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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Mutual Recognition Amendment Bill 2021**

**No.     , 2021**

*(Prime Minister)*

**A Bill for an Act to amend the *Mutual Recognition Act 1992*, and for related purposes**



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**A Bill for an Act to amend the *Mutual Recognition Act 1992*, and for related purposes**

The Parliament of Australia enacts:

**1 Short title**

This Act is the *Mutual Recognition Amendment Act 2021*.

**2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	1 July 2021.	1 July 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Amendments

### *Mutual Recognition Act 1992*

#### **1 Title**

Omit “and occupations”, substitute “, **occupations and activities**”.

#### **2 After section 3**

Insert:

#### **3A Simplified outline of this Act**

The purpose of this Act is to promote the goal of freedom of movement of goods and service providers in a national market in Australia.

Part 2 allows goods that have been produced in or imported into a first State to be sold in a second State without needing to comply with certain requirements in the second State (such as requirements relating to the standards of the goods or the way the goods are presented). Goods may be permanently or temporarily exempted from the application of that Part.

Part 3 provides for individuals who are registered for an occupation in one State to be registered for, and carry on the activities of, an equivalent occupation in a second State. Ministers from 2 or more States may determine which occupations are equivalent between their States.

Part 3A provides for individuals who are registered for an occupation in their home State to carry on activities covered by their home State occupation in a second State. The activities are carried on in the second State under automatic deemed registration. A State Minister may exempt registrations from automatic deemed registration because of a significant risk to consumer protection, the environment, animal welfare or the health or safety of workers or the public.

The mutual recognition principle underlies each of Parts 2, 3 and 3A.

The power to enact this Act is provided by:

- (a) the States referring to the Parliament of the Commonwealth the power to enact this Act as originally enacted or subsequently amended, under paragraph 51(xxxvii) of the Commonwealth Constitution; and
- (b) the States adopting this Act as originally enacted or subsequently amended, under paragraph 51(xxxvii) of the Commonwealth Constitution; and
- (c) section 122 of the Commonwealth Constitution (which deals with Territories).

### 3 Subsection 4(1)

Insert:

**activity** means an activity authorised to be carried on under an occupation that requires registration.

**automatic deemed registration** has the meaning given by subsection 42D(3).

**commencement day**, for a State, means:

- (a) 1 July 2021 (unless paragraph (b) applies); or
- (b) for a State that is a pre-adoption State on 1 July 2021—the day the State adopts this Act, as amended by the *Mutual Recognition Amendment Act 2021*.

### 4 Subsection 4(1) (definition of **conditions**)

After “occupations”, insert “or registration”.

### 5 Subsection 4(1)

Insert:

**covers**: an occupation **covers** an activity if a person must be registered for the occupation to carry on the activity.



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**6 Subsection 4(1) (definition of *deemed registration*)**

Repeal the definition.

**7 Subsection 4(1)**

Insert:

***first State:***

- (a) in, and in relation to, Part 2—has the meaning given by subsection 8(2); and
- (b) in, and in relation to, Part 3—has the meaning given by subsection 16(2).

***home State*** has the meaning given by subsections 42A(3) and (4).

***home State registration*** has the meaning given by paragraph 42D(1)(b).

***interim deemed registration*** has the meaning given by subsection 25(2).

**8 Section 4(1) (at the end of the definition of *local registration authority*)**

Add:

Note: Local registration authorities are given additional functions under this Act.

**9 Section 4(1)**

Insert:

***mutual recognition principle:***

- (a) as applying to goods—has the meaning given by subsection 8(1); and
- (b) as applying to occupations that are equivalent—has the meaning given by subsection 16(1); and
- (c) as applying to activities covered by occupations—has the meaning given by subsection 42A(1).

**10 Subsection 4(1) (definition of *participating jurisdiction*)**

Omit “section 43”, substitute “subsection 5(4)”.

## 11 Subsection 4(1)

Insert:

***pre-adoption State*** means a State (other than a Territory):

- (a) that is a participating jurisdiction; and
- (b) that has not referred to the Commonwealth Parliament the power to amend this Act, in accordance with the *Mutual Recognition Amendment Act 2021*, under paragraph 51(xxxvii) of the Commonwealth Constitution; and
- (c) that has not adopted this Act, as amended by the *Mutual Recognition Amendment Act 2021*.

***principal place of residence*** of a person means the place of residence or home that the person primarily occupies, on an ongoing and permanent basis, as the person's settled or usual home.

***principal place of work*** of a person, in relation to an activity covered by an occupation, means the place in which the person primarily carries on that occupation.

***public protection requirement*** means a requirement regarding insurance, fidelity funds, trust accounts, minimum financial requirements or the like that is designed to protect the public, clients, customers or others.

***registration fee*** has the meaning given by subsection 42K(2).

## 12 Subsection 4(1) (definition of requirements)

Repeal the definition, substitute:

***requirements***:

- (a) when used in relation to goods, means requirements, prohibitions, restrictions or conditions; and
- (b) when used in relation to secrecy, privacy or confidentiality, means laws, binding administrative arrangements, directions or other limitations, protections or processes.

