

**CROSS JURISDICTIONAL REVIEW FORUM**

**PROGRESS REPORT ON RESPONSES TO  
THE PRODUCTIVITY COMMISSION'S  
2009 REVIEW OF MUTUAL RECOGNITION SCHEMES**

**REPORT TO AUSTRALIAN HEADS OF GOVERNMENT AND  
THE NEW ZEALAND PRIME MINISTER**

**JULY 2014**

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## EXECUTIVE SUMMARY

### Introduction

The Commonwealth and State and Territory Governments entered into the Mutual Recognition Agreement (MRA) in 1992, and together with New Zealand entered into the Trans-Tasman Mutual Recognition Arrangement (TTMRA) in 1996. The MRA and TTMRA seek to promote economic integration of the participating jurisdictions by reducing regulatory impediments to the movement of goods and provision of services across Australasia, through the implementation of mutual recognition principles that, subject to some exceptions:

- a good that may legally be sold in one participating jurisdiction can also be sold in another, regardless of differences in standards or other sale-related regulatory requirements; and
- a person registered to practise an occupation in one participating jurisdiction can practise an equivalent occupation in another, without the need to undergo further testing or examination.

Under the terms of the MRA and TTMRA, cooperative legislative schemes (hereafter referred to as the 'mutual recognition Acts') were established in all participating jurisdictions. The key pieces of legislation are:

- the *Mutual Recognition Act 1992* of the Commonwealth (the 'MR Act'); and
- both the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth and of New Zealand (the 'TTMR Acts').

The terms of the TTMRA (Part XII) require that both schemes be reviewed together every five years. On 26 March 2008, the Council of Australian Governments (COAG) requested that the Australian Productivity Commission (the Commission) undertake a review of the mutual recognition schemes and report back to it and the New Zealand Government. The Terms of Reference for the review requested that the Cross-Jurisdictional Review Forum (CJR Forum) present to Australian Heads of Government and the New Zealand Prime Minister a Review Report responding to those findings. A copy of the Terms of Reference is included at Attachment A.

The CJR Forum comprises officers from the Commonwealth Government, States and Territories and New Zealand. The Forum's role is to monitor the operation of the mutual recognition schemes and to review, comment on and where appropriate implement, the findings of the five-yearly review of the schemes. CJR Forum members act as the point of contact for mutual recognition matters within their jurisdiction.

A CJR Forum report was approved by COAG and the New Zealand Prime Minister as a combined governmental response early in 2010. The report included substantive responses of the Forum to each of the Commission's findings and recommendations in an Attachment, including those for further action and timelines for completion. A copy of the report was subsequently provided to the Commission in mid-2010, but was not published.

In November 2012 the final report of a joint study by the Australian Productivity Commission and New Zealand Productivity Commission 2012, *Strengthening trans-Tasman economic relations*, noted that, following the 2009 review, 'other priorities on both sides of the Tasman have prevented non-essential work ... from being undertaken'. It recommended that:

The Australian and New Zealand Governments should give priority to implementing those recommendations of the Australian Commission's 2009 review of the Trans-Tasman Mutual Recognition Arrangement that were accepted by Governments. [Recommendation 4.3]; and

Governments should publish a progress report on implementing accepted recommendations of the 2009 review of the Trans-Tasman Recognition Arrangement before the next review, scheduled in 2013'. [Recommendation 4.4]

This report therefore updates the earlier 2009 report and documents progress on actions taken by participating jurisdictions in relation to the Commission's findings and recommendations. Matters of significance are summarised below, mirroring the structure of the Commission's review.

### **Economic Impacts of Mutual Recognition**

The Commission found that the MRA and TTMRA have increased the mobility of goods and labour around Australia and across the Tasman (Finding 4.1). The CJR Forum welcomed this finding, which is consistent with the policy outcomes that are the purpose of the mutual recognition schemes. The Commission considered that the schemes could be more effective in some areas, which is the focus of the remainder of the Commission's review.

### **Registration of Occupations**

The Commission found that despite the length of time that the mutual recognition schemes have been in place, there continues to be uncertainty around some of the provisions in the mutual recognition Acts concerning occupations, including that:

- there is uncertainty around the kinds of occupational registration that are covered by mutual recognition (Finding 5.1);
- the mechanism for approaching the Administrative Appeals Tribunal and Trans-Tasman Occupations Tribunal for declarations is not clear (Recommendation 5.2); and
- there is ambiguity in the legislation around the kinds of requirements that may be imposed on people who are registered under mutual recognition (Finding 5.6).

To remedy these matters the Commission recommended that amendments be made to the mutual recognition Acts to clarify the legislation and improve the performance of the schemes (Finding 5.4 and Recommendations 5.1 to 5.8). The CJR Forum supports the notion of legislative amendments to provide for certain criminal background checks and ongoing requirements to be able to apply to occupational registrations under mutual recognition (Recommendations 5.4 and 5.6). However, the CJR Forum will consider whether alternative feasible options could address this issue. The CJR Forum does not support the other amendments proposed by the Commission on the basis that further investigation is required (Recommendation 5.1), or that other options are available to address the relevant concern without legislative amendment, such as measures to improve awareness and understanding of the mutual recognition schemes. In particular, the Forum will update and reissue *A Users' Guide to the Mutual Recognition Agreement and the Trans Tasman Mutual Recognition Arrangement* and investigate further means of addressing issues of awareness and access to advice that the Commission has identified (Findings 5.3, 5.4, 5.5 and 5.7 and Recommendations 5.2, 5.3, 5.5, and 5.8).

The Commission recommended that Ministerial Declarations be extended to New Zealand registered occupations and that New Zealand be more closely involved in COAG's initiative to create a national system of licensing for selected occupations (Recommendations 5.9 and 5.10). COAG agreed, in December 2013, that the national licensing reform would not proceed. As an alternative to national licensing, the states, through the Council for the Australian Federation (CAF), will consider other approaches to improve licence recognition. The Forum proposes deferring further consideration of whether to extend Australia's declarations of licence equivalency to New Zealand pending a comprehensive review and update of the Ministerial Declarations.

### **Temporary Exemptions**

The MR Act and the TTMR Act allow goods to be given temporary exemptions where this is substantially for the purpose of protecting public health and safety or dealing with adverse effects on the environment. In these circumstances, a temporary exemption to either or both Acts can be invoked for a period of up to 12 months only. The Commission recommended that Australia's processes for temporarily exempting banned goods from mutual recognition be integrated with Australia's national consumer product safety regime (Recommendation 6.1).

### ***Mutual Recognition Act 1992 and the Australian Competition and Consumer Act 2010***

The CJR Forum agreed with the Commission's Recommendation 6.1. In line with Recommendation 6.1, the *Australian Competition and Consumer Act 2010 (CC Act)*, which commenced in January 2011, provides that an interim ban imposed by the Commonwealth Minister under the CC Act will apply in all States and Territories, so that goods which are subject to a Commonwealth interim ban will not be able to be lawfully sold in any Australian jurisdiction.

Section 121 of the CC Act includes provisions to ensure that temporary and permanent product bans under the CC Act will result in a temporary exemption under the MR Act. Furthermore, a permanent ban under the CC Act will apply in all States and Territories. Accordingly, goods which are subject to a permanent ban will not be able to be lawfully sold in any jurisdiction, with the result that the mutual recognition principle will have no application. As such, Australia's processes for exempting goods from the operation of the MR Act are integrated with the national consumer product safety regime.

### ***Australian Trans-Tasman Mutual Recognition Act 1997 and the Australian Competition and Consumer Act 2010***

Further to Recommendation 6.1 as it relates to the Australian TTMR Act, Section 120 of the CC Act operates so that where an interim or permanent ban is in force in relation to a particular good, a temporary exemption of that good will apply in Australia under the TTMR Act. Accordingly, an interim or a permanent ban in Australia would override the principle of mutual recognition in the Australian TTMR Act. This interplay would satisfy Recommendation 6.1 as it ensures that when an interim product ban is imposed by any Australian jurisdiction, the temporary exemption process under the TTMR Act is automatically invoked and the resultant temporary exemption is automatically revoked when the interim product ban ends.

However, where a permanent ban is imposed under the CC Act, the temporary exemption in force under the Australian TTMR Act (by virtue of section 120 of the CC Act) would lapse after 12 months, even though the ban continues permanently. In such cases, the jurisdiction may seek to convert the temporary exemption to a permanent exemption in the usual manner under the Australian TTMR Act.

