

# TRANS-TASMAN MUTUAL RECOGNITION BILL

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AS REPORTED FROM THE FOREIGN AFFAIRS, DEFENCE  
AND TRADE COMMITTEE

## COMMENTARY

### **Recommendation**

The Foreign Affairs, Defence and Trade Committee has examined the Trans-Tasman Mutual Recognition Bill and recommends that it be passed with the amendments shown in the bill.

### **Conduct of the examination**

The Trans-Tasman Mutual Recognition Bill was referred to the then Foreign Affairs and Defence Committee on 27 August 1996. That committee did not consider the bill and so it was held over for the current committee to consider in the new Parliament. The closing date for submissions was 18 April 1997. We began our consideration of the bill on 24 April 1997. We received and considered fourteen oral and eleven written submissions from interested parties. We were advised that the Minister of Justice wished to address the committee on issues relating to the application of the bill to the legal profession. In order to take advantage of this opportunity, we requested and were granted a one month extension to the initial report back date of 30 June 1997. Advice was received from the Ministry of Commerce and the Ministry of Foreign Affairs and Trade.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

### **Background**

#### *Introduction*

The bill aims to promote trade between Australia and New Zealand and enable people to work in either country with as little regulatory impediment as possible. It implements the Trans-Tasman Mutual Recognition Arrangement (TTMRA) which was signed by the Commonwealth and all States and Territories of Australia on 14 June 1996 and by New Zealand on 9 July 1996. The TTMRA is modelled on an existing Mutual Recognition Agreement between the Commonwealth and the States and Territories of Australia which has been in

force since May 1992. Clause 5 of the bill states that “Every law of New Zealand must, unless it or this Act otherwise expressly provides, be read subject to this Act.”

*Definition of the mutual recognition principle*

The operation of Trans-Tasman Mutual Recognition includes the extension of economic rights extra-territorially and, as such, contributes to an extension of New Zealand’s closer economic relations with Australia. Consequently, we feel it is important to emphasize the fundamental principles of the arrangement that underpin this bill.

The TTMRA is based on two key principles in relation to goods and occupations:

- (1) if goods may be legally sold in New Zealand, they may be legally sold in an Australian jurisdiction, and vice versa; and
- (2) if a person is registered to practise an occupation in New Zealand, he or she will be entitled to practise an equivalent occupation in an Australian jurisdiction, and vice versa.

*Goods*

Principle (1) means that goods produced in or imported into an Australian jurisdiction, which can legally be sold in that jurisdiction, will be able to be legally sold in New Zealand, and vice versa. Mutual recognition will override any New Zealand requirements relating to the sale of goods, although there are specific exceptions, including those laws that relate to the contractual aspects of the sale of goods, and the persons to whom goods may or may not be sold. If it can be established that the mutual recognition principle applies, the bill provides that mutual recognition is a defence to a prosecution in relation to the sale of goods.

*Occupations*

The bill delegates to local registration authorities responsibility for facilitating the mutual recognition principle in relation to occupations. The mutual recognition principle will not, however, affect the operation of any laws of New Zealand that regulate the manner of carrying on an occupation, so long as those laws—

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of New Zealand; and
- (b) do not require a person carrying on or seeking to carry on that occupation under the law of New Zealand to have any particular qualifications before doing so.

Under mutual recognition, a person who practises a registered occupation in Australia, and who wants to be registered in New Zealand will be required to lodge with the relevant local registration authority in New Zealand, a written notice containing certain basic information relating to his or her current registration. Once the application has been lodged, the local registration authority will, pending the actual positive grant or refusal of registration, deem the applicant to be registered. Deemed registration will allow the person to carry on the occupation as if he or she had been granted substantive registration. Deemed registration will continue unless cancelled or suspended. Cancellation or suspension will occur if the local registration authority refuses registration, the person ceases to be substantially registered in all other jurisdictions, or the deemed registration is cancelled at the person’s request.

The local registration authority will be required to consider the application within one month (deemed registration will continue until it does so). During this time period the local registration authority is required to make a decision regarding substantive registration based on equivalence of the occupations. The bill provides

that two occupations are equivalent if the activities authorised to be carried out under registration are substantially the same (whether or not this is achieved by imposing conditions). The local registration authority may then grant, refuse or postpone registration. Deemed registration continues if substantive registration is postponed. Conditions may be imposed by a local registration authority to achieve equivalence between occupations.

The bill provides that these mutual recognition principles will override various regulatory requirements relating to standards for goods and registration procedures for occupations. Effective implementation of the TTMRA is dependent on the adoption and operation of similar legislative provisions in each participating jurisdiction. The Commonwealth and all States and Territories of Australia have agreed to enact complementary legislation.

*Economic benefits and closer economic relations with Australia*

The TTMRA is a significant step in the development of an integrated Trans-Tasman economy, allowing goods to be traded freely between New Zealand and Australia, and enhancing the freedom of individuals to work in either country. In the area of goods, New Zealand and Australia have a long history of co-operation in the development of standards and recognition of each other's certification systems. Similarly, in the area of occupations co-operation already exists between many professional associations, reflecting similarities in education and training on both sides of the Tasman. An important aspect of the TTMRA is that it will encourage further consistency of registration requirements between New Zealand and Australia.

## **Committee's consideration of issues raised in submissions**

*General comments*

There were a number of issues raised in the submissions received on the bill. The majority of submissioners supported the aim of the bill, although a number were concerned with the impact of the arrangement on their particular profession or occupation, as well as the effect on trade in particular goods. Many of the points made in submissions were inconsistent with the mutual recognition principle. We agree that the equivalence test for occupations, together with the appeal processes and common law requirements on professional service providers such as the professional duty of care, provide adequate safeguards to protect consumer interests.

Several submissions raised the issue of the different qualification requirements for occupations in each country. The model assumes that New Zealand has confidence in Australian regulatory systems and vice versa. The underlying policy is to provide an impetus to remove unnecessary impediments to the movement of registered service providers between Australia and New Zealand. There are a number of costs associated with unnecessary occupational regulation, and mutual recognition provides the framework to address these issues.

*Main issues of concern to us*

There were three main issues, raised in submissions, which we considered in depth.

*(i) Difficulties associated with using the High Court as a registration body for law practitioners*

Both the Chief Justice and the Minister of Justice have addressed the issue of decisions concerning the admission of law practitioners. The area of concern is the status and appropriateness of the body authorised to review admission

decisions. The High Court is the registration authority for the purpose of law practitioner admission decisions. However, under the bill as originally worded, decisions of the High Court could be reviewed by the Trans-Tasman Occupations Tribunal, which is chaired by a barrister or solicitor or District Court Judge. This is in conflict with the appeal structure of the court system, which requires appeals to be heard by a more senior body.

It is important that the appeal process under mutual recognition is the same for all occupations. The purpose of establishing a Tribunal for appeals is to provide a low cost, relatively informal forum for reviewing decisions of registration authorities.

In his submission to the committee the Minister of Justice explained a solution which had been prepared in consultation with the Chief Justice. Under this proposal, the Registrar of the High Court would be the registration authority for those Australian barristers and solicitors seeking admission to the bar in New Zealand. This would require amendments to the Law Practitioners Act 1982 to provide that a certificate from the Registrar of the High Court entitles a person to be admitted as a barrister and solicitor in New Zealand, and verifies compliance with the notice requirements of section 19 of the Trans-Tasman Mutual Recognition Act. This procedure would allow an admission decision by the Registrar of the High Court to be reviewed by the Tribunal, and if necessary any Tribunal decision would be reviewable by the High Court itself.

*(ii) Problems associated with 'country of origin' labelling requirements*

The Retail Merchants' Association and the Manufacturers Federation Inc. raised the issue of country of origin labelling requirements. There was uncertainty as to whether or not the bill would override the New Zealand Consumer Information Standards (Country of Origin (Clothing and Footwear) Labelling) Regulations 1992, which require that all clothing and footwear must be labelled with its origin.

Clause 11 (1) (a) of the bill provides a number of exceptions to mutual recognition relating to goods, including any laws relating to "the circumstances in which goods may or may not be sold . . .". There is a possible argument that failing to comply with a prescribed consumer information standard is an example of a circumstance in which goods may or may not be sold, and is therefore not overridden by mutual recognition.

Clause 10, however, specifies the requirements that are overridden by mutual recognition, and includes any requirements that "goods satisfy standards relating to their age, date stamping, labelling, or packaging . . .". Therefore, we understand that clause 10 will operate to override country of origin labelling requirements.

We note that the Australian legislation contains a similar exception provision to clause 11. However, Australian country of origin labelling requirements are enforced at the border by Customs and will not be overridden by mutual recognition. It is necessary that the two countries have similar legislation in order for mutual recognition to be successful. We therefore recommend that, on this matter, the bill be amended only to align the clause more closely with the Australian equivalent of this provision. The wording of the bill would then parallel the Australian mutual recognition legislation and the Australian Mutual Recognition Act 1992.

We also note that the Ministry of Consumer Affairs is currently reviewing the country of origin regulations, and we expect that the appropriateness of such regulations will be considered in this context.

There are no risks to public health and safety that arise with the country of origin labelling requirements, and therefore we see no reason to provide a permanent exemption for the regulations.

*(iii) Experience based qualifications (for lawyers/midwives/nurses)*

The third major issue was the level of experience-based qualifications for certain professional occupations. The Nursing Council of New Zealand in particular was worried that the standards of nurses and midwives would fall below minimum levels if clause 16 of the bill were enacted. The Nursing Council expressed concern at the difference in minimum entry requirements in Australia which differ materially in course content in comparison to New Zealand programmes. However, as has already been outlined, the bill is based on confidence that the requirements and the decision-making processes in both countries are sufficiently similar to enable mutual recognition.

Further issues were raised by the Nursing Council regarding midwifery courses, especially those conducted in Queensland. The Nursing Council was concerned that the midwifery courses in Queensland are markedly deficient in theory when compared with New Zealand programmes. In the Council's view the bill would allow midwives from Queensland to have "deemed registration" in New Zealand, and thus be permitted to set up in independent practice without any safeguards requiring them to meet basic minimum New Zealand standards. Such deemed registration would occur before the Nursing Council makes a determination regarding substantive registration.

However, we believe that sufficient safeguards exist. In New Zealand midwives can practise independently without supervision from a medical practitioner. Midwives in Australia can practise only if a medical practitioner is present. Under clause 25 of the bill, the New Zealand Nursing Council could impose the requirement that, for example, midwives registered in Queensland could not practise independently without medical practitioner involvement. We are confident that this would provide the necessary safeguards to protect public health prior to the Nursing Council making a determination regarding their substantive registration.

The Nursing Council also raised the matter of the impact of deemed registration on the multiple registration which is provided for in New Zealand legislation (section 57 of the Nurses Act 1977). There are six registers that remain open. The Nursing Council submits that clauses 5 and 16 of the bill should be deleted or modified until New Zealand has single registration. According to the Ministry of Health, the only registers remaining open for New Zealand trained practitioners are the comprehensive register and the midwife register. This results from the fact that all nurse training in New Zealand is now comprehensive.

Under mutual recognition, an Australian applicant who has comprehensive registration will be placed on the same register in New Zealand. If a nurse is registered on a specialist (more narrow) register in Australia, under clause 20 (3) of the bill, the Nursing Council could impose conditions to achieve equivalence of occupations. For example, if a nurse is registered on a specialist register, he or she could be placed on the comparable one in New Zealand in order to achieve equivalence of the occupations. The bill also provides the registering authority with the ability to impose conditions on deemed registration to ensure equivalency of the occupations, until the decision regarding substantive registration is made.

We therefore consider that the bill contains sufficient safeguards to protect the health and safety of the public as well as maintaining confidence in the capabilities of professionals working in both countries, including nurses.

## Other Issues

### *Intellectual property and patent attorneys*

The submission from the New Zealand Institute of Patent Attorneys raised the issue that inclusion of the Patents Act 1953 in Schedule 1 may be interpreted as excluding patent attorneys from mutual recognition. We agreed that Schedule 1 should be redrafted to ensure that it is clear that patent attorneys are subject to mutual recognition. The bill has also been amended to include a definition of the term “intellectual property”. The definition is based on that used in the TTMRA.

