

A U S E R S ' G U I D E

to the Trans-Tasman
Mutual Recognition
Arrangement
(TTMRA)



to the Trans-Tasman Mutual Recognition Arrangement (TTMRA)

Between the Commonwealth of
Australia the Australian States
and Territories and New Zealand

Council of Australian Governments
Committee on Regulatory Reform

May 1998



**INDUSTRY
SCIENCE
TOURISM**
COMPETITIVE
AUSTRALIA



**FOREIGN
AFFAIRS AND
TRADE**



Department of Employment,
Education, Training and
Youth Affairs



© Commonwealth of Australia 1998

This work is copyright. The material contained in this statement may be freely quoted with appropriate acknowledgment.

Designed & Typeset by Four Design Group, Canberra
Printed by Pirie Printers Pty Limited, Canberra

Foreword

The signing of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) on 1 January 1983 marked the beginning of a process that has brought the two economies to a level of integration attained by few other countries.

In ANZCERTA's 15th anniversary year the commencement of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) consolidates this process and moves us closer to the seamless trans-Tasman marketplace envisioned by the drafters of ANZCERTA.

The TTMRA will deliver to exporters on both sides of the Tasman greater flexibility, wider choice and lower business compliance costs through mutual recognition and harmonisation of product standards. It will also enhance free movement of people in registered occupations across the Tasman.

The TTMRA will open up opportunities for trade and service-providers in New Zealand and Australia, and facilitate the important bilateral trade in manufactured and processed products. It will assist in the growth of skilled employment opportunities as well as providing predictability and stability for our respective business communities.

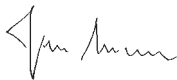
This User's Guide, prepared by the Council of Australian Governments (COAG) Committee on Regulatory Reform, is designed to assist exporters and professional service providers on both sides of the Tasman. The Guide will give users a greater understanding of the practical aspects of the TTMRA and ensure that the benefits of the scheme are fully realised.



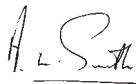
TIM FISCHER MP
Deputy Prime Minister and Minister for Trade
Australia



JOHN LUXTON
Minister of Commerce
New Zealand



JOHN MOORE MP
Minister for Industry, Science and Tourism
Australia



LOCKWOOD SMITH PhD
Minister for International Trade
New Zealand



DR DAVID KEMP MP
Minister for Employment Education Training
& Youth Affairs
Australia



Contents



Foreword	3
----------	---

Introduction

About this guide	7
Further information	7

Part I:

Background to the TTMRA

1.1 What is the background to the TTMRA?	9
1.2 What is the purpose of the TTMRA?	10
1.3 What are the expected benefits of the TTMRA?	10
1.4 How will the TTMRA be implemented into law?	11
1.5 When will the TTMRA be reviewed?	11
1.6 Can a jurisdiction withdraw from the TTMRA?	11
1.7 What is the role of Ministerial Councils under the TTMRA?	11
1.8 What is the role of the Council of Australian Governments Committee on Regulatory Reform?	12
1.9 How do the <i>COAG Principles and Guidelines for National Standard Setting and Regulatory Action</i> relate to the TTMRA?	12

Part II:

Occupations and the TTMRA

2.1 What occupations are covered by the TTMRA?	13
2.2 Are any requirements relating to occupations not affected by the TTMRA?	13
2.3 What is meant by the term 'equivalent occupations'?	14
2.4 How does a person obtain registration under the TTMRA?	14
2.5 What happens after lodgment of a written notice seeking registration?	15
2.6 Can a decision of a registration authority be appealed?	18
2.7 What are the possible outcomes of the appeal process?	19
2.8 What mechanisms are available if a registration authority has concerns about another jurisdiction's registration requirements?	19

Contents

Part III:

Goods and the TTMRA

3.1	What laws are affected by the TTMRA?	21
3.2	What laws are not affected by the TTMRA?	21
3.3	Are there any goods or laws that are exempt from the TTMRA?	22
	Exclusions	22
	Permanent Exemptions	23
	Special Exemptions and Cooperation Programs	23
	Temporary Exemptions	25
	Referrals	28
3.4	Relationship between the TTMRA and the Australia-New Zealand Food Harmonisation Agreement	29

Figure 1:

	The registration process	16
--	--------------------------	----

Introduction

About this Guide

This is a guide for users and administrators of the Trans-Tasman Mutual Recognition Arrangement (TTMRA). In particular, the guide contains information to help:

- those in registered occupations who wish to seek registration under the TTMRA;
- occupational registration authorities;
- professional associations and other occupational groups;
- business operators who wish to sell goods under the scheme;
- manufacturers' associations and other business groups;
- government agencies responsible for the regulation of goods; and
- Ministerial Councils.

Further Information

For further information about the operation of the TTMRA, the contacts for each of the participating governments are as follows:

Commonwealth – Goods

Manager
Standards and Conformance Policy Section
Department of Industry, Science and Tourism
20 Allara St Civic
CANBERRA ACT 2600

Phone: 02 6213 6557

Commonwealth – Occupations

National Office of Overseas Skills Recognition
Department of Employment, Education,
Training and Youth Affairs
GPO Box 9880
CANBERRA ACT 2601

Phone: 1800 020 086

New Zealand

Director
Competition and Enterprise Branch
Ministry of Commerce
PO Box 1473
WELLINGTON NZ

Phone: 0064 4 472 0030

New South Wales

Intergovernmental Relations and
Regulatory Reform Branch
The Cabinet Office
GPO Box 5341
SYDNEY NSW 2001

Phone: 02 9228 5414

Introduction

Victoria

First Assistant Secretary
Economic Development Branch
Cabinet Office
Department of Premier and Cabinet
Level 1, 1 Treasury Place
MELBOURNE VIC 3002
Phone: 03 9651 5094

