



Mutual Recognition Act 1992

No. 198, 1992

This future law compilation was prepared on 16 December 2020 taking into account amendments made by the Mutual Recognition Amendment Bill 2020.

These amendments are expected to commence on 1 July 2021.

About this compilation

This compilation

This is a future compilation of the *Mutual Recognition Act 1992* that shows the expected text of the law as amended by the Mutual Recognition Amendment Bill 2020 is expected to take effect on 1 July 2021.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to provide for the recognition within each State and Territory of the Commonwealth of regulatory standards adopted elsewhere in Australia regarding goods, occupations and activities

Part 1—Preliminary

1 Short title

This Act may be cited as the *Mutual Recognition Act 1992*.

2 Commencement

The provisions of this Act commence on a day or days to be fixed by Proclamation.

3 Principal purpose

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 promoting the goal of freedom of movement of goods and service providers in a national market in Australia.

3A Simplified outline of this Act

<p>The purpose of this Act is to promote the goal of freedom of movement of goods and service providers in a national market in Australia.</p>
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Part 1 Preliminary

Section 3A

Part 2 allows goods that have been produced in or imported into a first State to be sold in a second State without needing to comply with certain requirements in the second State (such as requirements relating to the standards of the goods or the way the goods are presented). Goods may be permanently or temporarily exempted from the application of that Part.

Part 3 provides for individuals who are registered for an occupation in one State to be registered for an equivalent occupation, and carry on the activities of that occupation, in a second State. Ministers from 2 or more States may determine which occupations are equivalent between their States.

Part 3A provides for individuals who are registered for an occupation in one State to be taken to be registered to carry on, in a second State, the activities covered by the occupation. This sort of registration is called automatic deemed registration. A State Minister may exempt a registration from being subject to automatic deemed registration because of a significant risk to consumer protection or the health or safety of workers or the public, or for a period of 6 months after the Part begins to apply to the State.

The power to enact this Act is provided by:

- (a) the States referring to the Parliament of the Commonwealth the power to enact this Act as originally enacted, or as amended by the *Mutual Recognition Amendment Act 2020*, under paragraph 51(xxxvii) of the Commonwealth Constitution; and
- (b) the States adopting this Act as originally enacted, or as amended by the *Mutual Recognition Amendment Act 2020*, under paragraph 51(xxxvii) of the Commonwealth Constitution; and
- (c) section 122 of the Commonwealth Constitution (which deals with Territories).

4 Interpretation

In this Act, unless the contrary intention appears:

activity means an activity authorised to be carried on under a registration for an occupation.

automatic deemed registration has the meaning given by subsection 42D(5).

commencement day, for a State, means:

- (a) 1 July 2021 (unless paragraph (b) applies); or
- (b) for a State that is a pre-adoption State on 1 July 2021—the day the State adopts this Act, as amended by the *Mutual Recognition Amendment Act 2020*.

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

covers: An occupation **covers** an activity, in relation to a State, if a registration of the occupation in the State authorises the carrying on of the activity.

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

first State:

- (a) in, and in relation to, Part 2—has the meaning given by subsection 8(3); and
- (b) in, and in relation to, Part 3—has the meaning given by subsection 16(3).

goods means goods of any kind, and includes:

- (a) animals; or
- (b) a package containing goods; or
- (c) a label attached to goods.

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

Section 4

home State has the meaning given by subsection 42A(3).

import means import from outside Australia.

interim deemed registration has the meaning given by section 25.

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 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 that occupation in the State.

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 subsection 5(4).

pre-adoption State means a State (other than a Territory):

- (a) that is a participating State; and
- (b) that has not referred to the Commonwealth Parliament the power to enact this Act, as amended by the *Mutual Recognition Amendment Act 2020*, under section 51(xxxvii) of the Commonwealth Constitution; and
- (c) that has not adopted this Act, as amended by *Mutual Recognition Amendment Act 2020*.

principal place of residence of a person means the place of residence or home that the person primarily occupies, on an ongoing and permanent basis, as the person's settled or usual home.

principal place of work of a person, in relation to an activity, means the place in which the person primarily carries on that activity.

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

public protection requirement means a requirement regarding insurance, fidelity funds, trust accounts or the like that is designed to protect the public, clients, customers or others.

registered: a person who is ***registered*** for an occupation in a State includes a person who:

- (a) is licensed, approved, admitted, certified (including by way of practising certificates), or otherwise authorised, under a law of the State to carry on the occupation; or
- (b) holds a licence, approval, admission, certification or any other authorisation under a law of the State to carry on the occupation.

registration fee has the meaning given by subsection 42F(2).

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

second State has the meaning given by:

- (a) in, or in relation to, Part 2—subsection 8(3); and
- (b) in, or in relation to, Part 3—subsection 16(3); and
- (c) in, or in relation to, Part 3A—subsection 42A(2).

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.

Section 5

substantive registration means registration under a law of a State, but does not include interim deemed registration or automatic deemed registration.

this Act as originally enacted includes any amendments to the Schedule to this Act by regulations made for the purposes of section 47.

Tribunal means the Administrative Appeals Tribunal.

vulnerable person character test means a character test or a fit or proper person test conducted for the purposes of determining whether a person may carry on an activity in relation to vulnerable people or children.

5 Application of this Act to 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.

Effect of amendments to this Act on pre-adoption States

- (3) Despite subsections (1) and (2):
 - (a) the amendments of this Act made by the *Mutual Recognition Amendment Act 2020* do not apply to a pre-adoption State; and
 - (b) this Act, as in force immediately before those amendments commence, continues to apply to the pre-adoption State while it is a pre-adoption State.

Note: There are effectively 2 versions of this Act that apply in Australia unless all States refer or adopt this Act as amended by the *Mutual Recognition Amendment Act 2020*.

The amended version of this Act applies in the Australian Capital Territory, the Northern Territory and any State that, before those amendments commence, refers power to the Commonwealth under paragraph 51(xxxvii) of the Commonwealth Constitution to enact the amendments made by the *Mutual Recognition Amendment Act 2020*.

The unamended version of this Act applies in any pre-adoption State unless that State adopts those amendments.

Definition of participating jurisdiction

- (4) A *participating jurisdiction* is:
- (a) 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 as originally enacted, or that adopts this Act as originally enacted, under paragraph 51(xxxvii) of the Commonwealth Constitution; or
 - (b) 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 as originally enacted, or that enables this Act as originally enacted to apply to it.