### *Clauses 86, 87 and 88*

Under clause 86 the bill allows the Governor-General to make regulations to temporarily exempt a category of goods from the scope of the bill for up to 12 months for reasons of public health or safety or the environment. During that time period the TTMRA specifies that the standard relating to the goods will be referred to the relevant ministerial council. Where a ministerial council recommends that a particular harmonised standard should be adopted, the recommendation must be implemented by all participating jurisdictions unless not approved by one third or more of Heads of Government. If legislation is required to be passed to give legal effect to the standard, possible time delays in the legislative process could result in mutual recognition applying at the end of a 12 month period (currently provided for under clause 86 (2)). We have therefore amended the bill (clause 87) to make it clear that a temporary exemption should be maintained until such time as legislation giving effect to the standard is passed.

### *Films, Videos, and Publications Classification Act 1993*

The Video Association of New Zealand submission argued that the bill would enable the importation and public supply in New Zealand of video cassettes bearing Australian video rating or classification labels, without the need for classification under the Films, Videos, and Publications Classification Act 1993. This was amplified in correspondence sent to the committee from the Office of Film and Literature Classification.

The Office of Film and Literature Classification informed us that earlier drafts of this bill included provisions to exempt pornographic material from the application of mutual recognition. As currently drafted, the bill only exempts ‘objectionable’ material. This would mean that all the other material of this nature from Australia, that would otherwise be given some sort of restricted classification, could be marketed and sold in New Zealand without needing to be classified in terms of the Films, Videos, and Publications Classifications Act 1993.

This risks undermining the censorship system established by the Films, Videos, and Publications Classification Act 1993. We do not consider this to be an intended consequence of the application of mutual recognition. Consequently, we recommend that the exemption contained in the Schedule 2 of the bill be amended to ensure that all Australian films, videos, and publications imported into New Zealand would still need to be classified in terms of the Films, Videos, and Publications Classification Act. We have been advised that this is consistent with the Australian mutual recognition legislation.

### *Clause 19 and clause 15*

We have amended clause 19 to clarify that the written notice criteria include a provision requiring the applicant to pay the prescribed fee and submit it with the application. We also recommend replacing the term “person” in the bill to clarify that Part 3 applies only to individuals.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

~~(Subject to this Act,)~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon. John Luxton

## TRANS-TASMAN MUTUAL RECOGNITION

### ANALYSIS

Title	
1. Short Title and commencement	
2. Interpretation	
3. Meaning of "participating jurisdiction"	
4. Meaning of "registration"	
<b>PART 1</b>	
<b>PRELIMINARY PROVISIONS</b>	
5. Application	
6. Operation of this Act in relation to Australia	
7. Act to bind the Crown	
8. Notices	
<b>PART 2</b>	
<b>GOODS</b>	
9. Place of production	
10. Trans-Tasman mutual recognition principle in relation to goods	
11. Section 10 not to affect operation of certain laws	
12. Defences to offences regarding sale	
13. Goods that comply with local law	
<b>PART 3</b>	
<b>OCCUPATIONS</b>	
14. Equivalent occupation	
15. Trans-Tasman mutual recognition principle in relation to occupations	
16. Section 15 not to affect operation of certain laws	
<i>Entitlement to Registration</i>	
17. Entitlement to registration and continued registration	
18. Residence or domicile irrelevant	
<i>Procedure for Registration</i>	
19. Notification to local registration authority	
20. Action following notice	
21. Postponement of registration	
22. Refusal of registration	
23. Notification	
<i>Interim Arrangements</i>	
24. Deemed registration	
25. Imposition of conditions on deemed registration	
26. Activities under deemed registration	
27. Application of relevant law to deemed registration	
28. Cessation of deemed registration	
<i>Declarations as to Equivalent Occupations</i>	
29. Declarations as to equivalence of occupations	
30. Declarations by Tribunal	
31. Declarations by Ministers	
<i>General Provisions</i>	
32. Disciplinary action	
33. Furnishing information	
34. Receiving information	
35. Applicant may obtain information from local registration authority	
36. General responsibilities of local registration authorities	
37. Formalities requiring personal attendance	
38. Saving	
39. Laws prescribing fees and conditions	
40. Regulations	
<b>PART 4</b>	
<b>TRANS-TASMAN OCCUPATIONS TRIBUNAL</b>	
41. Trans-Tasman Occupations Tribunal	
42. Functions of Tribunal	
43. Effect on decision	
44. Orders by Tribunal	
45. Co-operation with Australian Tribunal	
<i>Membership</i>	
46. Membership of Tribunal	
47. Appointment and term of office of Chairperson	
48. Panel	
49. Deputy Chairperson	
50. Vacation of office by Chairperson and Deputy Chairperson	
51. Remuneration and travelling allowances	



<p>52. Members of Tribunal not personally liable</p> <p style="text-align: center;"><i>Parties to Review</i></p> <p>53. Parties to review</p> <p style="text-align: center;"><i>Conferences</i></p> <p>54. Conferences 55. Procedure at conferences 56. Conference chairperson's participation in hearing 57. Evidence not admissible</p> <p style="text-align: center;"><i>Procedure</i></p> <p>58. Power of Tribunal if parties reach agreement 59. Hearing in absence of parties 60. Avoidance of unnecessary formality 61. Sittings of Tribunal 62. Procedure of Tribunal 63. Evidence 64. Witness summons 65. Service of summons 66. Witnesses' allowances 67. Privileges and immunities 68. Non-attendance or refusal to co-operate 69. Contempt of Tribunal 70. Costs 71. Stating case for High Court 72. Appeal on question of law 73. Regulations 74. New Zealand member of Australian Tribunal</p> <p style="text-align: center;">PART 5 EXCLUSIONS AND EXEMPTIONS</p> <p>75. Meaning of "endorsed" 76. Interpretation of Schedules</p>	<p>77. Exclusions 78. Amendments to Schedule 1 79. Permanent exemptions 80. Amendments to Schedule 2 81. Special exemptions 82. Amendments to Schedule 3 83. Amendments to Schedules 2 and 3 84. Exempt occupations 85. Amendments to Schedule 4 86. Regulations relating to temporary exemptions 87. Regulations continuing temporary exemptions</p> <p style="text-align: center;">PART 6 AMENDMENTS TO LAW PRACTITIONERS ACT 1982</p> <p>88. Amendments to Law Practitioners Act 1982</p> <p style="padding-left: 20px;">44. Qualifications 46. Admission 51A. Removal from roll if deemed registration ceases in some circumstances</p> <p style="text-align: center;">SCHEDULES</p> <p style="padding-left: 40px;">Schedule 1 Exclusions</p> <p style="padding-left: 40px;">Schedule 2 Permanent Exemptions</p> <p style="padding-left: 40px;">Schedule 3 Special Exemptions</p> <p style="padding-left: 40px;">Schedule 4 Exempt Laws Relating to Occupations</p>
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A BILL INTITULED

**An Act to provide for the recognition in New Zealand of regulatory standards adopted in Australia regarding goods and occupations**

BE IT ENACTED by the Parliament of New Zealand as follows: 5

**1. Short Title and commencement**—(1) This Act may be cited as the Trans-Tasman Mutual Recognition Act 1996.

(2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council; and one or more orders may be made bringing different provisions into force on different dates. 10

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 1 and 2 (Aust.)

**2. Interpretation**—(1) In this Act, unless the context otherwise requires,— 15

- “Applicant” means (*a person*) an individual who gives or, as the case requires, has given a notice under **section 19**:
- “Australia” means Australia in a geographical sense, and does not include the external territories:
- 5 “Australian Act” means the **Trans-Tasman Mutual Recognition Act 1996** of the Commonwealth:
- “Australian jurisdiction” means a participating jurisdiction, other than New Zealand:
- 10 “Australian Tribunal” means the Administrative Appeals Tribunal established under the Administrative Appeals Tribunal Act 1975 of the Commonwealth:
- “Chairperson” means the Chairperson of the Tribunal:
- “Commonwealth” means the Commonwealth of Australia:
- 15 “Conditions”, in relation to an occupation, means conditions, limitations, or restrictions:
- “Conference” means a conference to which **section 54 (1)** refers:
- 20 “Conference chairperson” means the member of the Tribunal nominated under **section 54 (1)**:
- “Decision”, in relation to a local registration authority, means—
- (a) The grant of registration; or
- 25 (b) The imposition of conditions on registration; or
- (c) The postponement of the grant of registration;
- or
- (d) The refusal to grant registration; or
- (e) The revocation of a refusal to grant registration:
- 30 “Deemed registration” has the meaning given to that term by **section 24 (2)**:
- “Equivalent occupation” has the meaning given to that term by **section 14**:
- “Exemption period” means the period of 12 months from the date on which **section 81** comes into force:
- 35 “Extended exemption period” means any period specified in regulations made under **section 82 (1) (a)**:
- “Goods”—
- (a) Means goods of any kind; and
- 40 (b) Includes—
- (i) Animals or plants; or
- (ii) Material of microbial origin; or
- (iii) A package containing goods; or
- (iv) A label attached to goods:
- 45 “Grant”, in relation to registration, means grant, issue, or otherwise confer:

*New (Unanimous)*

“Intellectual property”—

(a) Has the meaning provided for in Article 2 of the Convention establishing the World Intellectual Property Organisation done at Stockholm on 14 July 1967 and in the World Trade Organisation Agreement on the Trade Related Aspects of Intellectual Property Rights done at Marrakesh on 15 April 1994; and 5

(b) Includes all intellectual property rights, including (without limitation) rights relating to circuit layouts and semi-conductor chip products, confidential information, copyright, geographical indications, patents, plant varieties, registered designs, registered and unregistered trade marks, and service marks: 10 15

“Labelling”, in relation to goods, includes any means by which, at the point of sale, information is attached to goods or is displayed in relation to goods without being attached to them: 20

“Law relating to quarantine” means any law enacted or made substantially for the purpose of eliminating the risk of entry into, or spread in, New Zealand of—

(a) Any disease; or  
(b) Any genetic disorder; or 25  
(c) Any pest; or

(d) Any organism (within the meaning of the Biosecurity Act 1993) that may—

(i) Cause unwanted harm to natural resources (within the meaning of the Biosecurity Act 1993); or 30

(ii) Interfere with measures to manage or eradicate any organism that causes unwanted harm to such natural resources; or 35

(e) Any organism (including an entity the subject of an Order in Council made under **subsection (3)**) that may—

(i) Cause harm to human health; or  
(ii) Interfere with measures to manage or eradicate any organism that causes harm to human health: 40

*Struck Out (Unanimous)*

“Local registration authority”—

5 (a) Means the person in New Zealand having the function conferred by law of registering persons in connection with their carrying on of a particular occupation in New Zealand; and

(b) Includes, where more than one person has such a function in relation to a particular occupation, each such person:

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*New (Unanimous)*

“Local registration authority”,—

15 (a) Except in relation to barristers and solicitors,—  
(i) Means the person in New Zealand having the function conferred by law of registering individuals in connection with their carrying on of a particular occupation in New Zealand; and

20 (ii) If more than one person has the function described in **subparagraph (i)** in relation to a particular occupation, includes each such person; and

25 (b) In relation to barristers and solicitors, means,—  
(i) In relation to admission as a barrister and solicitor, a Registrar or Deputy Registrar of the High Court; and

(ii) In relation to the issue of a practising certificate, a District Law Society:

“The Minister” means the Minister of Commerce:

*New (Unanimous)*

30 “Ministerial council” means a council of Ministers of participating jurisdictions:

“Occupation”—

35 (a) Means a calling, occupation, profession, or trade of any kind that may be carried on only by (persons) individuals subject to registration, (where) if

registration is wholly or partly dependent on the attainment or possession of some qualification; and

(b) Includes a specialisation in any calling, occupation, profession, or trade of a kind described in paragraph (a) in which registration may be granted:

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“Panel” means the panel maintained under section 48:

“Participating jurisdiction” has the meaning given to that term by section 3:

“Produce” includes to manufacture, and also includes to harvest or otherwise produce in the course of any form of primary production:

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“Qualification” means—

(a) A specific course of education or training; or

(b) A specific examination; or

(c) A specific kind of experience; or

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(d) A suitable character (including, without limitation, being a fit and proper person); or

(e) A specific qualification, other than a qualification referred to in any of paragraphs (a) to (d), relating to fitness to carry on an occupation:

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“Registration” has the meaning given to that term by section 4:

“Requirements”, in relation to goods, means conditions, prohibitions, requirements, or restrictions:

“Review” means a review by the Tribunal under Part 4:

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“Sell” includes—

(a) Have in possession for sale; or

(b) Distribute for sale; or

(c) Expose or offer for sale; or

(d) Agree to sell; or

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(e) Sell by wholesale or retail; or

(f) Barter; or

(g) Supply by way of exchange, hire, hire purchase, or lease:

“State”—

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(a) Means a State of Australia in relation to which a law corresponding to this Act is in force; and

(b) Includes the Australian Capital Territory for so long as there is in force in that Territory a law corresponding to this Act; and

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(c) Includes the Northern Territory of Australia for so long as there is in force in that Territory a law corresponding to this Act:

“Substantive registration”—

(a) Means registration under the law of a participating jurisdiction; but

(b) Does not include deemed registration:

5 “Trans-Tasman mutual recognition principle in relation to goods” means the principle set out in **section 10**:

“Trans-Tasman mutual recognition principle in relation to occupations” means the principle set out in **section 15**:

10 “Tribunal” means the Trans-Tasman Occupations Tribunal established by **section 41**:

“Working day” means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and

15 (b) A day in the period commencing with 25 December in any year and ending with 15 January in the following year.