Queensland

Director
Intergovernmental Relations Branch
Department of the Premier and Cabinet
PO Box 185
Albert St Post Office
BRISBANE QLD 4002
Phone: 07 3224 5189

Western Australia

Assistant Director-General
Federal and Constitutional Affairs
Ministry of Premier and Cabinet
197 St Georges Terrace
PERTH WA 6000
Phone: 08 9222 9859

South Australia

Director
Microeconomic Reform Branch
Department of Premier and Cabinet
GPO Box 2343
ADELAIDE SA 5001
Phone: 08 8226 0903

Tasmania

Director
Economic Policy Branch
Department of Treasury and Finance
GPO Box 147B
HOBART TAS 7001
Phone: 03 6233 2550

Northern Territory

Assistant Secretary
Policy and Coordination Division
Department of the Chief Minister
GPO Box 4396
DARWIN NT 0801
Phone: 08 8999 5164

Australian Capital Territory

Manager
Regulatory and Industry Reform Unit
Department of Business
GPO Box 158
CANBERRA ACT 2601
Phone: 02 6205 0596

Internet

Copies of this guide, the TTMRA and the COAG Principles and Guidelines for National Standard Setting are available on the Internet at
www.dist.gov.au

A copy of the TTMR Act is available at
www.aph.gov.au/legis

Part I:

Background to the TTMRA

1.1 *What is the background to the TTMRA?*

The TTMRA is an arrangement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand. It represents a significant step in developing an integrated trans-Tasman economy. It allows goods to be traded freely between New Zealand and Australia and enhances the freedom of individuals to work in both countries.

The TTMRA builds on, and is a natural extension of, the Mutual Recognition Agreement (MRA) between the Commonwealth, States and Territories of Australia which commenced operation on 1 March 1993 and the Australia New Zealand Closer Economic Relations Trade Agreement (CER). As far as possible, the scheme established by the TTMRA is consistent with the scheme established by the MRA.

In developing the TTMRA, governments recognised that there are, in many areas, regulatory impediments to trade between New Zealand and Australia. These are often in the form of:

- different standards for goods;
- duplicative testing and certification requirements; and
- different regulatory requirements for those wishing to practise in registered occupations.

The benefits of the TTMRA are particularly significant where regulatory differences mainly reflect national historical or institutional arrangements, rather than the objective assessment of risks to public health, safety and the environment. The benefits of trade liberalisation under CER cannot be fully realised until these impediments are reduced.

The TTMRA was signed by the Prime Minister of Australia, State Premiers and Territory Chief Ministers at the meeting of the Council of Australian Governments (COAG) on 14 June 1996. It was subsequently signed by the Prime Minister of New Zealand on 9 July 1996. The scheme commenced operation on 1 May 1998 on the coming into force of legislation in Australia (the TTMRA Act) and in New Zealand. In the case of an Australian State or Territory, the scheme commences operation on the date of proclamation of relevant State or Territory TTMRA legislation.

Background to the TTMRA

1.2 What is the purpose of the TTMRA?

The purpose of the TTMRA is to give effect to two mutual recognition principles relating to the sale of goods and the registration of occupations. The two basic principles are:

- a good that may legally be sold in Australia may be sold in New Zealand, and a good that may legally be sold in New Zealand may be sold in Australia, regardless of differences in standards or other sale-related regulatory requirements between Australia and New Zealand; and
- a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and a person registered to practise an occupation in New Zealand is entitled to practise an equivalent occupation in Australia, without the need to undergo further testing or examination.

There are some exceptions and qualifications to these principles that are described below.

1.3 What are the expected benefits of the TTMRA?

The TTMRA is a simple, low cost and low maintenance mechanism for overcoming unnecessary regulatory impediments to trade between Australia and New Zealand.

Mutual recognition will benefit consumers, business and service providers by reducing or eliminating regulatory impediments to trade in goods and the movement of skilled practitioners between Australia and New Zealand. The potential benefits of the TTMRA are significant and include:

- lower costs to business and improved competitiveness, reflecting longer production runs and lower compliance costs from being able to manufacture to a single standard;
- greater choice for consumers;
- increased opportunities for Australians and New Zealanders to work in each other's country;
- an impetus for both countries to consider the appropriateness of existing regulation in the light of all participating governments' objective of removing unnecessary barriers to trade;
- greater discipline on regulators contemplating the introduction of new standards, regulations and registration requirements;
- greater cooperation between regulatory authorities; and
- greater opportunities for both countries to enhance their influence internationally through bodies such as the Asia-Pacific Economic Cooperation (APEC) forum.

Background to the TTMRA

1.4 How will the TTMRA be implemented into law?

All Australian Governments and the Government of New Zealand have signed the TTMRA. However, each Party must pass legislation in order to give the TTMRA the force of law in its jurisdiction. TTMRA legislation prevails over any inconsistent laws relating to the sale of goods or the registration of occupations. Jurisdictions that have passed the necessary legislation are referred to as 'participating' parties and will continue to be covered by the scheme while their TTMRA legislation remains in force.

1.5 When will the TTMRA be reviewed?

Parties to the TTMRA will undertake a general review of the scheme's operation in 2003 in conjunction with the second five yearly review of the MRA. Further reviews of both the TTMRA and the MRA will then occur every five years.

1.6 Can a jurisdiction withdraw from the TTMRA?

Parties may withdraw from the TTMRA if they give 12 months notice to the other participating parties. A jurisdiction wishing to withdraw must give a notice in writing to the other parties which:

- advises them of the decision to withdraw from the scheme; and
- sets out the reasons for the decision.

