a notice under section 18 with a local registration authority of an Australian jurisdiction is entitled to be registered in the equivalent occupation, as if the law of the jurisdiction that deals with registration expressly provided that registration in New Zealand is a sufficient ground of entitlement to registration. 35

- (2) The local registration authority may grant registration on that ground and may grant renewals of such registration.
- (3) Once a person is registered on that ground, the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in New Zealand. 5
- (4) Continuance of registration is otherwise subject to the laws of the jurisdiction, to the extent to which those laws:
- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the jurisdiction; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation. 10
- (5) The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they are conditions that apply to the person's registration in New Zealand or that are necessary to achieve equivalence of occupations. 15
- (6) This section has effect subject to this Part. 20

20 Action following notice

- (1) Registration must be granted within one month after the notice is lodged with the local registration authority under section 18.
- (2) When granted, registration takes effect as from the date the notice was lodged. 25
- (3) However, the local registration authority may, subject to this Part and within one month after the notice was lodged, postpone or refuse the grant of registration.
- (4) If the local registration authority neither grants the registration nor takes action under subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration immediately at the end of that period and no objection may be taken to the notice on any of the grounds on which refusal or postponement may be effected, except where fraud is involved. 30 35

21 Postponement of registration

- (1) A local registration authority may postpone the grant of registration, if:
- (a) any of the statements or information in the notice as required by section 18 are materially false or misleading; 5
or
 - (b) any document or information as required by section 18 (3) has not been provided or is materially false or misleading; or
 - (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or 10
 - (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation.
- (2) If the grant of registration has been postponed, the local registration authority may in due course grant or refuse the registration. 15
- (3) The local registration authority may not postpone the grant of registration for longer than a period of 6 months, and the person is entitled to registration immediately, at the end of that period, unless registration was refused at or before the end of that period. 20
- (4) Nothing in subsection (3) prevents earlier registration from being granted on a review by the Australian Tribunal.

22 Refusal of registration

- (1) A local registration authority may refuse the grant of registration, if: 25
- (a) any of the statements or information in the notice as required by section 18 are materially false or misleading; or
 - (b) any document or information as required by section 18 (3) has not been provided or is materially false or misleading; or 30
 - (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions. 35

- (2) A decision to refuse to grant registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than 2 weeks) after the person is notified of the decision, unless it has been previously revoked or there is an application for review to the Australian Tribunal, in which case the Tribunal may make whatever orders it considers appropriate. 5

23 Notification of decision

A local registration authority must give the person who lodges a notice in accordance with section 18 a notice in writing of its decision to grant registration, or to postpone or refuse the grant of registration, or to impose conditions on registration. 10

Division 3—Interim arrangements

24 Deemed registration

- (1) A person who lodges a notice under section 18 with a local registration authority of an Australian jurisdiction is, pending the grant or refusal of registration, taken to be registered as provided in section 19. 15
- (2) Such registration is called *deemed registration* in this Act.
- (3) Deemed registration in one Australian jurisdiction does not of itself provide a basis for registration in another Australian jurisdiction. 20

25 Duration of deemed registration

- (1) A person's deemed registration in an Australian jurisdiction continues until it is cancelled or suspended or otherwise ceases in accordance with this Part. 25
- (2) A person's deemed registration in an Australian jurisdiction ceases if the person becomes substantively registered in the jurisdiction in connection with the occupation concerned.
- (3) A person's deemed registration in an Australian jurisdiction ceases if the local registration authority of the jurisdiction refuses to grant registration, subject to any determination of the Australian Tribunal. 30

- (4) A person's deemed registration in an Australian jurisdiction ceases if the person ceases to be substantively registered in every other participating jurisdiction mentioned in the notice as required by section 18 (2) (c).
- (5) A local registration authority of an Australian jurisdiction may cancel a person's deemed registration in the jurisdiction if the person requests cancellation. 5
- (6) Deemed registration is not affected by postponement of the grant of substantive registration.
- 26 Activities under deemed registration 10**
- (1) A person who has deemed registration in an Australian jurisdiction may carry on the occupation in the jurisdiction as if the deemed registration were substantive registration in the jurisdiction.
- (2) However, the person may do so only: 15
- (a) within the limits conferred by the person's substantive registration in New Zealand; and
- (b) within the limits conferred by the person's deemed registration in the Australian jurisdiction; and
- (c) subject to any conditions or undertakings applying to the person's registration in New Zealand, unless waived by the local registration authority of the Australian jurisdiction under this section; and 20
- (d) subject to any conditions applying to the person's deemed registration. 25
- (3) Without limiting anything in this Division:
- (a) the person may not carry on the occupation in the Australian jurisdiction without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and 30
- (b) a person who has deemed registration in an occupation in the Australian jurisdiction is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in the jurisdiction; and 35

- (c) references in the law of the Australian jurisdiction to persons registered in an occupation under the law of the jurisdiction (however expressed) extend to persons who have deemed registration for the occupation under this Act. 5
- (4) However, the local registration authority of the Australian jurisdiction may waive any condition imposed under the law of New Zealand, or any undertaking given to the local registration authority of New Zealand, if it thinks it appropriate in the circumstances. 10
- (5) The local registration authority of the Australian jurisdiction may impose conditions as if deemed registration were substantive registration, but it must not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they correspond to conditions or undertakings that apply to the person's registration in New Zealand or that are necessary to achieve equivalence of occupations. 15

Division 4—Equivalent occupations 20

27 Equivalent occupations

The equivalence of occupations carried on in different participating jurisdictions is, for the purposes of this Act, to be determined in accordance with this Part.

28 General principle 25

- (1) An occupation for which persons may be registered in New Zealand is taken to be equivalent to an occupation for which persons may be registered in an Australian jurisdiction if the activities authorised to be carried out under each registration are substantially the same (whether or not this result is achieved by means of the imposition of conditions). 30
- (2) Conditions may be imposed on registration under this Part so as to achieve equivalence between occupations in different participating jurisdictions.
- (3) This section has effect subject to any relevant declarations in force under this Division. 35

29 Declarations as to equivalent occupations

- (1) This Part is to be given effect in accordance with relevant declarations (if any) made under this Division regarding equivalent occupations.
- (2) If a declaration made by the Australian Tribunal under section 30 and a declaration made by Ministers under section 31 are inconsistent, the ministerial declaration prevails. 5
- (3) A declaration under this Part does not affect the registration of any person already registered (except in the case of a declaration made by the Australian Tribunal in relation to that person specifically). 10

30 Declarations by Australian Tribunal

- (1) On a review, the Australian Tribunal may make an order that a person who is registered in a particular occupation in New Zealand is or is not entitled to registration in an Australian jurisdiction in a particular occupation, and may specify or describe conditions that will achieve equivalence. 15
- (2) On a review, the Australian Tribunal may make a declaration that occupations carried on in New Zealand and an Australian jurisdiction are not equivalent, but only if the Australian Tribunal is satisfied that: 20
 - (a) the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
 - (b) registration in New Zealand should not entitle registered persons to carry on a particular activity or class of activity in an Australian jurisdiction, where: 25
 - (i) the activity or class of activity is a material part of the practice of a person registered in New Zealand for the occupation; and 30
 - (ii) the activity or class of activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons in the Australian jurisdiction to a real threat to their health or safety or could reasonably be expected to cause significant environmental pollution (including air, water, noise or soil pollution); and 35

- (iii) it is not practicable to protect the health or safety of such persons from that threat or the environment from such pollution by regulating the manner in which services in the occupation are provided.
- (3) The Registrar or other proper officer of the Australian Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *Commonwealth of Australia Gazette*. 5
- (4) A declaration made on the basis of paragraph (2) (b) has effect for no longer than 12 months, and the local registration authority must promptly notify appropriate authorities in each other participating jurisdiction of the declaration. 10
- (5) The local registration authority is to give effect to the decision on the review, and must thereafter act in conformity with the decision in relation to other persons seeking registration. 15

31 Declarations by Ministers

- (1) A Minister from New Zealand and a Minister from each of one or more Australian jurisdictions may jointly declare, by notice in the *Commonwealth of Australia Gazette*, that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence. 20
- (2) The declaration may be amended or rescinded in the same way.
- (3) The declaration has effect only in relation to the participating jurisdictions concerned.
- (4) The appropriate local registration authority is to give effect to the declaration. 25

Division 5—General provisions

32 Disciplinary action

- (1) If a person's registration in an occupation in New Zealand:
- (a) is cancelled or suspended; or 30
- (b) is 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 in the equivalent occupation in an Australian jurisdiction is affected in the same way. 35

- (2) However, the local registration authority of the Australian jurisdiction may reinstate any cancelled or suspended registration or waive any such condition if it thinks it appropriate in the circumstances.
- (3) This section extends to registration effected apart from this Act. 5
- (4) This section has effect despite any other provisions of this Part.

33 Review of decisions

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Australian Tribunal for review of a decision of a local registration authority of an Australian jurisdiction in relation to its functions under this Act. 10
- (2) In subsection (1):
decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
- (3) If a local registration authority gives a person written notice of the making of a decision referred to in subsection (1), the notice must include a statement to the effect that: 15
- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application for review of the decision may be made to the Australian Tribunal by a person whose interests are affected by the decision; and 20
- (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision. 25
- (4) Any failure to comply with a requirement of subsection (3) does not affect the validity of the decision. 30

34 Costs

The Australian Tribunal may order a party in proceedings before it to pay costs if the party has acted unreasonably.

**35 Co-operation with and membership of Trans-Tasman
Occupations Tribunal (NZ)**

- (1) The purpose of this section is to promote consistency between decisions made by the Australian Tribunal for the purposes of this Act and decisions made by the New Zealand Tribunal for the purposes of the New Zealand Act. 5
- (2) In making decisions for the purposes of this Act, the Australian Tribunal is to have regard to decisions of the New Zealand Tribunal.
- (3) For the purposes of a review of a decision referred to in subsection 33 (1) of this Act, the President of the Australian Tribunal may, in the exercise of the power under paragraph 20 (1A) (b) of the *Administrative Appeals Tribunal Act 1975*, direct that the persons who are to constitute the Australian Tribunal for the purposes of that review include: 10
15
- (a) the Chairperson of the New Zealand Tribunal; or
- (b) a person included on the panel maintained under the New Zealand Act who is nominated by the Chairperson of the New Zealand Tribunal for the purposes of that review.
- (4) The President of the Australian Tribunal must exercise the power given by subsection (3) in accordance with arrangements made from time to time between the President and the Chairperson of the New Zealand Tribunal. 20
- (5) A reference in Part III, IIIA, IV or VI of the *Administrative Appeals Tribunal Act 1975* to a member includes a reference to a person included in a direction under subsection (3). 25
- (6) In spite of anything in any other Act, the Chairperson of the New Zealand Tribunal, or a person included on the panel maintained under the New Zealand Act, is not entitled to remuneration or allowances in respect of service as a member of the Australian Tribunal as permitted by this Act. 30
- (7) Service by a member of the Australian Tribunal on the New Zealand Tribunal under the New Zealand Act is taken for all purposes of Australian law to be service as a member of the Australian Tribunal. 35

36 Residence or domicile

Residence or domicile in a particular participating jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant, renewal or continuation of registration arising under this Part.

37 Furnishing information

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- (1) A local registration authority of an Australian jurisdiction must furnish without delay any information reasonably required by a local registration authority of another participating jurisdiction about a person substantively registered under a law of the Australian jurisdiction. 10
- (2) The obligation imposed under this section does not apply unless the authority of the other participating jurisdiction notifies the authority of the firstmentioned jurisdiction that the information is required in connection with:
 - (a) a notice lodged by a person seeking registration; or 15
 - (b) a person's deemed registration; or
 - (c) actual or possible disciplinary action against the person.
- (3) The authority of the firstmentioned jurisdiction is empowered to provide the information, despite any law relating to secrecy, confidentiality or privacy. 20
- (4) Nothing in this section affects any obligation or power to provide information apart from this section.

