

Business
Council of
Australia



Submission to the Productivity Commission Study of Mutual Recognition Schemes

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The Business Council of Australia (BCA) is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

About this submission

The Business Council welcomes the opportunity to provide a submission to the Productivity Commission's study of Mutual Recognition Schemes, the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

Introduction

Mutual recognition schemes are valuable to the economy and are becoming increasingly important for expanding cross-jurisdictional trade.

Australian governments require certification, standards, licenses or other forms of pre-approval (broadly referred to as 'certifications' in this submission) for a range of goods and occupations, on the legitimate basis of protecting the public interest and safety.

Inconsistent regulation and certification requirements between jurisdictions create transaction costs and delays for businesses that can act as impediments to labour and goods mobility.

The MRA and TTMRA aim to overcome these inconsistencies within Australia and between Australia and New Zealand respectively, by allowing a person or good that is certified in one jurisdiction to operate or be sold in another. The MRA and TTMRA provide a legal basis that allows jurisdictions the option of implementing mutual recognition.

Additional action is required by jurisdictions to specify what goods or occupations will be mutually recognised. Permission to operate or be sold in a host jurisdiction is often subject to re-assessment or confirmation of the initial certification, and does not negate the need to comply with the host jurisdiction's laws.

A well functioning mutual recognition system helps businesses find the right people for the right jobs, and increases competition and choice among goods for consumers while ensuring the public interest and safety is protected.

This submission considers opportunities for improving the application of the MRA and TTMRA in order to increase the mobility of goods and labour. There are opportunities to improve the institutional settings and implementation of the schemes to increase their effectiveness.

Key recommendations

Better institutional settings are needed to expand coverage

1. The Productivity Commission should examine how the institutional settings of the schemes could increase the number of goods or occupations that are mutually recognised. A role for productivity payments should be considered.
2. States and territories should individually review and report on what would be required to transition to automatic mutual recognition for occupational licensing, also referred to

as 'external equivalence'. This could be done unilaterally, such as has occurred in New South Wales.

3. Jurisdictions should collaborate on the settings of their certification schemes to encourage greater uniformity and adopt international standards where appropriate.

Priority should be given to occupational licensing

4. The Council for the Australian Federation (CAF) should reinvigorate its work on developing options for minimising occupational licensing requirements. This should include consideration of how to motivate jurisdictional regulators to adopt mutual recognition for occupations that are not subject to exemptions.

Implementation of mutual recognition should be improved

5. All governments should set clear expectations for their regulators to make greater use of mutual recognition under the MRA and TTMRA, and report on progress.
6. Clearer information should be provided to the community on how mutual recognition works, and which certifications have been mutually recognised by which jurisdictions.

Mutual recognition schemes are valuable

Labour and goods mobility is an important contribution to economic efficiency. It helps businesses find the right people for the right jobs. It gives people choice on where they can work and increases competition and choice for the goods they purchase.

Supply chains and labour markets are increasingly globally integrated and a regulatory regime that effectively encourages goods and labour mobility will improve Australia's competitiveness, especially in the trade of professional services.

Inconsistency between jurisdictions' certification regimes impedes goods and labour mobility and adds costs to businesses. Within Australia, there are several different models for reducing regulatory inconsistency including mutual recognition, national standards operated by the states and territories and full harmonisation.

Mutual recognition reduces costs by: requiring a person or good to only be certified once, with the certification recognised by other jurisdictions; and by increasing competition. The experience of some Business Council members is that mutual recognition works well, especially in sectors that have relatively uniform standards already, or efficient regulators.

Mutual recognition can also result in tangible cost reductions. The Council of Australian Governments (COAG) found that automatic mutual recognition in licensing for four occupational areas (property, refrigeration and air conditioning, plumbing and gas fitting, electrical) would result in annual benefits worth up to \$168 million per year over ten years¹.

The Productivity Commission's 2009 report into mutual recognition supported these views, finding that mutual recognition has contributed to economic efficiency.

¹ COAG (2012), Regulatory Impact Statements for COAG Decision for National Licensing

Mutual recognition schemes should be broadened and improved

The MRA and TTMRA are only effective to the extent that jurisdictions identify and agree what specific goods or occupations will be mutually recognised. The Business Council supports continued efforts to broaden and improve the operation of mutual recognition under the MRA and TTMRA.