1.7 What is the role of Ministerial Councils under the TTMRA?

Ministerial Councils¹ have an important role to play under the TTMRA, particularly in relation to Temporary Exemptions and Special Exemptions (and related Cooperation Programs) (see below). Under these mechanisms, Ministerial Councils, together with the relevant regulatory authorities, may be called upon to examine the regulatory requirements applying to certain goods or occupations covered by the scheme. When TTMRA issues arise, New Zealand will have full membership and voting rights on Ministerial Councils. In dealing with issues relating to the TTMRA, Ministerial Councils operate under the authority of Heads of Government.

¹ Ministerial Councils comprise Ministers from the Commonwealth, the States and Territories and in some cases New Zealand, dealing with a particular area of responsibility, for example, agriculture, health and industry. New Zealand is to have full membership on all Ministerial Councils when dealing with TTMRA issues.

Background to the TTMRA

1.8 What is the role of the Council of Australian Governments Committee on Regulatory Reform?

The Committee on Regulatory Reform (CRR) is a standing committee of COAG made up of officials from central agencies from the Commonwealth, the States and Territories and New Zealand. On behalf of COAG, CRR oversees the operation of both the Australian MRA and the TTMRA. CRR will monitor the TTMRA on an ongoing basis and report to Heads of Government as appropriate on the operation of the scheme.

1.9 How do the COAG Principles and Guidelines for National Standard Setting and Regulatory Action relate to the TTMRA?

At its February 1995 meeting, COAG endorsed the *Principles and Guidelines for Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies*. The *Principles and Guidelines* are a set of best-practice requirements for developing regulatory proposals and for preparing Regulatory Impact Statements on those proposals. Ministerial Councils and regulatory bodies will use the *Principles and Guidelines* when developing regulatory requirements. Ministerial Councils and national (that is, intergovernmental) regulatory bodies involved in the development of regulatory requirements for goods and occupations under the auspices of the TTMRA must comply with the *Principles and Guidelines*. The Commonwealth Government's Office of Regulation Review will monitor compliance and provide assistance to Ministerial Councils and regulatory bodies with the *Principles and Guidelines*.

Part II:

Occupations and the TTMRA

Under the TTMRA:

- a person who is registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand; and
- a person who is registered to practise an occupation in New Zealand is entitled to practise an equivalent occupation in Australia.

2.1 What occupations are covered by the TTMRA?

The TTMRA covers all occupations for which some form of legislation-based registration, certification, licensing, approval, admission or any other form of authorisation is required by individuals in order to legally practise the occupation. The only exception applies to medical practitioners. However, in the case of doctors trained in Australia and New Zealand, mutual recognition-type arrangements already apply.

2.2 Are any requirements relating to occupations not affected by the TTMRA?

The TTMRA does not affect the operation of laws that regulate **the manner of carrying on an occupation**. These laws include requirements relating to, for example, trust accounts, fees and continuing education.

However, these laws must:

- apply equally to all persons carrying on or seeking to carry on the occupation; and
- be not based on the attainment or possession of some qualification or experience relating to fitness to practise the occupation.

This means that the TTMRA does not affect any requirements of a jurisdiction that regulate the ongoing activities of persons registered to practise an occupation. A person registered under the TTMRA, therefore, must comply with any requirements for ongoing registration in that occupation so long as those requirements apply equally to all persons registered to practise the occupation and not just to persons registered under the TTMRA. In addition, they must not be based on attaining a certain qualification or level of experience.

Recognition under the TTMRA focuses on the fact of a person's registration in their original jurisdiction rather than on the requirements for registration (eg possession of a qualification). This means that requirements for *initial* registration cannot be imposed on practitioners from other jurisdictions as a condition of obtaining registration under the TTMRA. For example, a person cannot generally be required to up-grade their qualifications to bring them into line with local registration requirements.

Occupations and the TTMRA

2.3 What is meant by the term 'equivalent occupations'?

The mutual recognition principle only applies to occupations that are 'equivalent'. Two occupations are taken to be equivalent if the activities authorised to be carried out under registration are substantially the same. Equivalence can be achieved through the imposition of conditions on registration (eg restricting registration to certain activities) by a registration authority or, on appeal, by the relevant Appeals Tribunal (see below).

An example of the application of conditions to achieve equivalence is that of pest controllers under the Australian MRA. States in cooler climates do not suffer from termite problems. Pest controllers from those States, therefore, are not required to have training in, or experience with, the use of chemicals for the control of termites. To achieve equivalence between occupations, conditions have been imposed on such persons seeking registration in States that have termites such that they are not allowed to use termite control chemicals.

2.4 How does a person obtain registration under the TTMRA?

A person seeking registration under the TTMRA must lodge a written notice with the relevant registration authority containing certain basic information relating to his or her current registration. The notice must:

- contain the person's full personal particulars including name, address and telephone number;
- state the occupation for which the person is seeking registration, that the person is currently registered to practise an equivalent occupation and specify all the participating jurisdictions in which the person is already registered;
- confirm that the person's existing registration is not cancelled or suspended due to disciplinary action and that the person is not the subject of any such action, or in any other way prohibited or restricted from practising the occupation;
- if applicable, specify any conditions imposed on the person's existing registration in any of the participating jurisdictions in which registration is held; and
- give consent to the registration authority to make enquiries and exchange information with other registration authorities regarding the person's existing registration.

Occupations and the TTMRA

The notice must be accompanied by the original or a copy of the person's registration papers and should include a statement certifying that the papers are authentic. The statements and other information contained in the notice must be verified by statutory declaration.

As a practical matter, registration authorities should provide individuals with an acknowledgment that the written notice has been received.

2.5 What happens after lodgment of a written notice seeking registration?

Registration authorities have one month from the date of lodgment of the notice to formally grant, postpone or refuse registration. If a registration authority neither grants, postpones or refuses registration before the expiry of the one month period, the person is entitled to immediate registration. When granted, registration takes effect from the date of lodgment of the notice. Figure 1 outlines the registration process.