38 Receiving information

If a local registration authority of an Australian jurisdiction receives information under section 37 of this Act or the corresponding provision of the New Zealand Act, the information is subject to any law relating to secrecy, confidentiality or privacy that would apply if the information were provided under the law of the jurisdiction under which the authority is constituted or exercises its functions. 25
30

39 General responsibilities of local registration authorities

- (1) It is the duty of each local registration authority of an Australian jurisdiction to facilitate the operation of this Part in relation to the occupations for which the authority is responsible, and in particular to make use of the power to impose conditions in such a way as to promote the Trans-Tasman mutual recognition principle. 5
- (2) It is the duty of each local registration authority of an Australian jurisdiction to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations for which the authority is responsible. 10
- (3) The first such guidelines and information are to be available within 6 months after the commencement of this section.
- (4) In dealing with information obtained or to be obtained under this Act, a local registration authority of an Australian jurisdiction must have regard to the principles relating to information privacy set out in Schedule 5. 15
- (5) Nothing in subsection (4) or in Schedule 5:
 - (a) affects the operation or validity of any decision or other action taken under this Act; or 20
 - (b) gives rise to, or can be taken into account in, any civil cause of action; or
 - (c) creates rights or duties that are enforceable in judicial or other proceedings.

40 Fees 25

- (1) A local registration authority of an Australian jurisdiction has power to impose fees in relation to substantive or deemed registration or the continuance of registration arising under this Part, but any such fees may not be greater than are applicable for registration apart from this Part. 30
- (2) Nothing in this section prevents the fixing or prescribing of fees referred to in this section under any other law of an Australian jurisdiction, but the fees may not be greater than can be imposed under this section.

- (3) The local registration authority may impose a condition on substantive or deemed registration arising under this Part to the effect that a person may not carry out activities under registration unless a fee or other payment has been paid, but such a condition may not be imposed unless it corresponds to a requirement attaching to registration apart from this Part. 5
- (4) This section does not authorise the imposition of a tax.
- 41 Formalities requiring personal attendance**
- (1) Neither substantive or deemed registration, nor entitlement to registration, under this Part requires compliance with any statutory or other formalities requiring personal attendance in the Australian jurisdiction concerned. 10
- (2) This section applies to formalities that would otherwise have to be complied with before, at or after registration.
- 42 Saving** 15
- Nothing in this Part prevents a person from seeking registration or being registered for an occupation under a law apart from this Part.
- Part 4—Exclusions and exemptions**
- 43 References to endorsing a proposed regulation** 20
- (1) For the purposes of this Part, a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.
- (2) However, the making of a recommendation by a Minister to the Governor-General for the making of a regulation amounts to endorsement of the regulation by the Commonwealth, and the Commonwealth is taken to have endorsed the regulation for the purposes of this Part if the regulation is in fact made. 25
- 44 Exclusions** 30
- (1) This Act does not affect laws of an Australian jurisdiction specified or described in Schedule 1, to the extent that Schedule 1 indicates that they are excluded from the operation of this Act.

-
- (2) The Governor-General may make regulations amending Schedule 1.
- (3) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation. 5
- (4) However, if such a regulation amends Part 2 of Schedule 1 by substituting or adding a law of a State that relates to a matter referred to in paragraph (a), (b), (c) or (d) of subclause 1 (1) of Part 1 of that Schedule, the regulation may be made if the State has endorsed the regulation. 10

45 Permanent exemptions

- (1) This Act does not affect the operation of laws of an Australian jurisdiction specified or described in Schedule 2, to the extent that Schedule 2 indicates that they are exempt from the operation of this Act. 15
- (2) Such an exemption may be limited or unlimited in its application. If a law is specified or described in Schedule 2 without any limitation, it is taken to be wholly exempt from the operation of this Act.
- (3) The Governor-General may make regulations amending Schedule 2. 20
- (4) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.
- (5) However, if such a regulation merely omits or reduces the extent of an exemption of a law of a State from Schedule 2, the regulation may be made if the State has endorsed the regulation. 25

46 Temporary exemptions

- (1) This Act does not:
- (a) apply to the sale in an Australian jurisdiction of exempt goods; or 30
- (b) affect the operation of exempt laws of an Australian jurisdiction relating to a particular kind of goods.

Cwlth Cl 46

- (2) For the purposes of this section, goods or laws are exempt if the goods are of a kind, or the laws are, for the time being declared by or under an Act or regulation of the jurisdiction to be exempt from the operation of this Act.
- (3) Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the jurisdiction or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction. 5
- (4) No such exemption operates (together with the period of any previous exemption) for longer than a period of 12 months or an aggregate period of 12 months. 10
- 47 Continuation of temporary exemptions to enable implementation of Ministerial agreements**
- (1) The purpose of this section is to create a mechanism to provide an additional period not exceeding 12 months for legislative or other action to be taken to implement a ministerial agreement arising out of consideration of an exemption under section 46. However, this subsection does not provide grounds for invalidating any regulations made for the purposes of this section. 15
20
- (2) This Act does not:
- (a) apply to the sale in an Australian jurisdiction of exempt goods; or
- (b) affect the operation of exempt laws of an Australian jurisdiction relating to a particular kind of goods. 25
- (3) For the purposes of this section, goods or laws are exempt if the goods are of a kind, or the laws are, for the time being declared by regulations under this Act to be exempt from the operation of this Act. 30
- (4) The Governor-General may make regulations for the purposes of this section, but any such regulations may be made only if they have the effect of continuing or reviving, wholly or partly, and with or without modification, the effect of an exemption under section 46. 35

- (5) Such a modification may only:
- (a) in the case of an exemption relating to goods:
 - (i) limit the circumstances in which the goods are exempt; or
 - (ii) provide that the exemption does not apply if certain standards or conditions are complied with in relation to the goods; or
 - (b) in the case of an exemption relating to a law:
 - (i) modify the operation of the law while the exemption operates; or
 - (ii) provide that the exemption does not apply in relation to particular goods if certain standards or conditions are complied with in relation to the goods.
- (6) The regulations may discontinue any exemption under this section.
- (7) A regulation may not be made for the purposes of this section unless at least two-thirds of the then participating jurisdictions have endorsed the regulation.
- (8) No exemption under this section operates (together with the period of any previous such exemption) for longer than a period of 12 months or an aggregate period of 12 months after the corresponding exemption under section 46 ceases to operate.
- (9) In this section:
- ministerial agreement* means an agreement of Ministers of participating jurisdictions made in relation to goods or laws that are the subject of an exemption under section 46.

48 Special exemptions

- (1) This Act does not affect the operation of laws of an Australian jurisdiction that relate to goods and that are specified or described in Schedule 3, to the extent that Schedule 3 indicates that they are exempt from the operation of this Act.

- (2) Such an exemption operates for no longer than a period of 12 months after the commencement of this section, but may be extended in whole or in part by the regulations from time to time by one or more further periods each not exceeding 12 months.
- (3) A regulation may not be made for the purposes of subsection (2) if the exemption has expired or has otherwise ceased to be in force. 5
- (4) The Governor-General may make regulations amending Schedule 3.
- (5) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation. 10
- (6) However:
- (a) if such a regulation relates solely to one or more laws specified or described in Schedule 3 and will not take effect within 5 years after the commencement of this section, the regulation may be made if at least two-thirds of the then participating jurisdictions have endorsed the regulation; or 15
- (b) if such a regulation merely omits any matter relating to an exemption that has expired or has otherwise ceased to be in force, the regulation may be made if the Commonwealth has endorsed the regulation. 20

49 Exemptions relating to occupations

- (1) This Act does not affect the operation of laws of an Australian jurisdiction that relate to occupations and that are specified or described in Schedule 4, to the extent that Schedule 4 indicates that they are exempt from the operation of this Act. 25
- (2) The Governor-General may make regulations amending Schedule 4. 30
- (3) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.

- (4) However, if such a regulation amends Schedule 4 by omitting a law of a State, the regulation may be made if the State has endorsed the regulation.

Part 5—General

50 References to participating jurisdictions 5

For the purposes of this Act, a participating jurisdiction is:

- (a) New Zealand, while there is in force an Act of its Parliament that corresponds to this Act; or
- (b) the Commonwealth; or
- (c) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact this Act, or that adopts this Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution; or 10
- (d) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act or that enables this Act to apply in relation to it. 15

51 Application of Trans-Tasman mutual recognition principle 20

- (1) The Trans-Tasman mutual recognition principle and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose.
- (2) Nothing in this Act or the *Mutual Recognition Act 1992* prevents a person from relying on the Trans-Tasman mutual recognition principle in relation to more than one Australian jurisdiction. 25

52 Machinery provisions regarding limitations etc.

In cases where Part 3 provides that conditions or undertakings that apply or are relevant to registration in New Zealand also apply or are relevant to registration in an Australian jurisdiction, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable): 30

- (a) references to New Zealand are to be read as references to the Australian jurisdiction;
- (b) references to officers or authorities of New Zealand are to be read as references to the corresponding officers or authorities of the Australian jurisdiction. 5

53 Determining place of production

- (1) For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in New Zealand if the most recent step in the process of producing the goods (including for example processing, harvesting or packaging the goods) has occurred there. 10
- (2) Subsection (1) applies even though:
 - (a) the process of production may be incomplete; or
 - (b) some steps in the process have not yet been carried out; or
 - (c) some steps in the process were carried out elsewhere; or 15
 - (d) the goods or a component of the goods were imported into New Zealand.

54 Commonwealth regulations for temporary exemptions

Without limiting any other power under any other Act, the Governor-General may make regulations for the purposes mentioned in section 46. 20

Schedule 1 Exclusions

Note: See section 44.

Part 1—Introduction

1 Excluded laws

- (1) The laws specified or described in this Schedule are excluded 5
from the operation of this Act, so far as they relate to:
- (a) customs controls and tariffs—but only to the extent that 10
the laws provide for the imposition of tariffs and related
measures (for example, anti-dumping and countervailing
duties) and the prohibition or restriction of imports; and
 - (b) intellectual property—but only to the extent that the laws 15
provide for the protection of intellectual rights and relate
to requirements for the sale of goods set out in section 11;
and
 - (c) taxation and business franchises—but only to the extent 20
that the laws relate to taxes imposed on the sale of locally
produced and imported goods in a non-discriminatory
way, including, for example, wholesale sales tax
(Commonwealth) and business franchise and stamp duties
(States); and
 - (d) the implementation of international obligations—but only 25
to the extent that the laws implementing those obligations
deal with the requirements relating to the sale of goods set
out in section 11.
- (2) The laws specified or described in this Schedule are excluded 25
only to the extent that those laws would be affected by the
Trans-Tasman mutual recognition principle as applying to goods.

Part 2—Laws

- 2 Customs controls and tariffs (including laws relating to 30
international obligations)

Prohibited imports

*Customs (Prohibited Imports) Regulations of the Commonwealth
Commerce (Trade Descriptions) Act 1905 of the Commonwealth*

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule 1	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth) Exclusions

Any other laws of the Commonwealth to the extent that they provide for the prohibition or restriction of imports and would be affected by the Trans-Tasman mutual recognition principle as applying to goods

Tariffs 5

Customs Tariff Act 1995 of the Commonwealth
Customs Act 1901 of the Commonwealth, Part XVB
Customs Tariff (Anti-Dumping) Act 1975 of the Commonwealth

3 Intellectual property (including laws relating to the Paris Convention of 20 March 1983 for the Protection of Industrial Property) 10

<i>Patents Act 1990</i> of the Commonwealth	
<i>Trade Marks Act 1995</i> of the Commonwealth	
<i>Designs Act 1906</i> of the Commonwealth	
<i>Olympic Insignia Protection Act 1987</i> of the Commonwealth	15
<i>Scout Association Act 1924</i> of the Commonwealth	
<i>Defence (Transitional Provisions) Act 1946</i> of the Commonwealth	
<i>Defence Transition (Residual Provisions) Act 1952</i> of the Commonwealth	20
<i>Plant Breeder's Rights Act 1994</i> of the Commonwealth	
<i>Copyright Act 1968</i> of the Commonwealth	
<i>Circuit Layouts Act 1989</i> of the Commonwealth	
<i>Sydney 2000 Games (Indicia and Images) Protection Act 1996</i> of the Commonwealth	25
<i>Unauthorized Documents Act 1922</i> of New South Wales	
<i>Unauthorized Documents Act 1958</i> of Victoria	
<i>Badge, Arms, Floral and other Emblems of Queensland Act 1959</i> of Queensland	
<i>Armorial Bearings Protection Act 1979</i> of Western Australia	30
<i>Unauthorized Documents Act 1916</i> of South Australia	
<i>Unauthorized Documents Act 1986</i> of Tasmania	
<i>City of Canberra Arms Act 1932</i> of the Australian Capital Territory	
<i>Flag and Emblem Act 1985</i> of the Northern Territory	35