### **Special Exemptions**

The Commission recommended permanently exempting some goods from mutual recognition that were subject to annually renewed special exemptions (Finding 7.1 and Recommendations 7.1, 7.2 and 7.4). The Commission further recommended that special exemptions be retained for road vehicles and some radio communication devices (Recommendations 7.3 and 7.4), and that legislative changes be made to improve the administrative efficiency of the special exemption arrangements (Recommendation 7.5). The CJR Forum agreed in part with these recommendations, but proposed that all specially exempted goods be subject to permanent exemptions. This allows trans-Tasman collaboration to continue in areas where regulatory harmonisation is realistically achievable, without the need to annually renew the exemptions or to make legislative amendments to streamline the special exemption processes.

In order to enact these recommendations, Commonwealth regulations endorsed by two thirds of participating jurisdictions were made on 14 April 2010 to convert the special exemptions to permanent exemptions: *Trans-Tasman Mutual Recognition (Modification of Act) Regulations 2010 (No. 1)*. New Zealand regulations endorsed by two thirds of participating jurisdictions were made on 12 April 2010: *Trans-Tasman Mutual Recognition (Changes to Permanent and Special Exemptions) Regulations 2010*. The New Zealand regulations took effect on 30 April 2010.

### **Scope of Mutual Recognition – Goods**

The Commission has recommended legislative changes to the schemes in relation to goods, in particular that:

- consideration should be given to narrowing or removing permanent exemptions from mutual recognition that currently apply for ozone protection and trans-Tasman trade of risk-categorised foods (Recommendations 8.1 and 8.2);
- jurisdictional requirements relating to the use of goods do not currently fall within the mutual recognition schemes (Finding 8.1), but the mutual recognition Acts should be amended to include such requirements to the extent that they indirectly restrict or prevent the sale of goods (Recommendation 8.6); and
- new mediation and judicial remedies would assist sellers of goods, regulators and other interested parties to understand the schemes and resolve disputes (Finding 8.2 and Recommendation 8.8).

In accordance with Recommendation 8.1, the CJR Forum agreed to narrow the scope of permanent exemptions for risk foods from the TTMR Act. Changes in Australia and New Zealand in 2011 brought several additional foods under the operation of the TTMR Act. The effect of bringing the identified risk foods under the operation of mutual recognition has been to reduce unnecessary regulatory intervention for foods traded between Australia and New Zealand whilst continuing to protect public health and safety. The remaining exemptions are those for which harmonisation of risk-food lists and equivalence of import-control measures are not likely to be achievable in the long term.

The CJR Forum considers that the removal of the exemption for ozone-protections under the MR Act can be combined with other changes to the Schedules when these occur.

In relation to the other proposed legislative amendments, the CJR Forum considers that expanding mutual recognition to include use of goods requirements and new judicial remedies are matters that require further investigation. The Forum notes that future reviews of the mutual recognition arrangements could identify the extent of any trade restriction caused by mutual recognition not applying to requirements relating to the use of goods, to the extent those requirements prevent or restrict the sale of goods.

In addition, the Commission found that the administration of the schemes could be improved by a number of measures to improve information and guidance on mutual recognition to sellers of goods, regulators and other interested parties. Accordingly, the CJR Forum will update the mutual recognition Users' Guide, including providing up-to-date information on central points of contact and clarification of arrangements for referring goods-related issues to the relevant Ministerial Councils.

### **Exemptions and Extensions – Occupations**

The only type of occupation that is expressly excluded from the scope of the TTMR Acts is that of registered medical practitioners. The Commission recommended that the permanent exemption for medical practitioners be narrowed to concern only practitioners who obtained their qualifications

outside of Australia or New Zealand (Recommendation 9.2). In addition, the Commission recommended that the residual permanent exemption for practitioners who obtained their qualifications in third countries should be converted to a Special Exemption, and that a trans-Tasman cooperation program be established to pursue harmonisation of competency standards (Recommendation 9.1).

The CJR Forum does not agree that the exemption should be removed or narrowed at this time. It agreed that a proposal for a trans-Tasman cooperation program be fully investigated with a focus on streamlining of processes for international medical graduates from New Zealand. The Australian Parliament has passed the *Health Insurance Amendment (New Zealand overseas trained doctors) Act 2010*, relaxing restrictions on New Zealand citizens and permanent resident doctors who have gained their first medical degree from a New Zealand or Australian university. New Zealand did not apply similar restrictions to Australian citizens and permanent residents who gained their first medical degree from a New Zealand or Australian university.

The Commission also suggested that consideration be given to extending the mutual recognition schemes to cover a wider range of occupational matters including occupational registrations that are not compulsory for all practitioners, cross-border provision of services and some business registration requirements (Findings 9.1, 9.3 and 9.4). In this regard the Commission found that some business registrations issued to sole traders probably are already covered by the mutual recognition Acts (Finding 9.2).

The CJR Forum does not support the extension of mutual recognition to business registration requirements and non-mandatory registration schemes at this stage. The Forum notes that the national registration system for Australian businesses appears to have assisted in removing some of the previous impediments brought about by the requirement to hold multiple business licences. There is insufficient evidence of the nature of any problems remaining however the Forum would be interested in, and consider any evidence of, barriers identified in future mutual recognition reviews which provided supporting evidence of the nature and scale of the problem, (Findings 9.1 and 9.3).

The Forum supports in part the Commission's finding for a comprehensive review of legislation now that the Agreement on the Trans-Tasman Court Proceedings and Regulatory Enforcement is in place. In particular, the Forum proposes that future reviews of the mutual recognition arrangements identify occupations that could benefit from arrangements to better support cross-border service provisions (Finding 9.4). The CJR Forum also suggests that future reviews should target aspects of mutual recognition schemes that are less than optimal and quantify the effects of those problems.

### **Mutual Recognition in the Wider Context**

The Commission examined the implications for mutual recognition of Australia's Free Trade Agreement with the United States, and New Zealand's Free Trade Agreement with China. The Commission found that these agreements do not significantly increase risks of lower quality products being able to be sold or less qualified persons being able to obtain occupational registration in Australia or New Zealand via mutual recognition (Finding 10.1). However, the Commission did find that such risks could exist under future agreements, and recommended that Australia and New Zealand take into account possible impacts on the mutual recognition schemes as part of negotiating any future initiatives with other nations (Finding 10.2 and Recommendation 10.1). The CJR Forum noted these findings and recommendations and referred this matter to the Commonwealth Department of Foreign Affairs and Trade and the New Zealand Ministry of Foreign Affairs and Trade. The Commonwealth Department of Foreign Affairs and Trade and the New Zealand Ministry of Foreign Affairs and Trade indicated that in bilateral and regional trade

negotiations, officials take into account existing commitments under other agreements, including mutual recognition obligations and arrangements.

### **Awareness, Expertise and Oversight**

Notwithstanding the success of the mutual recognition schemes in promoting mobility of goods and labour around Australia and across the Tasman, the Commission considered that firms and individuals are not making full use of the schemes, and that regulators are not always applying mutual recognition consistently or appropriately. The Commission noted that these issues were also identified in previous reviews of the mutual recognition schemes, and considered that efforts to address these problems since the last review have had limited success.

The Commission recommended that awareness, expertise and oversight of the mutual recognition schemes could be improved by:

- establishing two new specialist units in the Commonwealth Government covering goods and occupations respectively (Recommendation 11.1);
- annual reporting requirements for occupational regulators to improve data collection (Recommendation 11.2); and
- the CJR Forum reporting annually to COAG Senior Officials on its work program and achievements (Recommendation 11.3).

The CJR Forum considers that the creation of new government units and new reporting requirements are not warranted. The Commonwealth Department of Industry has responsibility for the Australian mutual recognition Acts and, at present, two separate branches within the Department have responsibility for goods issues and for occupational issues respectively. Additional reporting requirements for occupational regulators would represent an increase in regulatory burden at a time when the government has a deregulatory agenda. The Forum agreed to enhance and re-issue the Users' Guide which will help improve awareness, expertise and oversight of the schemes. The CJR Forum agrees that there would be value in progress on the Forum's work program being reported to COAG Senior Officials but considers that such reports should be on an as-needs basis.

