

MUTUAL RECOGNITION (QUEENSLAND) BILL 1992

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

1. The object of this Bill is to enable the enactment of legislation applying uniformly throughout Australia for the mutual recognition by the States and Territories of each other's differing regulatory standards regarding goods and occupations.

2. The Bill forms part of a legislative scheme that involves the enactment of Bills, first by the States and Territories, and then by the Commonwealth.

3. 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.

The background

4. In October 1990, Heads of Government agreed in principle to work towards implementing a scheme of mutual recognition throughout Australia with the aim of removing inefficiencies brought about by varying standards and regulatory regimes in the different jurisdictions and ensuring the goal of freedom of movement of goods and labour in the national market. The agreement was reached in the context of enhancing the flexibility and competitiveness of the Australian economy.

5. Further agreement in principle was reached on 30 July 1991 by Heads of Government. The scheme to be established would provide for mutual recognition of standards for goods and of qualifications for entry to occupations. Further agreement was reached by Premiers and Chief Ministers in November 1991 on draft legislation to implement this scheme.

6. At their meeting on 11 May 1992, Heads of Government agreed to sign a final agreement, thereby endorsing a revised version of the legislation, which is substantially that now proposed for enactment. The Agreement also included mechanisms for considering exemptions and for reviewing the operation of the scheme.

The Commonwealth and State Bills

7. 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 terms substantially the same as those set out in the Schedule to the Bill. The Territories will request the enactment of such an Act. The Schedule contains a Bill for a Commonwealth Act with the short title of the Mutual Recognition Act 1992. Amendment of the proposed Mutual Recognition Act 1992 (other than the Schedules to the proposed Act) is also referred (or the subject of a request) to the Commonwealth, but only in terms approved by the designated person for each of the then participating jurisdictions. The designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

9. The referral of those matters to the Commonwealth is for a period of at least 5 years which may be terminated by the Governor by proclamation.

10. Schedule 1 to the proposed Commonwealth Act contains permanent specified exemptions to the mutual recognition provisions relating to goods. Heads of Government decided that a national market was not desirable for these goods. They also agreed to exempt from mutual recognition certain laws which are set out in Schedule 2 to the proposed Commonwealth Act. The Governor is given power to make regulations for the purposes of the proposed Commonwealth Act providing for temporary exemptions of goods or laws relating to goods on certain specified grounds (limited to a period of not more than 12 months).

11. The proposed Commonwealth Act enables the Administrative Appeals Tribunal to review decisions on matters arising under the Act.

The result to be achieved by the Commonwealth and State Bills

12. The new national scheme for mutual recognition will involve participating States enacting legislation referring or requesting the enactment of a Mutual Recognition Act to the Parliament of the Commonwealth. The Commonwealth will then enact the Mutual Recognition Act in substantially the same terms as those set out in the State Acts, and the Mutual Recognition Act of the Commonwealth will apply to those States which have referring or requesting legislation.

13. The Commonwealth Act will provide a comprehensive scheme for mutual recognition 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.

THE STATE BILL

Clause 1—Short title

The clause provides for the proposed Act to be cited as the Mutual Recognition (Queensland) Act 1992.

Clause 2—Commencement

The proposed Act is to commence on a proclaimed day.

Clause 3—Purpose

The clause states the purpose of the Act is to enable the enactment of uniform legislation relating to the recognition of regulatory standards adopted in Australia regarding goods and occupations.

Clause 4—Interpretation

The clause defines "the Commonwealth Act" to mean the Act to be enacted by the Parliament of the Commonwealth as referred to in clause 5.

Clause 5—Enactment of uniform mutual recognition legislation

The clause refers certain matters to the Parliament of the Commonwealth. Those matters are the enactment of an Act in the terms, or substantially in the terms, set out in the Schedule and the amendment of that Act (other than the Schedules to that Act), but only in terms which are approved by the designated person for each of the then participating jurisdictions. The designated person for a State is the Governor, for the Australian Capital Territory is the Chief Minister and for the Northern Territory is the Administrator.

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 6—Approval of amendments

The clause enables the Governor to approve the terms of amendments of the Commonwealth Act.

Clause 7—Regulations for temporary exemptions for goods

The clause enables the Governor to make regulations for the purposes of clause 15 of the Commonwealth Act (temporary exemptions).

THE COMMONWEALTH BILL

PART 1—PRELIMINARY

Clause 1—Short title

The clause provides for the proposed Act to be cited as the Mutual Recognition Act 1992.

Clause 2—Commencement

The clause provides for the proposed Act to commence on a day or days to be fixed by Proclamation of the Governor-General.

Clause 3—Principal purpose

The principal purpose of the proposed Act is to enact legislation to promote the goal of freedom of movement of goods and service providers in a national market in Australia.