4 Other international obligations

Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth, sections 21 and 22, to the extent that they implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora 5

Hazardous Waste (Regulation of Exports and Imports) Act 1989 of the Commonwealth, sections 12, 14, 15, 17, 18B, 20, 24–31, 34 and 39, to the extent that they implement the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal 1989 10

The following laws, to the extent that they implement the Charter of the United Nations (as it relates to the imposition of United Nations sanctions):

Charter of the United Nations Act 1945 of the Commonwealth, section 6 15

Air Navigation Act 1920 of the Commonwealth, section 26

Banking Act 1959 of the Commonwealth, section 71

Migration Act 1958 of the Commonwealth, subsection 31 (3), paragraph 116 (1) (g) and section 504

Customs Act 1901 of the Commonwealth, section 50 20

Protection of Movable Cultural Heritage Act 1986 of the Commonwealth, to the extent that it implements the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention Regulating the International Trade in Cultural Property 1970 25

The following laws, to the extent that they implement the European Union-Australia Wine Agreement—Protection of Certain Names and Expressions:

Australian Wine and Brandy Corporation Act 1980 of the Commonwealth, Part VIB and Part VIA (Label Integrity Program) 30

Australian Wine and Brandy Corporation (Exports) Regulations of the Commonwealth, Parts 3 and 4

5 Taxation and business franchises

Sales Tax Assessment Act 1992 of the Commonwealth 35
Sales Tax (Exemptions and Classifications) Act 1992 of the Commonwealth

	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Schedule 1	Exclusions

Laws of a State imposing or providing for the imposition, assessment or collection of taxation, including stamp duties, and providing for business licences.

Schedule 2 Permanent exemptions

Note: See section 45.

5

The laws specified or described in this Schedule are exempt from the operation of this Act.

Part 1—Laws relating to Goods: General

1 Quarantine

A law of an Australian jurisdiction, including a law relating to quarantine, to the extent that: 10

(a) the law is enacted or made substantially for the purpose of preventing the entry or spread of any pest, disease, organism, variety, genetic disorder or any other similar thing; and 15

(b) the law authorises the application of quarantine measures that do not amount to an arbitrary or unjustifiable discrimination or to a disguised restriction on trade between Australia and New Zealand and are not inconsistent with the requirements of the Agreement establishing the World Trade Organisation. 20

2 Endangered species

A law of an Australian jurisdiction to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the jurisdiction and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the jurisdiction. 25

Part 2—Laws relating to Goods: Specific

3 Commonwealth

30

Firearms and other prohibited or offensive weapons

Customs (Prohibited Imports) Regulations

Fireworks

Customs (Prohibited Imports) Regulations

Indecent material <i>Classification (Publications, Films and Computer Games) Act 1995</i>	
Ozone protection <i>Ozone Protection Act 1989</i>	5
Agricultural and veterinary chemicals <i>Agricultural and Veterinary Chemicals Act 1994</i> <i>Agricultural and Veterinary Chemicals Code Act 1994</i>	
Other <i>Imported Food Control Act 1992</i> (to the extent that it deals with risk categorised food commodities)	10
4 New South Wales	
Firearms and other prohibited or offensive weapons <i>Firearms Act 1996</i> <i>Prohibited Weapons Act 1989</i>	15
Fireworks <i>Dangerous Goods Act 1975</i> (to the extent that it deals with fireworks)	
Gaming machines <i>Registered Clubs Act 1976</i> , Parts 10 and 11 <i>Liquor Act 1982</i> , Part 11	20
Indecent material <i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>	
Ozone protection <i>Ozone Protection Act 1989</i>	25
5 Victoria	
Firearms and other prohibited or offensive weapons <i>Firearms Act 1958</i> <i>Firearms Regulations 1995</i> <i>Control of Weapons Act 1990</i> <i>Control of Weapons Regulations 1990</i>	30
Fireworks <i>Dangerous Goods Act 1985</i> (to the extent that it deals with fireworks) <i>Dangerous Goods (Explosives) Regulations 1988</i> , Part 8, Division 5	35
Gaming machines <i>Gaming Machine Control Act 1991</i>	

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule 2	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth) Permanent exemptions

Indecent material

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

Ozone protection

Environment Protection Act 1970, sections 16 and 41 (to the extent that they deal with ozone depleting substances) and paragraph 71(1)(gba) 5

6 Queensland

Firearms and other prohibited or offensive weapons

Weapons Act 1990 10

Fireworks

Explosives Act 1952 (to the extent that it deals with fireworks)

Gaming machines

Gaming Machine Act 1991

Indecent material

Classification of Films Act 1991
Classification of Publications Act 1991 15

Ozone protection

Environmental Protection (Interim) Regulation 1995 under the *Environmental Protection Act 1994* (to the extent that it deals with ozone depleting substances) 20

7 Western Australia

Firearms and other prohibited or offensive weapons

Firearms Act 1973

Fireworks

Explosives and Dangerous Goods Act 1961 (to the extent that it deals with fireworks) 25

Gaming machines

Gaming Commission Act 1987

Indecent material

Censorship of Films Act 1947
Indecent Publications and Articles Act 1902 30

Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Permanent exemptions

Schedule
Schedule 2

Video Tapes Classification and Control Act 1987
Censorship Act 1996

Ozone protection

Environmental Protection Act 1986 (to the extent that it deals
with ozone protection)

5

8 South Australia

Firearms and other prohibited or offensive weapons

Firearms Act 1977

Firearms Regulations 1993

Summary Offences Act 1953, section 15 (to the extent that it deals
with firearms) 10

Criminal Law Consolidation Act 1935, sections 32, 47A and
299A

Fireworks

Explosives Act 1936 (to the extent that it deals with fireworks) 15

Gaming machines

Gaming Machines Act 1992

Gaming Machines Regulations 1993

Indecent material

Classification (Publications, Films and Computer Games) Act
1995 20

Summary Offences Act 1953, sections 33 and 35

Ozone protection

Environment Protection Act 1993, Part 8, Division 3

Other

Environment Protection Act 1993, Part 8, Division 2 (dealing
with beverage containers) 25

9 Tasmania

Firearms and other prohibited or offensive weapons

Guns Act 1991

Firearms Act 1996

30

Fireworks

Dangerous Goods Act 1976 (to the extent that it deals with
fireworks)

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule 2	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth) Permanent exemptions

	Gaming machines	
	<i>Gaming Control Act 1993</i> (to the extent that it deals with gaming machines)	
	Indecent material	
	<i>Classification (Publications, Films and Computer Games) Enforcement Act 1995</i>	5
	Ozone protection	
	<i>Environmental Management and Pollution Control Act 1994</i> (to the extent that it deals with ozone protection)	
	Other	10
	<i>Living Marine Resources Management Act 1995</i> (to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size)	
10	Australian Capital Territory	
	Firearms and other prohibited or offensive weapons	15
	<i>Weapons Act 1991</i>	
	Fireworks	
	<i>Dangerous Goods Act 1975</i> of New South Wales in its application to the Australian Capital Territory (to the extent that it deals with fireworks)	20
	Gaming machines	
	<i>Gaming Machine Act 1987</i>	
	Indecent material	
	<i>Business Franchise ("X" Videos) Act 1990</i>	
	<i>Classification (Publications, Films and Computer Games) (Enforcement) Bill 1995</i>	25
	Ozone protection	
	<i>Ozone Protection Act 1991</i>	
11	Northern Territory	
	Firearms and other prohibited or offensive weapons	30
	<i>Firearms Act 1992</i>	
	Fireworks	
	<i>Dangerous Goods Act 1980</i> (to the extent that it deals with fireworks)	

Gaming machines
Gaming Control Act 1993

Indecent material
Classification of Publications and Films Act 1985

Ozone protection
Ozone Protection Act 1990

5

Schedule 3 Special exemptions

Note: See section 48.

The laws specified or described in this Schedule are exempt from the operation of this Act.

10

1 Therapeutic goods

Therapeutic Goods Act 1989 of the Commonwealth
Therapeutic Goods (Charges) Act 1989 of the Commonwealth

The following laws, to the extent that they deal with packaging and labelling of pharmaceutical drugs and would be affected by Part 2 of this Act:

15

Poisons and Therapeutic Goods Act 1966 of New South Wales
Drugs, Poisons and Controlled Substances Act 1981 of Victoria
Therapeutic Goods (Victoria) Act 1994 of Victoria
Poisons Regulation 1973 under the *Health Act 1937* of Queensland

20

Poisons Act 1964 of Western Australia
Controlled Substances Act 1984 of South Australia
Poisons Act 1971 of Tasmania

Poisons and Dangerous Drugs Act 1983 of the Northern Territory

25

Poisons and Drugs Act 1978 of the Australian Capital Territory

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule 3	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth) Special exemptions

2 Hazardous substances, industrial chemicals and dangerous goods

The following laws, to the extent that they deal with packaging and labelling of hazardous substances, industrial chemicals and dangerous goods and would be affected by Part 2 of this Act: 5

Poisons and Therapeutic Goods Act 1966 of New South Wales
Drugs, Poisons and Controlled Substances Act 1981 of Victoria
Poisons Regulation 1973 under the *Health Act 1937* of Queensland
Controlled Substances Act 1984 of South Australia 10
Poisons Act 1964 of Western Australia
Poisons Act 1971 of Tasmania
Poisons and Dangerous Drugs Act of the Northern Territory
Poisons and Drugs Act 1978 of the Australian Capital Territory

The following laws: 15

Industrial Chemicals (Notification and Assessment) Act 1989 of the Commonwealth
Occupational Health and Safety (Commonwealth Employment) Act 1991 of the Commonwealth
Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations of the Commonwealth 20
Road Transport Reform (Dangerous Goods) Act 1995 of the Commonwealth
Work Health Act 1986 of the Northern Territory
Work Health (Occupational Health and Safety) Regulations 1992 of the Northern Territory 25
Dangerous Goods Act 1980 of the Northern Territory
Dangerous Goods Regulations 1980 of the Northern Territory
Occupational Safety and Health Act 1984 of Western Australia
Occupational Safety and Health Regulations 1988 of Western Australia 30
Explosives and Dangerous Goods Act 1961 of Western Australia
Dangerous Goods Regulations 1992 of Western Australia
Explosives Regulations 1963 of Western Australia
Occupational Health and Safety Act 1983 of New South Wales 35
Occupational Health and Safety (Hazardous Substances) Regulation 1996 of New South Wales

<i>Occupational Health and Safety (Carcinogenic Substances) (Transitional) Regulation 1994 of New South Wales</i>	
<i>Dangerous Goods Act 1975 of New South Wales</i>	
<i>Dangerous Goods Regulation 1978 of New South Wales</i>	
<i>Dangerous Goods (Gas Installations) Regulation 1982 of New South Wales</i>	5
<i>Dangerous Goods Act 1985 of Victoria</i>	
<i>Dangerous Goods Act 1976 of Tasmania</i>	
<i>Factories, Shops and Industries Act 1962 of New South Wales</i>	
<i>Dangerous Substances Act 1979 of South Australia</i>	10
<i>Occupational Health, Safety and Welfare Act 1986 of South Australia</i>	
<i>Occupational Health, Safety and Welfare Regulations 1995 of South Australia</i>	
<i>Occupational Health and Safety Act 1985 of Victoria</i>	15
<i>Regulations under the Occupational Health and Safety Act 1985 of Victoria</i>	
<i>Workplace Health and Safety Act 1995 of Queensland</i>	
<i>Workplace Health and Safety Regulation 1989 of Queensland</i>	
<i>Workplace Health and Safety Regulation 1995 of Queensland</i>	20
<i>Workplace Health and Safety (Hazardous Substances) Compliance Standard 1995 of Queensland</i>	
<i>Workplace Health and Safety (Lead) Compliance Standard 1995 of Queensland</i>	
<i>Workplace Health and Safety Act 1995 of Tasmania</i>	25
<i>Occupational Health and Safety Act 1989 of the Australian Capital Territory</i>	
<i>Occupational Health and Safety Regulations of the Australian Capital Territory</i>	
<i>Hazardous Substances Regulations of the Australian Capital Territory</i>	30

3 Electromagnetic compatibility and radiocommunications equipment

Radiocommunications Act 1992 of the Commonwealth

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Bill 1996
Schedule 3	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth) Special exemptions

4 Road vehicles

Motor Vehicle Standards Act 1989 of the Commonwealth

5 Gas appliances

<i>Gas Act 1986</i> of New South Wales	
<i>Gas Supply Act 1996</i> of New South Wales	5
<i>Gas and Fuel Corporation Act 1958</i> of Victoria	
<i>Gas Industry Act 1994</i> of Victoria	
<i>Gas Act 1965</i> of Queensland	
<i>Gas Standards Act 1972</i> of Western Australia, to the extent that it relates to regulation of gas appliances	10
<i>Gas Act 1988</i> of South Australia	
<i>Dangerous Goods Act 1976</i> of Tasmania, to the extent that it relates to regulation of gas appliances	
<i>Dangerous Goods Act 1980</i> of the Northern Territory, to the extent that it relates to regulation of gas appliances	15
<i>Gas Act 1992</i> of the Australian Capital Territory, to the extent that it relates to regulation of gas appliances	
<i>Dangerous Goods Act 1984</i> of the Australian Capital Territory, to the extent that it relates to regulation of gas appliances	

Schedule 4 Exempt laws relating to occupations 20

Note: See section 49.