## 13 Subsection 4(1)

Insert:

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***second State:***

- (a) in, and in relation to, Part 2—has the meaning given by subsection 8(2); and
- (b) in, and in relation to, Part 3—has the meaning given by subsection 16(2); and
- (c) in, and in relation to, Part 3A—has the meaning given by subsection 42A(2).

***second State occupation*** has the meaning given by paragraph 42D(1)(c).

**14 Subsection 4(1) (definition of *substantive registration*)**

Omit “deemed registration”, substitute “interim deemed registration or automatic deemed registration”.

**15 Subsection 4(1)**

Insert:

***vulnerable person character test*** means a character test or a fit or proper person test conducted for the purposes of determining whether a person may carry on an activity in relation to children, young people or vulnerable people.

**16 At the end of section 5**

Add:

***Effect of amendments to this Act on pre-adoption States***

- (3) Despite subsections (1) and (2), the amendments of this Act made by the *Mutual Recognition Amendment Act 2021* do not apply to a pre-adoption State.

Note: Two versions of this Act will apply in Australia unless all States refer or adopt this Act as amended by the *Mutual Recognition Amendment Act 2021*.

The amended version of this Act applies in the Australian Capital Territory, the Northern Territory and any State that, before those amendments commence, refers power to the Commonwealth under paragraph 51(xxxvii) of the Commonwealth Constitution to enact the amendments made by the *Mutual Recognition Amendment Act 2021*.

The unamended version of this Act continues to apply to any pre-adoption State unless that State adopts those amendments.

*Definition of participating jurisdiction*

(4) A *participating jurisdiction* is:

- (a) a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact this Act as originally enacted, or that adopts this Act as originally enacted, under paragraph 51(xxxvii) of the Commonwealth Constitution; or
- (b) a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act as originally enacted, or that enables this Act as originally enacted to apply to it.

**17 Section 8 (at the end of the heading)**

Add “—goods”.

**18 Subsection 8(1)**

Omit “mutual recognition principle”, substitute “*mutual recognition principle*”.

**19 Subsections 8(2) and (3)**

Repeal the subsections, substitute:

- (2) This Part deals with goods produced in or imported into a State (the *first State*) and their sale in another State (the *second State*).

**20 Section 16 (at the end of the heading)**

Add “—equivalent occupations”.

**21 Subsection 16(1)**

Omit “mutual recognition principle as applying to occupations”, substitute “*mutual recognition principle* as applying to occupations that are equivalent”.

**22 At the end of subsection 16(1)**

Add:

Note: Part 3A provides for mutual recognition of activities covered by occupations.

**23 Subsections 16(2) and (3)**

Repeal the subsections, substitute:

- (2) This Part deals with the ability of a person who is registered for an occupation in a State (the *first State*) to carry on an equivalent occupation in another State (the *second State*).

**24 Section 17 (heading)**

Before “occupation”, insert “equivalent”.

**25 Division 2 of Part 3 (heading)**

Repeal the heading, substitute:

**Division 2—Entitlement to registration for equivalent occupations**

**26 Subsection 19(1)**

After “an occupation”, insert “that is equivalent to an occupation in the second State”.

**27 Paragraph 19(2)(c)**

Repeal the paragraph, substitute:

- (c) specify each State in which the person has substantive registration for an equivalent occupation; and
- (ca) specify each State in which the person has interim deemed registration to carry on an equivalent occupation; and
- (cb) specify each State in which the person has automatic deemed registration to carry on an activity covered by the occupation referred to in paragraph (b); and

**28 Paragraph 19(2)(e)**

After “registration”, insert “(including interim deemed registration and automatic deemed registration)”.

**29 Paragraphs 19(2)(f) and (g)**

Omit “special”.

**30 Paragraph 19(2)(g)**

Omit “State; and”, substitute “State.”.

**31 Paragraph 19(2)(h)**

Repeal the paragraph.

**32 At the end of subsection 19(2)**

Add:

Note: For paragraph (cb), one or more steps must be taken before automatic deemed registration begins (see subsections 42D(3) and (4)).

**33 At the end of subsection 19(5)**

Add “or another method agreed to by the local registration authority”.

**34 Subsection 20(1)**

Omit “under”, substitute “in accordance with”.

**35 Subsection 20(3)**

After “to registration”, insert “mentioned in subsection (1)”.

**36 Subsection 20(4)**

Omit “of registration”, substitute “of the registration”.

**37 After subsection 20(4)**

Insert:

(4A) To avoid doubt, a law imposing a public protection requirement is not a law based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

**38 Subsection 20(5)**

Omit “on registration”, substitute “on the registration”.

**39 Subsection 21(1)**

After “Registration”, insert “mentioned in subsection 20(1)”.

**40 Subsection 21(1)**

Omit “under”, substitute “in accordance with”.

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**41 Subsection 21(2)**

Omit “registration”, substitute “the registration”.

**42 Subsection 21(4)**

Omit “under subsection (3)”, substitute “in accordance with subsection (3)”.

**43 Subsection 21(4)**

After “entitled to registration”, insert “as mentioned in subsection 20(1)”.

**44 Subsection 22(1)**

After “grant of registration”, insert “mentioned in subsection 20(1)”.