Note 1: A pre-adoption State is still a participating jurisdiction, but an earlier version of this Act applies to that State.

Note 2: See section 4 for the definition of *this Act as originally enacted*.

6 Operation of this Act

- (1) Nothing in this Act affects the operation of any other law of the Commonwealth.
- (2) This Act does not limit the operation of a law of a State so far as it can operate concurrently with this Act.

7 Crown bound

Subject to section 5, this Act binds the Crown in right of the Commonwealth and of each of the States.

Part 2—Goods

8 Mutual recognition

- (1) The 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 a State and their sale in another State.
- (3) In this Part, the first-mentioned State is called the *first State* and the other State is called the *second State*.

9 Entitlement to sell goods

The mutual recognition principle is that, subject to this Part, goods produced in or imported into the first State, that may lawfully be sold in that State either generally or in particular circumstances, may, because of this Act, be sold in the second State either generally or in particular circumstances (as the case may be), without the necessity for compliance with further requirements as described in section 10.

10 Requirements that do not need to be complied with

The further requirements referred to in section 9 are any one or more of the following requirements relating to sale that are imposed by or under the law of the second State:

- (a) a requirement that the goods satisfy standards of the second State 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 second State 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 second State;
- (d) a requirement that any step in the production of the goods not occur outside the second State;
- (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 second State.

11 Requirements that do need to be complied with

- (1) The 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 the second State that regulate the manner of the sale of goods in the second State or the manner in which sellers conduct or are required to conduct their business in the second State (including laws set out in the examples below), so long as those laws apply equally to goods produced in or imported into the second State.

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 the second State regarding the transportation, storage or handling of goods within the State, so long as:
 - (a) those laws apply equally to goods produced in or imported into the second State; and
 - (b) those laws are directed at matters affecting health and safety of persons in the second State or at preventing, minimising or

Section 12

regulating environmental pollution (including air, water, noise or soil pollution) in the second State.

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

12 Defences to offences regarding sale

- (1) It is a defence to a prosecution for an offence against a law of the second State in relation to the sale of any goods if the defendant expressly claims that the 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 the first State; 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 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 the first State).
- (3) Any relevant presumptions or evidentiary procedures under the law of the first State 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 the first State 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.

13 Goods that comply with local law

- (1) Nothing in this Part prevents goods from being sold in the second State if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.
- (2) Nothing in this Part requires the labelling of goods as mentioned in section 12 if (apart from this Act) they comply with the relevant requirements imposed by or under the law of the second State.

14 Permanent exemptions

- (1) This Part does not apply to goods described in Schedule 1.
- (2) This Part does not affect the operation of laws described in Schedule 2.
- (3) Unless otherwise stated in Schedule 2, a law described in that Schedule includes any amendment or replacement of that law, but only to the extent that the amendment or replacement deals with the same subject-matter.

15 Temporary exemptions

- (1) This Part does not apply to the sale in the second State of goods, or affect laws of the second State, for the time being declared by or under an Act or regulation of the State to be goods or laws to which this section applies.
- (2) Any such exemptions have effect only if they are substantially for the purpose of protecting the health and safety of persons in the State or preventing, minimising or regulating environmental pollution (including air, water, noise or soil pollution) in the State.

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Part 2 Goods

Section 15

- (3) 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.

Part 3—Registration of equivalent occupations

Division 1—Preliminary

16 Mutual recognition of equivalent occupations

- (1) The mutual recognition principle as applying to occupations that are equivalent is as set out in this Part.

Note: Part 3A provides for mutual recognition of activities covered by occupations.

- (2) This Part deals with the ability of a person who is registered in connection with an occupation in a State to carry on an equivalent occupation in another State.
- (3) In this Part, the first-mentioned State is called the *first State*, and the other State is called the *second State*.

17 Entitlement to carry on equivalent occupation

- (1) The mutual recognition principle in relation to occupations that are equivalent is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:
 - (a) to be registered in the second State for the equivalent occupation; and
 - (b) pending such registration, to carry on the equivalent occupation in the second State.
- (2) However, the 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 the second State, 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 second State; and

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Part 3 Registration of equivalent occupations

Division 1 Preliminary

Section 18

- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

18 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 State, 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 of equivalent occupations

19 Notification to local registration authority

- (1) A person who is registered in the first State for an occupation that is equivalent to an occupation in the second State may lodge a written notice with the local registration authority of the second State for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the mutual recognition principle in section 17.
- (2) The notice must:
 - (a) state that the person is registered for the occupation in the first State and specify that State; and
 - (b) state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle in section 17; and
 - (c) specify each State in which the person has substantive registration for an equivalent occupation; and
 - (ca) specify each State in which the person has automatic deemed registration to carry on an activity covered by the occupation referred to in paragraph (b); and
 - (d) state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and
 - (e) state that the person's substantive registration referred to in paragraph (c), or automatic deemed registration referred to in paragraph (ca), in any State 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 State, and is not subject to any conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and

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Part 3 Registration of equivalent occupations

Division 2 Entitlement to registration of equivalent occupations

Section 20

(g) specify any conditions to which the person is subject in carrying on any such occupation in any State.

Note: For paragraph (ca), an automatic deemed registration may require steps to be taken before it begins. For when an automatic deemed registration begins, see subsection 42D(2).

- (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.

20 Entitlement to registration and continued registration

- (1) A person who lodges a notice in accordance with section 19 with a local registration authority of the second State is entitled to be registered in the equivalent occupation, as if the law of the second State that deals with registration expressly provided that registration in the first State 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 mentioned in subsection (1) continues, whether or not registration (including any renewal of registration) ceases in the first State.

- (4) Continuance of the registration is otherwise subject to the laws of the second State, 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 second State; 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 the 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 the first State or that are necessary to achieve equivalence of occupations.
- (6) This section has effect subject to this Part.

21 Action following notice

- (1) Registration mentioned in subsection 20(1) must be granted within one month after the notice is lodged with the local registration authority in accordance with section 19.
- (2) When granted, the 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 in accordance with subsection (3) within the period of one month after the notice is lodged, the person is entitled to registration as mentioned in subsection 20(1) 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.