1 Exempt laws

The laws specified or described in this Schedule are exempt from the operation of this Act to the extent indicated.

2 Medical practitioners 25

The following laws, to the extent that they deal with the occupation of medical practitioners as referred to in them:

- | | |
|--|----|
| (a) <i>Medical Practice Act 1992</i> of New South Wales; | |
| (b) <i>Medical Practice Act 1994</i> of Victoria; | |
| (c) <i>Medical Act 1939</i> of Queensland; | 30 |

- (d) *Medical Act 1894* of Western Australia;
- (e) *Medical Practitioners Act 1983* of South Australia;
- (f) *Medical Practitioners Registration Act 1996* of Tasmania;
- (g) *Medical Practitioners Act 1930* of the Australian Capital Territory;
- (h) *Medical Act 1995* of the Northern Territory.

5

Schedule 5 Privacy of information collected under the Act

Note: See section 39.

Part 1—Interpretation

10

1 Interpretation

In this Schedule:

consent means express consent or implied consent.

individual means a natural person.

individual concerned, in relation to personal information or a record of personal information, means the individual to whom the information relates.

15

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

20

record means:

- (a) a document; or
- (b) a database (however kept); or
- (c) a photograph or other pictorial representation of a person;

25

but does not include:

- (d) a generally available publication; or
- (e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (f) letters or other articles in the course of transmission by post. 5

solicit, in relation to personal information, means request a person to provide that information, or a kind of information in which that information is included.

use, in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication. 10

Part 2—Principles

2 Solicitation of personal information from individual concerned

Where: 15

- (a) a local registration authority collects personal information under this Act; and
- (b) the information is solicited by the authority from the individuals concerned;

the authority must ensure that the forms issued to individuals in connection with collecting the information specify: 20

- (c) the purpose for which the information is being collected; and
- (d) any person to whom, or any body or agency to which, it is the authority's usual practice to disclose personal information of the kind so collected, and (if known by the authority) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information. 25

3 Storage and security of personal information

A local registration authority who has possession or control of a record that contains personal information must ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and 5
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the local registration authority, everything reasonably within the power of the authority is done to prevent unauthorised use or disclosure of information contained in the record. 10

4 Limits on use of personal information

- (1) A local registration authority who has possession or control of a record that contains personal information that was obtained under this Act for a particular purpose must not use the information for any other purpose unless: 15
 - (a) the individual concerned has consented to use of the information for that other purpose; or
 - (b) use of the information for that other purpose is required or authorised by or under law; or 20
 - (c) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue. 25
- (2) Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the local registration authority must include in the record containing that information a note of that use. 30

5 Limits on disclosure for personal information

- (1) A local registration authority who has possession or control of a record that contains personal information must not disclose the information to a person, body or agency (other than the individual concerned) unless: 35

- (a) the individual concerned is reasonably likely to have been aware, or made aware under the principle set out in clause 2, that information of that kind is usually passed to that person, body or agency; or
 - (b) the individual concerned has consented to the disclosure; or 5
 - (c) the disclosure is required or authorised by or under law; or
 - (d) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue. 10
- (2) Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the local registration authority must include in the record containing that information a note of the disclosure. 15
- (3) A person, body or agency to whom personal information is disclosed under subclause (1) must not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.



New South Wales

Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102

Contents

	Page
1 Name of Act and purpose	2
2 Commencement	2
3 Interpretation	2
4 Enactment of uniform mutual recognition legislation	2
5 Regulations for temporary exemptions	3
Schedule	
Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)	4

Trans-Tasman Mutual Recognition Bill 1996 of the Commonwealth

Contents

Part 1—Preliminary

1	Short title	4
2	Commencement	4
3	Principal purpose	4
4	Interpretation	5
5	Operation of this Act in relation to the Commonwealth	8
6	Operation of this Act in relation to the States	8
7	Operation of this Act in relation to New Zealand	8
8	Crown bound	9

Part 2—Goods

9	Trans-Tasman mutual recognition principle	9
10	Entitlement to sell goods	9
11	Requirements that do not need to be complied with	9
12	Requirements that do need to be complied with	10
13	Defences to offences regarding sale	11
14	Goods that comply with local law	12

Part 3—Occupations

Division 1—Preliminary

15	Trans-Tasman mutual recognition principle	12
16	Entitlement to carry on occupation	12
17	Application of this Part	13

	Page
<hr/>	
Division 2—Entitlement to registration	
18 Notification to local registration authority	13
19 Entitlement to registration and continued registration	14
20 Action following notice	15
21 Postponement of registration	16
22 Refusal of registration	16
23 Notification of decision	17
Division 3—Interim arrangements	
24 Deemed registration	17
25 Duration of deemed registration	17
26 Activities under deemed registration	18
Division 4—Equivalent occupations	
27 Equivalent occupations	19
28 General principle	19
29 Declarations as to equivalent occupations	20
30 Declarations by Australian Tribunal	20
31 Declarations by Ministers	21
Division 5—General provisions	
32 Disciplinary action	21
33 Review of decisions	22
34 Costs	22
35 Co-operation with and membership of Trans-Tasman Occupations Tribunal (NZ)	23
36 Residence or domicile	24
37 Furnishing information	24
38 Receiving information	24
39 General responsibilities of local registration authorities	25
40 Fees	25
41 Formalities requiring personal attendance	26
42 Saving	26
<hr/>	
Part 4—Exclusions and exemptions	
43 References to endorsing a proposed regulation	26
44 Exclusions	26

Contents

	Page
45 Permanent exemptions	27
46 Temporary exemptions	27
47 Continuation of temporary exemptions to enable implementation of Ministerial agreements	28
48 Special exemptions	29
49 Exemptions relating to occupations	30

Part 5—General

50 References to participating jurisdictions	31
51 Application of Trans-Tasman mutual recognition principle	31
52 Machinery provisions regarding limitations etc.	31
53 Determining place of production	32
54 Commonwealth regulations for temporary exemptions	32

Schedules

1 Exclusions	33
2 Permanent exemptions	36
3 Special exemptions	41
4 Exempt laws relating to occupations	44
5 Privacy of information collected under the Act	45



New South Wales

Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102

Act No 102, 1996

An Act to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations. [Assented to 26 November 1996]

The Legislature of New South Wales enacts:**1 Name of Act and purpose**

- (1) This Act is the *Trans-Tasman Mutual Recognition (New South Wales) Act 1996*.
- (2) The purpose of this Act is to enable the enactment of legislation applying uniformly throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations.

2 Commencement

This Act commences on a day to be appointed by proclamation.

3 Interpretation

In this Act:

the Commonwealth Act means the Act of the Parliament of the Commonwealth, enacted as referred to in section 4 (1).

4 Enactment of uniform mutual recognition legislation

- (1) The following matters, to the extent to which they are not otherwise included in the legislative powers of the Parliament of the Commonwealth, are referred to the Parliament of the Commonwealth, namely, the matters to which the Schedule relates but only to the extent of the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule.
- (2) The reference has effect for a period commencing on the day on which this Act commences and ending on the day fixed under subsection (3) as the day on which the reference under this Act terminates, but not longer.
- (3) The Governor may, at any time, fix by proclamation a day as the day on which the reference terminates.
- (4) The day so fixed must be no earlier than the end of the period of 5 years commencing on:
 - (a) the day fixed under section 2 of the Commonwealth Act;
or
 - (b) if more than one day is fixed under that section, the earlier or earliest of those days.

- (5) The reference does not extend to amendments to the Commonwealth Act made after its original enactment, other than amendments to a Schedule to the Commonwealth Act made by regulations in accordance with the Commonwealth Act.

5 Regulations for temporary exemptions

Without limiting any other power under any other Act, the Governor may make regulations for the purposes mentioned in section 46 of the Commonwealth Act.

Schedule Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)

**A Bill for an Act to provide for the recognition within
Australia of regulatory standards adopted in New Zealand
regarding goods and occupations**

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Trans-Tasman Mutual Recognition Act 1996*.

2 Commencement

- (1) This Part commences on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Principal purpose

- (1) The principal purpose of this Act is to enact legislation authorised by the Parliaments of States under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, and requested by the legislatures of the Australian Capital Territory and the Northern Territory, for the purpose of recognising within Australia regulatory standards adopted in New Zealand regarding goods and occupations.

- (2) The legislation is as contemplated by the Trans-Tasman Mutual Recognition Arrangement entered into on 9 July 1996 between the Commonwealth of Australia, New Zealand, the States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania, the Australian Capital Territory and the Northern Territory.

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

Australia means Australia in a geographical sense, and does not include the external territories.

Australian jurisdiction means a participating jurisdiction, other than New Zealand.

Australian Tribunal means the Administrative Appeals Tribunal or a successor to that body.

conditions, when used in relation to occupations, means conditions, limitations or restrictions.

deemed registration means deemed registration as defined in section 24.

designated person means:

- (a) for New Zealand—a Minister of the Crown for New Zealand; or
- (b) for the Commonwealth—the Governor-General of Australia; or
- (c) for a State (other than a Territory)—the Governor of the State or a Minister of the Crown for the State; or
- (d) for the Australian Capital Territory—the Chief Minister of the Territory; or
- (e) for the Northern Territory—the Administrator of the Territory.

equivalent, when used in relation to occupations, has a meaning affected by Division 4 of Part 3.

goods means goods of any kind, and includes:

- (a) animals or plants; or
- (b) material of microbial origin; or
- (c) a package containing goods; or
- (d) a label attached to goods.

grant, when used in relation to registration, means grant, issue or otherwise confer registration.

import into an Australian jurisdiction means import from outside Australia.

labelling of goods includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them.

local registration authority of a participating jurisdiction for an occupation means the person or authority in the jurisdiction having the function conferred by legislation of registering persons in connection with their carrying on that occupation in the jurisdiction.

New Zealand has the meaning given by the *Acts Interpretation Act 1924* of New Zealand, as in force from time to time.

New Zealand Act means the Act of the Parliament of New Zealand (as amended and in force from time to time) that deals with Trans-Tasman mutual recognition and corresponds to this Act, and includes any Act replacing that Act (as amended and in force from time to time).

New Zealand Tribunal means the Trans-Tasman Occupations Tribunal of New Zealand or a successor to that body.

occupation means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted.

participating jurisdiction has the meaning given by section 50.

produce includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production.

registration includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation.

requirements, when used in relation to goods, means requirements, prohibitions, restrictions or conditions.

sell includes sell by wholesale or retail, and includes distribute for sale, expose or offer for sale or have in possession for sale or agree to sell, and includes barter, and includes supply by way of exchange, lease, hire or hire-purchase.

State includes the Australian Capital Territory or the Northern Territory.

substantive registration means registration under a law of a participating jurisdiction, but does not include deemed registration.