Clause 4—Interpretation

The clause contains definitions of expressions used in the proposed Act. In particular: "goods" includes animals, a package containing goods and a label attached to goods; and

"local registration authority" of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on of that occupation in the State; and

"occupation" means an occupation, trade, profession or calling of any kind that may be carried out 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

"Tribunal" means the Administrative Appeals Tribunal.

Clause 5—Application of this Act to States

This clause provides that the proposed Act applies to a State while it is a participating jurisdiction.

Clause 6—Operation of this Act

The clause states that the proposed Act does not affect the operation of any other law of the Commonwealth or limit the operation of a law of a State so far as it can operate concurrently with the proposed Act.

Clause 7—Crown bound

The proposed Act binds the Crown in the right of the Commonwealth and of each of the participating States.

PART 2—GOODS*Clause 8—Mutual Recognition*

The clause states that the mutual recognition principle as applying to goods is as set out in this Part. The Part deals with goods produced in or imported into a

State ("the first State") and their sale in another State ("the second State").

Clause 9—Entitlement to sell goods

The clause provides that goods produced in or imported into the first State that may lawfully be sold in that State may be sold in the second State without the need to comply with the requirements set out in clause 10.

Clause 10—Requirements that do not need to be complied with

The clause specifies the requirements relating to sale that are imposed by the second State that do not need to be complied with. Those requirements are as follows:

standards of the second State relating to the goods themselves, for example, requirements relating to their production, composition, quality or performance;

standards of the second State relating to the way the goods are presented, for example, requirements relating to their packaging, labelling, date stamping or age;

requirements that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;

requirements that any step in the production of the goods not occur outside the second State;

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 second State.

Clause 11—Requirements that do need to be complied with

This clause contains exceptions to the mutual recognition principle. The principle does not affect the operation of any laws of the second State, so long as those laws apply equally to goods produced in or imported into the second State and are laws which fall into one of the following classes:

laws which regulate the manner of sale of goods or the manner in which sellers conduct their business in the second State (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); or

laws which relate to the transportation, storage or handling of goods and are directed at matters affecting the health and safety of persons within the second State or at environmental pollution matters; or

laws which relate to the inspection of goods (other than laws providing that inspection is a prerequisite to the sale of the goods in the second State) and are directed at matters affecting the health and safety of persons within the second State or at environmental pollution matters.

Clause 12—Defences to offences regarding sale

The clause provides that it is a defence to a prosecution for an offence against sale of goods laws in the second State 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 the first State and also establishes that the person had no reason for believing 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 goods did not comply with requirements imposed by the law of the first State).

Clause 13—Goods that comply with local law

The clause provides that nothing prevents goods from being sold if they comply with the law of the State in which they are sold.

Clause 14—Permanent exemptions

The clause provides that this Part does not apply to goods specified in Schedule 1 and does not affect laws described in Schedule 2.

Clause 15—Temporary exemptions

The clause enables a State Act or regulation to declare that this Part does not apply to specified goods or does not affect the operation of specified laws. Such an exemption must be substantially for the purpose of protecting the health and safety of persons in the State or for preventing, minimising or regulating environmental pollution in the State and may not operate for a period exceeding, or periods exceeding in the aggregate, 12 months.

PART 3—OCCUPATIONS

Division 1—Preliminary

Clause 16—Mutual Recognition

The clause 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 a State ("the first State") to carry on an equivalent occupation in another State ("the second State").

Clause 17—Entitlement to carry on occupation

The clause provides that a person who is registered in the first State for an occupation is entitled to be registered for an equivalent occupation in the second State after notification to the local registration authority for the second State. Pending registration, the person may carry on the equivalent occupation in the second State.

The mutual recognition principle does not affect the operation of laws that affect the manner of carrying on an occupation in the second State 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 18—Application of this Part

The clause deals with aspects of how the Part applies. It applies to individuals only (and not to corporate bodies). 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 19—Notification to local registration authority

The clause enables a person who is registered in the first State for an occupation to lodge written notice with the local registration authority of the

second State 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 20—Entitlement to registration and continued registration

The clause provides that once a person lodges a notice under clause 19 in the second State the person is entitled to be registered in the equivalent occupation and the entitlement continues (even if the registration in the first State ceases) so as to enable renewal of registration in the second State. Continuance of registration is otherwise subject to the law of the second State.

The local registration authority of the second State 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 the first State or that are necessary to achieve equivalence of occupations. The clause states that it has effect subject to the Part (for example, clause 33).

Clause 21—Action following notice

The clause provides that registration must be granted within one month of lodging a notice under clause 19 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 22—Postponement of registration

The clause specifies the circumstances in which the local registration authority of the second State 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 Tribunal.

