



Australian Government

Department of the Prime Minister and Cabinet

Automatic Mutual Recognition of Occupational Registrations: Exposure Draft Legislation

Consultation Paper

Introduction

In August 2020, the Australian Government announced that the Commonwealth, and State and Territory governments had agreed to introduce a uniform scheme for the automatic mutual recognition of occupational registrations (AMR), subject to the passage of legislation, as part of a broader set of regulatory reforms to assist Australia's economic recovery.

AMR will allow a person who is licenced or registered for an occupation in one jurisdiction to be considered registered to perform the same activities in another jurisdiction, without the need for further application processes or additional registration fees. The AMR scheme will apply to registrations currently covered by existing mutual recognition arrangements, such as electricians, plumbers, teachers and real estate agents. The scheme will make it simpler, quicker and less expensive for people to work across jurisdictions, while maintaining high standards of consumer protection and worker and public health and safety. The scheme will also incorporate safeguards and flexibilities so that states and territories can ensure it operates appropriately in their jurisdictions. The benefits of this reform are significant — PwC estimated that AMR could lead to an additional \$2.4 billion in economic activity over ten years as a result of savings to workers and businesses, productivity improvements and extra surge capacity in response to natural disasters. Over 160,000 workers would benefit, including 44,000 people who will work interstate that would not otherwise have done so.

On 13 November 2020, National Cabinet agreed to establish an Intergovernmental Agreement on Automatic Mutual Recognition of Occupational Registration outlining jurisdictions' commitment to implement AMR, potential future reforms and governance arrangements. The Agreement was signed by all jurisdictions, with the exception of the ACT, at National Cabinet's 11 December 2020 meeting.¹ National Cabinet also agreed to release draft legislation by the end of the year to amend the *Mutual Recognition Act 1992* (MR Act), enabling AMR to commence from 1 July 2021.

The Deregulation Taskforce, based in the Department of the Prime Minister and Cabinet, is seeking stakeholder views on exposure draft legislation to amend the MR Act developed in collaboration with State and Territory governments. This consultation paper outlines the core elements of the exposure draft *Mutual Recognition Amendment Bill 2020* (the Bill) and provides high-level explanation of the policy intent behind these amendments to help inform consultation with interested parties. State and Territory governments may also conduct consultations on the Bill, complementing this process, with the outcomes to inform development of the final legislation.

Background

Over 17 per cent of the Australian workforce requires a registration or a licence to perform their work. Some occupations, including some health practitioners are registered under national arrangements, but regulatory requirements and processes for most registered professions are managed and set differently in each of the eight states and territories. Differences in regulation between jurisdictions for the same occupation make it harder for tradespersons and other professionals to move across borders for work, raising the costs to employers of filling job vacancies and reducing competition and choice for consumers.

Since its introduction in 1992, mutual recognition under the MR Act has helped to reduce barriers to occupational mobility across jurisdictions and in a broad range of occupations. However, reports by the Productivity Commission and others, have found that the effectiveness of the mutual recognition scheme is limited by its complexity, cost and the excessive regulatory burden it imposes on businesses and individuals providing services across jurisdictions. In its most recent report on mutual recognition in 2015, the Productivity Commission recommended governments expand the use of AMR to facilitate greater cross-border provision of services and improve the efficiency of mutual recognition arrangements.

Against this background, governments are progressing work to introduce a uniform AMR scheme as a means of ensuring Australians, including displaced and underemployed registered workers, can take up job opportunities wherever they arise. These reforms will support recovery from the COVID-19 pandemic and natural disasters in the short-term and help build a stronger, more resilient and more productive economy over the longer-term.

¹The Intergovernmental Agreement can be found at: <https://www.pmc.gov.au/domestic-policy/deregulation-taskforce>

Purpose and scope of the Exposure Draft Bill

The amendments covered by this Bill focus on reforms to the existing framework of the MR Act to establish a new Part 3A and to make consequential changes to other parts of the Act.