Deemed registration

A person is eligible for deemed registration from the date of lodgment of the notice and can carry on their occupation pending the grant or refusal of registration. A person with deemed registration may carry on their occupation as if they have been granted substantive registration

subject to any conditions attaching to their existing substantive registration or to any requirements of substantive registration (for example, regarding insurance, fidelity funds and trust accounts).

Deemed registration continues until it is cancelled, suspended or otherwise ends under the conditions set out in the TTMR Act. For example, deemed registration will end if a person is granted substantive registration or refused registration.

Substantive registration

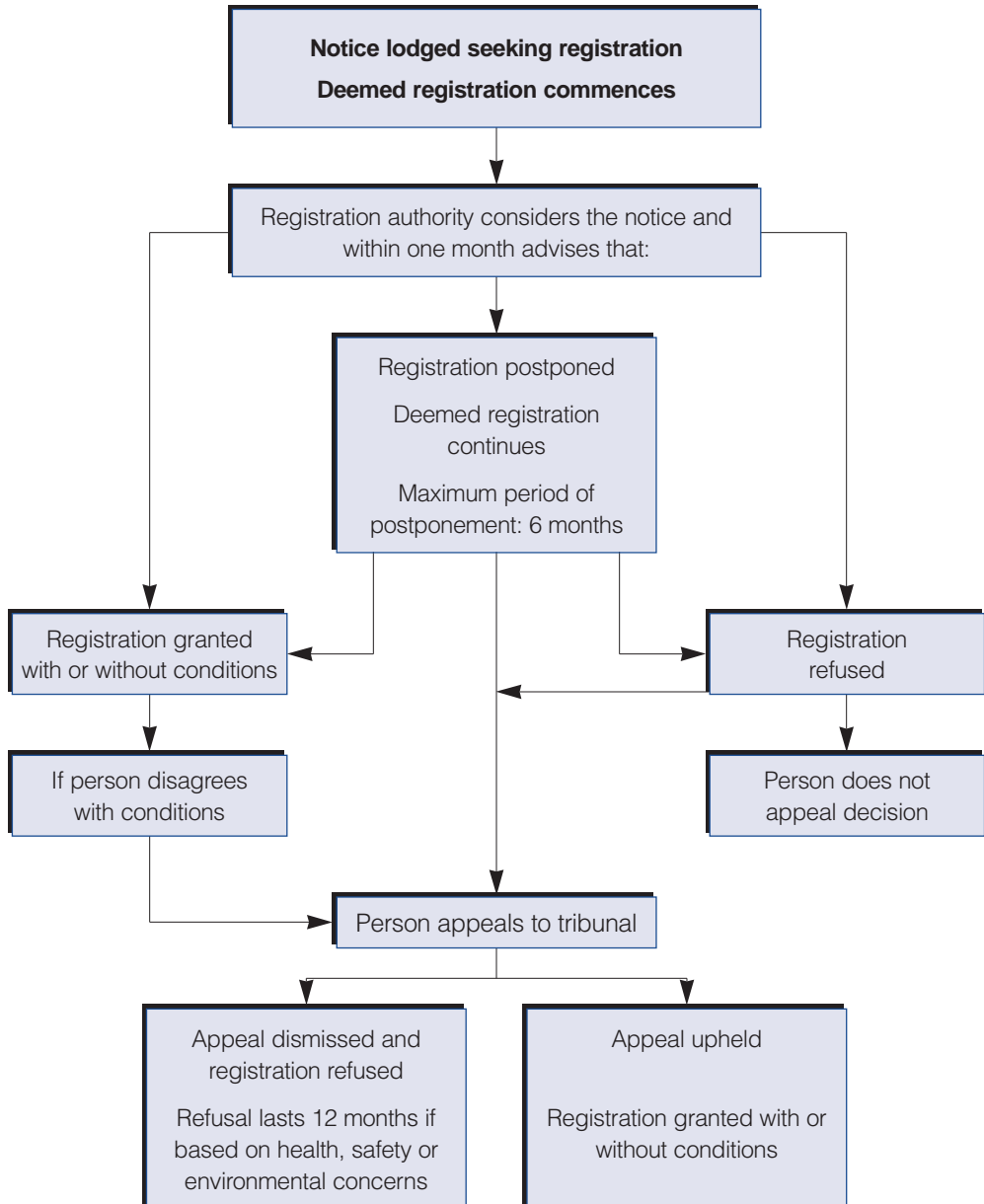
Substantive registration will generally be granted within one month of the date written notice seeking registration under the TTMRA was lodged. Registration may be renewed and, subject to the laws of the registering jurisdiction, the entitlement to registration will continue whether or not the person's registration in his or her original jurisdiction ceases.

Imposing conditions on registration

A registration authority may impose similar conditions on registration to any already applying to a person's original registration or which are necessary to achieve equivalence between occupations. Individuals should be advised in writing if conditions on registration are to be imposed. The registration authority should set out its reasons in full and advise the person of his or her right to appeal against the decision to impose conditions.

Occupations and the TTMRA

Figure 1: The registration process



Occupations and the TTMRA

Postponement of registration

A registration authority may postpone the granting of registration. It must do so within one month of the date of lodgement of a notice seeking registration. A registration authority may postpone a grant of registration if:

- statements or information in the written notice are materially false or misleading;
- documents or information required to be provided have not been provided or are materially false or misleading;
- the person's circumstances have materially changed since the lodgement date; or
- the registration authority decides that the occupation for which registration is sought is not an equivalent occupation.

Postponement can apply for a maximum of six months. A person's deemed registration is not affected by a registration authority's decision to postpone the grant of registration.