Part 3 Registration of equivalent occupations

Division 2 Entitlement to registration of equivalent occupations

Section 22

22 Postponement of registration

- (1) A local registration authority may postpone the grant of registration mentioned in subsection 20(1) if:
 - (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
 - (b) any document or information as required by subsection 19(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 as mentioned in subsection 20(1) immediately at the end of that period, unless the registration was refused at or before the end of that period.
- (4) Nothing in subsection (3) prevents earlier registration mentioned in subsection 20(1) from being granted on a review by the Tribunal.

23 Refusal of registration

- (1) A local registration authority may refuse the grant of registration mentioned in subsection 20(1) if:
 - (a) any of the statements or information in the notice as required by section 19 are materially false or misleading; or
 - (b) any document or information as required by subsection 19(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 the 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 Tribunal, in which case the Tribunal may make whatever orders it considers appropriate.

24 Notification of decision

A local registration authority must give the person who lodges a notice in accordance with section 19 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, in accordance with this Division.

Division 3—Interim arrangements

25 Interim deemed registration

- (1) A person who lodges a notice in accordance with section 19 with a local registration authority of a State is, pending the grant or refusal of registration in accordance with Division 2, taken to be registered as provided in section 20.
- (2) Such registration is called *interim deemed registration* in this Act.
- (3) Subject to section 42CB, interim deemed registration in one State does not of itself provide a basis for registration in another State (whether in accordance with this Part, Part 3A or otherwise).

Note: Section 42CB deals with changing home States.

26 Duration of interim deemed registration

- (1) A person's interim deemed registration in the second State continues until it is cancelled or suspended or otherwise ceases in accordance with this Part.
- (2) A person's interim deemed registration in the second State ceases if the person becomes substantively registered in the State in connection with the occupation concerned.
- (3) A person's interim deemed registration in the second State ceases if the local registration authority of the State refuses to grant registration, subject to any determination of the Tribunal.
- (4) A person's interim deemed registration in the second State ceases if the person ceases to be substantively registered in every other State mentioned in the notice as required by paragraph 19(2)(c).
- (5) A local registration authority of the second State may cancel a person's interim deemed registration in the second State if the person requests cancellation.
- (6) Interim deemed registration is not affected by postponement of the grant of substantive registration.

27 Activities under interim deemed registration

- (1) A person who has interim deemed registration in the second State may carry on the occupation in the second State as if the interim deemed registration were substantive registration in the second State.
- (2) However, the person may do so only:
 - (a) within the limits conferred by the person's substantive registration in the first State; and
 - (b) within the limits conferred by the person's interim deemed registration in the second State; and
 - (c) subject to any conditions or undertakings applying to the person's registration in the first State, unless waived by the local registration authority of the second State in accordance with this section; and
 - (d) subject to any conditions applying to the person's interim deemed registration.
- (3) Without limiting anything in this Division:
 - (a) the person may not carry on the occupation in the second State without complying with any public protection requirements; and
 - (b) a person who has interim deemed registration in an occupation in the second State is subject to any disciplinary provisions and arrangements that are applicable to persons who are substantively registered in that State; and
 - (c) references in the law of the second State to persons registered in an occupation under the law of that State (however expressed) extend to persons who have interim deemed registration for the occupation.
- (4) However, the local registration authority of the second State may waive any condition imposed under the law of the first State, or any undertaking given to the local registration authority of the first State, if it thinks it appropriate in the circumstances.

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Part 3 Registration of equivalent occupations

Division 3 Interim arrangements

Section 27

- (5) The local registration authority of the second State may impose conditions as if interim 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 the first State or that are necessary to achieve equivalence of occupations.

Division 4—Equivalent occupations

28 Equivalent occupations

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

29 General principles

- (1) An occupation for which persons may be registered in the first State is taken to be equivalent to an occupation for which persons may be registered in the second State 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 in accordance with this Part so as to achieve equivalence between occupations in different States.
- (3) This section has effect subject to any relevant declarations in force under this Division.

30 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 Tribunal and a declaration made by Ministers 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 Tribunal in relation to that person specifically).

31 Declarations by Tribunal

- (1) On a review, the Tribunal may make an order that a person who is registered in a particular occupation in a particular State is or is not entitled to registration in another State in a particular occupation, and may specify or describe conditions that will achieve equivalence.
- (2) On such a review, the Tribunal may make a declaration that occupations carried on in 2 States are not equivalent, but only if the Tribunal is satisfied that:
 - (a) the activities covered by the occupations are not substantially the same (even with the imposition of conditions); or
 - (b) registration in one State should not entitle registered persons to carry on a particular activity or class of activity in the other State, where:
 - (i) the activity or class of activity is a material part of the practice of a person registered in the first State 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 other State 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 Tribunal must cause a notice setting out the terms of a declaration under this section to be promptly published in the *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 State and the Commonwealth 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.

32 Declarations by Ministers

- (1) A Minister from each of 2 or more States may jointly declare, by notice in the *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 States concerned.
- (4) The appropriate local registration authority is to give effect to the declaration.

Division 5—General provisions

33 Disciplinary action

- (1) If a person's registration in an occupation in a State:
 - (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 another State is affected in the same way.
- (2) However, the local registration authority of the other State 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 but does not apply to any automatic deemed registration.

Note: For rules relating to cancellations etc. in relation to automatic deemed registrations, see paragraphs 42D(3)(b) and 42G(1)(a) and subsection 42L(2).

- (4) This section has effect despite any other provisions of this Part.

34 Review of decisions

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Tribunal for review of a decision of a local registration authority in relation to its functions under this Part.
- (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 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 subsection (3) does not affect the validity of the decision.

35 Costs

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

36 Residence or domicile

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

37 Furnishing information

- (1) A local registration authority of a State must furnish, as soon as reasonably practicable, any information reasonably required by a local registration authority of another State about a person substantively registered under a law of the first-mentioned State.
- (2) The obligation imposed in accordance with this section does not apply unless the authority of the other State notifies the authority of the first-mentioned State that the information is required in connection with:
 - (a) a notice lodged, in accordance with section 19, by a person seeking registration; or

Part 3 Registration of equivalent occupations

Division 5 General provisions

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- (b) a person's interim deemed registration; or
 - (c) actual or possible disciplinary action against the person in relation to the person's registration mentioned in subsection 20(1).
- (3) The authority of the first-mentioned State may provide the information, despite any law relating to secrecy, privacy or confidentiality.
- (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 receives information in relation to a person under section 37:

- (a) the information is subject to any law relating to secrecy, privacy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions; and
- (b) the local registration authority may receive the information for the purposes of the person's substantive registration (whether under this Part or otherwise), interim deemed registration or automatic deemed registration, in the State.