(2) A reference to or citation of any Act in this Act includes the citation of all subsequent enactments passed in amendment or substitution of the Act so referred to or cited, unless it is otherwise manifested by the context. This subsection applies notwithstanding anything in the Acts Interpretation Act 1924, but is subject to **section 76 (1) and (2)**.

25 (3) The Governor-General may, from time to time, by Order in Council, declare an entity to be an organism for the purposes of **paragraph (e)** of the definition of *(the term)* “law relating to quarantine” in **subsection (1)**.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 4(1), 6(1) and (2) (Aust.)

30 **3. Meaning of “participating jurisdiction”**—For the purposes of this Act, a participating jurisdiction is—

(a) New Zealand; or

(b) The Commonwealth, for so long as there is in force in the Commonwealth a law corresponding to this Act; or

35 (c) A State.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 49 (Aust.)

40 **4. Meaning of “registration”**—(1) In this Act, *(the term)* “registration” means the admission, approval, certification (including, without limitation, the issue of practising certificates), licensing, registration, or any other form of authorisation, of *(a person)* an individual required by or under law for carrying on an occupation.

(2) (Where) If (a person) an individual is required by or under law to have more than one form of authorisation, as described in subsection (1), to carry on an occupation, (the term) “registration” includes each form of authorisation that any relevant local registration authority grants. 5

(3) References in this Act to registration mean substantive registration, unless (the term) “registration” is qualified in such a way as to indicate another meaning; and “registered” has a corresponding meaning.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 4 (1), 10  
17 (2) (Aust.)

## PART 1

### PRELIMINARY PROVISIONS

**5. Application**—(1) Every law of New Zealand must, unless it or this Act otherwise expressly provides, be read subject to this Act. 15

(2) The Trans-Tasman mutual recognition principle in relation to goods, the Trans-Tasman mutual recognition principle in relation to occupations, and the provisions of this Act may be taken into consideration in proceedings of any kind and for any purpose. 20

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 5(1), 50(1) (Aust.)

**6. Operation of this Act in relation to Australia**—  
(1) The Governor-General may, on the recommendation of the Minister, by Order in Council, declare that this Act will cease to have effect on a specified day, if satisfied that— 25

(a) No jurisdiction in Australia has passed a law corresponding to this Act and no jurisdiction in Australia is likely to pass a law corresponding to this Act in the near future; or 30

(b) Some or all of the jurisdictions in Australia have passed a law corresponding to this Act but all the jurisdictions in Australia are likely to repeal such laws in the near future. 35

(2) The Minister must not make a recommendation under subsection (1) without first giving notice in the *Gazette* of his or her intention to do so.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 7(1) and (2) (Aust.) 40

**7. Act to bind the Crown**—This Act binds the Crown.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 8 (Aust.)

**8. Notices**—(1) *(Where)* If any provision of **Parts 2 to 4** requires or permits a notice to be given to any person, the notice may be given—

(a) To *(a natural person)* an individual,—

(i) By personal delivery; or

(ii) By leaving it at, or posting it to, the address of the place of residence or business of the *(person)* individual last known to the person giving the notice; or

(iii) By sending it by *(facsimile)* fax to the last known *(facsimile)* fax number of the *(person)* individual:

(b) To a body corporate,—

(i) By leaving it at, or posting it to, the principal office of the body corporate; or

(ii) By sending it by *(facsimile)* fax to the last known *(facsimile)* fax number of the body corporate.

(2) *(Where)* If a notice is personally delivered to any *(person)* individual *(pursuant to)* under subsection (1), it is deemed to have been given to the *(person)* individual at the time at which it was delivered.

(3) *(Where)* If a notice is left at an address or a principal office *(pursuant to)* under subsection (1), it is deemed to have been given to the person at the time at which it was left.

(4) *(Where)* If a notice is posted to any person *(pursuant to)* under subsection (1), it is deemed to have been given to the person at the time at which it would have been delivered in the ordinary course of post; and, in proving posting,—

(a) It is sufficient to prove that the notice was properly addressed; and

(b) It is presumed, in the absence of proof to the contrary, that the notice was posted on the day on which it was dated.

(5) *(Where)* If a notice is sent by *(facsimile)* fax to any person *(pursuant to)* under subsection (1), it is deemed to have been given to the person on the day after the day on which it was sent; and, in proving sending, it is sufficient to prove that a *(facsimile)* fax machine generated a record of the transmission of the notice to such fax number.



## PART 2

## GOODS

**9. Place of production**—(1) For the purpose of determining where goods are produced for the purposes of this Act, goods are taken to be produced in the place where the most recent step in the process of producing the goods, whether by way of harvesting, packaging, or processing the goods or otherwise, has occurred. 5

(2) **Subsection (1)** applies even though—

(a) The process of production may be incomplete; or 10

(b) Some steps in the process have not yet been carried out; or

or

(c) Some steps in the process were carried out elsewhere; or

(d) The goods or a component of the goods were imported into Australia. 15

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 52 (Aust.)

**10. Trans-Tasman mutual recognition principle in relation to goods**—(1) The Trans-Tasman mutual recognition principle in relation to goods is that, subject to this Act, goods produced in or imported into an Australian jurisdiction, that may be lawfully sold in the Australian jurisdiction either generally or in particular circumstances may, by virtue of this Act, be sold in New Zealand either generally or in particular circumstances (as the case may be), without the necessity for compliance with any of the requirements relating to sale that are imposed by or under the law of New Zealand and are described in **subsection (2)**. 20

(2) The requirements referred to in **subsection (1)** are the following: 30

(a) A requirement that the goods satisfy standards relating to their composition, performance, production, or quality, or relating to any other aspect of the goods themselves; or

(b) A requirement that the goods satisfy standards relating to their age, date stamping, labelling, or packaging, or relating to any other aspect of the way the goods are presented; or 35

(c) A requirement that the goods be inspected, passed, or similarly dealt with in or for the purposes of New Zealand; or 40

(d) A requirement that any step in the production of the goods not occur outside New Zealand; or

- (e) Any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in New Zealand.

5 Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 10 and 11 (Aust.)

**11. Section 10 not to affect operation of certain laws—**

*Struck Out (Unanimous)*

- 10 (1) Nothing in **section 10** of this Act affects the operation of—
- (a) Any laws of New Zealand that relate to—
    - 15 (i) The contractual aspects of the sale of goods; or
    - (ii) The persons to whom goods may or may not be sold; or
    - (iii) The circumstances in which goods may or may not be sold; or
    - (iv) Franchise agreements or arrangements relating to the sale of goods; or
    - (v) The registration of sellers or other persons carrying on occupations; or
  - 20 (b) Any laws of New Zealand other than those described in **paragraph (a)** of this subsection that regulate the manner of the sale of goods in New Zealand or the manner in which sellers conduct or are required to conduct their business in New Zealand,—
- 25 so long as those laws apply equally to goods produced in or imported into New Zealand.

*New (Unanimous)*

- 30 (1) Nothing in **section 10** affects the operation of any laws of New Zealand that regulate the manner of the sale of goods in New Zealand or the manner in which sellers conduct or are required to conduct their business in New Zealand, by dealing with (without limitation)—
- 35 (a) The contractual aspects of the sale of goods; or
  - (b) The persons to whom goods may or may not be sold; or
  - (c) The circumstances in which goods may or may not be sold; or
  - (d) Franchise agreements or arrangements relating to the sale of goods; or

*New (Unanimous)*

- |  |                |
|--|----------------|
| <p>(e) The registration of sellers or other persons carrying on occupations,—<br/>so long as those laws apply equally to goods produced in or imported into New Zealand.</p>   | 5              |
| <hr/>  |                |
| <p>(2) Nothing in <b>section 10</b> affects the operation of any laws of New Zealand regarding the handling, storage, or transportation of goods within New Zealand, so long as those laws—</p> <p>(a) Apply equally to goods produced in or imported into New Zealand; and</p> <p>(b) Are directed at matters affecting the health and safety of persons in New Zealand or at avoiding, remedying, or mitigating any adverse effects of activities on the environment in New Zealand.</p>   | 10             |
| <p>(3) Nothing in <b>section 10</b> affects the operation of any laws of New Zealand regarding the inspection of goods within New Zealand, so long as those laws—</p> <p>(a) Apply equally to goods produced in or imported into New Zealand; and</p> <p>(b) Are directed at matters affecting the health and safety of persons in New Zealand or at avoiding, remedying, or mitigating any adverse effects of activities on the environment in New Zealand; and</p> <p>(c) Do not require the inspection of goods as a prerequisite to the sale of the goods in New Zealand.</p> <p>Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 12 (2)–(4) (Aust.)</p> | 15<br>20<br>25 |
| <p><b>12. Defences to offences regarding sale</b>—(1) It is a defence to a prosecution for an offence against a law of New Zealand, being a prosecution in relation to the sale of any goods, if the defendant expressly claims that the Trans-Tasman mutual recognition principle in relation to goods applies and establishes that—</p> <p>(a) The goods were labelled at the point of sale with a statement to the effect that they were produced in or imported into Australia or a State; and</p> <p>(b) The defendant had no reasonable grounds for suspecting that they were not so produced or imported.</p>   | 30<br>35       |

(2) The defence described in **subsection (1)** is not available if the prosecution proves that the Trans-Tasman mutual recognition principle in relation to goods did not apply in the circumstances of the alleged offence.

5 (3) Without limiting **subsection (2)**, the defence described in **subsection (1)** is not available in relation to goods that were labelled at the point of sale with a statement to the effect that they were produced in or imported into Australia if the prosecution proves—

10 (a) That the goods were not, at the time they were labelled, subject to laws of the Commonwealth relating to the requirements described in **section 11** of the Australian Act; or

15 (b) That, (*where*) if the goods were, at the time they were labelled, subject to laws of the Commonwealth relating to the requirements described in **section 11** of the Australian Act, the Commonwealth was not, at that time, a participating jurisdiction.

20 (4) Without limiting **subsection (2)**, the defence described in **subsection (1)** is not available in relation to goods that were labelled at the point of sale with a statement to the effect that they were produced in or imported into a State if the prosecution proves—

25 (a) That the goods were not, at the time they were labelled, subject to laws of the State relating to the requirements described in **section 11** of the Australian Act; or

30 (b) That, (*where*) if the goods were, at the time they were labelled, subject to laws of the State relating to the requirements described in **section 11** of the Australian Act, the State was not, at that time, a participating jurisdiction.

35 (5) (*Where*)if the goods were labelled at the point of sale with a statement to the effect that they were produced in or imported into Australia,—

(a) Any relevant presumptions or evidentiary procedures under the law of the Commonwealth are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under **subsection (2) or subsection (3)**; and

40 (b) Any relevant defences under the law of the Commonwealth are available to the defendant in relation to matters sought to be proved by the prosecution under **subsection (2) or subsection (3)**.

(6) (*Where*) If the goods were labelled at the point of sale with a statement to the effect that they were produced in or imported into a State,—

(a) Any relevant presumptions or evidentiary procedures under the law of the State are available to the prosecution or defendant in relation to matters sought to be proved by the prosecution under **subsection (2) or subsection (4)**; and 5

(b) Any relevant defences under the law of the State are available to the defendant in relation to matters sought to be proved by the prosecution under **subsection (2) or subsection (4)**. 10

(7) This section does not affect any defence that is available apart from this section.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 13 (Aust.) 15

**13. Goods that comply with local law**—Nothing in this Part prevents goods from being sold in New Zealand if (apart from this Act) they comply with the relevant requirements of the law in force in New Zealand. 20

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 14 (Aust.)