Refusal of registration

A registration authority may refuse to grant a person registration. Registration may be refused if:

- statements or information in the written notice are materially false or misleading;
- documents or information required to be provided have not been provided or are materially false or misleading; or
- the authority decides that the occupation is not an equivalent occupation and equivalence cannot be achieved by imposing conditions or limits on registration.

Individuals should be advised in writing of any decision to refuse, postpone or impose conditions on registration. The registration authority should set out its reasons in full and advise the person of his or her right to appeal the decision. A decision to refuse registration on the grounds of lack of equivalence does not affect a person's deemed registration for two weeks after the person has been notified of the decision.

Suspension or termination of registration

If a person's initial registration is cancelled, suspended or 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 under the TTMRA is affected in the same way. However, a registration body may reinstate any cancelled or suspended registration or waive any conditions if it thinks it appropriate in the circumstances.

Exchange of information between occupational registration authorities

A local registration authority in either country must provide, without delay, any information reasonably required by a registration authority in the other country about a person seeking registration under the TTMRA. This obligation does not apply unless the authority seeking the information notifies the other authority that the information is required in connection with:

- a notice lodged by a person seeking registration under the TTMRA;
- a person's deemed registration; or
- actual or possible disciplinary action against the person.

Occupations and the TTMRA

Any information provided in these circumstances is subject to any law relating to secrecy, confidentiality or privacy in the jurisdiction of the authority receiving the information.

Responsibility of registration authorities to facilitate the operation of the TTMRA

It is the duty of occupational registration authorities in both countries to facilitate the operation of the TTMRA, in particular, by using their ability to impose conditions on registration in such a way as to promote the trans-Tasman mutual recognition principle. All registration authorities should prepare and make available guidelines and information about the operation of the TTMRA in relation to the occupations for which they are responsible. This information should be available within six months of the date of commencement of the scheme.

2.6 Can a decision of a registration authority be appealed?

When notifying a person of its decision to refuse, postpone or impose conditions on registration, a registration authority must advise the person that application for review may be made to the relevant appeals tribunal. Applicants who disagree with the decision of a registration authority can seek a review of that decision.

The Australian Administrative Appeals Tribunal (AAT) hears appeals relating to decisions of Australian registration bodies made under the TTMRA. The Trans-Tasman Occupations

Tribunal hears appeals relating to decisions of New Zealand registration bodies. The Australian and New Zealand appeal tribunals are low cost review mechanisms which, wherever possible, conduct reviews with as little formality and technicality as possible.

Appeals against decisions of **Australian** registration authorities should be addressed to:

Registrar
Administrative Appeals Tribunal
Level 4, Commonwealth Law Courts
GPO Box 9955
BRISBANE QLD 4001
Phone: 07 3361 3066

Appeals against decisions of **New Zealand** registration authorities should be addressed to:

Registrar
Trans-Tasman Occupations Tribunal
Tribunals Division
Department of Courts
PO Box 5027
WELLINGTON NZ
Phone: 0064 4 494 8800

To promote consistency between the decisions of the two tribunals, each tribunal is required to have regard to decisions made by the other. Provision has also been made for cross-membership between the tribunals. To formalise these cooperative arrangements, the tribunals will enter into a Memorandum of Understanding to maximise cooperation and exchange of information.

Occupations and the TTMRA

2.7 What are the possible outcomes of the appeal process?

After reviewing a decision of a registration authority, a tribunal may decide in one of two ways:

- 1 that the person is entitled to registration and, if relevant, specify or describe conditions to achieve equivalence; or
- 2 that the two occupations are not equivalent and the person is not entitled to registration. However, in that instance, the tribunal must be satisfied that:
 - the activities involved in the occupations are not substantially the same (even with the imposition of conditions); or
 - by allowing the person to practise, registration could pose a real threat to public health and safety or the environment.

Registration authorities are required to give effect to tribunal declarations and act in accordance with them when considering other applications for registration.

Tribunal declarations refusing the grant of registration on the basis of a threat to health, safety or the environment have effect for 12 months. During this period, the party in whose jurisdiction the declaration applies must refer the matter to the relevant Ministerial Council to examine the registration requirements for the occupation in question and determine whether any changes to the standards applying to the occupation should be made.

2.8 What mechanisms are available if a registration authority has concerns about another jurisdiction's registration requirements?

In the case of most occupations, registration requirements in Australia and New Zealand are broadly equivalent and registration authorities have confidence in each other's requirements. However, if registration authorities have concerns about the registration requirements applying on the other side of the Tasman, they are urged to commence discussions with their trans-Tasman counterparts with a view to resolving areas of concern.

There are two other more formal approaches to resolving concerns using mechanisms available under the TTMRA. These are:

- refer the matter to the relevant Ministerial Council; or
- invoke a Ministerial Declaration.

Referral to a Ministerial Council

Sometimes the issue of the appropriate competency standards needed to gain registration to practise a particular occupation may arise. If the issue substantially concerns the protection of public health, safety or the environment, a participating government may refer the matter to the relevant Ministerial Council for determination.

Occupations and the TTMRA

The Ministerial Council must endeavour to make a determination within 12 months of receiving a referral. Ministerial Council determinations require a vote in favour by not less than two-thirds of the total number of participating parties to the TTMRA.

Ministerial Council determinations must be made in accordance with the *COAG Principles and Guidelines for Standard Setting and Regulatory Action*. Determinations are to be submitted to Heads of Government for approval. Unless the determination is revoked by one third or more of Heads of Government within three months, the participating parties are required to take action to implement the determination.

Ministerial Declarations

A Minister from New Zealand and a Minister from at least one Australian participating jurisdiction may jointly declare that specified occupations are equivalent. They may also specify or describe conditions to achieve equivalence. Ministerial Declarations only have effect in the jurisdictions of the parties making them and prevail over any inconsistent decisions of either of the appeal tribunals.