39 General responsibilities of local registration authorities

Facilitating operation of this Part

- (1) It is the duty of each local registration authority 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 mutual recognition principle in section 17.

Guidelines and information

- (2) It is the duty of each local registration authority to prepare and make available guidelines and information regarding the operation
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of this Part in relation to the occupations for which the authority is responsible.

- (3) Without limiting subsection (2), it is the duty of each local registration authority in a State to make publicly available information about how personal information (within the meaning of the *Privacy Act 1988*) may be used for the purposes of this Part.

40 Fees

- (1) A local registration authority has power to impose fees in relation to substantive or interim deemed registration or the continuance of registration arising as a result of 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 a State, but the fees may not be greater than can be imposed in accordance with this section.
- (3) The local registration authority may impose a condition on substantive or interim deemed registration arising as a result of 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 interim deemed registration, nor entitlement to registration, as a result of this Part requires compliance with any statutory or other formalities requiring personal attendance in the second State for the purposes of becoming registered.
- (2) This section applies to formalities that would otherwise have to be complied with before, at or after registration.

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Part 3 Registration of equivalent occupations

Division 5 General provisions

Section 42

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.

Note: A person may, in accordance with Part 3A, have automatic deemed registration to carry on an activity covered by an occupation, or may alternatively have substantive registration under a State law.

Part 3A—Automatic deemed registration to carry on activities

Division 1—Preliminary

42A Mutual recognition of activities through automatic deemed registration

- (1) The mutual recognition principle as applying to activities covered by occupations is as set out in this Part.

Note 1: Part 3 provides for mutual recognition of occupations that are equivalent.

Note 2: For the definition of *activity*, see section 4.

- (2) This Part deals with the ability of a person who is registered for an occupation in the person's home State to carry on, in another State (the *second State*), the activities covered by the occupation.
- (3) The *home State* of a person, in relation to an activity, is the State in which the person has:
- (a) their principal place of residence; or
 - (b) their principal place of work in relation to the activity.

If the person's home State under paragraphs (a) and (b) in relation to an activity is different, the person's *home State* is whichever of the 2 States is chosen by the person.

- (4) To avoid doubt, a reference in subsection (2) or (3) to a State does not include a reference to a pre-adoption State.

42B Entitlement to carry on equivalent activities

- (1) The mutual recognition principle in relation to activities is that, subject to this Part, a person who is registered in the person's home State for an occupation is, by force of this Act, entitled to carry on in the second State the activities covered by the occupation.

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Part 3A Automatic deemed registration to carry on activities

Division 1 Preliminary

Section 42C

- (2) However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on the activities in the second State, so long as those laws:
- (a) apply equally to all persons carrying on or seeking to carry on the activities under the law of the second State; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the activities.

42C Application of this Part

- (1) This Part applies to individuals, and activities covered by occupations carried on by them.
- (2) If, in relation to an activity carried on by an individual, the individual is subject to:
- (a) more than one system of registration in a State; or
 - (b) more than one local registration authority in a State;
- this Part applies in relation to each of those systems of registration or each of those authorities.

Note: An example of such an activity is transporting dangerous goods, which requires a heavy vehicle licence and a dangerous goods driver licence issued by different bodies.

42CB Changing home States

- (1) This section applies if:
- (a) a person's home State in relation to an activity changes to a new State; and
 - (b) the person has interim deemed registration for an occupation that covers the activity in the new State.
- (2) This Part applies as if a reference to registration for the occupation that covers the activity in the home State were a reference to the interim deemed registration for the occupation that covers the activity in the new State.

Division 2—Entitlement to automatic deemed registration

Subdivision A—Entitlement to automatic deemed registration

42D Entitlement to automatic deemed registration

- (1) Despite any law of a State, a person who is registered in the person's home State for an occupation is, subject to this section, taken to be registered in the second State to carry on each of the activities covered by the occupation for which the person is required to be registered in the second State.

Note: See section 42CB if a person changes home States.

- (2) The person is taken to be registered in the second State to carry on each activity mentioned in subsection (1) covered by the occupation:
- (a) at the following time, or the latest of the following times, (as the case requires):
- (i) if the second State requires the person to notify the local registration authority for the occupation in accordance with subsection 42E(1)—at the time the person notifies the authority in accordance with that subsection;
 - (ii) if the second State requires the person to meet one or more public protection requirements before carrying on the activity in the second State—at the time the person meets the requirements;
 - (iii) if the second State requires the person to meet a vulnerable person character test—at the time the person meets the test; or
- (b) if none of subparagraph (a)(i), (ii) or (iii) applies—when the person first begins carrying on the activity in the second State.

Exceptions to entitlement to automatic deemed registration

- (3) A person is not taken to be registered to carry on an activity in the second State if:

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Part 3A Automatic deemed registration to carry on activities

Division 2 Entitlement to automatic deemed registration

Section 42D

- (a) the person is the subject of criminal, civil or disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to the activity; or
- (b) any of the following is cancelled or currently suspended as a result of disciplinary action:
 - (i) the person's registration in any State for an occupation that covers the activity;
 - (ii) the person's automatic deemed registration in any State (including the second State) to carry on the activity; or
- (c) the person is otherwise personally prohibited from carrying on the activity, or is subject to any conditions in carrying on the activity, as a result of criminal, civil or disciplinary proceedings in any State; or
- (d) the person is, in accordance with Part 3, refused registration in any State for an occupation that covers the activity; or
- (e) a law of the second State provides for persons to be, or to be taken to be, registered in that State to carry on the activity because, in another State, the person has a substantive registration for an occupation that covers the activity.

Note: A person's automatic deemed registration also ceases if subsection (3) begins to apply to the person after their automatic deemed registration begins (see paragraph 42G(1)(d)).