- (2) A law specified or described in a Schedule to this Act includes (unless otherwise stated in the Schedule) any relevant regulations or other statutory instruments under that law.
- (3) A law specified or described in a Schedule to this Act, including any relevant regulations or other statutory instruments under that law, includes (unless otherwise stated in the Schedule) any amendment or replacement of that law, but only to the extent that the effect of the amendment or replacement does not restrict the scope of this Act.
- (4) A reference in this Act to the designated person is, in relation to a participating jurisdiction for which there is or can be more than one designated person, a reference to any one of them.
- (5) This Act is to be interpreted in accordance with the *Acts Interpretation Act 1901* as in force at the date on which this Act receives the Royal Assent.

5 Operation of this Act in relation to the Commonwealth

- (1) Subject to this section:
 - (a) this Act has effect despite anything in any other law of the Commonwealth enacted or made before the commencement of this section; and
 - (b) any law of the Commonwealth enacted or made after the commencement of this section is to be construed as having effect subject to this Act, except where that law expressly overrides this Act.
- (2) Subject to subsection 51 (2), nothing in this Act affects the operation of the *Mutual Recognition Act 1992*.

6 Operation of this Act in relation to the States

- (1) This Act applies to a State, but only while it is a participating jurisdiction.
- (2) Accordingly, a reference in this Act to a State is a reference to a State that is a participating jurisdiction, and this Act does not affect the operation of the laws of a State that is not a participating jurisdiction.
- (3) This Act does not affect the operation of a law of a State so far as it can operate concurrently with this Act.

7 Operation of this Act in relation to New Zealand

- (1) The Governor-General may declare by Proclamation that this Act will cease to have effect on a specified day, if satisfied that:
 - (a) New Zealand is not a participating jurisdiction and is not likely to become a participating jurisdiction in the near future; or
 - (b) New Zealand is a participating jurisdiction but is likely to cease to be a participating jurisdiction in the near future.
- (2) Such a Proclamation cannot be made unless the designated person for each of the participating jurisdictions (other than New Zealand and the Commonwealth) has published a notice in the official gazette of the jurisdiction requesting the making of the Proclamation.
- (3) Such a Proclamation is effective according to its terms.

8 Crown bound

Subject to section 6, this Act binds the Crown in right of the Commonwealth and of each of the States.

Part 2—Goods

9 Trans-Tasman mutual recognition principle

- (1) The Trans-Tasman mutual recognition principle as applying to goods is as set out in this Part.
- (2) This Part deals with goods produced in or imported into New Zealand and their sale in Australia.

10 Entitlement to sell goods

The Trans-Tasman mutual recognition principle is that, subject to this Part, goods produced in or imported into New Zealand, that may lawfully be sold in New Zealand, either generally or in particular circumstances, may, by virtue of this Act, be sold in an Australian jurisdiction either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements imposed by or under the law of that jurisdiction as described in section 11.

11 Requirements that do not need to be complied with

The further requirements referred to in section 10 are any one or more of the following requirements relating to sale that are imposed by or under the law of the Australian jurisdiction concerned:

- (a) a requirement that the goods satisfy standards of the jurisdiction relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance;
- (b) a requirement that the goods satisfy standards of the jurisdiction relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;
- (c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the jurisdiction;

- (d) a requirement that any step in the production of the goods not occur outside the jurisdiction;
- (e) 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 jurisdiction.

12 Requirements that do need to be complied with

- (1) The Trans-Tasman mutual recognition principle is subject to the exceptions specified in this section.
- (2) The first exception is that the principle does not affect the operation of any laws of an Australian jurisdiction that regulate the manner of the sale of goods in the jurisdiction or the manner in which sellers conduct or are required to conduct their business in the jurisdiction (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the jurisdiction.

Examples: Laws relating to the following:

- (a) the contractual aspects of the sale of goods;
 - (b) the registration of sellers or other persons carrying on occupations;
 - (c) the requirement for business franchise licences;
 - (d) the persons to whom goods may or may not be sold;
 - (e) the circumstances in which goods may or may not be sold.
- (3) The second exception is that the principle does not affect the operation of any laws of an Australian jurisdiction regarding the transportation, storage or handling of goods within the jurisdiction, so long as:
 - (a) those laws apply equally to goods produced in or imported into the jurisdiction; and
 - (b) those laws are directed at matters affecting health and safety of persons in the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction.

- (4) The third exception is that the principle does not affect the operation of any laws of an Australian jurisdiction regarding the inspection of goods within the jurisdiction, so long as:
- (a) inspection or the requirement for inspection is not a prerequisite to the sale of the goods in the jurisdiction; and
 - (b) those laws apply equally to goods produced in or imported into the jurisdiction; and
 - (c) those laws are directed at matters affecting the health and safety of persons in the jurisdiction or at preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction.

13 Defences to offences regarding sale

- (1) It is a defence to a prosecution for an offence against a law of an Australian jurisdiction in relation to the sale of any goods if the defendant expressly claims that the Trans-Tasman mutual recognition principle applies and establishes that:
- (a) the goods were labelled at the point of sale with a statement to the effect that the goods were produced in or imported into New Zealand; and
 - (b) the defendant had no reasonable grounds for suspecting that they were not so produced or imported.
- (2) The defence is not available if the prosecution proves that the Trans-Tasman mutual recognition principle did not apply in the circumstances of the alleged offence (because for example the goods did not comply with requirements imposed by the law of New Zealand).
- (3) Any relevant presumptions or evidentiary procedures under the law of New Zealand are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under subsection (2).
- (4) Any relevant defences under the law of New Zealand are available to the defendant in relation to matters sought to be proved by the prosecution under subsection (2).
- (5) This section does not affect any defence that is available apart from this section.

14 Goods that comply with local law

Nothing in this Part prevents goods from being sold in an Australian jurisdiction if (apart from this Act) they comply with the relevant requirements of the law in force in the jurisdiction.

Part 3—Occupations

Division 1—Preliminary

15 Trans-Tasman mutual recognition principle

- (1) The Trans-Tasman mutual recognition principle as applying to occupations is as set out in this Part.
- (2) This Part deals with the ability of a person who is registered in connection with an occupation in New Zealand to carry on an equivalent occupation in Australia.

16 Entitlement to carry on occupation

- (1) The Trans-Tasman mutual recognition principle is that, subject to this Part, a person who is registered in New Zealand for an occupation is, by virtue of this Act, entitled after notifying the local registration authority of an Australian jurisdiction for the equivalent occupation:
 - (a) to be registered in the jurisdiction for the equivalent occupation; and
 - (b) pending such registration, to carry on the equivalent occupation in the jurisdiction.
- (2) However, the Trans-Tasman mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in an Australian jurisdiction, so long as those laws:
 - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the jurisdiction; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

17 Application of this Part

- (1) This Part applies to individuals and occupations carried on by them.
- (2) This Part extends to an occupation carried on by an individual, where the individual is subject to more than one system of registration or more than one local registration authority in a participating jurisdiction, and accordingly this Part applies in relation to each such system of registration and each such authority.
- (3) Without limiting subsection (2), an example of such an occupation is that of a legal practitioner, which involves both the admission as a legal practitioner by a court and the issue of a practising certificate by another body.

Division 2—Entitlement to registration

18 Notification to local registration authority

- (1) A person who is registered in New Zealand for an occupation may lodge a written notice with the local registration authority of an Australian jurisdiction for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the Trans-Tasman mutual recognition principle.
- (2) The notice must:
 - (a) state that the person is registered for the occupation in New Zealand; and
 - (b) state the occupation for which registration is sought and that it is being sought in accordance with the Trans-Tasman mutual recognition principle; and
 - (c) specify all the participating jurisdictions in which the person has substantive registration for equivalent occupations; and
 - (d) state that the person is not the subject of disciplinary proceedings in any participating jurisdiction (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and

- (e) state that the person's registration in any participating jurisdiction is not cancelled or currently suspended as a result of disciplinary action; and
 - (f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any participating jurisdiction, and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any participating jurisdiction; and
 - (g) specify any special conditions to which the person is subject in carrying on any such occupation in any participating jurisdiction; and
 - (h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any participating jurisdiction regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.
- (3) The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration).
- (4) As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original.
- (5) The statements and other information in the notice must be verified by statutory declaration.
- (6) The local registration authority may permit the notice to be amended after it is lodged.

19 Entitlement to registration and continued registration

- (1) A person who lodges a notice under section 18 with a local registration authority of an Australian jurisdiction is entitled to be registered in the equivalent occupation, as if the law of the jurisdiction that deals with registration expressly provided that registration in New Zealand is a sufficient ground of entitlement to registration.

- (2) The local registration authority may grant registration on that ground and may grant renewals of such registration.
- (3) Once a person is registered on that ground, the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in New Zealand.
- (4) Continuance of registration is otherwise subject to the laws of the jurisdiction, to the extent to which those laws:
 - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the jurisdiction; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.
- (5) The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they are conditions that apply to the person's registration in New Zealand or that are necessary to achieve equivalence of occupations.
- (6) This section has effect subject to this Part.

20 Action following notice

- (1) Registration must be granted within one month after the notice is lodged with the local registration authority under section 18.
- (2) When granted, registration takes effect as from the date the notice was lodged.
- (3) However, the local registration authority may, subject to this Part and within one month after the notice was lodged, postpone or refuse the grant of registration.
- (4) If the local registration authority neither grants the registration nor takes action under subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration immediately at the end of that period and no objection may be taken to the notice on any of the grounds on which refusal or postponement may be effected, except where fraud is involved.

21 Postponement of registration

- (1) A local registration authority may postpone the grant of registration, if:
 - (a) any of the statements or information in the notice as required by section 18 are materially false or misleading; or
 - (b) any document or information as required by section 18 (3) has not been provided or is materially false or misleading; or
 - (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or
 - (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation.
- (2) If the grant of registration has been postponed, the local registration authority may in due course grant or refuse the registration.
- (3) The local registration authority may not postpone the grant of registration for longer than a period of 6 months, and the person is entitled to registration immediately, at the end of that period, unless registration was refused at or before the end of that period.
- (4) Nothing in subsection (3) prevents earlier registration from being granted on a review by the Australian Tribunal.

22 Refusal of registration

- (1) A local registration authority may refuse the grant of registration, if:
 - (a) any of the statements or information in the notice as required by section 18 are materially false or misleading; or
 - (b) any document or information as required by section 18 (3) has not been provided or is materially false or misleading; or
 - (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions.

- (2) A decision to refuse to grant registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than 2 weeks) after the person is notified of the decision, unless it has been previously revoked or there is an application for review to the Australian Tribunal, in which case the Tribunal may make whatever orders it considers appropriate.

23 Notification of decision

A local registration authority must give the person who lodges a notice in accordance with section 18 a notice in writing of its decision to grant registration, or to postpone or refuse the grant of registration, or to impose conditions on registration.

Division 3—Interim arrangements

24 Deemed registration

- (1) A person who lodges a notice under section 18 with a local registration authority of an Australian jurisdiction is, pending the grant or refusal of registration, taken to be registered as provided in section 19.
- (2) Such registration is called *deemed registration* in this Act.
- (3) Deemed registration in one Australian jurisdiction does not of itself provide a basis for registration in another Australian jurisdiction.

25 Duration of deemed registration

- (1) A person's deemed registration in an Australian jurisdiction continues until it is cancelled or suspended or otherwise ceases in accordance with this Part.
- (2) A person's deemed registration in an Australian jurisdiction ceases if the person becomes substantively registered in the jurisdiction in connection with the occupation concerned.
- (3) A person's deemed registration in an Australian jurisdiction ceases if the local registration authority of the jurisdiction refuses to grant registration, subject to any determination of the Australian Tribunal.

- (4) A person's deemed registration in an Australian jurisdiction ceases if the person ceases to be substantively registered in every other participating jurisdiction mentioned in the notice as required by section 18 (2) (c).
- (5) A local registration authority of an Australian jurisdiction may cancel a person's deemed registration in the jurisdiction if the person requests cancellation.
- (6) Deemed registration is not affected by postponement of the grant of substantive registration.