Part III:

Goods and the TTMRA

Under the TTMRA:

- a good that may legally be sold in Australia may be sold in New Zealand; and
- a good that may legally be sold in New Zealand may be sold in Australia.

Subject to exceptions (see below), this principle applies regardless of the differences in sale-related regulatory requirements applying in each country. Goods need only comply with the standards or regulations applying in the country in which they are produced or through which they are imported before they can be sold in the other country.

3.1 What laws are affected by the TTMRA?

Legislation implementing the TTMRA overrides any laws, with certain exceptions, that regulate the manufacture or the sale of goods. Examples of **laws overridden** by the scheme include:

- requirements relating to the production, composition, quality or performance of a good (such as **product standards**);
- requirements that a good satisfy certain standards relating to presentation (such as **packaging and labelling**);
- requirements that goods be inspected, passed or similarly dealt with (such as **conformance assessment requirements**); or
- any other requirement that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the good.

More generally, the mutual recognition principle applies to regulatory requirements relating to the good itself and requirements relating to and leading up to the point of sale. The scheme does not impact on post point of sale requirements, including those relating to the use of goods.

3.2 What laws are not affected by the TTMRA?

The TTMRA does not affect the operation of any laws to the extent that they regulate:

- the **manner of sale** of goods or the manner in which sellers conduct or are required to conduct their business, so long as those laws apply equally to both locally produced and imported goods. Examples include,
 - the contractual aspects of the sale of goods (for example, **contractual arrangements** between the seller and purchaser of a good),
 - the **registration of sellers** or other persons carrying on occupations (for example, liquor licenses),
 - requirements for **business franchise licenses** (for example, tobacco licenses),
 - the persons **to whom goods may or may not be sold** (for example, the sale of liquor to minors), and
 - the **circumstances** in which goods may or may not be sold (for example, health/hygiene requirements);

Goods and the TTMRA

- the **transportation, storage or handling of goods**, so long as those laws apply equally to both locally produced and imported goods and they are directed at matters affecting public health or safety or at preventing, minimising or regulating environmental pollution; or
- the **inspection of goods**, provided inspection is not a prerequisite to the sale of goods, the laws apply equally to both locally produced and imported goods and the laws are directed to protecting health, safety or the environment.

The TTMRA does not affect the operation of laws prohibiting or restricting the export of goods from a participating jurisdiction.

3.3 Are there any goods or laws that are exempt from the TTMRA?

The TTMRA contains various types of exemptions for goods and laws for which mutual recognition is not appropriate.

Exclusions

Some laws that may indirectly relate to the sale of goods are excluded from the TTMRA. The reason is that, in developing the scheme, the parties identified a number of laws which could be unintentionally affected by the application of mutual recognition principles. These laws include those relating to:

- **customs controls and tariffs** – to the extent that laws provide for the imposition of tariffs and related measures (for example, anti-dumping and countervailing duties) and the prohibition or restriction of imports (for example, firearms);
- **intellectual property** – to the extent that laws provide for the protection of intellectual property rights;
- **taxation** – to the extent that laws provide for the imposition of taxes on the sale of locally produced and imported goods in a non-discriminatory way (for example, Wholesale Sales Tax (Commonwealth), Goods and Services Tax (New Zealand) and stamp duties (States and Territories); and
- **specified international obligations** – to the extent that laws implementing those obligations deal with the requirements relating to the sale of goods.

Goods and the TTMRA

AMENDMENT OF THE EXCLUSIONS SCHEDULE

The *laws* listed in the Exclusions schedule to the TTMRA Act may be amended unilaterally by any party as long as the amendment merely removes or reduces the extent of an excluded law or substitutes another law that falls within the categories described above. The *categories of laws* excluded from the scheme can only be amended if all the participating parties agree.

Permanent Exemptions

Certain laws relating to the sale of goods are permanently exempt from the TTMRA in areas where the parties considered that the application of mutual recognition principles would not be appropriate. These include laws relating to quarantine, endangered species, firearms, fireworks, indecent material, ozone protection, agricultural and veterinary chemicals and certain risk-categorised food.

AMENDMENT OF THE PERMANENT EXEMPTION SCHEDULE

A participating government can unilaterally amend or replace a permanently exempt law at any time but only if the amendment or replacement does not expand the scope of the exemption as at the date of commencement of the TTMRA. Jurisdictions can unilaterally remove or reduce the extent of permanently exempt laws. Amendments seeking to add laws to the Permanent Exemption schedule to the TTMRA Act require the unanimous agreement of the participating parties.

Special Exemptions and Cooperation Programs

Special Exemptions apply in a number of areas where further examination of each country's regulatory requirements was deemed desirable in order to determine the appropriateness or otherwise of allowing mutual recognition principles to operate. Special Exemptions will apply to regulatory requirements in the areas of:

- therapeutic goods;
- hazardous substances, industrial chemicals and dangerous goods, including consumer product safety standards;
- electromagnetic compatibility and radiocommunications standards;
- road vehicles; and
- gas appliances.

During the exemption period, Australia and New Zealand will embark on Cooperation Programs in each of these areas with a view to developing complementary regulatory arrangements across the Tasman. Special Exemptions last for 12 months in each instance, but can be rolled over until each Cooperation Program is completed. The first 12 month Special Exemption period started on the date on which the scheme commenced operation, that is, 1 May 1998. Further 12 month Special Exemption periods can be obtained with the agreement of two-thirds of the Heads of Government of the participating jurisdictions.