- (4) Subsections (1) and (2) are subject to:
 - (a) subsection 42H(2) (person may carry on equivalent activities); and
 - (b) Subdivisions B and C (effect of automatic deemed registration); and
 - (c) sections 42R and 42RA (exempting registrations because of significant risk to consumer protection etc. and exempting registrations temporarily).

Automatic deemed registration

- (5) A person who, as mentioned in subsections (1) and (2), is taken to be registered in the second State to carry on an activity has

automatic deemed registration to carry on the activity in that State.

References in State laws to persons who are registered

- (6) A reference in the law of the second State to a person registered for an occupation in the State (however expressed) that covers an activity includes a reference to a person who has automatic deemed registration to carry on the activity in the State.
- (7) For the purpose of any law of a State, a person who has automatic deemed registration to carry on an activity in the State is taken:
 - (a) to have had the registration for the occupation that covers the activity in the State conferred on the person by operation of the law of the State; and
 - (b) not to have had the person's automatic deemed registration to carry on the activity in the State conferred on the person by the operation of this Part.

Note: One effect of this provision is that a decision of a local registration authority in a State in relation to a person's automatic deemed registration is generally reviewable in accordance with the Acts of that State.

Automatic deemed registration does not create entitlement to other registrations

- (8) Automatic deemed registration in one State does not of itself provide a basis for substantive registration, interim deemed registration, or automatic deemed registration, in another State.

42E Notification may be required before a person has automatic deemed registration

- (1) If a Minister of a State makes a determination under subsection (4) in relation to an activity covered by an occupation, a person who intends to carry on the activity in the State in reliance on automatic deemed registration must notify, in accordance with the determination, the local registration authority for the occupation before the person begins to carry on the activity.

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Part 3A Automatic deemed registration to carry on activities

Division 2 Entitlement to automatic deemed registration

Section 42F

Note: The person's automatic deemed registration does not begin until the person has notified as required by subsection (1) (and may begin later) (see paragraph 42D(2)(a)).

Limitation on notifications

- (2) The form of the notification must not require anything that is not required by section 19 for the occupation that covers the activity.
- (3) No fee is payable to the local registration authority in relation to the notification.

Determination by Minister

- (4) A Minister of a State may determine, by legislative instrument:
 - (a) one or more activities for which notification is required by subsection (1); or
 - (b) the manner in which a person is to notify the local registration authority for the occupation that covers the activity.

Note: The determination is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (5) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of Chapter 3 (sunsetting) of that Act applies to a determination under subsection (4) of this section.

42F Payment of fees

- (1) A person must not be required to pay a registration fee in the second State in relation to the person's automatic deemed registration to carry on an activity.

Note: The local registration authority must also not charge a fee in relation to notifying the authority in relation to a person's automatic deemed registration (see subsection 42E(3)).

- (2) A **registration fee** is:
 - (a) a fee that is required to be paid before a person is registered, or to continue a person's registration (for example, on an anniversary of the person's registration); or
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- (b) a fee that is payable to the local registration authority to generally support compliance activities by the local registration authority (or any other person) in relation to the person's automatic deemed registration, other than:
 - (i) a fine, penalty or legal costs; or
 - (ii) a fee that is payable for a specific and identifiable compliance action taken in relation to the person's automatic deemed registration;

but does not include a fee relating to public protection requirements or relating to meeting a vulnerable person character test.

Example: A fee that is charged to pay for an inspector to provide a certificate of compliance is not a registration fee as it is payable for a specific and identifiable compliance action taken in relation to a person's automatic deemed registration.

42G Duration of automatic deemed registration

- (1) A person's automatic deemed registration to carry on an activity in the second State continues until:
 - (a) the person's substantive registration for the occupation that covers the activity in the home State ceases to be in force; or
 - (b) the person's home State changes and the person does not have interim deemed registration for an occupation that covers the activity in the new State (see section 42CB); or
 - (c) the person's automatic deemed registration is cancelled as mentioned in subsection (2); or
 - (d) the person otherwise ceases to be taken to be registered to carry on the activity in the second State because of subsection 42D(3); or
 - (e) the person becomes substantively registered in the second State for the occupation that covers the activity.
- (2) Without limiting paragraph 42L(1)(b), a local registration authority in the second State for an occupation that covers an activity may:

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Part 3A Automatic deemed registration to carry on activities

Division 2 Entitlement to automatic deemed registration

Section 42H

- (a) cancel a person's automatic deemed registration to carry on the activity in that State if the person requests the cancellation; or
- (b) cancel or suspend a person's automatic deemed registration if the person provides false or misleading information to the authority.

Subdivision B—Effect of automatic deemed registration

42H Person may carry on equivalent activities

- (1) To avoid doubt, a person who has automatic deemed registration to carry on an activity in the second State may carry on, in the second State, the activity that the person may carry on in the home State under the person's substantive registration for the occupation that covers the activity.
- (2) However, subject to this Division, the carrying on by the person of the activity in the second State is subject to the laws of the second State, to the extent that those laws:
 - (a) apply equally to all persons carrying on or seeking to carry on the activity under the law of the second State; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the activity.

42J Evidence of automatic deemed registration

Registers

- (1) Despite any law of a State:
 - (a) a local registration authority in the State for an occupation that covers an activity is not required to include a person's name on a register (however described) relating to the activity if the person has automatic deemed registration to carry on the activity; but

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Automatic deemed registration to carry on activities **Part 3A**

Entitlement to automatic deemed registration **Division 2**

Section 42J

- (b) the local registration authority may include on the register the person's name, and any other information authorised or required to be on the register.

If the person's name is not included on the register, the person's name (and other information) is taken, for the purposes of a law of the State, to be included on the register.

Licences etc.

- (2) Despite any law of a State:
- (a) a local registration authority in the State for an occupation that covers an activity is not required to give a person any evidence of the person's automatic deemed registration (such as a licence, approval or certification) to carry on the activity; but
- (b) the local registration authority may give the person such evidence of the person's automatic deemed registration.

If the person is not given such evidence, the person is taken, for the purposes of a law of the State, to hold a licence, approval or certification or other evidence of registration for the activity.

Evidence of registration

- (3) For the purposes of a law of the second State, if a person has automatic deemed registration to carry on an activity in the second State:
- (a) evidence of the person's registration for the occupation that covers the activity in the person's home State is taken to be evidence of the person's automatic deemed registration to carry on the activity in the second State (even if the evidence has been issued by the second State); and
- (b) if the person is relying on evidence from the person's home State, the person must comply with any requirement of the law of the second State to provide evidence of the person's registration to the extent possible.