### PART 3

#### OCCUPATIONS

**14. Equivalent occupation**—(1) For the purposes of this Act, and subject to **subsection (2)**, an occupation for which (*persons*) individuals may be registered in an Australian jurisdiction is taken to be an equivalent occupation to an occupation for which (*persons*) individuals may be registered in New Zealand if the activities authorised to be carried out under each registration are substantially the same. 25 30

(2) **Subsection (1)** is subject to—

(a) The fact that equivalence of occupations between New Zealand and an Australian jurisdiction may be achieved by the imposition of conditions on deemed registration or registration; and 35

(b) Any declaration made and in force under **section 30 or section 31**.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 28, 29(1) (Aust.) 40

**15. Trans-Tasman mutual recognition principle in relation to occupations**—(1) The Trans-Tasman mutual recognition principle in relation to occupations is that, subject to this Act, *(a person)* an individual who is registered in an Australian jurisdiction for an occupation is entitled, after giving notice to the local registration authority for the equivalent occupation,—

- (a) To be registered in New Zealand for the equivalent occupation; and
- (b) Pending such registration, to carry on the equivalent occupation in New Zealand.

(2) The entitlement described in **subsection (1)** arises by virtue of this Act, and no law of New Zealand requiring *(a person)* an individual seeking to carry on that occupation to have any particular qualification before doing so applies to any *(person)* individual who is registered in an Australian jurisdiction for an occupation and who gives notice to the local registration authority for the equivalent occupation in accordance with **section 19**.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 16(1) (Aust.)

**16. Section 15 not to affect operation of certain laws**—Nothing in **section 15** affects the operation of any laws of New Zealand that regulate the manner of carrying on an occupation in New Zealand, so long as those laws—

- (a) Apply equally to all *(persons)* individuals carrying on or seeking to carry on the occupation under the law of New Zealand; and
- (b) Do not require *(a person)* an individual carrying on or seeking to carry on that occupation under the law of New Zealand to have any particular qualification before doing so.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl.16(2) (Aust.)

35 *Entitlement to Registration*

**17. Entitlement to registration and continued registration**—(1) For all the purposes of the law of New Zealand, every law of New Zealand dealing with registration is deemed to include as a ground of entitlement to registration and renewal of registration, subject to the provisions of this Act, the ground that *(a person)* an individual seeking

registration or renewal of registration is registered in an equivalent occupation in an Australian jurisdiction.

(2) *(A person)* An individual to whom registration has been granted on the ground referred to in **subsection (1)**—

- (a) Is entitled to renewal of registration in accordance with the law dealing with registration of that kind; and 5
- (b) Is not disentitled to registration or renewal of registration solely because the *(person)* individual ceases to be registered in an equivalent occupation in an Australian jurisdiction; and 10
- (c) Keeps or loses his or her entitlement to registration or renewal of registration in accordance with any law dealing with registration of that kind, to the extent that any such law—
  - (i) Applies equally to all *(persons)* individuals carrying on or seeking to carry on the occupation under the law of New Zealand; and 15
  - (ii) Does not require *(a person)* an individual carrying on or seeking to carry on that occupation under the law of New Zealand to have any particular qualification before doing so. 20

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 19 (1)–(4) (Aust.)

**18. Residence or domicile irrelevant**—Residence or domicile in any particular participating jurisdiction is not a prerequisite to, or a factor in, entitlement to the grant, renewal, or continuation of registration. 25

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 36 (Aust.)

#### *Procedure for Registration* 30

**19. Notification to local registration authority**—(1) *(A person)* An individual who is registered in an Australian jurisdiction for an occupation may give a written notice to the local registration authority for the equivalent occupation seeking registration for the equivalent occupation on the ground referred to in **section 17 (1)**, in accordance with the Trans-Tasman mutual recognition principle in relation to occupations. 35

- (2) A notice referred to in **subsection (1)** must—
  - (a) State the occupation for which registration is sought; and 40

- (b) State that the applicant is registered for that occupation or an equivalent occupation in an Australian jurisdiction; and
- 5 (c) State that registration is being sought in accordance with the Trans-Tasman mutual recognition principle in relation to occupations; and
- (d) Specify all the participating jurisdictions in which the applicant has registration for equivalent occupations and specify the occupations; and
- 10 (e) State that the applicant is not, in relation to any occupation referred to in **paragraph (b) or paragraph (d)**,—
  - (i) The subject of any preliminary investigations or action that might lead to disciplinary proceedings in any participating jurisdiction; or
  - 15 (ii) The subject of any disciplinary proceedings in any participating jurisdiction; and
- (f) State that the applicant's registration for any occupation referred to in **paragraph (b) or paragraph (d)** is neither cancelled nor suspended in any participating jurisdiction as a result of disciplinary action; and
- 20 (g) State that the applicant is not otherwise personally prohibited from carrying on any occupation referred to in **paragraph (b) or paragraph (d)** in any participating jurisdiction, and is not subject to any special conditions in carrying on any such occupation, as a result of criminal, civil, or disciplinary proceedings in any participating jurisdiction; and
- 25 (h) Specify any special conditions to which the applicant is subject in carrying on any occupation referred to in **paragraph (b) or paragraph (d)** in any participating jurisdiction; and
- 30 (i) Give consent to the making of inquiries of, and the exchange of information with, the authorities of any participating jurisdiction regarding the applicant's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice; and
- 35 and

*New (Unanimous)*

- 40 (j) Be accompanied by any fee payable under **section 39 or section 40**.

(3) The applicant must, in relation to a notice referred to in **subsection (1)**,—



- (a) Annex to it either—
- (i) A document that is either the original or a facsimile copy of the instrument evidencing the applicant's existing registration; or
  - (ii) *(Where)* If no such instrument exists, sufficient information to identify the applicant and the applicant's existing registration; and
- (b) *(Where)* If a document accompanies a notice *(pursuant to)* under **subparagraph (i) of paragraph (a)**, certify in the notice that the document is either the original or a facsimile copy of the instrument evidencing the applicant's existing registration; and
- (c) Verify the statements and other information in the notice by statutory declaration.
- (4) The local registration authority may, at its discretion, permit a notice referred to in **subsection (1)** to be amended after it is given.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 18 (Aust.)

**20. Action following notice**—(1) Within the period of one month after a notice is given under **section 19** the local registration authority must—

- (a) Grant registration on the ground referred to in **section 17 (1)**;  
or
  - (b) Postpone, under **section 21**, the grant of registration; or
  - (c) Refuse, under **section 22**, to grant registration.
- (2) *(Where)* If the local registration authority grants registration under **subsection (1) (a)**, it must decide whether or not to impose conditions on the grant.
- (3) A local registration authority may impose conditions under **subsection (2)**—
- (a) For the purpose of achieving equivalence of occupations;  
or
  - (b) For the purpose of imposing on the applicant's registration in New Zealand a condition that applies to the applicant's registration in an Australian jurisdiction; or
  - (c) For any other purpose relating to the implementation of the Trans-Tasman mutual recognition principle in relation to occupations.
- (4) No condition imposed under **subsection (3) (c)** may be more onerous than a condition that the local registration authority would impose in similar circumstances, having regard to

relevant qualifications, if the registration were effected apart from this Act.

5 (5) *(Where)* If the local registration authority does not grant, postpone, or refuse registration within the period of one month after a notice is given under **section 19**, the applicant is entitled, subject to **subsection (6)**, to registration immediately at the end of that period.

10 (6) *(Where)* If an applicant who is entitled to registration under **subsection (5)** seeks a grant of registration from the local registration authority, the local registration authority may refuse to grant registration only if—

- 15 (a) Any ground set out in **section 22 (1)** applies; and  
 (b) There are reasonable grounds to believe that there has been an attempt to obtain the applicant's registration by fraud, whether that fraud was committed by the applicant or any other person.

(7) Registration granted under this section has effect as if it had been granted immediately on the giving of the notice.

20 Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 19(2) and (5), 20 (Aust.)

**21. Postponement of registration**—(1) A local registration authority may postpone the grant of registration if—

- 25 (a) Any of the statements or information in the notice required by **section 19** are materially false or misleading; or  
 (b) Any document or information required by **section 19** is materially false or misleading; or  
 (c) Any document or information required by **section 19** has not been provided; or  
 30 (d) The circumstances of the applicant have materially changed since the date of the notice or the date it was given; or  
 (e) The authority determines that the occupation in which registration is sought is not an equivalent occupation.

35 (2) The local registration authority must not postpone the grant of registration (*pursuant to*) under **subsection (1)** for longer than a period of 6 months commencing at the conclusion of the period of one month referred to in **section 20 (1)**.

40 (3) Within the period of 6 months referred to in **subsection (2)** the local registration authority must—

- (a) Grant registration on the ground referred to in **section 17 (1)**;  
 or  
 (b) Refuse, under **section 22**, to grant registration.

(4) (*Where*) If the local registration authority does not grant or refuse registration within the period of 6 months referred to in **subsection (2)**, the applicant is entitled to registration immediately at the end of that period.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 21 5  
(1)–(3) (Aust.)

**22. Refusal of registration**—(1) A local registration authority may refuse to grant registration if—

- (a) Any of the statements or information in the notice required by **section 19** are materially false or misleading; or 10
- (b) Any document or information required by **section 19** is materially false or misleading; or
- (c) Any document or information required by **section 19** has not been provided; or 15
- (d) The authority determines—
  - (i) That the occupation in which registration is sought is not an equivalent occupation; and
  - (ii) That equivalence cannot be achieved by the imposition of conditions. 20

(2) In making a determination under **subsection (1) (d)**, the local registration authority must disregard the power of the Tribunal to make a declaration on the ground referred to in **section 30 (1) (b)**.

(3) A refusal to grant registration on the ground referred to in **subsection (1) (d)** takes effect at the end of a period that— 25

- (a) Is specified in the notice given under **section 23 (1)**; and
- (b) Is no less than 2 weeks; and
- (c) Commences on the day on which the notice is deemed to have been given to the applicant. 30

(4) A local registration authority may revoke a refusal to grant registration at any time before it takes effect.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 22 (Aust.)

**23. Notification**—(1) A local registration authority must give to the applicant written notice of the following decisions: 35

- (a) The grant of registration; or
- (b) The imposition of conditions on registration; or
- (c) The postponement of the grant of registration; or
- (d) The refusal to grant registration; or 40
- (e) The revocation of a refusal to grant registration.

(2) A notice given under **subsection (1)** must, in relation to a decision referred to in any of **paragraphs (b) to (d) of subsection (1)**,—

- (a) Include a statement of the reasons for the decision; and
- (b) Include a statement to the effect that the applicant may apply for a review of the decision; and
- (c) Refer to **section 35**.

5 (3) Failure to comply with any requirement of **subsection (2)** does not affect the validity of the decision.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 23, 33(3) and (4) (Aust.)

*Interim Arrangements*

10 **24. Deemed registration**—(1) Subject to **section 26**, an applicant is, pending the grant or refusal of registration, entitled to carry on his or her occupation in New Zealand as if the applicant were subject to registration in New Zealand.

15 (2) References in this Act to deemed registration mean the entitlement referred to in **subsection (1)**.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 24(1) and (2) (Aust.)

**25. Imposition of conditions on deemed registration**—

20 (1) The local registration authority must decide whether or not to impose conditions on an applicant's deemed registration.

(2) A local registration authority may impose conditions under **subsection (1)**—

- (a) For the purpose of achieving equivalence of occupations; or
- 25 (b) For the purpose of imposing on the applicant's deemed registration in New Zealand a condition that applies to the applicant's registration in an Australian jurisdiction; or
- 30 (c) For any other purpose relating to the implementation of the Trans-Tasman mutual recognition principle in relation to occupations.

35 (3) No condition imposed under **subsection (2) (c)** may be more onerous than a condition that the local registration authority would impose in similar circumstances, having regard to relevant qualifications, if the registration were effected apart from this Act.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 26(5) (Aust.)