### **The Next Steps for Mutual Recognition**

The Commission has recommended that the Australian States and Territories consider ways to make amending the mutual recognition Acts more flexible. Under current arrangements, changes to the mutual recognition Acts in Australia can require amendments to both the primary Commonwealth Acts as well as corresponding amendments to State and Territory legislation. The Commission suggested that consideration be given to reducing the need for State and Territory legislatures to pass amendments to their corresponding legislation when the Commonwealth amends its Acts. The CJR Forum notes that any reduction in the role of State and Territory legislatures in approving changes to the mutual recognition Acts would be a significant change requiring careful consideration.

ATTACHMENT A – Terms of Reference

ATTACHMENT B – Table of findings and recommendations



**PRODUCTIVITY COMMISSION**  
**TERMS OF REFERENCE**  
**FOR**  
**2009 REVIEW OF THE MUTUAL RECOGNITION ARRANGEMENTS**

- 1) The Commission is to:
  - a) assess the coverage, efficiency and effectiveness of the MRA and TTMRA since the Commission's 2003 Review, with particular attention to:
    - i) the implementation of the 2003 review findings;
    - ii) matters identified by the Cross Jurisdictional Review Forum; and
    - iii) matters identified by the COAG Skills Recognition Steering Committee.
  - b) assess how the administrative provisions (such as the annual roll-over of the special exemptions under the TTMRA) can be amended and/or enhanced to support the more efficient operation of the MRA and/or TTMRA;
  - c) examine whether any components of overseas models of mutual recognition or any other changes might be made to enhance the functioning of the MRA and TTMRA;
  - d) explore any possible implications for the operation of the TTMRA arising from participating jurisdictions' bi-lateral engagement with third countries.
- 2) In undertaking the research study, the Commission is to consult relevant stakeholders in Australia and New Zealand, including with the Cross- Jurisdictional Review Forum and the COAG Skills Recognition Steering Committee.
- 3) The Commission's research findings shall be presented to Australian Heads of Government and the New Zealand Prime Minister nine months from the date of commissioning and the Commission's report is to be published.
- 4) Within three months of receiving the Commission's findings, the Cross- Jurisdictional Review Forum is to present to Australian Heads of Government and the New Zealand Prime Minister a Review Report responding to those findings.