26 Activities under deemed registration

- (1) A person who has deemed registration in an Australian jurisdiction may carry on the occupation in the jurisdiction as if the deemed registration were substantive registration in the jurisdiction.
- (2) However, the person may do so only:
 - (a) within the limits conferred by the person's substantive registration in New Zealand; and
 - (b) within the limits conferred by the person's deemed registration in the Australian jurisdiction; and
 - (c) subject to any conditions or undertakings applying to the person's registration in New Zealand, unless waived by the local registration authority of the Australian jurisdiction under this section; and
 - (d) subject to any conditions applying to the person's deemed registration.
- (3) Without limiting anything in this Division:
 - (a) the person may not carry on the occupation in the Australian jurisdiction without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and
 - (b) a person who has deemed registration in an occupation in the Australian jurisdiction is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in the jurisdiction; and

- (c) references in the law of the Australian jurisdiction to persons registered in an occupation under the law of the jurisdiction (however expressed) extend to persons who have deemed registration for the occupation under this Act.
- (4) However, the local registration authority of the Australian jurisdiction may waive any condition imposed under the law of New Zealand, or any undertaking given to the local registration authority of New Zealand, if it thinks it appropriate in the circumstances.
- (5) The local registration authority of the Australian jurisdiction may impose conditions as if deemed registration were substantive registration, but it must not impose conditions that are more onerous than would be imposed in similar circumstances (having regard to relevant qualifications and experience) if it were registration effected apart from this Part, unless they correspond to conditions or undertakings that apply to the person's registration in New Zealand or that are necessary to achieve equivalence of occupations.

Division 4—Equivalent occupations

27 Equivalent occupations

The equivalence of occupations carried on in different participating jurisdictions is, for the purposes of this Act, to be determined in accordance with this Part.

28 General principle

- (1) An occupation for which persons may be registered in New Zealand is taken to be equivalent to an occupation for which persons may be registered in an Australian jurisdiction if the activities authorised to be carried out under each registration are substantially the same (whether or not this result is achieved by means of the imposition of conditions).
- (2) Conditions may be imposed on registration under this Part so as to achieve equivalence between occupations in different participating jurisdictions.
- (3) This section has effect subject to any relevant declarations in force under this Division.

29 Declarations as to equivalent occupations

- (1) This Part is to be given effect in accordance with relevant declarations (if any) made under this Division regarding equivalent occupations.
- (2) If a declaration made by the Australian Tribunal under section 30 and a declaration made by Ministers under section 31 are inconsistent, the ministerial declaration prevails.
- (3) A declaration under this Part does not affect the registration of any person already registered (except in the case of a declaration made by the Australian Tribunal in relation to that person specifically).

30 Declarations by Australian Tribunal

- (1) On a review, the Australian Tribunal may make an order that a person who is registered in a particular occupation in New Zealand is or is not entitled to registration in an Australian jurisdiction in a particular occupation, and may specify or describe conditions that will achieve equivalence.
- (2) On a review, the Australian Tribunal may make a declaration that occupations carried on in New Zealand and an Australian jurisdiction are not equivalent, but only if the Australian Tribunal is satisfied that:
 - (a) the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
 - (b) registration in New Zealand should not entitle registered persons to carry on a particular activity or class of activity in an Australian jurisdiction, where:
 - (i) the activity or class of activity is a material part of the practice of a person registered in New Zealand for the occupation; and
 - (ii) the activity or class of activity, if carried out by a person not conforming to the appropriate standards, could reasonably be expected to expose persons in the Australian jurisdiction to a real threat to their health or safety or could reasonably be expected to cause significant environmental pollution (including air, water, noise or soil pollution); and

- (iii) it is not practicable to protect the health or safety of such persons from that threat or the environment from such pollution by regulating the manner in which services in the occupation are provided.
- (3) The Registrar or other proper officer of the Australian Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *Commonwealth of Australia Gazette*.
- (4) A declaration made on the basis of paragraph (2) (b) has effect for no longer than 12 months, and the local registration authority must promptly notify appropriate authorities in each other participating jurisdiction of the declaration.
- (5) The local registration authority is to give effect to the decision on the review, and must thereafter act in conformity with the decision in relation to other persons seeking registration.

31 Declarations by Ministers

- (1) A Minister from New Zealand and a Minister from each of one or more Australian jurisdictions may jointly declare, by notice in the *Commonwealth of Australia Gazette*, that specified occupations are equivalent, and may specify or describe conditions that will achieve equivalence.
- (2) The declaration may be amended or rescinded in the same way.
- (3) The declaration has effect only in relation to the participating jurisdictions concerned.
- (4) The appropriate local registration authority is to give effect to the declaration.

Division 5—General provisions

32 Disciplinary action

- (1) If a person's registration in an occupation in New Zealand:
 - (a) is cancelled or suspended; or
 - (b) is 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 in the equivalent occupation in an Australian jurisdiction is affected in the same way.

- (2) However, the local registration authority of the Australian jurisdiction may reinstate any cancelled or suspended registration or waive any such condition if it thinks it appropriate in the circumstances.
- (3) This section extends to registration effected apart from this Act.
- (4) This section has effect despite any other provisions of this Part.

33 Review of decisions

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Australian Tribunal for review of a decision of a local registration authority of an Australian jurisdiction in relation to its functions under this Act.
- (2) In subsection (1):
decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
- (3) If a local registration authority gives a person written notice of the making of a decision referred to in subsection (1), the notice must include a statement to the effect that:
 - (a) subject to the *Administrative Appeals Tribunal Act 1975*, application for review of the decision may be made to the Australian Tribunal by a person whose interests are affected by the decision; and
 - (b) except where subsection 28 (4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of that person for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based, and giving the reasons for the decision.
- (4) Any failure to comply with a requirement of subsection (3) does not affect the validity of the decision.

34 Costs

The Australian Tribunal may order a party in proceedings before it to pay costs if the party has acted unreasonably.

35 Co-operation with and membership of Trans-Tasman Occupations Tribunal (NZ)

- (1) The purpose of this section is to promote consistency between decisions made by the Australian Tribunal for the purposes of this Act and decisions made by the New Zealand Tribunal for the purposes of the New Zealand Act.
- (2) In making decisions for the purposes of this Act, the Australian Tribunal is to have regard to decisions of the New Zealand Tribunal.
- (3) For the purposes of a review of a decision referred to in subsection 33 (1) of this Act, the President of the Australian Tribunal may, in the exercise of the power under paragraph 20 (1A) (b) of the *Administrative Appeals Tribunal Act 1975*, direct that the persons who are to constitute the Australian Tribunal for the purposes of that review include:
 - (a) the Chairperson of the New Zealand Tribunal; or
 - (b) a person included on the panel maintained under the New Zealand Act who is nominated by the Chairperson of the New Zealand Tribunal for the purposes of that review.
- (4) The President of the Australian Tribunal must exercise the power given by subsection (3) in accordance with arrangements made from time to time between the President and the Chairperson of the New Zealand Tribunal.
- (5) A reference in Part III, IIIA, IV or VI of the *Administrative Appeals Tribunal Act 1975* to a member includes a reference to a person included in a direction under subsection (3).
- (6) In spite of anything in any other Act, the Chairperson of the New Zealand Tribunal, or a person included on the panel maintained under the New Zealand Act, is not entitled to remuneration or allowances in respect of service as a member of the Australian Tribunal as permitted by this Act.
- (7) Service by a member of the Australian Tribunal on the New Zealand Tribunal under the New Zealand Act is taken for all purposes of Australian law to be service as a member of the Australian Tribunal.

36 Residence or domicile

Residence or domicile in a particular participating jurisdiction is not to be a prerequisite for or a factor in entitlement to the grant, renewal or continuation of registration arising under this Part.

37 Furnishing information

- (1) A local registration authority of an Australian jurisdiction must furnish without delay any information reasonably required by a local registration authority of another participating jurisdiction about a person substantively registered under a law of the Australian jurisdiction.
- (2) The obligation imposed under this section does not apply unless the authority of the other participating jurisdiction notifies the authority of the firstmentioned jurisdiction that the information is required in connection with:
 - (a) a notice lodged by a person seeking registration; or
 - (b) a person's deemed registration; or
 - (c) actual or possible disciplinary action against the person.
- (3) The authority of the firstmentioned jurisdiction is empowered to provide the information, despite any law relating to secrecy, confidentiality or privacy.
- (4) Nothing in this section affects any obligation or power to provide information apart from this section.

38 Receiving information

If a local registration authority of an Australian jurisdiction receives information under section 37 of this Act or the corresponding provision of the New Zealand Act, the information is subject to any law relating to secrecy, confidentiality or privacy that would apply if the information were provided under the law of the jurisdiction under which the authority is constituted or exercises its functions.

39 General responsibilities of local registration authorities

- (1) It is the duty of each local registration authority of an Australian jurisdiction to facilitate the operation of this Part in relation to the occupations for which the authority is responsible, and in particular to make use of the power to impose conditions in such a way as to promote the Trans-Tasman mutual recognition principle.
- (2) It is the duty of each local registration authority of an Australian jurisdiction to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations for which the authority is responsible.
- (3) The first such guidelines and information are to be available within 6 months after the commencement of this section.
- (4) In dealing with information obtained or to be obtained under this Act, a local registration authority of an Australian jurisdiction must have regard to the principles relating to information privacy set out in Schedule 5.
- (5) Nothing in subsection (4) or in Schedule 5:
 - (a) affects the operation or validity of any decision or other action taken under this Act; or
 - (b) gives rise to, or can be taken into account in, any civil cause of action; or
 - (c) creates rights or duties that are enforceable in judicial or other proceedings.

40 Fees

- (1) A local registration authority of an Australian jurisdiction has power to impose fees in relation to substantive or deemed registration or the continuance of registration arising under this Part, but any such fees may not be greater than are applicable for registration apart from this Part.
- (2) Nothing in this section prevents the fixing or prescribing of fees referred to in this section under any other law of an Australian jurisdiction, but the fees may not be greater than can be imposed under this section.

- (3) The local registration authority may impose a condition on substantive or deemed registration arising under this Part to the effect that a person may not carry out activities under registration unless a fee or other payment has been paid, but such a condition may not be imposed unless it corresponds to a requirement attaching to registration apart from this Part.
- (4) This section does not authorise the imposition of a tax.

41 Formalities requiring personal attendance

- (1) Neither substantive or deemed registration, nor entitlement to registration, under this Part requires compliance with any statutory or other formalities requiring personal attendance in the Australian jurisdiction concerned.
- (2) This section applies to formalities that would otherwise have to be complied with before, at or after registration.

42 Saving

Nothing in this Part prevents a person from seeking registration or being registered for an occupation under a law apart from this Part.

Part 4—Exclusions and exemptions

43 References to endorsing a proposed regulation

- (1) For the purposes of this Part, a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.
- (2) However, the making of a recommendation by a Minister to the Governor-General for the making of a regulation amounts to endorsement of the regulation by the Commonwealth, and the Commonwealth is taken to have endorsed the regulation for the purposes of this Part if the regulation is in fact made.

44 Exclusions

- (1) This Act does not affect laws of an Australian jurisdiction specified or described in Schedule 1, to the extent that Schedule 1 indicates that they are excluded from the operation of this Act.

- (2) The Governor-General may make regulations amending Schedule 1.
- (3) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.
- (4) However, if such a regulation amends Part 2 of Schedule 1 by substituting or adding a law of a State that relates to a matter referred to in paragraph (a), (b), (c) or (d) of subclause 1 (1) of Part 1 of that Schedule, the regulation may be made if the State has endorsed the regulation.

45 Permanent exemptions

- (1) This Act does not affect the operation of laws of an Australian jurisdiction specified or described in Schedule 2, to the extent that Schedule 2 indicates that they are exempt from the operation of this Act.
- (2) Such an exemption may be limited or unlimited in its application. If a law is specified or described in Schedule 2 without any limitation, it is taken to be wholly exempt from the operation of this Act.
- (3) The Governor-General may make regulations amending Schedule 2.
- (4) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.
- (5) However, if such a regulation merely omits or reduces the extent of an exemption of a law of a State from Schedule 2, the regulation may be made if the State has endorsed the regulation.

46 Temporary exemptions

- (1) This Act does not:
 - (a) apply to the sale in an Australian jurisdiction of exempt goods; or
 - (b) affect the operation of exempt laws of an Australian jurisdiction relating to a particular kind of goods.