- 26. Activities under deemed registration**—(1) An applicant who is subject to deemed registration may carry on his or her occupation as if the applicant were subject to registration, but may do so only—
- (a) Within the limits conferred by the deemed registration; 5  
and
  - (b) Subject to any conditions applying to the deemed registration imposed under **section 25**; and
  - (c) Within the limits conferred by the applicant's registration 10  
in all the Australian jurisdictions in which the applicant is registered; and
  - (d) Subject to any conditions or undertakings applying to the applicant's registration in all the Australian jurisdictions in which the applicant is registered, 15  
unless waived by the local registration authority under **subsection (2)**; and
  - (e) So long as the applicant complies with any requirement regarding fidelity funds, insurance, or trust accounts, or any other such protection for the public, clients, customers, or others. 20
- (2) The local registration authority may waive any condition or undertaking applying to the applicant's registration in an Australian jurisdiction if it thinks it appropriate to do so in the circumstances.
- (3) Any condition or undertaking applying to an applicant's 25  
registration in an Australian jurisdiction, when applied to the applicant's deemed registration, is to be construed with any necessary modifications, including the following (*where*)if appropriate and so far as practicable):
- (a) References to the Australian jurisdiction are to be read as 30  
references to New Zealand:
  - (b) References to officers or authorities of the Australian jurisdiction are to be read as references to the corresponding officers or authorities of New Zealand.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cls 26(1), 35  
(2), (3)(a), (4), 51 (Aust.)

- 27. Application of relevant law to deemed registration**—(1) An applicant who is subject to deemed registration is subject to any disciplinary provisions and arrangements that are applicable to (*persons*) individuals who 40  
are subject to registration.

(2) References in the law of New Zealand to *(persons) individuals* registered for an occupation in New Zealand (however expressed) extend to applicants who are subject to deemed registration.

5 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 26(3)(b), (c) (Aust.)

**28. Cessation of deemed registration**—(1) Deemed registration ceases if—

- 10 (a) It is cancelled or suspended in accordance with any law of New Zealand applied by **section 27**; or
- (b) The local registration authority grants registration to an applicant subject to it; or
- (c) The local registration authority refuses to grant registration to an applicant subject to it; or
- 15 (d) The local registration authority cancels it at the request of an applicant subject to it; or
- (e) An applicant subject to it ceases to be subject to registration in every other participating jurisdiction referred to in the notice *(pursuant to)* under
- 20 **paragraph (b) or (d) of section 19 (2).**

(2) Deemed registration is not affected by postponement of the grant of registration.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 25 (Aust.)

25 *Declarations as to Equivalent Occupations*

**29. Declarations as to equivalence of occupations**—

- (1) If a declaration made by the Tribunal under **section 30** and a declaration made by Ministers under **section 31** are inconsistent, the declaration made by Ministers prevails.
- 30 (2) A declaration made by the Tribunal under **section 30** does not affect the registration of any *(person) individual* already registered, other than the *(person) individual* to whom the declaration relates.
- (3) A declaration made by Ministers under **section 31** does not
- 35 affect the registration of any *(person) individual* already registered.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 29(2) and (3) (Aust.)

**30. Declarations by Tribunal**—(1) The Tribunal may, in any review, make a declaration that occupations carried on in an Australian jurisdiction and New Zealand are not equivalent, but only if the Tribunal is satisfied—

- (a) That the activities involved in the occupations are not substantially the same and that no conditions can be imposed that would have the effect of making the activities substantially the same; or 5
- (b) That registration in an Australian jurisdiction should not entitle ~~(persons)~~ individuals subject to registration to carry on a particular activity or class of activity in New Zealand, ~~(where)~~ if— 10
- (i) The activity or class of activity is a material part of the practice of ~~(a person)~~ an individual subject to registration in an Australian jurisdiction for the occupation; and 15
- (ii) The activity or class of activity, if carried on by ~~(a person)~~ an individual not conforming to the appropriate standards, could reasonably be expected to expose persons in New Zealand to a real threat to their health or safety or could reasonably be expected to cause significant adverse effects on the environment in New Zealand; and 20
- (iii) It is not practicable to protect the health or safety of such persons from that threat or the environment from such adverse effects by regulating the manner in which services in the occupation are provided. 25
- (2) The proper officer of the Tribunal must cause a notice setting out the terms of a declaration under this section to be published promptly in the *Gazette*. 30
- (3) A declaration made on the basis of **subsection (1) (b)** has effect for no longer than 12 months.
- (4) The local registration authority must promptly give written notice to equivalent authorities in each other participating jurisdiction of a declaration made on the basis of **subsection (1) (b)**. 35
- (5) The local registration authority must give effect to a declaration made under **subsection (1)**, and must ~~(thereafter)~~ from then on act in conformity with the declaration in relation to other ~~(persons)~~ individuals seeking registration. 40

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 30 (2)–(5) (Aust.)

**31. Declarations by Ministers**—(1) The Minister and a Minister from each of one or more Australian jurisdictions may jointly declare, by notice in the *Gazette*,—

- 5 (a) That specified occupations are equivalent, and may specify or describe in the notice any conditions that the appropriate local registration authority is to impose to achieve equivalence; or
- (b) That a notice published under **paragraph (a)** is amended or revoked.

10 (2) A declaration made under **subsection (1)** has effect only in relation to the participating jurisdictions concerned.

(3) The appropriate local registration authority must give effect to any declaration made under **subsection (1)**.

15 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 31 (Aust.)

#### *General Provisions*

**32. Disciplinary action**—(1) If (a person's) an individual's deemed registration or registration for an occupation in an Australian jurisdiction—

20 (a) Is cancelled or suspended; or

(b) Is subject to a condition—  
on disciplinary grounds, or as a result of or in anticipation of criminal, civil, or disciplinary proceedings, then the (person's) individual's deemed registration or registration for the  
25 equivalent occupation in New Zealand is affected in the same way.

(2) Notwithstanding **subsection (1)**, the local registration authority may reinstate any cancelled or suspended deemed registration or registration or waive any such condition if it  
30 thinks it appropriate to do so in the circumstances.

(3) This section extends to registration effected apart from this Act.

(4) This section has effect notwithstanding any other provisions of this Act.

35 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 32 (Aust.)

**33. Furnishing information**—(1) A local registration authority must furnish without delay any information reasonably required by the equivalent authority of any other  
40 participating jurisdiction about (a person) an individual subject to registration in New Zealand if—



- (a) The equivalent authority of the other participating jurisdiction notifies the local registration authority that the information is required in connection with—
- (i) A notice given by *(a person)* an individual seeking registration; or
  - (ii) *(A person's)* An individual's deemed registration; or
  - (iii) Actual or possible disciplinary action against the *(person)* individual; and
- (b) Either—
- (i) *(Where)* If the requirement relates to a notice given by *(a person)* an individual seeking registration, the equivalent authority of the other participating jurisdiction notifies the local registration authority that the *(person)* individual seeking registration has, in the notice, authorised the furnishing of the information; or
  - (ii) *(Where)* If the requirement relates to *(a person's)* an individual's deemed registration or actual or possible disciplinary action against the *(person)* individual, the furnishing of the information does not contravene the Privacy Act 1993.
- (2) This section applies notwithstanding any law of New Zealand relating to secrecy or confidentiality.
- (3) Nothing in this section affects any obligation or power of a local registration authority to provide information apart from this section.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 37 (Aust.)
- 34. Receiving information**—If a local registration authority receives information *(pursuant to)* under a provision of a law of an Australian jurisdiction corresponding to **section 33**, the information is subject to the Privacy Act 1993 or any other law relating to secrecy or confidentiality to the same extent as it would be if the information had been provided under the law of New Zealand.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 38 (Aust.)
- 35. Applicant may obtain information from local registration authority**—(1) *(Where)* If a local registration authority makes a decision in respect of which an applicant may apply for a review, the applicant may, by notice in writing to the local registration authority, request it to furnish to the

applicant a statement in writing setting out the findings on material questions of fact and referring to the evidence or other material on which those findings were based.

5 (2) (*Where*) If a local registration authority receives a request made under **subsection (1)** it must, within 20 working days after receiving the request, prepare, and furnish to the applicant, such a statement.

10 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 33(3) (Aust.); Administrative Appeals Tribunal Act 1975, s. 28(1) (Aust.)

**36. General responsibilities of local registration authorities**—(1) It is the duty of each local registration authority to facilitate the operation of this Part in relation to every occupation for which the authority is responsible and, in particular, to make use of its powers to impose conditions in such a way as to promote the Trans-Tasman mutual recognition principle in relation to occupations.

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

(3) The first guidelines and information required by **subsection (2)** must be available within 6 months from the date on which this section comes into force.

25 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 39 (Aust.)

**37. Formalities requiring personal attendance**—(1) Compliance with any statutory or other formalities requiring personal attendance in New Zealand is not a prerequisite to entitlement to registration or deemed registration or registration under this Act.

30 (2) This section applies to formalities that would otherwise have to be complied with before, at, or after registration.

35 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 41 (Aust.)

**38. Saving**—Nothing in this Act prevents (*a person*) an individual from seeking registration or being registered for an occupation under a law other than this Act.

40 Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 42 (Aust.)

**39. Laws prescribing fees and conditions**—(1) In the absence of regulations made under **section 40 (1) (a)**,—

- (a) The fee prescribed for registration, in any law dealing with registration for a particular occupation, must be read as the fee for deemed registration for that occupation under this Act; and 5
- (b) The fee prescribed for the renewal of registration, in any law dealing with registration for a particular occupation, must be read as the fee for the renewal of registration for that occupation under this Act;— 10
- and, (*where*) if any law dealing with registration for a particular occupation prescribes more than one fee for registration or the renewal of registration, as the case requires, the applicant must pay the lower or the lowest of the fees prescribed.

(2) (*Where*) If an applicant has paid a fee for deemed registration (*pursuant to*) under a law referred to in **subsection (1) (a)**, that applicant is not, notwithstanding anything in that law, required to pay a fee for registration under this Act. 15

(3) In the absence of regulations made under **section 40 (1) (b)**, any condition in any law dealing with registration for a particular occupation, to the effect that (*a person*) an individual may not carry on the occupation unless a fee has been paid, must, subject to **subsection (2)**, be read as applying to deemed registration or registration or the renewal of registration under this Act. 20 25

**40. Regulations**—(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing fees in relation to deemed registration or the renewal of registration for a particular occupation under this Act: 30
- (b) Providing, as a condition of deemed registration or the renewal of registration for a particular occupation under this Act, that (*a person*) an individual may not carry on the occupation unless a fee has been paid. 35
- (2) No fee prescribed under **subsection (1)** for deemed registration under this Act may be greater than the fee prescribed for registration (or, (*where*) if more than one fee is so prescribed, the higher or highest of those fees) under the law dealing with registration for the particular occupation. 40

(3) No fee prescribed under **subsection (1)** for the renewal of registration under this Act may be greater than the fee prescribed for the renewal of registration (or, (*where*) if more than one fee is so prescribed, the higher or highest of those

fees) under the law dealing with registration for the particular occupation.

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 40 (Aust.)

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PART 4

TRANS-TASMAN OCCUPATIONS TRIBUNAL

**41. Trans-Tasman Occupations Tribunal**—There is established a Tribunal to be called the Trans-Tasman Occupations Tribunal.

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**42. Functions of Tribunal**—An applicant may apply to the Tribunal for the review of a decision of a local registration authority to—

(a) Impose conditions on registration; or

(b) Postpone the grant of registration; or

15

(c) Refuse to grant registration.

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 33(1) (Aust.)

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**43. Effect on decision**—(1) Subject to **subsection (2)**, every decision of a local registration authority that is the subject of a review continues in force and has effect pending the determination of the review.

(2) The Tribunal may, at the request of an applicant who is a party to a review, make an interim order,—

25

(a) In relation to a decision to impose conditions on registration, permitting the applicant to carry on the occupation without complying with the conditions; or

(b) In relation to a decision to refuse to grant registration, extending the applicant's deemed registration for a period specified by the Tribunal.

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(3) The Tribunal must not make an order under **subsection (2)** unless the local registration authority whose decision is the subject of the review has been given a reasonable opportunity to make a submission to the Tribunal in relation to the interim order proposed to be made.

35

(4) The Tribunal may revoke at any time an interim order made under **subsection (2)**.

**44. Orders by Tribunal**—(1) The Tribunal may make any order that it thinks fit in relation to the conduct of any review.

(2) The Tribunal may, in any review, make an order—

- (a) That *(a person)* an individual who is registered in a particular occupation in an Australian jurisdiction is entitled to registration in a particular occupation in New Zealand; or
- (b) That *(a person)* an individual who is registered in a particular occupation in an Australian jurisdiction is entitled to registration in a particular occupation in New Zealand, subject to conditions specified by the Tribunal for the purpose of achieving equivalence of occupations; or
- (c) That *(a person)* an individual who is registered in a particular occupation in an Australian jurisdiction is not entitled to registration in a particular occupation in New Zealand.
- (3) The local registration authority must give effect to an order made under **subsection (2)**, and must *(thereafter)* from then on act in conformity with the order in relation to other *(persons)* individuals seeking registration.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 30(1) and (5) (Aust.)