## ATTACHMENT B - TABLE OF FINDINGS AND RECOMMENDATIONS

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<b>Economic impacts of mutual recognition</b>	
<p><b>FINDING 4.1</b> (page 82)</p> <p>The Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA) have increased the mobility of goods and labour around Australia and across the Tasman.</p> <ul style="list-style-type: none"> <li>• In the goods area, mutual recognition has led to lower regulatory compliance costs for firms arising from jurisdictional differences. There is some evidence that this has contributed to the expansion of interstate and trans-Tasman trade.</li> <li>• Increased labour mobility and reduced wage dispersion are consistent with the expected effects of mutual recognition of occupational registration.</li> </ul>	<p><b>Noted.</b> No further action required.</p>
<b>Registration of occupations</b>	
<p><b>FINDING 5.1</b> (page 86)</p> <p>In contrast with the majority view among stakeholders, coregulatory arrangements appear likely to fall within the coverage of the mutual recognition schemes if the elements required for mutual recognition (authorisation under legislation conferred by a local registration authority) are present.</p>	<p><b>Noted.</b> See Recommendation 5.1.</p>
<p><b>RECOMMENDATION 5.1</b> (page 86)</p> <p>The mutual recognition Acts should be amended to make clear whether or not the schemes cover co-regulatory, de facto and negative licensing arrangements.</p>	<p><b>For further consideration.</b> The CJR Forum proposes to explore issues relating to the application of mutual recognition to co-regulatory licensing arrangements and to investigate what action is necessary to clarify that de facto and negative licensing are not covered by the schemes.</p> <p>The Commission has found that de facto and negative licensing are probably not covered by the mutual recognition Acts, but that co-regulatory</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
	<p>arrangements are probably covered (see Finding 5.1). On this basis, the CJR Forum considers that co-regulatory arrangements should be examined in further detail. The Forum considers that negative and de facto licences should remain outside of the mutual recognition schemes at this time.</p> <p>The CJR Forum proposes to coordinate the preparation of a revised Users' Guide which will include further information on co-regulatory, de facto and negative licensing arrangements.</p>
<p><b>FINDING 5.2</b> (page 89)</p> <p>Although many study participants raised concerns about lower occupational standards causing harm, the limited data provided did not offer conclusive evidence of systemic problems affecting an entire occupation in a given jurisdiction. This does not mean that such problems cannot arise. Furthermore, the evidence highlights the fact that lower standards can, on occasion, allow poorly qualified practitioners to operate. It is important that an effective mechanism exists for dealing with the harm that does, or might, stem from lower standards.</p>	<p><b>Noted.</b></p> <p>The CJR Forum notes that regulators have general powers either to cancel or suspend a licence if problems of lower occupational standards cause harm to arise. The CJR Forum also notes that this issue will be addressed to some extent within Australia by the work of the National Registration and Accreditation Scheme for health professionals and may be addressed through the CAF's consideration of alternative approaches to occupational licence recognition.</p>
<p><b>FINDING 5.3</b> (page 90)</p> <p>The mechanism of referring a concern about the standards required for registration in an occupation to a Ministerial Council appears never to have been used. It is possible that this reflects a lack of awareness that could usefully be addressed through initiatives to improve regulator expertise.</p>	<p><b>Noted.</b> The CJR Forum will update the Users' Guide to clarify the role of Ministerial Councils.</p> <p>The Commission notes that the MR Agreement and TTMR Arrangement contain provisions for the referral of concerns regarding occupational standards to a Ministerial Council for resolution, but that equivalent provisions are not included in the mutual recognition Acts. The Commission considers that there may be a lack of awareness among regulators stemming from the absence of equivalent provisions in the Acts.</p> <p>The CJR Forum notes that the joint development of policy between governments is part of the general role of Ministerial Councils. Accordingly, there exists no barrier to jurisdictions raising matters of standards or other policy matters concerning occupations at the relevant Ministerial Council, whether or not the matter is covered by the MR</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
	<p>Agreement, TTMR Arrangement and/or the Acts.</p> <p>On this basis, the CJR Forum considers that it should be sufficient to update the information in the Users' Guide to clarify the role of Ministerial Councils, including reference to the provisions in the MR Agreement and TTMR Arrangement concerning Ministerial Council voting arrangements for matters referred under the Agreement/Arrangement. This will assist in improving regulator expertise.</p> <p>See also Recommendations 8.9, 11.1 and 11.2.</p>
<p><b>RECOMMENDATION 5.2</b> (page 91)</p> <p>The mechanisms through which the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal can be approached to make a declaration on occupational standards should be clarified.</p>	<p><b>Agreed in principle.</b> The CJR Forum proposes to update the Users' Guide to clarify the mechanism by which the Administrative Appeals Tribunal (AAT) and the Trans-Tasman Occupations Tribunal (TTOT) can be approached to make a declaration.</p> <p>Both mutual recognition Acts have provisions for a tribunal to make a declaration that occupations are not equivalent on standards grounds: s31 of the MR Act and s30 of the TTMR Acts. The Commission has found that the mechanisms by which such a declaration may be sought are unclear. In particular, the Acts provide only that a tribunal may be approached to review the decision of a regulator. The Commission suggests that it could be argued that, in allowing the tribunals to rule on occupational standards following application for a review of the registration decision, the mutual recognition legislation permits regulators to refuse registration when they have significant concerns about the occupation standards applied by the applicant's home jurisdiction. The Commission considers that this is inconsistent with the general intent of mutual recognition.</p> <p>In addition, the CJR Forum notes that any expansion of the remit of the AAT and TTOT should be considered alongside the Commission's other recommendations for avenues of advice or appeal (see Finding 5.5 and Recommendations 5.3, 8.8 and 11.1).</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<p><b>RECOMMENDATION 5.3</b> (page 91)</p> <p>The mutual recognition Acts should be amended to create a mechanism for regulators and other interested parties to approach the Administrative Appeals Tribunal and the Trans-Tasman Occupations Tribunal for advisory opinions.</p>	<p><b>Not agreed.</b> The CJR Forum proposes instead to consider including additional advisory information in the updated Users' Guide to assist in clarifying any ambiguities.</p> <p>The CJR Forum considers that the Commission's report does not present a strong case for legislating new tribunal processes in addition to the tribunal review remedies that are already provided for in the mutual recognition Acts. The Forum further notes that the Users' Guide and jurisdictional contact points are available to regulators and other interested parties to clarify the intent and operation of the mutual recognition schemes. In this regard, the CJR Forum will consider including additional information in the Users' Guide to clarify ambiguities identified in the Commission's report.</p> <p>See also Recommendation 8.8 in relation to goods.</p>
<p><b>FINDING 5.4</b> (page 91-92)</p> <p>A regulator may test whether an applicant under mutual recognition has met the registration requirements of his or her home jurisdiction, but cannot refuse the application if the applicant has been registered in error. Consideration should be given to a mechanism that would permit regulators to legally reject an application in this situation.</p>	<p><b>Noted.</b> The CJR Forum to update the Users' Guide to draw regulators' attention to the option that a regulator can contact the registering authority in an applicant's home jurisdiction if they believe a person was registered in error.</p> <p>The CJR Forum notes that the mutual recognition Acts provide for the exchange of information between an applicant's home jurisdiction and the second jurisdiction: s19 (2)(h) of the MR Act and s18 (2)(h) of TTMR Act of the Commonwealth and s19 (2)(i) of the TTMR Act of New Zealand. Accordingly, the CJR Forum considers that a regulator should be able to notify the home jurisdiction if they believe a person was registered in error.</p>
<p><b>RECOMMENDATION 5.4</b> (page 95)</p> <p>The mutual recognition Acts should be amended to allow criminal record checks, if they are required of local applicants.</p>	<p><b>Agreed.</b> CJR Forum will consider whether legislative amendments or an alternative feasible option could allow for criminal record checks of applicants in appropriate circumstances.</p> <p>The Commission found that criminal record checks are unable to be legally required of registrants under mutual recognition, but recommends that the Acts be amended to permit such checks. The CJR Forum notes that any</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
	<p>such requirements should only be permitted where they are required of all registration applicants for an occupation in that jurisdiction.</p> <p>The CJR Forum will consider all the available options, including encouraging regulators to recognise checks conducted in other jurisdictions, provided a check was conducted recently enough to be considered current. Options would need to be consistent with the intent of mutual recognition, not resile from the principle of equivalence nor unduly limit the mobility of practitioners.</p> <p>See also Finding 5.6 and Recommendation 5.6.</p>
<p><b>RECOMMENDATION 5.5</b> (page 96)</p> <p>The mutual recognition Acts should be amended to make clear the types of condition (for example, around local knowledge or recency of practice requirements) that registration authorities may impose at the time of registration.</p>	<p><b>Not agreed.</b> The CJR Forum does not agree that legislative amendments are necessary. The CJR Forum notes that an appeal can be made to the AAT or TTOT in event of a dispute over conditions imposed on a registration.</p> <p>The Commission found that a lack of clarity in the mutual recognition Acts may contribute, in part, to regulator confusion in their application of conditions to registrations under mutual recognition. On this basis, the Commission recommends that the legislation should be clarified.</p> <p>The CJR Forum does not agree with the recommendation on the basis that:</p> <ul style="list-style-type: none"> <li>• there is an existing judicial remedy available through the AAT and TTOT, to settle disputes around whether particular conditions can be imposed on a registration;</li> <li>• within Australia, Ministerial Declarations of licence equivalence and the work of the CAF to further advance occupational licence recognition may obviate such concerns in relation to many occupations covered by the MR Act; and</li> <li>• as noted by the Commission, legislative clarity is only part of the issue. In this regard, the Forum considers that regulator confusion around the conditions that can be imposed on registrations can be addressed through improved awareness and understanding (see Finding 5.7).</li> </ul>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<p><b>FINDING 5.5</b> (page 100)</p> <p>Mutual recognition would work more effectively if a point of contact existed where individuals could cheaply and easily obtain advice about their rights under the schemes.</p>	<p><b>Noted.</b> See Recommendation 11.1.</p> <p>Jurisdictions currently provide central points of contact for mutual recognition matters, whose details are published in the Users' Guide and, for the MRA, on the Licence Recognition website.</p>
<p><b>FINDING 5.6</b> (page 102)</p> <p>Legal advice indicates that an Australian registration authority can probably not impose ongoing requirements (for example, around training or criminal record checks) on people who are registered under mutual recognition, but that a New Zealand authority might not be similarly constrained. However, there is ambiguity around this issue in each of the three mutual recognition Acts that could usefully be clarified.</p>	<p><b>Noted.</b> See Recommendation 5.6.</p>
<p><b>RECOMMENDATION 5.6</b> (page 102)</p> <p>The mutual recognition Acts should be amended to make it clear that requirements for ongoing registration, including further training, continuing professional development and criminal record checks, apply equally to all registered persons within an occupation, including those registered under mutual recognition.</p>	<p><b>Agreed.</b> CJR Forum will consider whether legislative amendments or an alternative feasible option could address the requirements for ongoing registration.</p> <p>The CJR Forum supports in principle that licence holders should be subject to the same ongoing requirements in a jurisdiction, irrespective of whether a licence was acquired under mutual recognition. However, careful consideration will need to be given to the implications for occupational practitioners who maintain a licence in more than one jurisdiction, for example where this would result in duplicate training requirements for persons concurrently registered in more than one jurisdiction.</p> <p>Options would need to be consistent with the intent of mutual recognition, not resile from the principle of equivalence nor unduly limit the mobility of practitioners</p> <p>The CJR Forum will also consider the option of encouraging regulators to recognise ongoing requirements conducted in other jurisdictions, where practical.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<p><b>RECOMMENDATION 5.7</b> (page 104)</p> <p>The mutual recognition Acts should be amended to define undertakings and provide that they are transferable between jurisdictions.</p>	<p><b>Not agreed.</b> The CJR Forum notes that legally binding undertakings are transferable under the existing legislation.</p> <p>The Commission has published advice from the Australian Government Solicitor that suggests that legally-binding undertakings constitute conditions and are already transferable within the terms of the existing legislation, but that undertakings that are not legally enforceable are unlikely to be transferable. The Forum considers that if undertakings are unable to be enforced then there is little apparent benefit in making them transferable between jurisdictions. The Agreement on trans-Tasman Court Proceedings and Regulatory Enforcement, which took effect on 11 October 2013, also provides for common judicial enforcement mechanisms.</p>
<p><b>RECOMMENDATION 5.8</b> (page 104)</p> <p>The mutual recognition Acts should be amended to ensure that information on non-disciplinary or remedial action can be shared between jurisdictions, where such action arises from a regulator's concern about an individual's fitness to practise.</p>	<p><b>Not agreed.</b></p> <p>The CJR Forum notes that s19 (2)(h) of the MR Act and s18 (2)(h) of TTMR Act of the Commonwealth and s19 (2)(i) of the TTMR Act of New Zealand provide that a person seeking registration under mutual recognition must consent to the making of inquiries and exchange of information with the authorities of any participating jurisdiction. In addition, s37 and s38 of the MR Act and TTMR Act of the Commonwealth, and s33 and s34 of the TTMR Act of New Zealand make further provisions in relation to the furnishing and receiving of information by registration authorities. The CJR Forum will clarify in the Users' Guide the application of these provisions for information sharing and their relationship with relevant privacy legislation in Australia and New Zealand.</p>
<p><b>FINDING 5.7</b> (page 106)</p> <p>There is evidence that a significant minority of regulators do not comply with their obligations under the mutual recognition schemes. Initiatives to enhance regulators' awareness in this area could address this issue.</p>	<p><b>Noted.</b> The CJR Forum will update and re-issue the Users' Guide to improve regulator awareness, and will circulate the updated Users' Guide to regulators. The CJR Forum recognises that there is a continuing need to promote mutual recognition principles to their respective regulators.</p>
<p><b>RECOMMENDATION 5.9</b> (page 109)</p>	<p><b>Noted.</b> The CJR Forum will further consider this proposal following a review of the Ministerial Declarations and the work by CAF to improve</p>