Goods and the TTMRA

Cooperation Programs can lead to three possible outcomes:

- that **mutual recognition** should be allowed to operate because the regulatory requirements applying in each country for the goods in question are adequate from the point of view of protecting health, safety or the environment;
- that the regulatory requirements applying in each jurisdiction to the goods in question be subject to **harmonisation**, or in some other way brought into alignment. For example, Ministers could agree that identical standards should apply both countries or, alternatively, it could be agreed that the regulatory requirements applying in each country should be brought into closer alignment. Once harmonisation or closer alignment was achieved, the mutual recognition principle would apply; or
- that a good or certain regulatory requirement should not be able to be sold under the scheme. In these circumstances, Ministers may seek Heads of Government agreement to have the good added to the **Permanent Exemption** schedule.

In each of these cases, agreement is obtained by a vote in favour of not less than two-thirds of the participating parties represented on the relevant Ministerial Council. If harmonisation of standards across the Tasman is not possible, as a last resort, Ministerial Councils may determine that certain regulatory requirements should be permanently exempt from the TTMRA.

Regulatory requirements can be permanently

exempted from the scheme at any time with the unanimous agreement of the Heads of Government of the participating jurisdictions. However, if the vote is taken more than five years after the commencement of the scheme (that is, after 1 May 2003), laws listed on the Special Exemption Schedule can be converted into Permanent Exemptions on the agreement of not less than two-thirds of the Heads of Government of the participating parties.

ANNUAL COOPERATION REPORTS

Three months before each 12 month Special Exemption period expires, the regulatory authorities responsible for pursuing the various Cooperation Programs must submit to Heads of Government a jointly agreed Annual Cooperation Report through the relevant Ministerial Council. The Chair of the relevant Ministerial Council should write to the Prime Minister of Australia enclosing the Cooperation Report which will then be passed on to the Heads of Government of the other participating parties. The Report should set out the progress that has been achieved over the previous year in progressing the Cooperation Program and, if relevant, provide a justification as to why a further 12 month extension to the Special Exemption period is needed. In addition, the report should:

- list any laws or parts of laws currently on the Special Exemption Schedule which can be removed; and
- set out a timetable for the completion of the Cooperation Program.

Goods and the TTMRA

On the basis of the progress achieved and the timetable for completion, Heads of Government will decide whether a further 12 month Special Exemption period should be granted. Cooperation Reports will need to be submitted annually until the Cooperation Program is completed.

When examining regulatory requirements and developing proposals under Cooperation Programs, the Parties must have regard to:

- (a) the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies*;
- (b) international regulatory best practice; and
- (c) the level of risk to public health and safety and the environment.

Temporary Exemptions

The regulatory requirements relating to certain goods or classes of goods can be temporarily exempted from the operation of the TTMRA for a period of up to 12 months. If a jurisdiction considers that the standards or regulatory requirements applying to a good are such that the sale of the good could give rise to a threat to health, safety or the environment, it may unilaterally invoke a Temporary Exemption. Temporary Exemptions are invoked by the gazettal of a regulation by the designated person (eg the Governor-General, State Governor or relevant Minister) of a participating party. Temporary Exemption regulations can be made under the TTMR Act

of the relevant jurisdiction or the specific legislation which implements the standards or regulatory requirements for which exemption is being sought. To enable the ongoing coordination of Temporary Exemptions, Heads of Government prefer that Temporary Exemption regulations be made under the relevant jurisdiction's TTMR legislation.

COVERAGE OF TEMPORARY EXEMPTIONS

Temporary Exemptions apply only in the jurisdiction which invokes the exemption. However, goods from New Zealand that are temporarily exempted by an Australian jurisdiction under the TTMRA could still enter that jurisdiction through other jurisdictions participating in the Australian MRA. Accordingly, if *all* Australian participating parties did not invoke a Temporary Exemption under the TTMRA, Australian jurisdictions seeking to use the Temporary Exemption mechanism might also consider invoking a Temporary Exemption under the Australian MRA.

A Temporary Exemption under the MRA would necessitate Ministerial Council consideration of the need or otherwise for nationally consistent regulatory requirements in Australia for the good in question. In such instances, there should ideally be a single, combined process through which the relevant Ministerial Council reaches a determination in relation to the regulatory requirements applying to the good both within Australia under the MRA and between Australia and New Zealand under the TTMRA.

Goods and the TTMRA

In cases where a good being imported from New Zealand is of concern to all Australian jurisdictions, a coordinated approach to the use of the Temporary Exemption mechanism will be required. This may mean, for example, the simultaneous gazettal of a regulation invoking a Temporary Exemption by all Australian jurisdictions. This situation will only arise in relation to regulatory requirements imposed at the State and Territory level. For requirements imposed by the Commonwealth, a single regulation made by the Governor-General under the Commonwealth TTMRA Act would be sufficient.

WHAT SHOULD BE EXEMPTED?

The TTMRA affects most regulatory requirements relating to the manufacture or sale of a good, for example, the standard of the good itself, as well as requirements relating to packaging, labelling, testing and inspection. Only the particular regulatory requirements that are of concern to the jurisdiction invoking the exemption should be covered by a Temporary Exemption regulation. Hence, a Temporary Exemption regulation should not generally refer to a specific product by name. For example, if only the labelling of the good is of concern, only provisions of the law relating to labelling should be exempted. Other regulatory requirements that are not of concern (for example, those relating to the standard of the good itself) should not be covered by the exemption. This will allow the sale of goods that meet the labelling standard

(thereby allaying the invoking jurisdiction's concerns on that score), while the benefits of mutual recognition can be realised in respect of other regulatory requirements applying to the good.