**45. Co-operation with Australian Tribunal**—For the purpose of promoting consistency between decisions made by the Tribunal for the purposes of this Act and the Australian Tribunal for the purposes of the Australian Act, the Tribunal must have regard to decisions made by the Australian Tribunal for the purposes of the Australian Act.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 35(1) and (2) (Aust.)

#### *Membership*

**46. Membership of Tribunal**—(1) The members of the Tribunal are—

- (a) The Chairperson; and
- (b) Subject to **subsection (2)**, 2 other *(persons)* individuals appointed from the panel by the Chairperson for the purposes of each review.
- (2) Instead of making 2 appointments under **subsection (1) (b)**, the Chairperson may, if the Chairperson considers it desirable,—
- (a) Appoint one member of the Tribunal under **subsection (1) (b)**; and

(b) Appoint, as another member of the Tribunal, a member of the Australian Tribunal, in accordance with arrangements made from time to time between the Chairperson and the President of the Australian Tribunal.

5

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 35(3) (Aust.)

**47. Appointment and term of office of Chairperson—**

(1) Every *(person)* individual appointed as the Chairperson must be a barrister or solicitor of the High Court of not less than 7 years' practice or a District Court Judge.

10

(2) Any *(person)* individual appointed as the Chairperson may hold that office concurrently with any other office held by him or her and may from time to time be reappointed.

15

(3) The Chairperson is appointed by the Governor-General on the recommendation of the Minister of Justice.

20

(4) Except as otherwise provided in **section 50**, every *(person)* individual appointed as the Chairperson holds office for such term, not exceeding 5 years, as the Governor-General on the recommendation of the Minister of Justice specifies in the instrument appointing the Chairperson.

25

(5) The Minister of Justice must consult the Minister before making any recommendation under **subsection (3)** or **subsection (4)**.

30

(6) *(Where)* If the term for which the Chairperson has been appointed expires, the Chairperson, unless sooner vacating or removed from office under **section 50**, continues to hold office, by virtue of the appointment for the term that has expired, until—

35

(a) Any review has concluded; and

40

(b) Either—

(i) The Chairperson is reappointed; or

(ii) A successor to the Chairperson is appointed; or

(iii) The Chairperson is informed in writing by the Minister of Justice that the Chairperson is not to be reappointed and that a successor to the Chairperson is not to be appointed.

45

(7) The expiry of the term of office of the Chairperson does not affect any service being performed by the Chairperson on the Australian Tribunal.

50

**48. Panel—**(1) The Minister of Justice must maintain a panel of not more than 15 *(persons)* individuals who may be appointed *(pursuant to)* under section 46 (1) (b).

(2) The Minister of Justice must consult the Minister before including any *(person)* individual on the panel.

(3) In considering the suitability of any *(person)* individual for inclusion on the panel, the Minister of Justice and the Minister must have regard not only to his or her personal attributes but also to his or her knowledge of and experience in the different aspects of matters likely to come before the Tribunal. 5

(4) The name of *(a person)* an individual must be removed from the panel if—

(a) The *(person)* individual dies or is, under the Insolvency Act 1967, adjudged bankrupt; or 10

(b) The Minister of Justice directs that the name of the *(person)* individual be removed from the panel for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Minister of Justice; or 15

(c) A period of 5 years has elapsed since the date on which the Minister of Justice last approved the entry of the *(person's)* individual's name; or

(d) The *(person)* individual requests by writing addressed to the Minister of Justice that his or her name be removed. 20

(5) *(Where)* If **paragraph (c) or paragraph (d) of subsection (4)** applies, the name of the *(person)* individual must not be removed from the panel until any review in respect of which that *(person)* individual was appointed to the Tribunal has concluded and until any service being performed by the *(person)* individual on the Australian Tribunal has concluded. 25

**49. Deputy Chairperson**—(1) In any case in which the Chairperson becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the Chairperson deems it not proper or desirable that he or she should adjudicate on any specified matter, the Governor-General, on the recommendation of the Minister of Justice, may appoint a suitable *(person)* individual to be the Deputy Chairperson and to act for the Chairperson for the period or purpose stated in the appointment. 30 35

(2) The Minister of Justice must consult the Minister before making a recommendation under **subsection (1)**.

(3) No *(person)* individual may be appointed as the Deputy Chairperson unless he or she is eligible for appointment as the Chairperson. 40

(4) Every Deputy Chairperson appointed under this section is, while acting for the Chairperson, deemed to be the Chairperson.

5 (5) No appointment of a Deputy Chairperson, and no act done by a Deputy Chairperson as such, and no act done by the Tribunal while he or she is acting as such, may in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

**50. Vacation of office by Chairperson and Deputy Chairperson**—(1) The Chairperson and any Deputy Chairperson may at any time resign his or her office by delivering a notice in writing to that effect to the Minister of Justice.

15 (2) The Chairperson and any Deputy Chairperson is deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 1967, adjudged bankrupt.

20 (3) The Chairperson and any Deputy Chairperson may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

**51. Remuneration and travelling allowances**—(1) The Tribunal is declared to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.

25 (2) Subject to **subsection (3)**, there must be paid to members of the Tribunal remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly.

30 (3) **Subsection (2)** does not apply to a District Court Judge who is a member of the Tribunal or to any member appointed under **section 46 (2) (b)**.

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 35 (4) (Aust.)

35 **52. Members of Tribunal not personally liable**—No member of the Tribunal is personally liable for any act done or omitted to be done by the Tribunal or any member of it in good faith in pursuance or intended pursuance of the functions, duties, powers, or authorities of the Tribunal.



*Parties to Review*

**53. Parties to review**—(1) The parties to a review are the applicant and the local registration authority.

(2) The Tribunal may direct that (*an organisation or*) a person be added as a party to any review (*where*) if the Tribunal is satisfied that the (*organisation or*) person has a substantial interest in the review and either—

(a) The (*organisation or*) person applies to be made a party to the review; or

(b) The Tribunal of its own motion considers it desirable.

(3) The Attorney-General, if in his or her opinion the public interest is or may be involved, may, on giving such notice to other parties as the Tribunal may direct, appear and be heard, or present submissions in writing, on any review.

*Conferences*

**54. Conferences**—(1) (*Where*) If the Tribunal is of the opinion that it would be appropriate for the parties to a review to attend a conference—

(a) For any purpose relating to the conduct of the review; or

(b) For the purpose of—

(i) Identifying the matters in issue between the parties; and

(ii) Trying to obtain agreement between the parties on the resolution of those matters,—

the Chairperson may nominate a member of the Tribunal appointed under **section 46 (1) (b) or section 46 (2) (b)** to chair the conference.

(2) The conference chairperson must give written notice to the parties—

(a) Inviting them to attend the conference; and

(b) Notifying them of the purpose of the conference; and

(c) Notifying them of the date, time, and place of the conference; and

(d) Notifying them that their representatives may, if the parties so wish, attend the conference.

**55. Procedure at conferences**—(1) The conference chairperson may, with the parties' consent, invite to attend a conference any person whose attendance would in the opinion of the conference chairperson be likely to assist in achieving any purpose for which the conference was called.

(2) There may be paid to any person attending any conference (*pursuant to*) under subsection (1) fees, allowances, and expenses as if that person were a witness attending before the

Tribunal to give evidence (*pursuant to*) under a summons issued on the motion of the Tribunal.

5 (3) The conference chairperson may allow the parties or their representatives or any other person invited to attend a conference to participate in the conference by—

(a) Telephone; or

(b) Closed-circuit television, (*where*) if such a facility is available; or

10 (c) Any other means of communication for which facilities are available.

(4) Any conference may be adjourned from time to time and from place to place.

15 (5) (*Where*)if the parties reach an agreement in relation to the conduct of the review, and the Tribunal is satisfied that an order recording the terms of the agreement is within its powers under **section 44 (1)**, the Tribunal may, if it thinks fit, make such an order.

20 (6) (*Where*)if the parties reach agreement on the matters in issue, and the Tribunal is satisfied that an order recording the terms of the agreement is within its powers under **section 44 (2)**, the Tribunal may, if it thinks fit, make such an order.

**56. Conference chairperson's participation in hearing—**(*Where*)if—

(a) A conference is held; and

25 (b) Either—

(i) The Tribunal makes an order under **section 44 (1)**;  
or

(ii) The Tribunal makes no order under **section 44**;  
and

30 (c) A party objects to the conference chairperson participating in the hearing of the review,—

the Chairperson must appoint another (*person*) individual under **section 46 (1) (b)** or **section 46 (2) (b)** to replace the conference chairperson on the Tribunal for the purposes of the hearing of  
35 the review.

**57. Evidence not admissible—**No evidence is admissible in any court, or before any person acting judicially, of any information, statement, or admission disclosed or made to any person in the course of a conference, except, with the parties'  
40 consent, at the hearing of the review.

*Procedure***58. Power of Tribunal if parties reach agreement—**

(1) If, at any stage of a review, the parties reach an agreement in relation to the conduct of the review, and the Tribunal is satisfied that an order recording the terms of the agreement is within its powers under **section 44 (1)**, the Tribunal may, if it thinks fit, make such an order. 5

(2) If, at any stage of a review, the parties reach agreement on the matters in issue, and the Tribunal is satisfied that an order recording the terms of the agreement is within its powers under **section 44 (2)**, the Tribunal may, if it thinks fit, make such an order. 10

**59. Hearing in absence of parties—(Where)If—**

(a) It appears to the Tribunal that a review can be adequately determined in the absence of the parties, their representatives, and witnesses; and 15

(b) The parties consent to the review being determined in the absence of the parties, their representatives, and witnesses,—

the Tribunal may conduct the review by considering the documents or other material lodged with or provided to the Tribunal. 20

**60. Avoidance of unnecessary formality—**The Tribunal must conduct any review with as little formality and technicality, and as much expedition, as is permitted by— 25

(a) The requirements of this Act; and

(b) A proper consideration of the review; and

(c) The principles of natural justice.

**61. Sittings of Tribunal—**(1) The Tribunal must fix a time and place for each sitting and cause notice to be given to the parties of the time and place so fixed. 30

(2) The Chairperson presides at every sitting of the Tribunal.

(3) No sitting of the Tribunal may take place, except for the purposes of interlocutory or other ancillary matters, unless all members are present. 35

(4) Every sitting of the Tribunal is held in such place as the Tribunal deems convenient.

(5) Every sitting of the Tribunal is held in public unless the Tribunal in any particular case, having regard to the interests of the parties and of all other persons concerned, considers that the sitting or any part of it should be held in private. 40

(6) The Tribunal may make an order prohibiting the publication of any report or description of a review or of any part of a review.

5 (7) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 who, without reasonable excuse, acts in contravention of any order made by the Tribunal under **subsection (6)**.

(8) Any sitting of the Tribunal may be adjourned from time to time and from place to place.

10 **62. Procedure of Tribunal**—(1) Any party to a review may appear personally or by the party's barrister, solicitor, or agent.

(2) The Tribunal may appoint a barrister or solicitor to appear and be heard in a review as counsel assisting the Tribunal.

15 (3) The decision of the majority of members is the decision of the Tribunal.

(4) Every decision of the Tribunal must be in writing and must state the reasons for the decision.

20 (5) Except as otherwise provided in this Part, the Tribunal must determine its own procedure.

**63. Evidence**—(1) The Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the review, whether or not the same would be admissible in a court of law.

25 (2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.

30 (3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

(4) Subject to **subsections (1) to (3)**, the Evidence Act 1908 applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

35 **64. Witness summons**—(1) The Tribunal may of its own motion, or on the application of any party to the review, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence in the review.