- (2) For the purposes of this section, goods or laws are exempt if the goods are of a kind, or the laws are, for the time being declared by or under an Act or regulation of the jurisdiction to be exempt from the operation of this Act.
- (3) Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the jurisdiction or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the jurisdiction.
- (4) No such exemption operates (together with the period of any previous exemption) for longer than a period of 12 months or an aggregate period of 12 months.

47 Continuation of temporary exemptions to enable implementation of Ministerial agreements

- (1) The purpose of this section is to create a mechanism to provide an additional period not exceeding 12 months for legislative or other action to be taken to implement a ministerial agreement arising out of consideration of an exemption under section 46. However, this subsection does not provide grounds for invalidating any regulations made for the purposes of this section.
- (2) This Act does not:
 - (a) apply to the sale in an Australian jurisdiction of exempt goods; or
 - (b) affect the operation of exempt laws of an Australian jurisdiction relating to a particular kind of goods.
- (3) For the purposes of this section, goods or laws are exempt if the goods are of a kind, or the laws are, for the time being declared by regulations under this Act to be exempt from the operation of this Act.
- (4) The Governor-General may make regulations for the purposes of this section, but any such regulations may be made only if they have the effect of continuing or reviving, wholly or partly, and with or without modification, the effect of an exemption under section 46.

- (5) Such a modification may only:
- (a) in the case of an exemption relating to goods:
 - (i) limit the circumstances in which the goods are exempt; or
 - (ii) provide that the exemption does not apply if certain standards or conditions are complied with in relation to the goods; or
 - (b) in the case of an exemption relating to a law:
 - (i) modify the operation of the law while the exemption operates; or
 - (ii) provide that the exemption does not apply in relation to particular goods if certain standards or conditions are complied with in relation to the goods.
- (6) The regulations may discontinue any exemption under this section.
- (7) A regulation may not be made for the purposes of this section unless at least two-thirds of the then participating jurisdictions have endorsed the regulation.
- (8) No exemption under this section operates (together with the period of any previous such exemption) for longer than a period of 12 months or an aggregate period of 12 months after the corresponding exemption under section 46 ceases to operate.
- (9) In this section:

ministerial agreement means an agreement of Ministers of participating jurisdictions made in relation to goods or laws that are the subject of an exemption under section 46.

48 Special exemptions

- (1) This Act does not affect the operation of laws of an Australian jurisdiction that relate to goods and that are specified or described in Schedule 3, to the extent that Schedule 3 indicates that they are exempt from the operation of this Act.

- (2) Such an exemption operates for no longer than a period of 12 months after the commencement of this section, but may be extended in whole or in part by the regulations from time to time by one or more further periods each not exceeding 12 months.
- (3) A regulation may not be made for the purposes of subsection (2) if the exemption has expired or has otherwise ceased to be in force.
- (4) The Governor-General may make regulations amending Schedule 3.
- (5) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.
- (6) However:
 - (a) if such a regulation relates solely to one or more laws specified or described in Schedule 3 and will not take effect within 5 years after the commencement of this section, the regulation may be made if at least two-thirds of the then participating jurisdictions have endorsed the regulation; or
 - (b) if such a regulation merely omits any matter relating to an exemption that has expired or has otherwise ceased to be in force, the regulation may be made if the Commonwealth has endorsed the regulation.

49 Exemptions relating to occupations

- (1) This Act does not affect the operation of laws of an Australian jurisdiction that relate to occupations and that are specified or described in Schedule 4, to the extent that Schedule 4 indicates that they are exempt from the operation of this Act.
- (2) The Governor-General may make regulations amending Schedule 4.
- (3) A regulation may not be made for the purposes of this section unless all of the then participating jurisdictions have endorsed the regulation.

- (4) However, if such a regulation amends Schedule 4 by omitting a law of a State, the regulation may be made if the State has endorsed the regulation.

Part 5—General

50 References to participating jurisdictions

For the purposes of this Act, a participating jurisdiction is:

- (a) New Zealand, while there is in force an Act of its Parliament that corresponds to this Act; or
- (b) the Commonwealth; or
- (c) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact this Act, or that adopts this Act, under paragraph (xxxvii) of section 51 of the Commonwealth Constitution; or
- (d) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act or that enables this Act to apply in relation to it.

51 Application of Trans-Tasman mutual recognition principle

- (1) The Trans-Tasman mutual recognition principle and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose.
- (2) Nothing in this Act or the *Mutual Recognition Act 1992* prevents a person from relying on the Trans-Tasman mutual recognition principle in relation to more than one Australian jurisdiction.

52 Machinery provisions regarding limitations etc.

In cases where Part 3 provides that conditions or undertakings that apply or are relevant to registration in New Zealand also apply or are relevant to registration in an Australian jurisdiction, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable):

- (a) references to New Zealand are to be read as references to the Australian jurisdiction;
- (b) references to officers or authorities of New Zealand are to be read as references to the corresponding officers or authorities of the Australian jurisdiction.

53 Determining place of production

- (1) For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in New Zealand if the most recent step in the process of producing the goods (including for example processing, harvesting or packaging the goods) has occurred there.
- (2) Subsection (1) applies even though:
 - (a) the process of production may be incomplete; or
 - (b) some steps in the process have not yet been carried out; or
 - (c) some steps in the process were carried out elsewhere; or
 - (d) the goods or a component of the goods were imported into New Zealand.

54 Commonwealth regulations for temporary exemptions

Without limiting any other power under any other Act, the Governor-General may make regulations for the purposes mentioned in section 46.

Schedule 1 Exclusions

Note: See section 44.

Part 1—Introduction

1 Excluded laws

- (1) The laws specified or described in this Schedule are excluded from the operation of this Act, so far as they relate to:
 - (a) customs controls and tariffs—but only to the extent that the laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing duties) and the prohibition or restriction of imports; and
 - (b) intellectual property—but only to the extent that the laws provide for the protection of intellectual rights and relate to requirements for the sale of goods set out in section 11; and
 - (c) taxation and business franchises—but only to the extent that the laws relate to taxes imposed on the sale of locally produced and imported goods in a non-discriminatory way, including, for example, wholesale sales tax (Commonwealth) and business franchise and stamp duties (States); and
 - (d) the implementation of international obligations—but only to the extent that the laws implementing those obligations deal with the requirements relating to the sale of goods set out in section 11.
- (2) The laws specified or described in this Schedule are excluded only to the extent that those laws would be affected by the Trans-Tasman mutual recognition principle as applying to goods.

Part 2—Laws

2 Customs controls and tariffs (including laws relating to international obligations)

Prohibited imports

Customs (Prohibited Imports) Regulations of the Commonwealth
Commerce (Trade Descriptions) Act 1905 of the Commonwealth

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102
Schedule 1	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Cwlth CI 2	Exclusions

Any other laws of the Commonwealth to the extent that they provide for the prohibition or restriction of imports and would be affected by the Trans-Tasman mutual recognition principle as applying to goods

Tariffs

Customs Tariff Act 1995 of the Commonwealth
Customs Act 1901 of the Commonwealth, Part XVB
Customs Tariff (Anti-Dumping) Act 1975 of the Commonwealth

3 Intellectual property (including laws relating to the Paris Convention of 20 March 1983 for the Protection of Industrial Property)

Patents Act 1990 of the Commonwealth
Trade Marks Act 1995 of the Commonwealth
Designs Act 1906 of the Commonwealth
Olympic Insignia Protection Act 1987 of the Commonwealth
Scout Association Act 1924 of the Commonwealth
Defence (Transitional Provisions) Act 1946 of the Commonwealth
Defence Transition (Residual Provisions) Act 1952 of the Commonwealth
Plant Breeder's Rights Act 1994 of the Commonwealth
Copyright Act 1968 of the Commonwealth
Circuit Layouts Act 1989 of the Commonwealth
Sydney 2000 Games (Indicia and Images) Protection Act 1996 of the Commonwealth
Unauthorised Documents Act 1922 of New South Wales
Unauthorized Documents Act 1958 of Victoria
Badge, Arms, Floral and other Emblems of Queensland Act 1959 of Queensland
Armorial Bearings Protection Act 1979 of Western Australia
Unauthorised Documents Act 1916 of South Australia
Unauthorized Documents Act 1986 of Tasmania
City of Canberra Arms Act 1932 of the Australian Capital Territory
Flag and Emblem Act 1985 of the Northern Territory

4 Other international obligations

Wildlife Protection (Regulation of Exports and Imports) Act 1982 of the Commonwealth, sections 21 and 22, to the extent that they implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora

Hazardous Waste (Regulation of Exports and Imports) Act 1989 of the Commonwealth, sections 12, 14, 15, 17, 18B, 20, 24–31, 34 and 39, to the extent that they implement the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal 1989

The following laws, to the extent that they implement the Charter of the United Nations (as it relates to the imposition of United Nations sanctions):

Charter of the United Nations Act 1945 of the Commonwealth, section 6

Air Navigation Act 1920 of the Commonwealth, section 26

Banking Act 1959 of the Commonwealth, section 71

Migration Act 1958 of the Commonwealth, subsection 31 (3), paragraph 116 (1) (g) and section 504

Customs Act 1901 of the Commonwealth, section 50

Protection of Movable Cultural Heritage Act 1986 of the Commonwealth, to the extent that it implements the United Nations Educational, Scientific and Cultural Organisation (UNESCO) Convention Regulating the International Trade in Cultural Property 1970

The following laws, to the extent that they implement the European Union-Australia Wine Agreement—Protection of Certain Names and Expressions:

Australian Wine and Brandy Corporation Act 1980 of the Commonwealth, Part VIB and Part VIA (Label Integrity Program)

Australian Wine and Brandy Corporation (Exports) Regulations of the Commonwealth, Parts 3 and 4

5 Taxation and business franchises

Sales Tax Assessment Act 1992 of the Commonwealth

Sales Tax (Exemptions and Classifications) Act 1992 of the Commonwealth

Laws of a State imposing or providing for the imposition, assessment or collection of taxation, including stamp duties, and providing for business licences.

Schedule 2 Permanent exemptions

Note: See section 45.

The laws specified or described in this Schedule are exempt from the operation of this Act.

Part 1—Laws relating to Goods: General

1 Quarantine

A law of an Australian jurisdiction, including a law relating to quarantine, to the extent that:

- (a) the law is enacted or made substantially for the purpose of preventing the entry or spread of any pest, disease, organism, variety, genetic disorder or any other similar thing; and
- (b) the law authorises the application of quarantine measures that do not amount to an arbitrary or unjustifiable discrimination or to a disguised restriction on trade between Australia and New Zealand and are not inconsistent with the requirements of the Agreement establishing the World Trade Organisation.

2 Endangered species

A law of an Australian jurisdiction to the extent that it is enacted or made substantially for the purpose of protecting a species or other class of animals or plants from extinction in the jurisdiction and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the jurisdiction.