<p><b>PRODUCTIVITY COMMISSION FINDING</b></p>	<p><b>CJR FORUM RECOMMENDATION</b></p>
<p>Consideration should be given to extending the Ministerial Declarations to occupations regulated in New Zealand.</p>	<p>occupational licence recognition.</p> <p>While Australian jurisdictions have chosen to develop declarations under the MR Acts through a coordinated COAG process, there is no apparent barrier to a jurisdiction initiating the development of new declarations including New Zealand under the TTMR Act through a Ministerial Council or through direct negotiation between Ministers of the relevant jurisdictions. The CJR Forum notes that s31 of the TTMR Acts provide that a Minister from New Zealand and a Minister from each of one or more Australian jurisdictions may jointly declare, by notice in the <i>Commonwealth of Australia Gazette</i> and the <i>New Zealand Gazette</i>, that specified occupations are equivalent.</p>
<p><b>RECOMMENDATION 5.10</b> (page 110)                      Relevant New Zealand regulators should be included in consultations around the development of national licensing systems in Australia.</p>	<p><b>Noted.</b> The CJR Forum notes that relevant New Zealand regulators were invited as observers in consultations and to participate in regulator working groups in the development of a national licensing system in Australia.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<b>Temporary exemptions</b>	
<p><b>RECOMMENDATION 6.1</b> (page 122)</p> <p>The foreshadowed new Australian consumer product safety regime should include provisions to ensure it is closely integrated with the temporary exemption processes under the MRA and TTMRA. In particular, the new consumer law should ensure that:</p> <ul style="list-style-type: none"> <li>• when an interim product ban is imposed on a good under Australia’s new consumer product safety regime, the MRA does not apply to that good until the ban is either resolved by a Commonwealth decision or lapses — in order to avoid duplication and inconsistency between the product safety regime and the temporary exemption process under the MRA</li> <li>• when an interim product ban is imposed by any Australian jurisdiction, the temporary exemption process under the TTMRA is automatically invoked and the resultant temporary exemption for the relevant jurisdiction is automatically revoked when the interim product ban ends</li> <li>• if and when an interim product ban within Australia is resolved by a national permanent ban, a national temporary exemption under the TTMRA is automatically invoked for Australia.</li> </ul>	<p><b>Agreed.</b> In line with Recommendation 6.1, Section 121 and 120 of the <i>Australian Competition and Consumer Act 2010 (CC Act)</i> include provisions to ensure that temporary and permanent product bans under the CC Act will automatically result in a temporary exemption under the Australian MR Act or the Australian TTMR Act with respect to those banned goods. As such, Australia’s processes for temporarily exempting banned goods from the MR Act and the TTMR Act are integrated with the national consumer product safety regime.</p>
<b>Special exemptions</b>	
<p><b>RECOMMENDATION 7.1</b> (page 137)</p> <p>Following completion of the five year work plan for industrial chemicals in 2009, Australian and New Zealand Governments should consider converting the TTMRA special exemption for hazardous substances, industrial chemicals and dangerous goods into a permanent exemption, and/or applying mutual recognition to some areas. This should involve a cost–benefit analysis, based on a realistic assessment of the likelihood of</p>	<p><b>Agreed in part.</b></p> <p>Special exemptions have been converted to permanent exemptions for hazardous substances, industrial chemicals and dangerous goods. The Commonwealth regulations were made on 14 April 2010 and the New Zealand regulations on 12 April 2010.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
achieving mutual recognition or harmonisation in the foreseeable future, given the slow progress to date.	See also Recommendation 7.5.
<p><b>RECOMMENDATION 7.2</b> (page 147)</p> <p>The New Zealand Government should advise the Australian Government within three months of receiving this report whether the foreshadowed trans-Tasman regulatory regime for therapeutic goods is likely to be enacted by the New Zealand Parliament within the following nine months. If it advises that enactment is unlikely within this period, therapeutic products should be granted a permanent exemption from the TTMRA as soon as possible. If it advises that enactment is likely, but the parliaments fail to enact the legislation within twelve months of governments receiving this report, a permanent exemption should also be adopted as soon as possible.</p>	<p><b>Noted.</b> The special exemption for therapeutic goods has been converted to a permanent exemption, consistent with the treatment of other special exemptions. The Commonwealth regulations were made on 14 April 2010 and the New Zealand regulations on 12 April 2010.</p>
<p><b>RECOMMENDATION 7.3</b> (page 158)</p> <p>The TTMRA special exemption for road vehicles should remain because there are opportunities for Australia and New Zealand to harmonise their vehicle standards and associated procedures in advance of, and in some cases to a greater extent than, the harmonisation expected to eventually be achieved at a global level. To ensure that the special exemption delivers results, the Australian and New Zealand Governments should develop a reinvigorated cooperation program for road vehicles that has clear objectives and deadlines, and is supported by a clear intent to reduce impediments to trans-Tasman trade in vehicles.</p>	<p><b>Not agreed.</b> Special exemptions have been converted to permanent exemptions for road vehicles and child car seat restraints, consistent with the treatment of other special exemptions. The Commonwealth regulations were made on 14 April 2010 and the New Zealand regulations on 12 April 2010.</p> <p>See also Recommendation 7.5.</p>
<p><b>FINDING 7.1</b> (page 162)</p> <p>The Commission notes the progress made by the Australian and New Zealand Governments towards harmonised regulations for natural gas appliances. It supports the move towards a permanent exemption for ‘non universal’ LPG appliances, subject to a cost–benefit analysis of the change.</p>	<p>In accordance with Finding 7.1 the special exemption relating to gas appliances has been converted to a permanent exemption. The Commonwealth regulations were made on 14 April 2010 and the New Zealand regulations on 12 April 2010.</p>
<p><b>RECOMMENDATION 7.4</b> (page 166)</p> <p>Because of the different historical paths of Australian and New Zealand</p>	<p><b>Agreed in part.</b> The special exemption for radiocommunication devices have been converted to a permanent exemption, consistent with the treatment</p>

<p align="center"><b>PRODUCTIVITY COMMISSION FINDING</b></p>	<p align="center"><b>CJR FORUM RECOMMENDATION</b></p>
<p>spectrum allocation and use, a permanent exemption should be considered for short-range and spread-spectrum devices, once opportunities for harmonisation of standards are exhausted. A special exemption should remain where there is a possibility of harmonisation of spectrum allocation, including for the high frequency citizen band, in-shore boating devices and digital electrical cordless telephones. Devices likely to become obsolete in the near future should also remain as a special exemption until the exemption is no longer needed.</p>	<p>of other special exemptions.</p> <p>The CJR Forum notes that there are adequate alternative mechanisms in place to facilitate further efforts to align regulatory approaches in the field of radiocommunications.</p> <p>See also Recommendation 7.5.</p>
<p><b>RECOMMENDATION 7.5</b> (page 171)</p> <p>The TTMRA legislation should be amended so that special exemptions can have a maximum duration of three years, and can be extended for one or more further periods, each not exceeding three years. This reform should be reflected in the administrative procedures that governments use when considering special exemption rollovers, including that cooperation reports only need to be prepared every three years.</p>	<p><b>Not agreed.</b></p> <p>This recommendation has been overtaken by the conversion of all special exemptions to permanent exemptions.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<b>Scope of mutual recognition — goods</b>	
<p><b>RECOMMENDATION 8.1</b> (page 177)</p> <p>Consideration should be given to narrowing the permanent exemption for risk-foods from the TTMRA to include only those for which harmonisation of risk-food lists and equivalence of import-control measures are not achievable in the long term. Other risk-foods should be reclassified as a special exemption. Efforts should be made to achieve equivalence of import-control systems and third-country arrangements through a cooperation program, undertaken by a trans-Tasman working group, consisting of regulatory bodies and policy officials.</p>	<p><b>Agreed in part.</b> The CJR Forum agreed to narrow the scope of permanent exemptions for risk-foods from the TTMRA. Changes in 2011 brought several additional foods under the operation of the TTMRA. The CJRF considers that mutual recognition should be accepted, except for the small number of risk foods where equivalence is unlikely to be reached between Australia and New Zealand.</p>
<p><b>RECOMMENDATION 8.2</b> (page 182)</p> <p>The permanent exemption for ozone-protection legislation should be removed from the MRA. Governments should also consider removing the ozone-protection exemption from the TTMRA, subject to both countries aligning their respective regulatory systems while ensuring consistency with international obligations.</p>	<p><b>Agreed in part.</b> The CJR Forum:</p> <ul style="list-style-type: none"> <li>• will consider legislative amendments to remove the permanent exemption for ozone-protection from the MR Act following the completion of phase-out plans; and</li> <li>• considers that the ozone-protection permanent exemption in the TTMR Act should remain in place.</li> </ul> <p>In order to remove the permanent exemption from the TTMR Act, it would be necessary to align the ozone depleting substances (ODS) phase-out programs in Australia and New Zealand. Currently there appears not to be significant benefits in aligning the respective ODS phase-out programs given that Australia and New Zealand are committed to different phase-out schedules for hydrochlorofluorocarbons (HCFCs).</p> <p>Although Australia and New Zealand have different phase-out schedules for HCFCs, both countries have consistently aimed to meet or exceed their commitments under the Montreal Protocol. This arrangement has delivered major gains to date and should continue to be the main focus of efforts across the Tasman.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<p><b>RECOMMENDATION 8.3</b> (page 189)</p> <p>A new provision should be included in the Trans-Tasman Mutual Recognition Acts which would allow, through regulation, exempted legislation to be moved from Schedule 2 (permanent exemptions) to Schedule 3 (special exemptions).</p>	<p><b>Not agreed.</b> Consistent with the approach in relation to the current Special Exemptions, the CJRF considers that it is not necessary to retain the Special Exemption facility.</p> <p>Any issues that may arise can be effectively dealt with via the existing Temporary Exemption vehicle as well as cooperation activities undertaken in areas covered by Permanent Exemption where there are prospects for mutual recognition or harmonisation.</p>
<p><b>RECOMMENDATION 8.4</b> (page 198)</p> <p>The exceptions for goods in the mutual recognition Acts should be retained. Impediments to trade arising from the exceptions should be dealt with via direct negotiation with regulators on a case-by-case basis. A central point of contact should be made available to facilitate this process.</p>	<p><b>Agreed.</b> The CJR Forum:</p> <ul style="list-style-type: none"> <li>• notes that a central point of contact for each jurisdiction already is listed in the Users' Guide; and</li> <li>• will update the Users' Guide to clarify the role of contacts in facilitating negotiations with regulators.</li> </ul> <p>The Commission notes that the mutual recognition Acts contain general exceptions that provide for jurisdictions to be able to regulate the manner in which a good is sold, transported, stored, handled or inspected. The Commission supports retention of these provisions, noting that the exceptions are subject to such requirements applying to both locally produced as well as imported products.</p> <p>The CJR Forum notes that changes may be required to the exceptions, following from further consideration of Recommendation 8.6.</p> <p>See also Recommendation 11.1.</p>
<p><b>RECOMMENDATION 8.5</b> (page 198)</p> <p>The implications of regulation for mutual recognition should feature as one of the factors to be taken into consideration in jurisdictions' respective regulatory guidelines.</p>	<p><b>Noted.</b> The CJR Forum considers that this is a broader issue of ensuring that there is sufficient ongoing education and guidance regarding mutual recognition in each government's policy development and regulation making processes. The CJR Forum notes that jurisdictions use a range of measures to achieve this, reflecting their respective jurisdictional processes, including via regulatory guidelines.</p>