Note: For example, a requirement in a second State for a person's registration number to be shown in the person's advertising would be

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Division 2 Entitlement to automatic deemed registration

Section 42K

complied with by the person showing their home State registration number in the advertising.

42K Conditions on automatic deemed registration

- (1) A person's automatic deemed registration to carry on an activity in the second State is subject to any condition or undertaking to which the person's registration for the occupation that covers the activity in the home State is subject.

Note: See also section 45 (machinery provisions regarding limitations etc.).

- (2) For the purposes of any law of the second State, a condition of the person's registration in the home State is taken to be a condition of the person's registration in the second State.
- (3) The local registration authority (the *second State authority*) in the second State:
- (a) may waive:
 - (i) any condition imposed on the automatic deemed registration because of subsection (1); or
 - (ii) any undertaking given to the local registration authority in the home State to the extent that the undertaking relates to the second State because of subsection (1);if the second State authority thinks it appropriate to do so in the circumstances; and
 - (b) must not impose any conditions on the person's automatic deemed registration.

42L Disciplinary action in relation to automatic deemed registration

- (1) Without limiting subsection 42H(2) or any other provision of this Part:
- (a) a person may not carry on an activity in the second State without complying with any public protection requirement or meeting any vulnerable person character test under the law of the second State; and
 - (b) a person who has automatic deemed registration to carry on an activity in the second State is subject to any disciplinary

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provisions and arrangements that are applicable to persons who are substantively registered in that State.

Note: The person's automatic deemed registration may cease as a result of disciplinary action (see subsection 42D(3) and paragraph 42G(1)(d)).

Impact of disciplinary action in relation to automatic deemed registration

- (2) If a person's automatic deemed registration for an activity in a State is cancelled or suspended on disciplinary grounds, or as a result of or in anticipation of criminal, civil or disciplinary proceedings, then any registration for the activity (whether effected under Part 3 or otherwise) is affected in the same way.

Determination by Minister

- (3) A Minister of a State (the *first State*) may, by legislative instrument and with the consent of another State, determine officers or authorities (however described) of the other State that are taken to be officers or authorities for the purposes of any law of the first State.

Note: The determination is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (4) For the purposes of obtaining the consent of the other State, a person authorised by the Minister of the first State may provide information to a person authorised by a Minister of the other State. The information may be given despite any law relating to secrecy, privacy or confidentiality.
- (5) A local registration authority that receives information under subsection (4) is subject to any law relating to secrecy, privacy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions.
- (6) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of Chapter 3 (sunsetting) of that Act applies to a determination under subsection (3) of this section.

Part 3A Automatic deemed registration to carry on activities

Division 2 Entitlement to automatic deemed registration

Section 42LA

42LA Notifying other local registration authority of disciplinary action

- (1) If a local registration authority in a State for an occupation that covers an activity suspends or cancels a person's automatic deemed registration to carry on the activity in the State, the local registration authority must notify all local registration authorities for the occupation that covers the activity in all other States of the following:
 - (a) the person's name and address;
 - (b) information identifying the person's automatic deemed registration;
 - (c) the fact that the automatic deemed registration has been suspended or cancelled;
 - (d) whether the suspension or cancellation is subject to an appeal;
 - (e) information relating to the reason for the suspension or cancellation;
 - (f) for a suspension—the period of the suspension.
- (2) The information may be provided despite any law relating to secrecy, privacy or confidentiality.
- (3) Nothing in this section affects any obligation or power to provide information apart from this section.

Receiving information

- (4) A local registration authority that receives information under subsection (1):
 - (a) is subject to any law relating to secrecy, privacy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions; and
 - (b) may receive the information for the purposes of the person's automatic deemed registration, substantive registration (whether under Part 3 or otherwise) or interim deemed registration in the State.

Subdivision C—Other effects of automatic deemed registration on State laws

42M References in State laws to registration in other States

- (1) This section applies if a provision of a law of a State (the *first State*) contains an explicit reference to a person registered in another State for an occupation that covers an activity.
- (2) The reference does not apply to a person who has automatic deemed registration to carry on the activity in the first State.
- (3) Subsection (2) does not prevent the provision from otherwise applying to the person.

Example: A provision of a law of the first State prohibits a person from advertising as an architect unless the person is registered under that law or a law of another State.

For a person with automatic deemed registration in the first State, the provision would apply to the person as if the person was locally registered, and not as if the person was registered under the law of the person's home State.

42N References in State laws to former registration

A reference (however described) in a State law to a person who was, but is no longer, registered in the State for an occupation that covers an activity includes a reference to a person who:

- (a) had, but no longer has, automatic deemed registration to carry on the activity in the State; and
- (b) is not otherwise registered (in accordance with Part 3 or otherwise) for the occupation that covers the activity in the State.

42P Formalities requiring personal attendance

Neither automatic deemed registration, nor entitlement to automatic deemed registration, requires compliance with any statutory or other formalities (whether before or after the automatic

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Division 2 Entitlement to automatic deemed registration

Section 42Q

deemed registration begins) requiring personal attendance in the second State for the purposes of becoming registered.

42Q Effect of automatic deemed registration on obligations in other States

Unless the contrary intention appears, if a law of the second State imposes an obligation on a person who has automatic deemed registration to carry on an activity in that State, the person is not required to comply with the obligation in relation to activities carried on by the person in any other State.

Note: For example, the law of the second State requires a registered person to keep a record of workers who are employed by the person. The obligation does not apply in relation to workers who are employed by the person to work solely outside the second State.

Division 3—General provisions

42R Exempting registrations because of significant risk to consumer protection etc.

- (1) A Minister of a State (the *declaration State*) may declare, by legislative instrument, that:
 - (a) a specified registration in the declaration State is excluded from the operation of automatic deemed registration; or
 - (b) a specified registration in the declaration State is excluded from the operation of automatic deemed registration on the basis of a specified substantive registration in one or more other specified States;if the Minister is satisfied that the declaration is necessary because of a significant risk, arising from particular circumstances or conditions in the declaration State, to:
 - (c) consumer protection; or
 - (d) the health or safety of workers or the public.

