

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**TRANS-TASMAN MUTUAL RECOGNITION (AMENDMENT) BILL 1998  
EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Chief Minister**

## TRANS-TASMAN MUTUAL RECOGNITION (AMENDMENT) BILL 1998

### Outline

#### General

This is an amending Bill. It amends the *Trans-Tasman Mutual Recognition Act 1997*, referred to in the amending Bill as the Principal Act, and brings it into line with the 1996 Trans-Tasman Mutual Recognition Arrangement. The object of the Principal Act is to enable the enactment of legislation (in the form of the proposed Commonwealth Act) applying uniformity throughout Australia for the recognition of regulatory standards adopted in New Zealand regarding goods and occupations.

#### Overall Legislative Scheme

The Trans-Tasman Mutual Recognition Arrangement (the Arrangement) was signed by the Commonwealth, States and Territories on 14 June 1996 and by New Zealand on 9 July 1996. The purpose of the Arrangement is to give effect to a scheme implementing mutual recognition principles between the parties relating to the sale of goods and the registration of occupations, consistent with the protection of public health and safety and the environment. The objective of the Arrangement is to remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand, and to thereby facilitate trade between the two countries.

The Principal Act forms part of a larger legislative scheme that involves the enactment of Bills by the ACT, Northern Territory and the States, the Commonwealth and New Zealand. The larger legislative scheme has two components:

- an Australian component, and
- a New Zealand component.

The Principal Act is concerned with the Australian component of this larger legislative scheme. It requests the Commonwealth to enact legislation for the purposes of implementing the Trans-Tasman Mutual Recognition Arrangement. The *Trans-Tasman Mutual Recognition Act 1997* of New Zealand, which is concerned with the New Zealand component of this total legislative scheme, was enacted by the New Zealand Parliament on 20 August 1997.

#### Background

The Commonwealth Bill to implement the Arrangement was passed in December 1997. However, the Act that was passed by the Commonwealth Parliament, although similar to that set out in the schedule to the ACT Act, is different in that several minor changes were made. An ACT amending Bill is therefore required to pick up these changes

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The amending bill will remove any doubt about the status of the ACT as a participating jurisdiction within the meaning of the Commonwealth Act. The amendments ensure that the intent of the Arrangement is preserved in the following ways

- Schedule 1 to the Commonwealth Bill annexed to the principal Act sets out a list of laws which are excluded from the Act. The amendments allow participating jurisdictions (including the Commonwealth) to remove, or reduce the extent of, their own legislation from the list without the need to seek agreement from other participants.
- Schedule 3 to the Commonwealth Bill annexed to the principal Act is a list of special exemptions to the Act. The amendments allow participants to change a specially exempt law to a permanent exemption or to add to the list of special exemptions with the agreement of two-thirds of other participants, rather than unanimous consent, as currently required in the principal Act.
- The amendments also add to Schedule 3 to the Commonwealth Bill annexed to the principal Act a number of consumer protection laws in each jurisdiction which were omitted from the principal Act and clarify the powers of the Governor General to amend Schedule 3 in certain circumstances

### Revenue/Cost Implications

The Bill has no revenue or cost implications.

### Formal Clauses

Section 1 sets out the name (also called the short title) of the proposed Act.

Section 2 provides for the commencement of the proposed Act. Subsection (1) allows that Sections 1 and 2 commence on the day on which the Act is notified in the *Gazette*. Subsection (2) allows that the remaining provisions will be taken to have commenced on 16 January 1998, that is, on the day on which the Principal Act was commenced.

Section 3 declares the Principal Act as the *Trans-Tasman Mutual Recognition Act 1997*.

Subsection 4(a) provides an amendment to subsection 44(4) of the annexed Commonwealth Bill. The objective of the amendment is to add a provision that a regulation made to amend Schedule 1 (Excluded laws), that merely omits or reduces the extent of an exclusion of a law of an individual State from the Schedule, may be made if the State has endorsed the regulation. This provision omits the need to gain unanimous endorsement of all of the then participating jurisdictions in these circumstances.

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Subsection 4(b) provides an amendment to subsection 45(5) of the annexed Commonwealth Bill. The object of the amendment is to ensure that when a regulation is to be made to change a special exemption to a permanent exemption and provided that the regulation will not take effect within 5 years after the commencement of section 48, then the regulation can be made with the endorsement of at least two-thirds of then participating jurisdictions. This omits the requirement for unanimous consent and in so doing aligns the annexed Commonwealth Bill with the Bill that was passed by the Commonwealth in December 1997. The amendment supports the original intention of the Trans-Tasman Mutual Recognition Arrangement that was signed by Heads of Government in June 1996.

The amendment also adds that if a regulation to be made merely omits or reduces the extent of an exemption of a law of an individual State from the already listed schedule of permanent exemptions, then the regulation may be made if the State has endorsed the regulation. This provision omits the need to gain unanimous endorsement of all of the then participating jurisdictions in these circumstances.

Subsection 4(c) amends subsection 48(4) of the annexed Commonwealth Bill. The object of the amendment is to clarify that the Governor General may only make regulations amending Schedule 3 (Special Exemptions) for the purposes of subsection (2) or (6). Subsection (2) stipulates that a special exemption operates for no longer than 12 months after the commencement of section 48. However, the exemption may be extended either wholly or in part by regulations where the extensions are to be made in intervals that individually do not exceed 12 months duration. Subsection (6) stipulates that where a regulation merely omits any matter relating to an exemption that has expired or has otherwise ceased to be in force, the regulation may be made if the Commonwealth has endorsed the regulation.

Subsection 4(d) amends subsection 48(5) of the annexed Commonwealth Bill. The object of the amendment is to ensure that, when in the limited circumstances proposed by the Act, special exemptions are proposed to be made, the endorsement of two-thirds of the participating jurisdictions is needed. This corrects the requirement that unanimous consent is required and in so doing aligns the annexed Commonwealth Bill with the Bill that was passed by the Commonwealth in December 1997. The amendment supports the original intention of the Trans-Tasman Mutual Recognition Arrangement as signed by Heads of Government in June 1996

Subsection 4(e) is a consequential amendment. The object of the amendment is to replace subsection 48(6)(a) of the annexed Commonwealth Bill. As a consequence of the amendment stipulated in subsection 4(d) above, subsection 48(6)(a) of the annexed Commonwealth Bill is no longer required. The amendment also adds that where a regulation merely omits any matter relating to an exemption that has expired or ceases to be in force, then the regulation can be made if the Commonwealth has endorsed the regulation. This omits the need to gain the endorsement of two-thirds of the then participating jurisdictions in these circumstances.

Subsection 4(f) provides an amendment to Clause 2 of Schedule 3 to the annexed Commonwealth Bill. The objective of the amendment is to add a number of laws dealing with consumer protection in each Australian jurisdiction to the list of special exemptions to the annexed Commonwealth Bill. These laws were omitted from the original bill.