(2) The witness summons must state—

(a) The place where the person is to attend; and

40 (b) The date and time when the person is to attend; and

- (c) The papers, documents, records, or things that that person is required to bring and produce to the Tribunal; and
- (d) The entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and 5
- (e) The penalty for failing to attend.
- (3) The power to issue a witness summons may be exercised by the Tribunal or the Chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the Chairperson. 10
- 65. Service of summons**—(1) A witness summons may be served—
- (a) By delivering it personally to the person summoned; or
- (b) By posting it by registered letter addressed to the person summoned at that person's usual place of residence. 15
- (2) The summons must,—
- (a) *(Where)* If it is served under **subsection (1) (a)**, be served at least 24 hours before the attendance of the witness is required; or
- (b) *(Where)* If it is served under **subsection (1) (b)**, be served at least 10 working days before the date on which the attendance of the witness is required. 20
- (3) If the summons is posted by registered letter, it is deemed for the purposes of **subsection (2) (b)** to have been served at the time when the letter would be delivered in the ordinary course of post. 25
- 66. Witnesses' allowances**—(1) Every witness attending before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Summary Proceedings Act 1957, and those regulations apply accordingly. 30
- (2) On each occasion on which the Tribunal issues a summons under **section 64**, the Tribunal, or the *(person)* individual exercising the power of the Tribunal under **section 64 (3)**, must fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, must be paid or tendered to the witness. 35
- (3) The amount fixed under **subsection (2)** must be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or *(person)* individual, the 40

witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.

5 (4) (*Where*) If a party to the review has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness must be paid by that party.

(5) (*Where*) If the Tribunal has of its own motion issued the witness summons, the fees, allowances, and travelling expenses payable to the witness must be paid by the Crown.

10 **67. Privileges and immunities**—(1) Witnesses appearing before the Tribunal have the same privileges and immunities as witnesses have in proceedings in a District Court.

(2) Counsel and agents appearing before the Tribunal have the same privileges and immunities as counsel have in proceedings in a District Court.

15 **68. Non-attendance or refusal to co-operate**—(1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without reasonable excuse,—

20 (a) Fails to attend in accordance with the summons; or

(b) Refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the review; or

25 (c) Fails to produce any such paper, document, record, or thing.

(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$1,500.

30 (3) No person summoned to attend before the Tribunal may be convicted of an offence against **subsection (1)** unless there was tendered or paid to that person travelling expenses in accordance with **section 66**.

35 **69. Contempt of Tribunal**—(1) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who—

(a) Assaults, threatens, or intimidates, or intentionally insults, the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to, or returning from, any sitting; or

40 (b) Intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or

(c) Intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any sitting.

(2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any *(person)* individual whose behaviour, in that member's opinion, constitutes an offence against **subsection (1)**, whether or not such *(person)* individual is charged with the offence; and any member of the Police may take such steps as are reasonably necessary to enforce such an exclusion. 5  
10

**70. Costs**—(1) The Tribunal may order any party to pay to any other party such costs and expenses (including witness expenses) incurred by that other party as the Tribunal considers reasonable.

(2) Any such order as to costs may be filed in a District Court and may be enforced as a judgment of that court. 15

**71. Stating case for High Court**—(1) The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the review or of its own motion, state a case for the opinion of the High Court on any question of law arising in the review. 20

(2) The Tribunal must give notice to the parties to the review of the Tribunal's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed. 25

(3) Except *(where)* when the Tribunal intends to state the case of its own motion, the question must be in the form of a special case to be drawn up by the parties to the review, and, if the parties do not agree, to be settled by the Tribunal.

(4) *(Where)* If the Tribunal intends to state a case of its own motion, it must itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court. 30

(5) Every case stated for the High Court under this section must be dealt with in accordance with rules of court. 35

(6) The High Court must hear and determine any question submitted to it under this section, and must remit the case with its opinion to the Tribunal.

**72. Appeal on question of law**—(1) *(Where)* If the Tribunal does not give a direction under **section 53 (2)** in relation to an application by *(an organisation or)* a person to be made a party 40

to a review, the (*organisation or*) person concerned may appeal to the High Court.

5 (2) (*Where*) If any party to any review is dissatisfied with any decision of the Tribunal as being erroneous in point of law, that party may appeal to the High Court on that question of law.

(3) Every appeal under this section must be dealt with in accordance with rules of court.

10 (4) Subject to any order of the High Court, every decision of the Tribunal against which an appeal is lodged continues in force or has effect pending the determination of the appeal.

**73. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

15 (a) Prescribing a fee to be paid by an applicant making an application under **section 42**:

(b) Prescribing the procedure to be followed under this Act in respect of reviews.

**74. New Zealand member of Australian Tribunal**—  
20 (*Where*) If the Chairperson or (*a person*) an individual whose name is entered on the panel serves as a member of the Australian Tribunal for the purposes of a review under **section 33** of the Australian Act,—

25 (a) The Australian Tribunal is deemed to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951; and

30 (b) The Chairperson or (*person*) individual must be paid—  
(i) Remuneration by way of fees, salary, or otherwise in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly; and

(ii) Travelling allowances and travelling expenses in respect of time spent in travelling in the service of the Australian Tribunal, at such rate as the Minister of State Services from time to time approves; and

35 (iii) Such other allowances at such rate as the Minister of State Services from time to time approves.

## PART 5

### EXCLUSIONS AND EXEMPTIONS

40 **75. Meaning of “endorsed”**—For the purposes of **sections 78 (2), 80 (2), 82 (2), 83 (2), (and 85 (2)) 85 (2), and 87 (2)**, terms of proposed regulations are endorsed—



- (a) By New Zealand, when the Minister has given notice in the *Gazette* of his or her intention to make a recommendation to the Governor-General to make the regulations; and
- (b) By the Commonwealth, when regulations to the same effect as the proposed regulations have been made by the Commonwealth; and 5
- (c) By a State, when a notice setting out and endorsing regulations to the same effect as the proposed regulations has been published in the official gazette of— 10
- (i) Each State (other than the Australian Capital Territory or the Northern Territory), by the Governor of the State or a Minister of the Crown for the State:
- (ii) The Australian Capital Territory, by the Chief Minister of the Territory: 15
- (iii) The Northern Territory, by the Administrator of the Territory.
- Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 43 (Aust.) 20

**76. Interpretation of Schedules**—(1) A reference to a law, in **Schedule 1**, includes—

- (a) Any amendment to any provision of that law made after **section 77** comes into force; or
- (b) Any provision inserted in that law after **section 77** comes into force; or 25
- (c) Any provision substituted for another provision in that law after **section 77** comes into force,—
- if the subject matter of that amendment or provision is described by one of the categories in **Schedule 1**. 30
- (2) A reference to a law, in **Schedule 2** or **Schedule 3**, includes—
- (a) Any amendment to any provision of that law made after **section 79** or **section 81**, as the case requires, comes into force; or
- (b) Any provision inserted in that law after **section 79** or **section 81**, as the case requires, comes into force; or 35
- (c) Any provision substituted for another provision in that law after **section 79** or **section 81**, as the case requires, comes into force; or
- (d) Any law passed in substitution for that law,— 40
- if that amendment or provision or law does not increase the scope of the exemption effected by **Schedule 2** or **Schedule 3**, as the case requires, at the date on which **section 79** or **section 81**, as the case requires, comes into force.

(3) Notwithstanding anything in the Acts Interpretation Act 1924, a reference to an Act in any schedule includes, unless the reference to the Act indicates otherwise,—

- 5 (a) Any rules and regulations made under the Act; and  
 (b) Any order, proclamation, notice, or other statutory instrument made or given under the Act.
- (4) In **subsection (3)**, *(the term)* “regulations”—
- 10 (a) Has the same meaning as it has in section 2 of the Acts and Regulations Publication Act 1989; and  
 (b) Includes any instruments that have, *(pursuant to)* under section 6A of the Regulations Act 1936 or section 14 of the Acts and Regulations Publication Act 1989 or any other Act, been printed or published as if they were regulations.

15 *New (Unanimous)*

- (5) A law specified in **Schedules 1, 2, or 3**, that deals not only with requirements described in **section 10 (2)** relating to the sale of goods but also with the registration of an occupation, is excluded or exempted only to the extent that it deals with requirements described in **section 10 (2)** relating to the sale of goods.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 4(2) and (3) (Aust.)

25 **77. Exclusions**—This Act does not affect the operation of any law, or any provision of any law, specified or described in a category in **Schedule 1**.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 44(1) (Aust.)

30 **78. Amendments to Schedule 1**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 1** by adding another category.

35 (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister is satisfied that all of the then participating jurisdictions have endorsed the terms of the proposed regulations.

(3) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 1** by—

- (a) Adding another law, or another provision of a law, to any of the categories:
- (b) Omitting a law from any of the categories and substituting another law, or omitting a provision of a law from any of the categories and substituting another provision of that law: 5
- (c) Omitting a category.
- (4) The Minister must not make a recommendation under **subsection (3)** unless the Minister has given notice in the *Gazette* of his or her intention to do so. 10
- (5) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 1** by omitting a law or a provision of a law.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 44 (2)–(4) (Aust.) 15
- 79. Permanent exemptions**—This Act does not affect the operation of any law, or any provision of any law, specified or described in **Schedule 2**.
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 45 (1) (Aust.) 20
- 80. Amendments to Schedule 2**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 2** by— 25
- (a) Adding another law or another provision of a law:
- (b) Omitting a law and substituting another law, or omitting a provision of a law and substituting another provision of that law.
- (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister is satisfied that all of the then participating jurisdictions have endorsed the terms of the proposed regulations. 30
- (3) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 2** by omitting a law or a provision of a law. 35
- Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 45(3), (4), (5)(b) (Aust.)
- 81. Special exemptions**—This Act does not affect the operation of any law, or any provision of any law, specified or described in **Schedule 3** until the expiry of the exemption period 40

or, as the case requires, the extended exemption period relating to that law or that provision.

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 47(1) and (2) (Aust.)

5       **82. Amendments to Schedule 3**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations—

10       (a) Extending the exemption period by a period specified in the regulations, being a period of no longer than 12 months at any one time, in relation to any law or any provision of any law specified or described in **Schedule 3**; or

15       (b) Amending **Schedule 3** by omitting any law, or any provision of any law, in relation to which the exemption period or, as the case may be, the extended exemption period, has expired or has otherwise ceased to be of effect.

20       (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister is satisfied that no fewer than two-thirds of the then participating jurisdictions have endorsed the terms of the proposed regulations.

25       (3) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 3** by omitting a law or a provision of a law.

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 47 (2)–(5) (Aust.)

30       **83. Amendments to Schedules 2 and 3**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations that amend **Schedule 2** by adding to it a law or a provision of a law specified or described in **Schedule 3** and amend **Schedule 3** by omitting from it that law or that provision of a law.

35       (2) The Minister must not make a recommendation under **subsection (1)** unless the Minister is satisfied either—

(a) That all of the then participating jurisdictions have endorsed the terms of the proposed regulations; or

(b) That—

40       (i) No fewer than two-thirds of the then participating jurisdictions have endorsed the terms of the proposed regulations; and

(ii) A period of not less than 5 years has elapsed since **section 81** came into force.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 45 (5)(a) (Aust.)

**84. Exempt occupations**—This Act does not apply to any law, or any provision of any law, that relates to any occupation and is specified or described in **Schedule 4**. 5

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 48(1) (Aust.)

**85. Amendments to Schedule 4**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 4** by— 10

(a) Adding another law or another provision of a law:

(b) Omitting a law and substituting another law, or omitting a provision of a law and substituting another provision of that law. 15

(2) The Minister must not make a recommendation under **subsection (1)** unless the Minister is satisfied that all of the then participating jurisdictions have endorsed the terms of the proposed regulations. 20

(3) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations amending **Schedule 4** by omitting a law or a provision of a law. 25

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 48(2) to (4) (Aust.)

**86. Regulations relating to temporary exemptions**—(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations exempting a particular kind of goods or any law, or any provision of any law, relating to a particular kind of goods from the provisions of this Act. 30

(2) No exemption under regulations made under **subsection (1)** may exceed the period of 12 months in total, whether the exemption is made in one set of regulations or in more than one set of regulations. 35

(3) The Minister must not make a recommendation under **subsection (1)** unless he or she is satisfied that every exemption effected by the regulations is substantially for the purpose of protecting the health and safety of persons in New Zealand or 40

avoiding, remedying, or mitigating any adverse effects of activities on the environment in New Zealand.

Cf. Trans-Tasman Mutual Recognition Bill 1996, cl. 46 (Aust.)

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*New (Unanimous)*

**87. Regulations continuing temporary exemptions—**

(1) The Governor-General may, from time to time, on the recommendation of the Minister, by Order in Council, make regulations—

- 10 (a) Continuing or reviving the effect of an exemption under **section 86:**  
 (b) Discontinuing an exemption continued or revived under this section.