Clause 23—Refusal of registration

The clause specifies the grounds on which the local registration authority of the second State may refuse registration. Those grounds are that a statement or information in the notice under clause 19, 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 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 Tribunal. On such an application the Tribunal may make whatever orders it considers appropriate.

Clause 24—Notification of decision

The clause requires a local registration authority to give notice in writing of its decision as to registration.

Division 3—Interim arrangements

Clause 25—Deemed registration

The clause provides that pending determination of a notice under clause 19 the person lodging the notice has "deemed registration". Deemed registration does not of itself provide a basis for registration in another State.

Clause 26—Duration of deemed registration

The clause deals with the duration of a person's deemed registration. It ceases when the person is registered by the local registration authority of the second State, or if that authority refuses registration, or if substantive registration in other States 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 27—Activities under deemed registration

The clause enables a person with deemed registration to carry on the equivalent occupation in the second State but subject to certain limitations. Those limitations include the limits conferred by the person's substantive registration as well as by the person's deemed registration.

Division 4—Equivalent occupations

Clause 28—Equivalent occupations

The clause states that the equivalence of occupations carried on in different States is to be determined in accordance with this Part.

Clause 29—General principle

The clause provides that occupations in different States are to be taken as equivalent if the activities authorised under the registration for the occupation in each State are substantially the same. This equivalence may be achieved by the imposition of conditions.

Clause 30—Declarations as to equivalent occupations

The clause 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 Tribunal (see clause 31) and a declaration of Ministers (see clause 32), the ministerial declaration prevails. A declaration does not affect the registration of a person already registered unless it is made by the Tribunal in relation to that person specifically.

Clause 31—Declarations by Tribunal

The clause enables the 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 the first State is or is not entitled to registration in the second State in a particular occupation.

On such a review, the Tribunal may also specify conditions that will achieve equivalence and may make a declaration that occupations carried on in two States are not equivalent if it is satisfied as to certain matters.

Such declarations must be published and notified to appropriate authorities in other States and the Commonwealth. The local registration authority must give effect to the decision on the review.

Clause 32—Declarations by Ministers

The clause enables Ministers from two or more States jointly to declare that specified occupations are equivalent and to specify conditions that will achieve equivalence. Such a declaration has effect only in relation to the States

concerned and must be given effect to by the appropriate local registration authorities.

Division 5—General provisions

Clause 33—Disciplinary action

The clause provides that if a person's registration in an occupation in a State 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 another State is affected in the same way (whether or not the registration in the other State was effected under the proposed Act). The local registration authority of the other State may in such cases reinstate the registration or waive conditions if it thinks it *appropriate*.

Clause 34—Review of decisions

The clause allows a person to apply to the Tribunal for review of a decision of a local registration authority under the proposed Act.

Clause 35—Costs

The clause empowers the Tribunal to order a party in proceedings to pay costs if the party has acted unreasonably.

Clause 36—Residence or domicile

The clause 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—Furnishing information

The clause requires a local registration authority of a State to furnish promptly information about a person registered in that State reasonably required by a local registration authority of another State. The request for information must be in connection with the seeking of registration by the person in the second State, 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 or confidentiality.

Clause 38—Receiving information

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

Clause 39—General responsibilities of local registration authorities

The clause 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 is to be available within six months of the commencement of the clause.

Clause 40—Fees

The clause enables a local registration authority 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—Formalities requiring personal attendance

The clause provides that registration or entitlement to registration under this Part does not require compliance with any requirements as to personal attendance in the second State.

Clause 42—Saving

The clause states that nothing prevents a person from seeking registration in an occupation apart from this Act.

PART 4—GENERAL

Clause 43—References to participating jurisdictions

The clause defines "participating jurisdiction" for the purposes of the proposed Act as being a State which has an Act referring to the Commonwealth the power to enact the proposed Act or a Territory which has an Act requesting the Commonwealth to enact the Act or enabling the Act to apply to it.

Clause 44—Application of mutual recognition principle

The clause 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 two States (as well as in relation to two States).

Clause 45—Machinery provisions regarding limitations etc.

The clause enables conditions or undertakings imposed on the registration of a person in an occupation in the first State to be construed with necessary adaptations for the purposes of registration in the second State.

Clause 46—Determining place of production

The clause provides a method for determining where goods are produced for the purposes of the proposed Act.

Clause 47—Amendment of Schedules

The clause empowers the Governor-General to make regulations amending the Schedules to the proposed Act but only if the designated person for each of the then participating States has published a notice in the relevant official gazette setting out the terms of the regulation and requesting that it be made.

Schedule 1—Permanent Exemptions: Goods

Schedule 1 specifies goods to which the mutual recognition principle as embodied in Part 2 does not apply.

Schedule 2—Permanent Exemptions: Laws Relating to Goods

Schedule 2 specifies laws which are not affected by the mutual recognition principle as embodied in Part 2.