MINISTERIAL COUNCIL DETERMINATIONS

As noted, a Temporary Exemption for a specific good or law may not apply for more than an aggregate maximum of 12 months. Before the exemption period expires, the relevant Ministerial Council must endeavour to determine whether the regulatory requirement subject to the exemption should be amended and, if so, what the new regulatory requirements should be. As with the Special Exemption mechanism, there are three possible outcomes from a Ministerial Council determination:

- the good under examination does not pose a real threat to health, safety or the environment and mutual recognition should be allowed to operate;
- the regulatory requirements applying to the exempt good should be harmonised or in some other way brought into alignment. For example, Ministers could agree that identical standards should apply in all jurisdictions or, alternatively, it could be agreed that the regulatory requirements applying in the jurisdiction from which the exempt goods emanate should be amended in a way that resolves the concerns that led to the invoking of the Temporary Exemption; or

Goods and the TTMRA

- Ministers agree that the good or law in question should be exempt from the TTMRA. In these circumstances, Ministers may seek the agreement of Heads of Government to have the good permanently exempted from the scheme. Application for Permanent Exemption should be made in writing from the chair of the relevant Ministerial Council to the chair of COAG (that is, the Australian Prime Minister).

Ministerial Council determinations are made by a vote in favour by not less than two-thirds of the participating parties to the TTMRA. They must be made before the 12 month exemption period expires. Once a Ministerial Council has made its determination it needs to seek approval for the determination from Heads of Government. If at least one-third of Heads of Government do not disapprove the determination within three months of its receipt, jurisdictions should take action to implement the determination as soon as practicable.

The parties have agreed that, when examining regulatory requirements and developing regulatory proposals under the Temporary Exemption mechanism, Ministerial Councils should comply with the *COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies*. In addition, when developing regulatory proposals, Ministerial Councils should, wherever possible, align regulatory requirements with those commonly accepted in international trade.

IMPLEMENTATION OF MINISTERIAL COUNCIL DETERMINATIONS?

Ministerial Council determinations define the extent to which a good is to be covered by the scheme. For example, if Ministers were to agree that a good should meet a certain standard in order to be sold under the TTMRA, then only goods meeting that standard could be sold under the scheme. However, as the Arrangement itself (as opposed to the TTMR Act) is not a legal instrument, determinations also need to be given the force of law. If, for example, Ministers were to determine that mutual recognition should continue to apply to the good, then no further action is required as the TTMR legislation will continue to apply to the good when the 12 month Temporary Exemption period expires.

However, if Ministers were to agree that different regulatory requirements should apply to the exempt good, these requirements would need to be given legal effect through the legislation regulating the sale of the exempt good. If Ministers agree that the good should not be able to be sold under the TTMRA at all, there would need to be action taken to seek an amendment to the Commonwealth and/or New Zealand TTMR legislation so as to add the good to the Permanent Exemption Schedule.

The TTMR legislation provides for an additional 12 month period during which the mutual recognition principle would not apply to a temporarily exempt good so that legislative or other action can be taken to give legal force to a Ministerial Council determination.

Goods and the TTMRA

Those jurisdictions affected by a Ministerial Council determination need to take whatever action is necessary in order to implement the determination before the expiry of the 12 month implementation period.

The implementation period is invoked in the same way as the initial Temporary Exemption, that is, through the gazettal of a regulation under TTMR legislation by the designated person of the relevant jurisdiction(s).

TRANSITION TO IMPLEMENTATION OF THE TTMRA IN ALL JURISDICTIONS

The TTMRA commenced operation on 1 May 1998. Not all States and Territories had their TTMR legislation in place at that date. This will result in a transition period during which some jurisdictions planning to join the scheme are not participating parties. The operation of the Australian MRA, however, means that goods from New Zealand can enter all Australian jurisdictions through those States or Territories that are participating parties in the TTMRA.

This situation raises a number of issues in relation to the involvement in Ministerial Council determinations of jurisdictions that are yet to pass TTMR legislation. In the case of any Temporary Exemptions in place from 1 May 1998 which apply to goods that are of concern to Australian jurisdictions that are yet to become participating parties, the following should occur:

- those Australian jurisdictions that formally enter the scheme after 1 May 1998 should invoke Temporary Exemptions commencing

on the day their TTMRA legislation takes effect covering the goods for which exemptions have already been invoked by other participating Australian jurisdictions; and

- Ministerial Councils examining goods covered by Temporary Exemptions should involve all jurisdictions in their considerations, even if they had not enacted TTMR legislation on 1 May. However, under the terms of the TTMR Act only those jurisdictions that are participating parties (that is, those that have passed TTMR legislation) can vote on Ministerial Council determinations.

Referrals

A participating jurisdiction may, at any time, refer the matter of the standard applicable to a good to the relevant Ministerial Council. This must be substantially for the purpose of protecting health, safety or the environment. When a Ministerial Council receives a referral it should make a determination in respect of the standards applying to the good within 12 months.

Referrals set in train Ministerial Council processes similar to those under the Temporary Exemption mechanism. The key difference is that the good to which the referral relates is not exempted from the scheme during the period in which a Ministerial Council determination is developed. Ministerial Council decisions arising out of a referral should be implemented by the relevant jurisdictions as soon as practicable.

Goods and the TTMRA

3.4 Relationship between the TTMRA and the Australia-New Zealand Food Harmonisation Agreement

Australia and New Zealand signed a treaty in 1995 establishing a joint food regulatory agency, the Australia-New Zealand Food Authority (ANZFA). Over time, ANZFA will harmonise Australian and New Zealand food standards. In the mean time, a form of mutual recognition of standards applies. In addition to these transition arrangements, the TTMRA will underpin the harmonisation process to ensure that barriers to trade in food do not exist. After harmonisation is complete, there may still be some food products for which a single trans-Tasman standard does not apply. However, the TTMRA will continue to underpin the new food harmonisation regime. This will allow unrestricted trade in those products for which different Australian and New Zealand standards still apply. This will ensure that the inability to harmonise standards does not result in regulatory barriers to the trade of food products between the two countries. Where differences in food standards across the Tasman raise concerns about public health, safety or the environment, the normal exemption mechanisms under the TTMRA are available.

Notes

Notes

Notes