Note: The declaration is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).
- (2) The declaration must include a statement explaining the risk to consumer protection or the health or safety of workers or the public.
- (3) The declaration has effect only in relation to the declaration State.
- (4) The local registration authority in the declaration State for the occupation that covers the activity authorised by the specified registration is to give effect to the declaration.
- (5) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of Chapter 3 (sunsetting) of that Act applies to a declaration under subsection (1) of this section.
- (6) That Act applies, in relation to a declaration under subsection (1), as if the reference to tenth anniversary in subsection 50(1) of that Act were a reference to fifth anniversary.

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Note: The effect of subsection (6) is that the declaration sunsets under the *Legislation Act 2003* after 5 years (instead of 10 years).

Declaration not to give preference

- (7) A declaration under subsection (1) is invalid to the extent that it gives preference (within the meaning of section 99 of the Commonwealth Constitution) to one State or part of a State over another State or part of a State.

42RA Exempting registrations temporarily

- (1) A Minister of a State (the *declaration State*) may declare, before the end of 6 months after this section commences, by legislative instrument, that:

- (a) a specified registration in the declaration State is excluded from the operation of automatic deemed registration; or
- (b) a specified registration in the declaration State is excluded from the operation of automatic deemed registration on the basis of a specified substantive registration in one or more other specified States;

until the end of that 6 month period if the Minister is not satisfied that the automatic deemed registration does not create a significant risk, arising from particular circumstances or conditions in the declaration State, to:

- (c) consumer protection; or
- (d) the health or safety of workers or the public.

Note: The declaration is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (2) The declaration has effect only in relation to the declaration State.
- (3) The local registration authority in the declaration State for the occupation authorised by the specified registration is to give effect to the declaration.
- (4) The declaration is repealed at the end of the 6-month period (unless the declaration is revoked earlier).

Declaration not to give preference

- (5) A declaration under subsection (1) is invalid to the extent that it gives preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

42SA Person providing information about home State to local registration authority

A local registration authority in a State for an occupation that covers an activity may request a person who has automatic deemed registration to carry on the activity in the State to provide evidence of the person's place of residence or place of work (as the case requires).

42S Local registration authorities providing and receiving information

- (1) The local registration authority (the *home State authority*) for a person's home State must give a local registration authority (the *second State authority*) of a second State information under subsection (2) if the second State authority notifies the home State authority that the information is required in connection with:
- (a) a notification of the person's automatic deemed registration in accordance with subsection 42E(1); or
 - (b) the person's automatic deemed registration; or
 - (c) actual or possible disciplinary action against the person in relation to the person's automatic deemed registration.
- (2) The home State authority must give, as soon as reasonably practicable, any information reasonably required about the person, including any or all of the following information:
- (a) the person's name and address;
 - (b) information identifying the person's substantive registration for the activity;
 - (c) information relating to disciplinary action taken against the person (if applicable);

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- (d) information relating to conditions on the substantive registration.
- (3) The information may be given despite any law relating to secrecy, privacy or confidentiality.
- (4) Nothing in this section affects any obligation or power to provide information apart from this section.

Receiving information

- (5) A local registration authority in a State that receives information relating to a person under subsection (2):
 - (a) is subject to any law relating to secrecy, privacy or confidentiality that would apply if the information were provided under the law of the State under which the authority is constituted or exercises its functions; and
 - (b) may receive the information for the purposes of the person's automatic deemed registration, substantive registration (whether under Part 3 or otherwise) or interim deemed registration in the State.

42T General responsibilities of local registration authorities

Facilitating operation of this Part

- (1) It is the duty of each local registration authority in a State to facilitate the operation of this Part in relation to the occupations covering activities for which the authority is responsible.

Guidelines and information

- (2) It is the duty of each local registration authority in a State to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations covering activities for which the authority is responsible.
- (3) Without limiting subsection (2), it is the duty of each local registration authority in a State to make publicly available

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Automatic deemed registration to carry on activities **Part 3A**
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Section 42U

information about how personal information (within the meaning of the *Privacy Act 1988*) may be used for the purposes of this Part.

- (4) The guidelines and information under subsection (2) or (3) are to be available within 6 months of the commencement day for the State.

42U Saving

Nothing in this Part prevents a person from seeking registration or being registered to carry on an activity under a law apart from this Part.

Note: A person may have substantive registration, or interim deemed registration, in a State in accordance with Part 3, as well as substantive registration under a State law.

Part 4—General

43 This Act does not confer judicial power on State local registration authorities or tribunals etc.

- (1) This Act has no effect to the extent (if any) to which it purports to confer judicial power on a local registration authority, or a tribunal or other body of a State (other than a Court of the State).

- (2) In this section:

judicial power means the judicial power of the Commonwealth referred to in section 71 of the Constitution.

44 Application of mutual recognition principles

- (1) The mutual recognition principles in this Act 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 prevents a person from relying on the mutual recognition principles in this Act in relation to more than 2 States.

45 Machinery provisions regarding limitations etc.

- (1) If Part 3 provides that conditions or undertakings that apply or are relevant to registration in the first State also apply or are relevant to registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable):
 - (a) references to the first State are to be read as references to the second State;
 - (b) references to officers or authorities of the first State are to be read as references to the corresponding officers or authorities of the second State.
- (2) If Part 3A provides that conditions or undertakings that apply or are relevant to registration in the home State also apply or are

relevant to automatic deemed registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable):

- (a) references to the home State are to be read as references to the second State;
- (b) references to officers or authorities of the home State are to be read as references to the corresponding officers or authorities of the second State.

46 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 the State where the most recent step has occurred in the process of producing the goods (including, for example, processing, harvesting or packaging the goods).
- (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, whether in another State or outside Australia; or
 - (d) the goods or any components of the goods were imported.

46A Application of amendments made by the *Mutual Recognition Amendment Act 2020*

- (1) The amendments of section 19 made by Schedule 1 to the *Mutual Recognition Amendment Act 2020* apply in relation to any notice given to a local registration authority in a State under that section after the commencement day for the State.
- (2) Part 3A of this Act, as inserted by Schedule 1 to the *Mutual Recognition Amendment Act 2020*, applies in relation to any activity begun in a State after the commencement day for the State.
- (3) Section 43 of this Act, as inserted by Schedule 1 to the *Mutual Recognition Amendment Act 2020*, applies in relation to any

Part 4 General

Section 47

conferral of power on a local registration body, or a tribunal or other body of a State (whether before or after the commencement day for the State).