Key elements of the Bill include:

- A new Part 3A will establish a second mutual recognition principle that **a person who is registered for an occupation in their home state is entitled to carry on those activities authorised under their home state registration in a second state.**
- This principle **will be operationalised through automatic deemed registration**, whereby a person who is registered for an occupation in their home state is taken to be registered in the second state for the purposes of carrying on those activities permitted under their home state registration.
- A registered person **will not be required to pay extra fees or meet any additional requirements for the issue or renewal of a registration** to undertake permitted activities in the second state. The person will have to meet requirements relating to insurance, fidelity funds, trust accounts or the like, as well as other requirements such as working with children checks, that that are designed to protect the public, consumers and others. States may also require notification of intent to work in their jurisdiction.
- A registered person **will need to comply with local laws in the second state and is subject to any applicable disciplinary actions.** A registered person subject to disciplinary action or who has conditions on their licence as a result of disciplinary, civil or criminal action in relation to the activity will not be eligible for automatic deemed registration.
- A registered person **will need to apply for a new home state registration should their home state change.** In this situation, the registered person could apply for a new registration through existing mutual recognition arrangements. A person will continue to have access to automatic deemed registration, relying on their original home state registration until a registration from the new home state is issued.
- A Minister in the second state **may declare that specific registrations are exempt from automatic deemed registration in their jurisdiction** where they determine there is a significant risk to consumer protection, or the health or safety of workers or the public. These exemptions will be published, sunset after five years and be subject to review by the state if they are to be renewed.
 - Additionally, a Minister in the second state will be able **to declare a specific registration temporarily exempt from automatic deemed registration**, where the Minister is not satisfied that there is no significant risk to consumer protection, or the health or safety of workers or the public in that state or territory.
- States and local registration authorities **will be required to make available to each other relevant information about a registered person and prepare and publish guidance** on the operation of automatic deemed registration, consistent with the existing mutual recognition arrangements.
- The proposed amendments will **not prevent a person from seeking mutual recognition under the existing framework** in Part 3 of the Act nor will it disrupt existing national registration schemes or existing state-based automatic mutual recognition schemes, such as the NSW scheme for electrical trade work licences.

Core elements of AMR

Automatic Deemed Registration

The Bill introduces the concept of a home state, taken to be a person's primary place of residence or their primary place of work, to enable a person who is registered in their home state to be entitled to Automatic Deemed Registration (ADR) in a second state. ADR enables an individual to carry on those occupational activities authorised under their home state registration in a second state. This entitlement, while automatic, can be conditional on the fulfilment of a simple notification requirement (should the second state decide), a character test if working with vulnerable people and children, and financial requirements subject to second state laws.

The new mutual recognition principle is different to the existing principle (in Part 3 of the MR Act) because it focuses on activities authorised under a registration and enabling an individual to continue those same activities in another state without requiring another registration outlining which activities can be carried out.

Simple notification, with no application or renewal fees

A registered person looking to carry on activities under ADR in a second state will notionally not be required to provide any information to the local regulator before starting work. However, the Bill does give a Minister of the second state the discretion to determine whether a form of notification, such as a simple notification of an intention to work, is required for a person to claim ADR in their jurisdiction. In addition, the Bill contains provisions removing any obligation for second state regulators to issue individuals with evidence of their ADR. This means that a person claiming ADR can use their home state registration details or documents as evidence of their authority to work in the second state. Consumers will be able to verify an individual's authority to provide a service by looking at publicly available information about an individual's home state registration and by contacting the home state regulator.

The Bill provides that an interstate registered person carrying on activities in the second state under ADR is not required to pay those fees typically required to be paid by local persons applying for or renewing a home state registration. This avoids a registered person paying duplicative registration fees in the second state. An interstate registered person will still have to pay those fees or charges in the second state that are designed to protect the public and others (such as payment of insurance), any fines or legal costs, or fees to obtain a certificate verifying that work has been done to the required standards.

State laws will continue to apply

The laws of a second state, and the State Government's ability to take effective disciplinary action, will continue to apply to everyone providing a service in its jurisdiction, including a person operating under ADR.

This will include compliance with any laws associated with the manner of carrying-on the activity and public protection requirements imposed by the second state on its local registration holders, such as maintaining required insurance cover, contributions to compensation funds or other financial requirements designed to protect the public. In addition, a registered person will need to obtain and maintain applicable permissions in the second state for carrying on the activity in relation to vulnerable people or children.

A state may take action against a person's registration, including suspending or cancelling ADR, as a result of criminal, civil or disciplinary proceedings consistent with the laws that local licence holders are subject to. In these circumstances, the registered person will lose their eligibility to carry on activities under ADR in all jurisdictions and, depending on the nature of the non-compliance in the second state, an individual's home state licence may be affected. This will be supported by information sharing between jurisdictions to ensure that local regulators are aware of actions taken within the scheme.

Although a registered person working in a second state under ADR may be subject to conditions or undertakings imposed by their home state regulator, second state regulators will not have the ability to impose any additional conditions on their ADR.