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	<p>The CJR Forum notes that improving the consideration of mutual recognition issues in Australia and New Zealand's policy and regulation-making processes was the subject of recommendations in the Commission's 2003 review of the mutual recognition schemes (Findings 6.1 and 6.2). Jurisdictions considered measures to improve their processes at that time. The CJR Forum notes that mutual recognition continues to be a factor taken into consideration in jurisdictional reviews of policy development and regulation making processes.</p>
<p><b>FINDING 8.1</b> (page 201)</p> <p>Use of goods requirements have the potential to unnecessarily impede the sale of goods across jurisdictions. Provisions in the Acts appear to exclude use requirements from the scope of mutual recognition.</p>	<p><b>Noted.</b> See Recommendation 8.6.</p>
<p><b>FINDING 8.2</b> (page 201)</p> <p>The Acts currently provide for mutual recognition as a defence to a prosecution in relation to the sale of goods. Even if the mutual recognition Acts had explicitly covered use of goods requirements, the existing provisions would not have provided an adequate mechanism for sellers of goods to challenge a use requirement, given that it is unlikely that a prospective user would buy the product in the first instance.</p>	<p><b>Noted.</b> See Recommendation 8.6.</p>
<p><b>RECOMMENDATION 8.6</b> (page 204)</p> <p>Requirements relating to the use of goods, insofar as they prevent or restrict the sale of goods, should be explicitly brought into the scope of the mutual recognition schemes.</p> <p>An exception should be made where mutual recognition of use provisions could expose persons in another jurisdiction to a real threat to health or safety or cause significant harm to the environment.</p>	<p><b>For further consideration.</b> The CJR Forum proposes that future reviews of the mutual recognition arrangements include an investigation of the implications, feasibility and possible scope of extending mutual recognition to the use of goods.</p>
<p><b>RECOMMENDATION 8.7</b> (page 208)</p> <p>An effective, accessible administrative mechanism should be made available to sellers of goods, regulators and other interested parties (including industry and consumer associations) to obtain information and</p>	<p><b>Noted.</b> The CJR Forum considers that the points of contact in the Users' Guide and readily available information published by jurisdictions on mutual recognition provide an existing, low cost mechanism for interested parties to obtain information and guidance on mutual recognition matters.</p>

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<p>guidance on the application of the mutual recognition legislation to individual cases, and to assist in the resolution of disputes.</p>	<p>The CJR Forum will update and reissue the Users' Guide. In doing so, the CJR Forum will consider steps to draw greater attention outside of government to mutual recognition, including awareness of existing advisory mechanisms. The CJR Forum notes the Commission has suggested possible awareness raising activities under Recommendation 11.1.</p> <p>The CJR Forum will also consider this recommendation further in conjunction with the Commission's other recommendations concerning advice and remedies for interested parties, in particular Finding 5.5 and Recommendations 5.2, 5.3, 8.8 and 11.1. In this regard, the CJR Forum notes that the AAT made a submission to the Commission's Review, which responded to the Commission's suggestion that a new specialist unit in Australia could provide a liaison and mediation service for disputes concerning goods. The AAT notes that alternative dispute resolution forms part of the AAT's own processes. The CJR Forum notes that the appropriate forum for mediation will require further consideration together with the Commission's other recommendations in relation to the role of the AAT.</p>
<p><b>RECOMMENDATION 8.8</b> (page 208)</p> <p>A judicial mechanism should be made available for sellers of goods and other interested parties to:</p> <ul style="list-style-type: none"> <li>• obtain advisory opinions from a body such as the Administrative Appeals Tribunal</li> <li>• appeal regulator decisions to enforce requirements where the parties believe mutual recognition should apply.</li> </ul>	<p><b>For further consideration.</b> The CJR Forum proposes to consider including additional advisory information in the updated Users' Guide to assist in clarifying any ambiguities.</p> <p>The Commission notes that no formal appeals bodies for the sale of goods are mentioned in the mutual recognition Acts. Instead, the Acts provide for mutual recognition as a defence to a prosecution for an offence: s12 of the MR Act and s13 of the TTMR Act of the Commonwealth; and s12 of the TTMR Act of New Zealand. The Commission considers that the defence to prosecution mechanism is reactive and inadequate, offering limited scope for businesses to test the validity of any decision by a regulator to enforce a particular requirement without risking prosecution.</p>



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	<p>The CJR Forum notes that the Commission does not analyse what status an advisory opinion would have, nor does the Commission consider in detail the scope and circumstances in which an appeal to the AAT should be available and how these processes should interface with jurisdictional enforcement activities. There are various implications that need to be examined, including a possible outcome that AAT and TTOT adopt a substantial role in matters of policy set by governments and legislatures.</p>
<p><b>RECOMMENDATION 8.9</b> (page 209)</p> <p>The existing mechanism for referral of issues relating to jurisdictional requirements for goods standards to Ministerial Councils should be extended to all issues of significant dispute relating to goods.</p>	<p>The CJR Forum notes that Ministerial Councils are already able to consider all issues of significant dispute relating to goods, not just standards.</p> <p>The Commission notes that the MR Agreement (Cl 4.3.1) and TTMR Arrangement (Cl 4.3) contain provisions for the referral of concerns regarding goods standards to a Ministerial Council for resolution. However, the CJR Forum notes that the intent of these provisions is not to limit the types of concerns that may be referred to Ministerial Councils, but rather to set time limits and voting arrangements for resolving issues relating to goods standards.</p> <p>The CJR Forum notes that, in relation to New Zealand's participation in Ministerial Councils, the TTMR Arrangement provides that:</p> <ul style="list-style-type: none"> <li>• New Zealand has full membership and voting rights on Ministerial Councils when Councils are dealing with matters pursuant to the Arrangement (Cl 6.1); and</li> <li>• if at any time a Ministerial Council has cause to consider the standard of a Good arising out of the operation of the Australian MR Agreement, the Chair of the Ministerial Council will consult with the New Zealand Minister on the Council with a view to determining whether the matter should be resolved in the context of the Arrangement (Cl 6.6).</li> </ul> <p>Separate from the TTMR Arrangement, New Zealand is a member of key Ministerial Councils, whose deliberations can incorporate regulatory matters concerning goods, including: the COAG Legislative and</p>