Continued barriers to goods and labour mobility may exist for three reasons:

1. *The good or occupation is an identified exemption to mutual recognition.* Many exemptions would be appropriate for mutual recognition in principle but are exempted due to implementation difficulties: whether in relation to goods (ozone-depleting substances or radiocommunications devices) or occupations (implementation costs were a key consideration in discussion of national licensing harmonisation). Implementation difficulties arise from differences in government commitments to international agreements, differences in standards or a lack of coordination between jurisdictions.
2. *The good or occupation is not exempt, but mutual recognition has not been agreed or implemented by jurisdictions.* This may occur where there is insufficient momentum for regulators to initiate agreement or implementation for their specific good or occupation. Occupations in the property industry are an example under this category.
3. *Idiosyncratic differences exist in jurisdictional regulation.* These differences often exist for non-economic reasons but prove difficult to overcome. Case Study 1 provides an example.

Case Study 1: Coles and different jurisdictional requirements for goods

Regulators have an important responsibility to be vigilant on all issues relating to biosecurity, however, differences in regulation between jurisdictions impose costs and there needs to be a clear justification for their continued experience.

As one of Australia's largest retailers, Coles faces significant compliance costs and regulatory burdens in relation to transporting and selling goods across jurisdictions.

Through the three months to December 2014, Coles engaged with regulators more than 510 times relating to food and product safety. Examples of different jurisdictional requirements found by Coles include:

- Honey cannot be imported into Western Australia.
- Certain fish (such as salmon, trout, herring, cod, perch and mullet) and shellfish (such as oysters, clams, mussels and abalone) cannot be imported into Tasmania fresh or frozen, even if the alternative source of supply is from within Australian waters.
- A recent shipment of 4300kg of pears was held up for two days due to a debate between agencies in two different states over a minor paperwork discrepancy.

Better institutional settings are needed to expand coverage

Better institutional settings could drive coverage of mutual recognition further. These institutional settings could include:

- use of incentive payments
- implementation of automatic mutual recognition
- deeper collaboration in developing standards
- greater adoption of international standards.

Encourage jurisdictional regulators to increase use of mutual recognition

There is a need to encourage jurisdictions to make greater use of mutual recognition schemes.

The Productivity Commission should examine how the institutional settings of the schemes could increase in the number of goods or occupations that are mutually recognised.

A potential role for productivity payments should be considered. As outlined in the Business Council's 2013 publication *Improving Australia's Regulatory System*, incentive payments can be a compelling motivation and effectively share the economic benefits from mutual recognition with regulators².

Recommendation 1:

The Productivity Commission should examine how the institutional settings of the schemes could increase the number of goods and occupations that are mutually recognised. A role for productivity payments should be considered.

Additionally, states and territories could consider transitioning to automatic mutual recognition for occupational licensing, also referred to as 'external equivalence'. Moving to automatic mutual recognition by default means that adoption of mutual recognition is less dependent on the actions of individual regulators.

States and territories do not necessarily need to agree to implement automatic mutual recognition of occupational licensing. It is possible for one jurisdiction to pursue automatic mutual recognition unilaterally, like the New South Wales Government has done.

Jurisdictions should individually review and report on what would be required to transition to automatic mutual recognition. A transition period would likely be required to plan implementation and identify any goods or occupations for which automatic mutual recognition is not appropriate.

² Business Council of Australia (2013), *Improving Australia's Regulatory System*, <http://www.bca.com.au/publications/improving-australias-regulatory-system>

Recommendation 2:

States and territories should individually review and report on what would be required to transition to automatic mutual recognition for occupational licensing, also referred to as 'external equivalence'. This could be done unilaterally, such as has occurred in New South Wales.

Pursue greater adoption of common standards

Greater adoption of common standards would reduce the incidence of inconsistent regulation in the first place.

Encouraging common standards can happen two ways:

- by greater collaboration between jurisdictions on their certification schemes to encourage uniformity.
- by adopting international standards where possible. Supply chains and labour markets are increasingly integrated around the world, and common international standards enhances the mobility of Australian goods and occupations.

Recommendation 3:

Jurisdictions should collaborate on the settings of their certification schemes to encourage greater uniformity and adopt international standards where appropriate.