Moving home state

Given a person's home state registration provides the basis for the scope and duration of their entitlement to ADR, the Bill contains provisions to cover instances where a registered person changes their home state. Should a person change the location of their principal place of residence or principal place of work, they will be able to benefit from transitional arrangements until they become substantively registered in the new jurisdiction. Under the Bill, the definitions of principal place of residence and principal place of work are sufficiently flexible to accommodate situations where a person works regularly across state borders.

A new home state registration can be accessed through notification to the local regulator in the new home state using the existing mutual recognition arrangements, this will enable the individual to continue to provide a service using their ADR in a third state. A person will continue to have access to ADR relying on their original home state registration until a registration from the new home state is issued.

States can exempt registrations from the scheme

A registered person will be able to access ADR to carry on activities in another state unless a Minister has publicly declared a registration exempt from ADR in their jurisdiction because of a significant risk to consumer protection, or the health or safety of workers or the public. An exemption could apply to every interstate registered person seeking to access ADR for the registration or it could apply only to those coming from a certain jurisdiction, depending on the nature of the risk.

While there is a threshold for a state to declare a registration exempt from the scheme, the process will be sufficiently flexible to allow jurisdictions to address a significant risk. The declarations will need to include a statement of reasons explaining the significant risk to the jurisdiction associated with ADR for the registration. The declaration will be made public and will automatically expire after five years, if not revoked earlier, but can be extended following a review confirming the continued risk.

On commencement of the scheme on 1 July 2021, the Bill allows states to declare a registration temporarily exempt from ADR where the Minister is not satisfied that there is no significant risk to consumer protection, or the health or safety of workers or the public. A temporary exemption can apply for up to six-months, to 31 December 2021, unless the declaration is revoked earlier. This provision allows states additional time to identify risks and consider how best to address them.

Local regulators will play a key role

Local regulators will play a key role in the effective operation of the scheme and the Bill enhances their ability to take necessary action. Given the scheme will remove existing requirements for a registered person to apply and provide information to a second state regulator to obtain registration, the Bill builds on the information sharing provisions under existing arrangements to enable a second state to confirm the person's eligibility to access the AMR scheme and authority to carry-out an activity using ADR. The Bill includes provisions that require second state regulators to share information with all other state regulators when disciplinary action is taken as this may affect the individual's home state licence and their entitlement to ADR in other states. These provisions will reduce the likelihood of repeat non-compliant behaviour in other states. Material received by states will be managed in accordance with their laws governing personal information.

Local regulators will be at the frontline of activities to bring the scheme into force and guide stakeholders through the transition. The Bill therefore requires regulators to prepare and make available guidelines and information regarding the operation of the scheme in relation to the registrations for which they are responsible, including outlining that registration information on individuals taking part in mutual recognition and automatic mutual recognition will be shared between regulators. This guidance material will be made available within six months of the scheme commencing in their jurisdiction.

Other recognition schemes will not be affected

The Bill will not disrupt mutual recognition under the MR Act or existing schemes for the automatic recognition of occupational registrations, such as NSW's arrangements for electrical trade work licences from Queensland, Victoria and the ACT. The amended MR Act will also operate separately from national schemes, such as the one in place for certain health practitioners.

The consultation process

Feedback from workers, businesses, consumers and bodies including industry representatives is important to ensuring that these new arrangements are effective.

The Deregulation Taskforce will continue to work with State and Territory governments to consult with a range of stakeholders on the Bill. Following consideration of the views expressed through this consultation process, the Commonwealth intends to introduce a bill to Parliament as soon as possible, to enable commencement of the new scheme from 1 July 2021.

How to make a submission

The Deregulation Taskforce, based in the Department of the Prime Minister and Cabinet (the Department) invites submissions on the Exposure Draft Bill and the proposed Automatic Mutual Recognition scheme more broadly.

Submissions can be made online at <https://www.pmc.gov.au/domestic-policy/deregulation-taskforce> or via post. Hard copy submissions can be posted to:

Deregulation Taskforce
Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600
Australia

The department will consider hardcopy submissions received by post, however these submissions will not be published on the website. **Submissions should be received by the Department by 5 PM AEDST, Friday 12 February 2021.**

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The Department reserves the right not to publish all or part of a submission. Contact us for more information at OccupationalMobility1@pmc.gov.au.

Information you provide in your submission, including personal information, may be disclosed to the Australian Government, State and Territory governments and their departments and agencies; and third parties who provide services to the Department, for the purposes of informing and supporting the work of the Deregulation Taskforce. This information may also be used to communicate with you about your submission and the consultation process.

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