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	<p>Governance Forum on Consumer Affairs', the National Environment Protection Council, and the Transport and Infrastructure Council.</p> <p>The CJR Forum notes that the joint development of policy between governments is part of the general role of Ministerial Councils. Accordingly, there exists no barrier to jurisdictions raising matters of standards or other policy matters relating to goods at the relevant Ministerial Council, whether or not the matter is covered by the MR Agreement, TTMR Arrangement and/or the Acts.</p> <p>On this basis, the CJR Forum considers that it should be sufficient to update the information in the Users' Guide to clarify the role of Ministerial Councils, including the provisions in the MR Agreement and TTMR Arrangement concerning Ministerial Council voting arrangements for matters referred under the Agreement/Arrangement, and consultation and participation of New Zealand in Ministerial Councils. This will assist in improving regulator expertise.</p> <p>See also Finding 5.3 in relation occupations.</p>
<b>Exemptions and extensions — occupations</b>	
<p><b>RECOMMENDATION 9.1</b> (page 214)</p> <p>The permanent exemption for registered medical practitioners should become a special exemption, and be limited to third-country trained medical practitioners (that is, practitioners with primary and/or postgraduate qualifications obtained outside Australasia). Harmonisation of competency standards for overseas-trained medical practitioners could then be pursued through a cooperation program.</p>	<p><b>Not agreed.</b> The CJR Forum recommends that the permanent exemption for registered medical practitioners remain in place for the time being.</p> <p>The CJR Forum does not support the Commission's recommendation. However, the CJR Forum considers that a proposal for a trans-Tasman cooperation program be investigated with a focus on further streamlining of processes for international medical graduates from New Zealand if appropriate.</p>
<p><b>RECOMMENDATION 9.2</b> (page 214)</p> <p>Mutual recognition should apply to registered medical practitioners who have gained their medical qualifications only within Australia or New</p>	<p><b>Not agreed.</b> See Recommendation 9.1.</p>

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<p data-bbox="114 226 235 255">Zealand.</p> <p data-bbox="114 279 459 311"><b>FINDING 9.1</b> (page 215)</p> <p data-bbox="114 327 1086 502">The mutual recognition legislation could be amended to ensure that mutual recognition is available to people registered under schemes in which registration is not compulsory for all practitioners, provided those schemes meet the other requirements for registration specified under the mutual recognition legislation.</p>	<p data-bbox="1131 271 2072 375"><b>Noted.</b> The CJR Forum proposes to further consider extending mutual recognition to schemes in which registration is compulsory for only some practitioners.</p> <p data-bbox="1131 422 2094 670">The Commission notes that persons registered in schemes that do not require <i>all</i> practitioners to be registered are unable to apply for mutual recognition in other jurisdictions. The Commission's view is that this means that mutual recognition will not apply to any new registration scheme that 'grandfathers' those practitioners who are already carrying out the occupation, and will not apply during any transitional period provided for existing practitioners to register under the new scheme.</p> <p data-bbox="1131 718 2049 933">The Commission considers that if a scheme that does not cover all practitioners meets the other requirements of the mutual recognition legislation, there does not seem to be a good reason to preclude people registered under that scheme from accessing mutual recognition. In this regard, the Commission notes that extending mutual recognition might encourage practitioners to join voluntary registration schemes.</p> <p data-bbox="1131 973 2094 1109">The CJR Forum notes that further consideration could be given to the coverage of mutual recognition in relation to positive registration schemes whose requirements are not uniform or which cover only some practitioners of an occupation. Circumstances that may need consideration include:</p> <ul data-bbox="1131 1125 2105 1428" style="list-style-type: none"> <li>• where registration is dependent on the attainment or possession of some qualification, but registration is optional;</li> <li>• where registration is dependent on the attainment or possession of some qualification, but registration is only compulsory for some practitioners (for example, after a certain date); and</li> <li>• where registration is mandatory for all practitioners, but qualification requirements do not apply uniformly to registration applicants (for example, where registration is available under grandfathering</li> </ul>

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	<p>arrangements to existing practitioners on introduction of a new registration system).</p> <p>The CJR Forum will further consider this matter together with possible changes to clarify the scope of mutual recognition under Recommendation 5.1.</p>
<p><b>FINDING 9.2</b> (page 217)</p> <p>Business licences held by sole traders, that include at least one requirement relating to an individual’s ‘fitness’ to hold a licence, are likely to fall within the coverage of the mutual recognition schemes.</p>	<p><b>Noted.</b> See Finding 9.3.</p>
<p><b>FINDING 9.3</b> (page 220)</p> <p>Mutual recognition could be extended to business registration requirements where similar requirements would result in an individual being registered for mutual recognition purposes.</p>	<p><b>Noted.</b> In the short term, the CJR Forum does not support extending mutual recognition to business registration requirements.</p> <p>The CJR Forum considers that the national registration system for Australian businesses appears to have removed any previous barriers resulting from multiple licences. The system, administered by the Australian Securities and Investments Commission (ASIC), delivers a seamless, single online registration system, enabling businesses to apply for their business name and ABN in one step. Businesses now need to register their names only once – regardless of how many jurisdictions they operate in. However, the Forum would be interested in, and consider any evidence of barriers identified in future mutual recognition reviews.</p>
<p><b>FINDING 9.4</b> (page 227-228)</p> <p>Following the implementation of the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement, Australian jurisdictions and New Zealand could conduct a comprehensive and transparent stocktake of their legislation, similar to the mutual evaluation process under the European Union Services Directive. This stocktake would aim to identify major barriers to service provision across borders, and could be initiated and</p>	<p><b>Agreed.</b> The CJR Forum considers that the Trans-Tasman Proceedings regime now provides an opportunity for a review of jurisdictional legislation to identify opportunities to support greater cross-border service provision.</p> <p>The CJR Forum agrees that cross-border provision of services is an increasingly important area for further examination. The Forum notes that the following initiatives will be particularly relevant to an examination of</p>

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<p>managed by the Cross-Jurisdictional Review Forum.</p> <p>If, based on the outcomes of that stocktake, regulatory action is deemed to be warranted, the jurisdictions could consider the types of initiative that would facilitate trade in services.</p>	<p>this matter:</p> <ul style="list-style-type: none"> <li>• the CJR Forum notes that the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement entered into force in October 2013; and</li> <li>• the CJR Forum notes further that part examination of this issue may be undertaken in the work by the CAF to consider alternative options for recognising occupational licences within Australia, where currently a person would need to be re-registered under the MR Act. The CJR Forum considers that work on cross-border provision of services could usefully cross-reference this work.</li> </ul>
<b>Mutual recognition in the wider context</b>	
<p><b>FINDING 10.1</b> (page 243)</p> <p>The US–Australia Free Trade Agreement and the New Zealand–China Free Trade Agreement do not significantly increase the risk to consumers of lower quality products or registered persons with lower qualifications entering New Zealand or Australia under the TTMRA.</p>	<p><b>Noted.</b> See Recommendation 10.1.</p>
<p><b>FINDING 10.2</b> (page 246-247)</p> <p>Free trade agreements generally include commitments by the parties to engage in further cooperation, recognition and harmonisation agreements that may create opportunities and may pose risks for a mutual recognition partner:</p> <ul style="list-style-type: none"> <li>• opportunities arise if the cooperation agreement extends recognition or harmonisation to the mutual recognition partner, or if the agreement provides a platform for discussions between the mutual recognition partner and the third country;</li> <li>• risks arise if the cooperation agreement results in lower quality goods being sold or less qualified persons carrying on occupations in the free trade partner that subsequently flow into the mutual recognition partner; and</li> </ul>	<p><b>Noted.</b> See Recommendation 10.1.</p>