15 (2) The Minister must not recommend the making of regulations under **subsection (1) (a)** unless the Minister is satisfied that—

- 20 (a) An additional period is necessary to enable legislative or other action to be taken to implement a recommendation of a ministerial council made in relation to goods or laws that are the subject of an exemption under **section 86**; and  
 (b) No fewer than two-thirds of the then participating jurisdictions have endorsed the terms of the proposed regulations.

25 (3) Regulations made under **subsection (1) (a)** may continue or revive an exemption—

- (a) Wholly or partly; and  
 (b) With or without modification.  
 (4) A modification may only,—  
 30 (a) In the case of an exemption relating to goods,—  
     (i) Limit the circumstances in which the goods are exempt; or  
     (ii) Provide that the exemption does not apply if certain standards or conditions are complied with in  
 35 relation to the goods;  
 (b) In the case of an exemption relating to a law,—  
     (i) Modify the operation of the law while the exemption operates; or  
     (ii) Provide that the exemption does not apply in  
 40 relation to particular goods if certain standards or conditions are complied with in relation to the goods.

*New (Unanimous)*

(5) No exemption may be continued or revived under regulations made under **subsection (1) (a)** for a period exceeding 12 months in total, whether the exemption is continued or revived in one set of regulations or in more than one set of regulations. 5

Cf. *Trans-Tasman Mutual Recognition Bill 1996*, cl. 47 (Aust.)

## PART 6

## AMENDMENTS TO LAW PRACTITIONERS ACT 1982

**88. Amendments to Law Practitioners Act 1982**—(1) The Law Practitioners Act 1982 is amended by repealing section 44, and substituting the following section: 10

“44. **Qualifications**—(1) A person is qualified for admission as a barrister and solicitor if he or she is in at least 1 of the categories in this section. 15

“(2) The first category is persons who—

“(a) Are at least 20 years old; and

“(b) Have passed, or been credited with passing, the examination in general knowledge and law prescribed by the Council of Legal Education; and 20

“(c) Have all the other qualifications for admission (if any) prescribed by the Council of Legal Education.

“(3) The second category is persons who—

“(a) Are at least 20 years old; and

“(b) Have been admitted as a barrister, solicitor, advocate, or attorney by a superior court in any other country; and 25

“(c) Comply with the conditions, hold the qualifications, and pass the examinations required by the Council of the New Zealand Law Society in consultation with the Council of Legal Education. 30

“(4) The third category is persons who have been issued with a certificate by a Registrar stating that the candidate has given notice under **section 19** of the **Trans-Tasman Mutual Recognition Act 1997** to the Registrar acting as a local registration authority under that Act.” 35

(2) The Law Practitioners Act 1982 is amended by repealing section 46, and substituting the following section:

*New (Unanimous)*

- “46. **Admission**—(1) A candidate seeking admission on the ground that he or she is qualified under **section 44 (2) or section 44 (3)** must apply to the Court in accordance with this Act and with any rules made under this Act.
- 5 “(2) The Court or a Judge must make an order admitting the candidate as a barrister and solicitor of the Court if—
- “(a) The Court or Judge is satisfied that the candidate—
- 10 “(i) Is qualified for admission under **section 44 (2) or section 44 (3)**; and
- “(ii) Is of good character and a fit and proper person to be admitted; and
- “(b) The candidate has taken the following oath:
- 15 ‘I, A.B., swear that I will truly and honestly conduct myself in the practice of a barrister and solicitor according to the best of my knowledge and ability.’
- “(3) A candidate seeking admission on the ground that he or she is qualified under **section 44 (4)** must apply to the Court.
- 20 “(4) The Court or a Judge must make an order admitting the candidate as a barrister and solicitor of the Court if the Court or Judge is satisfied that the candidate is qualified for admission under **section 44 (4)**.”
- (3) The Law Practitioners Act 1982 is amended by inserting, after section 51, the following section:
- 25 “51A. **Removal from roll if deemed registration ceases in some circumstances**—(1) The Registrar must remove from the roll the name of a practitioner who—
- “(a) Was admitted under **section 46 (4)**; and
- 30 “(b) Had deemed registration under the **Trans-Tasman Mutual Recognition Act 1997** at the time he or she was admitted,—
- if the Registrar receives written notice from a Registrar acting as a local registration authority that the deemed registration has ceased for a reason in **section 28 (1) (a) or section 28 (1) (c) to (e)** of that Act.
- 35 “(2) The Registrar must cause to be published in the *Gazette* a notice to the effect that the name has been removed from the roll under this section.
- 40 “(3) The expenses incurred in publishing the notice must be paid by the practitioner.”



## SCHEDULES

*Struck Out (Unanimous)***Section 77**

## FIRST SCHEDULE

## EXCLUSIONS

**Category 1**

*Laws relating to customs controls and tariffs, to the extent that those laws provide for—*

- (a) The imposition of tariffs or the taking of related measures; or*
  - (b) The imposition of anti-dumping duties or countervailing duties or the taking of related measures; or*
  - (c) The prohibition or restriction of imports—*
- and deal with any requirement described in section 10 (2) of this Act relating to the sale of goods*

Customs Act 1966

—Section 48

—Any Order in Council made or deemed to have been made under section 48 and in force

—First Schedule

Temporary Safeguard Authorities Act 1987

Dumping and Countervailing Duties Act 1988

Tariff Act 1988

Any other provision of the law by or under which goods are prohibited from importation into New Zealand, or the importation of goods into New Zealand is restricted

**Category 2**

*Laws relating to intellectual property, to the extent that those laws—*

- (a) Provide for the protection of intellectual property rights; and*
- (b) Deal with any requirement described in section 10 (2) of this Act relating to the sale of goods*

Designs Act 1953

Patents Act 1953

Trade Marks Act 1953

Geneva Conventions Act 1958

Commonwealth Games Symbol Protection Act 1974

Flags, Emblems, and Names Protection Act 1981

Plant Variety Rights Act 1981

Copyright Act 1994

Geographical Indications Act 1994

Layout Designs Act 1994

**Category 3**

*Laws relating to international obligations, to the extent that those laws deal with any requirement described in section 10 (2) of this Act relating to the sale of goods*

United Nations Act 1946

Trade in Endangered Species Act 1989

Ozone Layer Protection Act 1990

*Struck Out (Unanimous)*

FIRST SCHEDULE—*continued*

EXCLUSIONS—*continued*

**Category 4**

*Laws relating to taxation, to the extent that those laws provide for the imposition of taxes on the sale of locally produced and imported goods in a non-discriminatory way and deal with any requirement described in section 10 (2) of this Act relating to the sale of goods*

Estate and Gift Duties Act 1968  
 Gaming Duties Act 1971  
 Stamp and Cheque Duties Act 1971  
 Goods and Services Tax Act 1985

*New (Unanimous)*

SCHEDULE 1

Section 77

EXCLUSIONS

**Category 1**

This category concerns laws relating to customs controls and tariffs, to the extent that those laws provide for—

- (a) The imposition of tariffs or the taking of related measures; or
- (b) The imposition of anti-dumping duties or countervailing duties or the taking of related measures; or
- (c) The prohibition or restriction of imports—

and would be affected by the Trans-Tasman mutual recognition principle in relation to goods.

The laws specified or described below are excluded from the operation of this Act:

Temporary Safeguard Authorities Act 1987  
 Dumping and Countervailing Duties Act 1988  
 Tariff Act 1988  
 Customs and Excise Act 1996

—Section 54

—Any Order in Council made or deemed to have been made under section 54 and in force

—First Schedule

Any other provision of the law by or under which goods are prohibited from importation into New Zealand, or the importation of goods into New Zealand is restricted

**Category 2**

This category concerns laws relating to intellectual property, to the extent that those laws—

- (a) Provide for the protection of intellectual property rights; and
- (b) Would be affected by the Trans-Tasman mutual recognition principle in relation to goods.

FIRST SCHEDULE—*continued*EXCLUSIONS—*continued**New (Unanimous)*

The laws specified or described below are excluded from the operation of this Act:

Designs Act 1953

Patents Act 1953

Trade Marks Act 1953

Geneva Conventions Act 1958

Commonwealth Games Symbol Protection Act 1974

Flags, Emblems, and Names Protection Act 1981

Plant Variety Rights Act 1981

Copyright Act 1994

Geographical Indications Act 1994

Layout Designs Act 1994

Any other enactment, or any rule of law, that provides, directly or indirectly, for the protection of intellectual property rights

**Category 3**

This category concerns laws relating to international obligations, to the extent that those laws would be affected by the Trans-Tasman mutual recognition principle in relation to goods.

The laws specified or described below are excluded from the operation of this Act:

United Nations Act 1946

Trade in Endangered Species Act 1989

Ozone Layer Protection Act 1990

**Category 4**

This category concerns laws relating to taxation, to the extent that those laws—

(a) Provide for the imposition of taxes on the sale of locally produced and imported goods in a non-discriminatory way; and

(b) Would be affected by the Trans-Tasman mutual recognition principle in relation to goods.

The laws specified or described below are excluded from the operation of this Act:

Estate and Gift Duties Act 1968

Gaming Duties Act 1971

Stamp and Cheque Duties Act 1971

Goods and Services Tax Act 1985

SCHEDULE 2

Section 79

PERMANENT EXEMPTIONS

- Wildlife Act 1953, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any wildlife (within the meaning of the Wildlife Act 1953)
- Explosives Act 1957, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any explosive of the sixth (ammunition) class of the Schedule of the Explosives Act 1957 or the seventh (firework) class of the Schedule of the Explosives Act 1957
- Crimes Act 1961, section 124, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any indecent model or object
- Radiation Protection Act 1965, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any radioactive material (within the meaning of the Radiation Protection Act 1965)
- Animal Remedies Act 1967, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any animal remedy (within the meaning of the Animal Remedies Act 1967)
- Antiquities Act 1975, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any antiquity (within the meaning of the Antiquities Act 1975)
- Gaming and Lotteries Act 1977, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any gaming machine (within the meaning of the Gaming and Lotteries Act 1977)
- Arms Act 1983, to the extent that it deals with any requirement described in **section 10 (2)** applicable to the sale of any item for which a dealer's licence, firearms licence, or permit is required under the Arms Act 1983
- Films, Videos, and Publications Classification Act 1993

*Struck Out (Unanimous)*

, to the extent that it deals with any requirement described in **section 10 (2)** of this Act applicable to the sale of any publication that is objectionable within the meaning of the Films, Videos, and Publications Classification Act 1993 in the hands of all persons and for all purposes

Any law relating to quarantine, to the extent that it deals with any requirement described in **section 10 (2)** relating to the sale of goods and does not amount to an arbitrary or unjustifiable discrimination or a disguised restriction on trade between Australia and New Zealand.

Any law that—

- (a) Is enacted or made substantially for the purpose of preserving a class of animals or plants from extinction in New Zealand; and
- (b) Prohibits or restricts the capture, killing, possession, or sale of animals of that class in New Zealand or the killing, possession, or sale of plants of that class in New Zealand,—

SCHEDULE 2—*continued*PERMANENT EXEMPTIONS—*continued*

to the extent that it deals with any requirement described in **section 10 (2)** relating to the sale of goods

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**Section 81**

## SCHEDULE 3

## SPECIAL EXEMPTIONS

*Laws Relating to Dangerous Goods, Hazardous Substances, and Industrial Chemicals*

Until the coming into force of section 150 of the Hazardous Substances and New Organisms Act 1996, laws that will be repealed or revoked on the coming into force of that section, to the extent that those laws deal with any requirement described in **section 10 (2)** relating to the sale of goods

On the coming into force of section 150 of the Hazardous Substances and New Organisms Act 1996, that Act

*Laws Relating to Electromagnetic Compatibility and Radiocommunications Equipment*

Radiocommunications (Radio) Regulations 1993, Part V

*Laws Relating to Gas Appliance Standards*

Gas Act 1992

*Laws Relating to Road Vehicles*

Transport Act 1962

Road User Charges Act 1977

Transport Services Licensing Act 1989

Land Transport Act 1993

*Laws Relating to Therapeutic Goods*

Misuse of Drugs Act 1975

Medicines Act 1981

Dietary Supplements Regulations 1985

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**Section 84**

## SCHEDULE 4

## EXEMPT LAWS RELATING TO OCCUPATIONS

Medical Practitioners Act 1995, to the extent that it deals with registered medical practitioners