47 Amendment of Schedules

- (1) The Governor-General may make regulations amending the Schedules.
- (2) No such regulation may be made unless the designated person for each of the then participating jurisdictions has published a notice in the official gazette of the jurisdiction setting out the terms of the proposed regulation and requesting that it be made.
- (3) For the purposes of this section, 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.

Schedule 1—Permanent exemptions: goods

Subsection 14(1)

1. Firearms and other prohibited or offensive weapons.
2. Fireworks.
3. Gaming machines.
4. Pornographic material.

Schedule 2—Permanent exemptions: laws relating to goods

Subsection 14(2)

1. A law of a State relating to quarantine, to the extent that:
 - (a) the law (or a direction or instrument given or made under the law or some other action taken under the law) regulates or prohibits the bringing of specified goods into the State or into a defined area of the State; and
 - (b) the State or area is substantially free of a particular disease, organism, variety, genetic disorder or any other similar thing; and
 - (c) it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other thing into the State or area; and
 - (d) it is reasonably likely that that introduction would have a long-term and substantially detrimental effect on the whole or any part of the State.
2. A law of a State 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 State and that it prohibits or restricts the possession, sale, killing or capture of animals or plants of that species or other class in the State.
3. *Ozone Protection Act 1991* of the Australian Capital Territory.
4. *Weapons Act 1991* of the Australian Capital Territory.
5. *Ozone Protection Act 1989* of New South Wales.
6. *Clean Air Act 1963* of Queensland, Part 4A.
7. Hazardous Substances (Chlorofluorocarbons and Other Ozone Layer Depleting Substances) Regulation 1988 under the *Health Act 1937-1988* of Queensland.
8. *Beverage Container Act, 1975* of South Australia.
9. Clean Air Act, 1984 of South Australia, Part IIIA.

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Permanent exemptions: laws relating to goods **Schedule 2**

10. A law of Tasmania to the extent that it relates to the possession, sale or capture of abalone, crayfish or scallops of a certain minimum size.
11. *Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988* of Tasmania.
12. *Environment Protection Act 1970* of Victoria, section 16 (in relation to ozone depleting substances), paragraphs 41(2)(d) and 71(1)(gba).
13. Environmental Protection Regulations 1987 under the *Environmental Protection Act 1986* of Western Australia.
14. *Business Franchise ("X" Videos) Act 1990* of the Australian Capital Territory.
15. *Classification of Publications Ordinance 1983* of the Australian Capital Territory.
16. *Crimes Act, 1900* of the Australian Capital Territory, section 92NB.
17. *Film Classification Act 1971* of the Australian Capital Territory.
18. *Publications Control Act 1989* of the Australian Capital Territory.
19. Film and Video Tape Classification Act 1984 of New South Wales.
20. Indecent Articles and Classified Publications Act 1975 of New South Wales.
21. *Classification of Publications and Films Act* of the Northern Territory.
22. *Classification of Films Act 1991* of Queensland.
23. *Classification of Publications Act 1991* of Queensland.
24. Classification of Films for Public Exhibition Act, 1971 of South Australia and regulations under the Act.
25. Classification of Publications Act, 1974 of South Australia and regulations under the Act.

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Schedule 2 Permanent exemptions: laws relating to goods

26. *Summary Offences Act, 1953* of South Australia, sections 33 and 35.
 27. *Classification of Publications Act 1984* of Tasmania.
 28. *Classification of Films and Publications Act 1990* of Victoria.
 29. *Censorship of Films Act 1947* of Western Australia.
 30. *Indecent Publications and Articles Act 1902* of Western Australia.
 31. *Video Tapes Classification and Control Act 1987* of Western Australia.
 32. *Ozone Protection Act* of the Northern Territory.
 33. *Summary Offences Act 1953* of South Australia, section 9B.
 - 34 Each of the following:
 - (a) Part 2 of the *Environment Protection (Beverage Containers and Plastic Bags) Act* (NT);
 - (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part;
 - (c) regulations made under that Act, to the extent that they relate to that scheme.
 - 35 Each of the following:
 - (a) Part 5 of the *Waste Avoidance and Resource Recovery Act 2001* (NSW);
 - (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part;
 - (c) instruments made under that Act, to the extent that they relate to that scheme.
 - 36 Each of the following:
 - (a) Part 10A of the *Waste Management and Resource Recovery Act 2016* (ACT);
 - (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part;
 - (c) regulations made under that Act, to the extent that they relate to that scheme.
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Permanent exemptions: laws relating to goods **Schedule 2**

37 Each of the following:

- (a) Part 5A of the *Waste Avoidance and Resource Recovery Act 2007* (WA);
- (b) all other provisions of that Act, to the extent that they relate to the container deposit scheme established by that Part;
- (c) regulations or other instruments made under that Act, to the extent that they relate to that scheme.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

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Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Mutual Recognition Act 1992	198, 1992	21 Dec 1992	1 Mar 1993 (s 2 and gaz 1993, No GN7)	

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
139, 1993	23 June 1993	23 June 1993 (r 1)	—
41, 2010	15 Mar 2010 (F2010L00651)	16 Mar 2010 (r 2)	—
224, 2013	8 Aug 2013 (F2013L01542)	9 Aug 2013 (s 2)	—

Name	Registration	Commencement	Application, saving and transitional provisions
Mutual Recognition Amendment (NSW Container Deposit Scheme) Regulations 2017	21 Nov 2017 (F2017L01503)	22 Nov 2017 (s 2(1) item 1)	—
Mutual Recognition Amendment (ACT Container Deposit Scheme) Regulations 2018	6 Dec 2018 (F2018L01672)	7 Dec 2018 (s 2(1) item 1)	—

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Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Mutual Recognition Amendment (WA Container Deposit Scheme) Regulations 2020	18 Sept 2020 (F2020L01184)	19 Sept 2020 (s 2(1) item 1)	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Schedule 2	
Schedule 2	am. Statutory Rule 1993 No. 139; SLI 2010 No. 41; SLI No. 224, 2013; F2017L01503; F2018L01672 ed C5 am F2020L01184