Priority should be given to occupational licensing

Australian policymakers have discussed national harmonisation of occupational licensing for some time. In December 2013, COAG decided to discontinue pursuit of national occupational licensing, based on an assessment of the implementation costs to government.

Since then, there has been lost momentum in simplifying occupational licenses. CAF was tasked by COAG with developing options to minimise impediments specifically for occupational licensing. Since then, there has been no substantive progress reports made publicly available on the status of discussions or details on how mutual recognition of occupational licensing could be progressed.

CAF should reinvigorate this work as a priority. The process would benefit from making more information publicly available on the progress of discussions, and closer involvement of stakeholders such as the business community.

If the CAF work is unable to reach a satisfactory outcome, COAG should resume discussion on what amendments to occupational licensing would better encourage labour mobility.

Recommendation 4:

CAF should reinvigorate its work on developing options for minimising occupational licensing requirements. This should include consideration of how to motivate jurisdictional regulators to adopt mutual recognition for occupations that are not subject to exemptions.

Implementation of mutual recognition should be improved

Improve performance of regulators

Even if institutional settings were improved, mutual recognition will continue to face barriers to its effectiveness unless it is implemented well by regulators. Regulators can undo the benefits of mutual recognition if they take an unduly narrow and restrictive approach that is not in line with the principle of efficient regulation that underpins mutual recognition (refer Case Study 2).

Case Study 2: Trans-Tasman mutual recognition in civil aviation

Civil aviation is subject to a mutual recognition scheme between Australia and New Zealand. As agreed under the 1996 Australia-New Zealand Single Aviation Market Arrangements, air operator certificates issued by Australian and New Zealand civil aviation regulators for aircraft of more than 30 seats or 15,000kg can be mutually recognised. Although this formally operates under a different legislative framework - the Civil Aviation Legislation (Mutual Recognition with New Zealand) Act 2006 - the explanatory memorandum for the Bill indicates that the civil aviation mutual recognition scheme is based on the same principle as the TTMRA and the MRA.

Virgin Australia is an international aviation company that has attempted to take advantage of this scheme. Virgin has encountered a restrictive view taken by regulators in interpreting the mutual recognition scheme.

For example, when consolidating two existing air operator certificates to realise efficiencies within the business, the Australian regulator required re-approval for every certificate issued by the New Zealand regulator. Separately, New Zealand's regulator disputed privileges provided by the scheme, and legal interpretation was required to reach an outcome.

This is an example of regulators not operating in line with the deregulatory principles of mutual recognition, and choosing to interpret the mutual recognition scheme in a way that did not result in the intended efficiencies.

All governments should set expectations for improved performance by regulators that administer certification schemes, and improved progress by regulators towards greater use of mutual recognition. Transparency should be enhanced by measuring and reporting on specific outcomes that can be compared between regulators³.

Recommendation 5:

All governments should set clear expectations for their regulators to make greater use of mutual recognition under the MRA and TTMRA, and report on progress.

Provide clearer information for the community

The 2009 Productivity Commission inquiry recommended publishing clear information for the general public on how mutual recognition works⁴. The communication and information since published (such as that at www.licencerecognition.gov.au) could be simpler and clearer. The Federal Department of Industry and Science, as the owner of the information, would be an appropriate organisation to review the information, with a view to simplifying.

Recommendation 6:

Clearer information should be provided to the community on how mutual recognition works, and which certifications have been mutually recognised by which jurisdictions.

Implement complementary initiatives where possible

In relation to the TTMRA and trans-Tasman trade, more efficient customs processes can significantly enhance the productivity of supply chains involving Australia and New Zealand. The application of initiatives such as the Trusted Trader Programme (which reduces regulatory requirements for goods that come from trusted countries) to New Zealand would be a welcome step.

³A large body of work regarding good regulator performance exists, such as the BCA's Improving Australia's Regulatory System report, the Australian National Audit Office's report Administering Regulation: Achieving the Right Balance, the COAG Best Practice Regulation Guide, the NSW Independent Pricing and Regulatory Tribunal's Reforming licensing in NSW report, or the Victorian Government's Statements of Expectations for Regulators.

⁴ Productivity Commission (2009), *Review of Mutual Recognition Schemes*, <http://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes-2009>

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