PRODUCTIVITY COMMISSION FINDING	CJR FORUM RECOMMENDATION
<ul style="list-style-type: none"> <li>opportunities can be increased and risks can be mitigated if Australia and New Zealand consider mutual recognition implications when future cooperation agreements are negotiated.</li> </ul>	
<p><b>RECOMMENDATION 10.1</b> (page 247)</p> <p>Australia and New Zealand should take into account the possible impacts that international agreements will have on the mutual recognition framework when negotiating future initiatives with third countries.</p>	<p><b>Agreed.</b> The recommendation was referred to the Commonwealth Department of Foreign Affairs and Trade and the New Zealand Ministry of Foreign Affairs and Trade.</p> <p>The Commonwealth Department of Foreign Affairs and Trade and the New Zealand Ministry of Foreign Affairs and Trade have indicated that in bilateral and regional trade negotiations, officials take into account existing commitments under other agreements, including mutual recognition obligations and arrangements.</p>
<p><b>FINDING 10.3</b> (page 253)</p> <p>Recent trans-Tasman agreements may provide alternative or complementary approaches for improving the operation of mutual recognition. The new agreements apply mutual recognition to some services and strengthen trans-Tasman enforcement and dispute resolution. It is important that these new instruments be considered alongside other options when modifying the mutual recognition schemes.</p>	<p><b>Noted.</b></p>
<p><b>Awareness, expertise and oversight</b></p>	
<p><b>RECOMMENDATION 11.1</b> (page 269)</p> <p>COAG should strengthen its oversight of the mutual recognition schemes by agreeing to establish two specialist units — one for goods and the other for occupations — to monitor and provide advice on the operation of the schemes within Australia.</p> <p>The functions of the two units should include:</p> <ul style="list-style-type: none"> <li>advising COAG, regulators and the public on technical aspects of the schemes</li> <li>providing a ‘complaints-box’ service that enables the public to alert</li> </ul>	<p><b>Not agreed.</b></p> <p>The CJR Forum considers that the creation of new government units and new reporting requirements are not warranted. The Commonwealth Department of Industry has responsibility for the Australian mutual recognition Acts and, at present, two separate branches within the Department have responsibility for goods issues and for occupational issues respectively.</p> <p>Additional reporting requirements for occupational regulators would represent an increase in regulatory burden at a time when the government</p>

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<p>COAG about problems with the schemes' operation, and to facilitate greater use of existing appeals mechanisms by the public and the referral process by COAG when disputes cannot be resolved through mediation by the specialist units</p> <ul style="list-style-type: none"> <li>• raising public awareness and regulator expertise on the schemes. This should include the provision of separate users' guides for the public and regulators, a website, and seminars targeted at relevant industry associations, professional associations, trade unions, policy makers and regulators</li> <li>• administering an internet-based practical test that relevant officials in regulatory agencies would have to undertake annually to confirm they have sufficient expertise to administer the mutual recognition schemes</li> <li>• for the occupations unit, facilitate regulators' annual updating of the Ministerial Declarations of occupational equivalence.</li> </ul> <p>The administrative arrangements for the two units should be as follows:</p> <ul style="list-style-type: none"> <li>• the units should be funded by contributions from all Australian jurisdictions, and support COAG's Cross-Jurisdictional Review Forum</li> <li>• the goods unit should be located in the Commonwealth Department of Innovation, Industry, Science and Research</li> <li>• the occupations unit should be located in the Commonwealth Department of Education, Employment and Workplace Relations.</li> </ul>	<p>has a deregulatory agenda.</p> <p>The Commission considers that firms and individuals are not making full use of the mutual recognition schemes, and that regulators are not always applying mutual recognition consistently or appropriately. The Commission notes that these issues were also identified in previous reviews of the mutual recognition schemes, and considers that efforts to address these problems since the last review have had limited success. In particular the Commission considers that:</p> <ul style="list-style-type: none"> <li>• insufficient resources and expertise have been devoted to ongoing monitoring of the schemes;</li> <li>• the enforcement role envisaged for Ministerial Councils and appeal tribunals has been limited due to the under-resourced monitoring by governments, and the cost and low public awareness of appeal mechanisms; and</li> <li>• individual regulators face barriers to building up and maintaining expertise on mutual recognition matters.</li> </ul> <p>The CJR Forum notes the Commission has found that notwithstanding these concerns, the schemes have had some success in achieving their policy objective of facilitating inter-jurisdictional mobility of labour and goods (Finding 4.1). The CJR Forum further notes that the implementation of other reforms arising from this review or being progressed through other fora are likely to remedy or supersede some areas of concern, and consequently diminish the benefits of committing new resources to the schemes, for example:</p> <ul style="list-style-type: none"> <li>• the alternative options for improving the labour mobility of licensed persons may obviate some occupational mutual recognition issues in relation to the MR Agreement within Australia;</li> <li>• the Australian Consumer Law similarly obviates many goods related mutual recognition issues within Australia and simplifies interactions</li> </ul>

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	<p>with New Zealand;</p> <ul style="list-style-type: none"> <li>• clarifying the scope of mutual recognition and the dispute remedies available to interested parties stands to reduce any uncertainties that may currently exist for businesses, occupational practitioners and consumers; and</li> <li>• the CJR Forum proposes to update and reissue the Users' Guide, which includes central points of contact in each jurisdiction, and will consider new measures to improve awareness both within and outside of government.</li> </ul>
<p><b>RECOMMENDATION 11.2</b> (page 270)</p> <p>Occupation-registration authorities should be required to report annually on their administration of the mutual recognition schemes. This should include data on the number registered under mutual recognition, compared with total registrations, and information about complaints and appeals. Such reports should be provided to the specialist occupations unit mentioned in recommendation 11.1.</p>	<p><b>Not agreed.</b> The CJR Forum recommends that occupational registration authorities collect this data on an annual basis, but does not agree to annual reporting requirements.</p> <p>The Commission found that there are significant deficiencies in the record keeping of occupation-registration authorities that make it difficult to assess the effectiveness of the mutual recognition schemes. The Commission considers that this could be remedied by annual reporting requirements for regulators.</p> <p>While the CJR Forum agrees that this recommendation would provide improved agency focus and awareness on mutual recognition, its implementation would entail additional costs for regulators. The CJR Forum proposes that jurisdictions request that their respective regulators collect data on mutual recognition on an annual basis and that provision for the collection of such data be a priority in the introduction of any new regulator recordkeeping systems.</p>
<p><b>RECOMMENDATION 11.3</b> (page 270)</p> <p>The Cross-Jurisdictional Review Forum should report annually to COAG on its work program and achievements. This reporting should be done through COAG's Senior Officials' Group.</p>	<p><b>Agreed in part.</b> The CJR Forum agrees that the Forum should report to COAG Senior Officials on an as-needs basis.</p> <p>The Commission notes that there is not a formal requirement for the CJR Forum to report regularly to COAG on its activities, and that the Forum is</p>



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	<p>no longer supervised by COAG’s Committee on Regulatory Reform. The Commission considers that if the CJR Forum were required to report annually through COAG Senior Officials, this would give added impetus for the Forum to set specific goals and make progress.</p> <p>The CJR Forum considers that the five-yearly review process already provides appropriate means for reporting to COAG on progress with mutual recognition matters. The CJR Forum further notes that it has outlined specific directions for the Forum in response to the Commission’s report, which will form part of a forward work program. The Forum agrees that the report on progress implementing the forward work program will be published on the Commonwealth Department of Industry website and may be published on the New Zealand Ministry of Business, Innovation and Employment website.</p>
<p><b>The next steps for mutual recognition</b></p>	
<p><b>RECOMMENDATION 12.1</b> (page 285)</p> <p>The state and territory jurisdictions should consider ways to make amending the mutual recognition legislation more flexible. The legislative mechanisms to amend the state Mutual Recognition Acts and the Trans-Tasman Mutual Recognition Acts could allow the Commonwealth to amend the legislation with approval from the jurisdictions.</p>	<p><b>For further consideration.</b> The CJR Forum proposes to defer investigation of a means of making the amending of mutual recognition legislation more flexible, in a manner that recognises the role of jurisdictions’ legislatures.</p> <p>The Commission notes that legislative changes to the mutual recognition schemes can require amendments to be passed by the legislatures of all participating jurisdictions. The Commission considers that this is a cumbersome requirement that could be streamlined while retaining some form of requirement for jurisdictional approval of changes to the Acts.</p> <p>While the CJR Forum supports the notion of increasing the flexibility with which the MR Act and TTMR Acts are amended, it is important that any such changes are balanced with due consideration of any possible issues that may arise from such changes and the role of the legislature of each jurisdiction.</p>