Part 2—Laws relating to Goods: Specific

3 Commonwealth

Firearms and other prohibited or offensive weapons

Customs (Prohibited Imports) Regulations

Fireworks

Customs (Prohibited Imports) Regulations

Indecent material

Classification (Publications, Films and Computer Games) Act 1995

Ozone protection

Ozone Protection Act 1989

Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals Act 1994

Agricultural and Veterinary Chemicals Code Act 1994

Other

Imported Food Control Act 1992 (to the extent that it deals with risk categorised food commodities)

4 New South Wales

Firearms and other prohibited or offensive weapons

Firearms Act 1996

Prohibited Weapons Act 1989

Fireworks

Dangerous Goods Act 1975 (to the extent that it deals with fireworks)

Gaming machines

Registered Clubs Act 1976, Parts 10 and 11

Liquor Act 1982, Part 11

Indecent material

Classification (Publications, Films and Computer Games) Enforcement Act 1995

Ozone protection

Ozone Protection Act 1989

5 Victoria

Firearms and other prohibited or offensive weapons

Firearms Act 1958

Firearms Regulations 1995

Control of Weapons Act 1990

Control of Weapons Regulations 1990

Fireworks

Dangerous Goods Act 1985 (to the extent that it deals with fireworks)

Dangerous Goods (Explosives) Regulations 1988, Part 8, Division 5

Gaming machines

Gaming Machine Control Act 1991

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102
Schedule 2	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Cwlth Cl 5	Permanent exemptions

Indecent material

Classification (Publications, Films and Computer Games) (Enforcement) Act 1995

Ozone protection

Environment Protection Act 1970, sections 16 and 41 (to the extent that they deal with ozone depleting substances) and paragraph 71(1)(gba)

6 Queensland

Firearms and other prohibited or offensive weapons

Weapons Act 1990

Fireworks

Explosives Act 1952 (to the extent that it deals with fireworks)

Gaming machines

Gaming Machine Act 1991

Indecent material

Classification of Films Act 1991

Classification of Publications Act 1991

Ozone protection

Environmental Protection (Interim) Regulation 1995 under the *Environmental Protection Act 1994* (to the extent that it deals with ozone depleting substances)

7 Western Australia

Firearms and other prohibited or offensive weapons

Firearms Act 1973

Fireworks

Explosives and Dangerous Goods Act 1961 (to the extent that it deals with fireworks)

Gaming machines

Gaming Commission Act 1987

Indecent material

Censorship of Films Act 1947

Indecent Publications and Articles Act 1902

Video Tapes Classification and Control Act 1987
Censorship Act 1996

Ozone protection

Environmental Protection Act 1986 (to the extent that it deals with ozone protection)

8 South Australia

Firearms and other prohibited or offensive weapons

Firearms Act 1977

Firearms Regulations 1993

Summary Offences Act 1953, section 15 (to the extent that it deals with firearms)

Criminal Law Consolidation Act 1935, sections 32, 47A and 299A

Fireworks

Explosives Act 1936 (to the extent that it deals with fireworks)

Gaming machines

Gaming Machines Act 1992

Gaming Machines Regulations 1993

Indecent material

Classification (Publications, Films and Computer Games) Act 1995

Summary Offences Act 1953, sections 33 and 35

Ozone protection

Environment Protection Act 1993, Part 8, Division 3

Other

Environment Protection Act 1993, Part 8, Division 2 (dealing with beverage containers)

9 Tasmania

Firearms and other prohibited or offensive weapons

Guns Act 1991

Firearms Act 1996

Fireworks

Dangerous Goods Act 1976 (to the extent that it deals with fireworks)

Gaming machines

Gaming Control Act 1993 (to the extent that it deals with gaming machines)

Indecent material

Classification (Publications, Films and Computer Games) Enforcement Act 1995

Ozone protection

Environmental Management and Pollution Control Act 1994 (to the extent that it deals with ozone protection)

Other

Living Marine Resources Management Act 1995 (to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size)

10 Australian Capital Territory

Firearms and other prohibited or offensive weapons

Weapons Act 1991

Fireworks

Dangerous Goods Act 1975 of New South Wales in its application to the Australian Capital Territory (to the extent that it deals with fireworks)

Gaming machines

Gaming Machine Act 1987

Indecent material

Business Franchise ("X" Videos) Act 1990
Classification (Publications, Films and Computer Games) (Enforcement) Bill 1995

Ozone protection

Ozone Protection Act 1991

11 Northern Territory

Firearms and other prohibited or offensive weapons

Firearms Act 1992

Fireworks

Dangerous Goods Act 1980 (to the extent that it deals with fireworks)

Gaming machines

Gaming Control Act 1993

Indecent material

Classification of Publications and Films Act 1985

Ozone protection

Ozone Protection Act 1990

Schedule 3 Special exemptions

Note: See section 48.

The laws specified or described in this Schedule are exempt from the operation of this Act.

1 Therapeutic goods

Therapeutic Goods Act 1989 of the Commonwealth

Therapeutic Goods (Charges) Act 1989 of the Commonwealth

The following laws, to the extent that they deal with packaging and labelling of pharmaceutical drugs and would be affected by Part 2 of this Act:

Poisons and Therapeutic Goods Act 1966 of New South Wales

Drugs, Poisons and Controlled Substances Act 1981 of Victoria

Therapeutic Goods (Victoria) Act 1994 of Victoria

Poisons Regulation 1973 under the *Health Act 1937* of Queensland

Poisons Act 1964 of Western Australia

Controlled Substances Act 1984 of South Australia

Poisons Act 1971 of Tasmania

Poisons and Dangerous Drugs Act 1983 of the Northern Territory

Poisons and Drugs Act 1978 of the Australian Capital Territory

	Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102
Schedule	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Schedule 3	Special exemptions
Cwlth Cl 2	

2 Hazardous substances, industrial chemicals and dangerous goods

The following laws, to the extent that they deal with packaging and labelling of hazardous substances, industrial chemicals and dangerous goods and would be affected by Part 2 of this Act:

Poisons and Therapeutic Goods Act 1966 of New South Wales
Drugs, Poisons and Controlled Substances Act 1981 of Victoria
Poisons Regulation 1973 under the *Health Act 1937* of Queensland
Controlled Substances Act 1984 of South Australia
Poisons Act 1964 of Western Australia
Poisons Act 1971 of Tasmania
Poisons and Dangerous Drugs Act of the Northern Territory
Poisons and Drugs Act 1978 of the Australian Capital Territory

The following laws:

Industrial Chemicals (Notification and Assessment) Act 1989 of the Commonwealth
Occupational Health and Safety (Commonwealth Employment) Act 1991 of the Commonwealth
Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations of the Commonwealth
Road Transport Reform (Dangerous Goods) Act 1995 of the Commonwealth
Work Health Act 1986 of the Northern Territory
Work Health (Occupational Health and Safety) Regulations 1992 of the Northern Territory
Dangerous Goods Act 1980 of the Northern Territory
Dangerous Goods Regulations 1980 of the Northern Territory
Occupational Safety and Health Act 1984 of Western Australia
Occupational Safety and Health Regulations 1988 of Western Australia
Explosives and Dangerous Goods Act 1961 of Western Australia
Dangerous Goods Regulations 1992 of Western Australia
Explosives Regulations 1963 of Western Australia
Occupational Health and Safety Act 1983 of New South Wales
Occupational Health and Safety (Hazardous Substances) Regulation 1996 of New South Wales

Occupational Health and Safety (Carcinogenic Substances) (Transitional) Regulation 1994 of New South Wales
Dangerous Goods Act 1975 of New South Wales
Dangerous Goods Regulation 1978 of New South Wales
Dangerous Goods (Gas Installations) Regulation 1982 of New South Wales
Dangerous Goods Act 1985 of Victoria
Dangerous Goods Act 1976 of Tasmania
Factories, Shops and Industries Act 1962 of New South Wales
Dangerous Substances Act 1979 of South Australia
Occupational Health, Safety and Welfare Act 1986 of South Australia
Occupational Health, Safety and Welfare Regulations 1995 of South Australia
Occupational Health and Safety Act 1985 of Victoria
Regulations under the *Occupational Health and Safety Act 1985 of Victoria*
Workplace Health and Safety Act 1995 of Queensland
Workplace Health and Safety Regulation 1989 of Queensland
Workplace Health and Safety Regulation 1995 of Queensland
Workplace Health and Safety (Hazardous Substances) Compliance Standard 1995 of Queensland
Workplace Health and Safety (Lead) Compliance Standard 1995 of Queensland
Workplace Health and Safety Act 1995 of Tasmania
Occupational Health and Safety Act 1989 of the Australian Capital Territory
Occupational Health and Safety Regulations of the Australian Capital Territory
Hazardous Substances Regulations of the Australian Capital Territory

3 Electromagnetic compatibility and radiocommunications equipment

Radiocommunications Act 1992 of the Commonwealth

Schedule	Trans-Tasman Mutual Recognition (New South Wales) Act 1996 No 102
Schedule 3	Trans-Tasman Mutual Recognition Bill 1996 (Cwlth)
Cwlth CI 4	Special exemptions

4 Road vehicles

Motor Vehicle Standards Act 1989 of the Commonwealth

5 Gas appliances

Gas Act 1986 of New South Wales

Gas Supply Act 1996 of New South Wales

Gas and Fuel Corporation Act 1958 of Victoria

Gas Industry Act 1994 of Victoria

Gas Act 1965 of Queensland

Gas Standards Act 1972 of Western Australia, to the extent that it relates to regulation of gas appliances

Gas Act 1988 of South Australia

Dangerous Goods Act 1976 of Tasmania, to the extent that it relates to regulation of gas appliances

Dangerous Goods Act 1980 of the Northern Territory, to the extent that it relates to regulation of gas appliances

Gas Act 1992 of the Australian Capital Territory, to the extent that it relates to regulation of gas appliances

Dangerous Goods Act 1984 of the Australian Capital Territory, to the extent that it relates to regulation of gas appliances

Schedule 4 Exempt laws relating to occupations

Note: See section 49.

1 Exempt laws

The laws specified or described in this Schedule are exempt from the operation of this Act to the extent indicated.

2 Medical practitioners

The following laws, to the extent that they deal with the occupation of medical practitioners as referred to in them:

- (a) *Medical Practice Act 1992* of New South Wales;
- (b) *Medical Practice Act 1994* of Victoria;
- (c) *Medical Act 1939* of Queensland;

- (d) *Medical Act 1894* of Western Australia;
- (e) *Medical Practitioners Act 1983* of South Australia;
- (f) *Medical Practitioners Registration Act 1996* of Tasmania;
- (g) *Medical Practitioners Act 1930* of the Australian Capital Territory;
- (h) *Medical Act 1995* of the Northern Territory.

Schedule 5 Privacy of information collected under the Act

Note: See section 39.

Part 1—Interpretation

1 Interpretation

In this Schedule:

consent means express consent or implied consent.

individual means a natural person.

individual concerned, in relation to personal information or a record of personal information, means the individual to whom the information relates.

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

record means:

- (a) a document; or
- (b) a database (however kept); or
- (c) a photograph or other pictorial representation of a person;

but does not include:

- (d) a generally available publication; or
- (e) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (f) letters or other articles in the course of transmission by post.

solicit, in relation to personal information, means request a person to provide that information, or a kind of information in which that information is included.

use, in relation to information, does not include mere disclosure of the information, but does include the inclusion of the information in a publication.

Part 2—Principles

2 Solicitation of personal information from individual concerned

Where:

- (a) a local registration authority collects personal information under this Act; and
- (b) the information is solicited by the authority from the individuals concerned;

the authority must ensure that the forms issued to individuals in connection with collecting the information specify:

- (c) the purpose for which the information is being collected; and
- (d) any person to whom, or any body or agency to which, it is the authority's usual practice to disclose personal information of the kind so collected, and (if known by the authority) any person to whom, or any body or agency to which, it is the usual practice of that first-mentioned person, body or agency to pass on that information.

3 Storage and security of personal information

A local registration authority who has possession or control of a record that contains personal information must ensure:

- (a) that the record is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
- (b) that if it is necessary for the record to be given to a person in connection with the provision of a service to the local registration authority, everything reasonably within the power of the authority is done to prevent unauthorised use or disclosure of information contained in the record.

4 Limits on use of personal information

- (1) A local registration authority who has possession or control of a record that contains personal information that was obtained under this Act for a particular purpose must not use the information for any other purpose unless:
 - (a) the individual concerned has consented to use of the information for that other purpose; or
 - (b) use of the information for that other purpose is required or authorised by or under law; or
 - (c) use of the information for that other purpose is reasonably necessary for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
- (2) Where personal information is used for enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue, the local registration authority must include in the record containing that information a note of that use.

5 Limits on disclosure for personal information

- (1) A local registration authority who has possession or control of a record that contains personal information must not disclose the information to a person, body or agency (other than the individual concerned) unless:

- (a) the individual concerned is reasonably likely to have been aware, or made aware under the principle set out in clause 2, that information of that kind is usually passed to that person, body or agency; or
 - (b) the individual concerned has consented to the disclosure; or
 - (c) the disclosure is required or authorised by or under law; or
 - (d) the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.
- (2) Where personal information is disclosed for the purposes of enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the purpose of the protection of the public revenue, the local registration authority must include in the record containing that information a note of the disclosure.
- (3) A person, body or agency to whom personal information is disclosed under subclause (1) must not use or disclose the information for a purpose other than the purpose for which the information was given to the person, body or agency.

[Minister's second reading speech made in—
Legislative Assembly on 30 October 1996
Legislative Council on 13 November 1996]

BY AUTHORITY