**45 Subsection 22(3)**

Omit “immediately at the end of that period, unless registration”, insert “as mentioned in subsection 20(1) immediately at the end of that period, unless the registration”.

**46 Subsection 22(4)**

After “registration”, insert “mentioned in subsection 20(1)”.

**47 Subsection 23(1)**

After “grant of registration”, insert “mentioned in subsection 20(1)”.

**48 Subsection 23(2)**

Omit “grant registration”, substitute “grant the registration”.

**49 Section 24**

After “on registration”, insert “, in accordance with this Division”.

**50 Section 25 (heading)**

Repeal the heading, substitute:

**25 Interim deemed registration**

**51 Subsection 25(1)**

Omit “under”, substitute “in accordance with”.

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**52 Subsection 25(1)**

After “refusal of registration”, insert “in accordance with Division 2”.

**53 Subsection 25(2)**

Before “*deemed registration*”, insert “*interim*”.

**54 Subsection 25(3)**

Omit “Deemed registration”, substitute “Interim deemed registration”.

**55 Section 26 (heading)**

Before “**deemed registration**”, insert “**interim**”.

**56 Subsections 26(1) to (5)**

Before “deemed registration”, insert “interim”.

**57 Subsection 26(6)**

Omit “Deemed registration”, substitute “Interim deemed registration”.

**58 Section 27 (heading)**

Before “**deemed registration**”, insert “**interim**”.

**59 Subsection 27(1)**

Before “deemed registration” (wherever occurring), insert “interim”.

**60 Paragraph 27(2)(b)**

Before “deemed registration”, insert “interim”.

**61 Paragraph 27(2)(c)**

Omit “under”, substitute “in accordance with”.

**62 Paragraph 27(2)(d)**

Before “deemed registration”, insert “interim”.

**63 Paragraph 27(3)(a)**

Omit “requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others”, substitute “public protection requirements”.



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**64 Paragraph 27(3)(b)**

Before “deemed registration”, insert “interim”.

**65 Paragraph 27(3)(c)**

Omit “deemed registration for the occupation under this Act”, substitute “interim deemed registration for the occupation”.

**66 Subsection 27(5)**

Before “deemed registration”, insert “interim”.

**67 Subsection 29(2)**

Omit “under this Part”, substitute “in accordance with this Part”.

**68 After subsection 33(2)**

Insert:

(2A) If:

- (a) a person’s registration for an occupation in a State is cancelled, suspended or subject to a condition; and
- (b) the local registration authority for the occupation in the State knows that the person is registered for an equivalent occupation in another State;

the local registration authority must, without delay, inform the local registration authority for the equivalent occupation of the cancellation, suspension or condition.

(2B) Subsection (2A) applies despite any requirements relating to secrecy, privacy or confidentiality.

(2C) Nothing in this section affects any obligation or power to provide information apart from this section.

**69 At the end of subsection 33(3)**

Add “, but does not apply to any automatic deemed registration”.

**70 At the end of subsection 33(3)**

Add:

Note: For rules relating to cancellations etc. in relation to automatic deemed registrations, see sections 42G and 42M.

**71 Subsection 34(1)**

Omit “this Act”, substitute “this Part, subsection 42F(3), paragraph 42G(2)(b) or subsection 42M(2)”.

**72 Section 36**

Omit “under this Part”, substitute “as a result of this Part”.

**73 Subsection 37(1)**

Omit “without delay”, substitute “, as soon as reasonably practicable,”.

**74 Subsection 37(2)**

Omit “under”, substitute “in accordance with”.

**75 Paragraphs 37(2)(a) to (c)**

Repeal the paragraphs, substitute:

- (a) a notice lodged in accordance with section 19 by the person seeking registration in the other State; or
- (b) the person’s interim deemed registration in the other State; or
- (c) actual or possible disciplinary action against the person.

**76 Subsection 37(3)**

Omit “law relating to secrecy”, substitute “requirements relating to secrecy, privacy”.

**77 Section 38**

Repeal the section, substitute:

**38 Receiving information**

If a local registration authority receives information in relation to a person under section 33 or 37:

- (a) the information is subject to any requirements relating to secrecy, privacy or confidentiality that would apply if the information were provided from within the State in which the authority is constituted or exercises its functions; and
- (b) the local registration authority may use the information for the purposes of the person’s substantive registration (whether under this Part or otherwise), interim deemed registration or automatic deemed registration, in the State.

**78 Before subsection 39(1)**

Insert:

*Facilitating operation of this Part*

**79 Before subsection 39(2)**

Insert:

*Guidelines and information*

**80 Subsection 39(3)**

Repeal the subsection, substitute:

- (3) Without limiting subsection (2), it is the duty of each local registration authority in a State to make publicly available information about how personal information may be used by the authority for the purposes of this Part.

**81 Subsection 40(1)**

Omit “deemed registration or the continuance of registration arising under”, insert “interim deemed registration or the continuance of registration arising as a result of”.

**82 Subsection 40(2)**

Omit “under this section”, substitute “in accordance with this section”.

**83 Subsection 40(3)**

Omit “deemed registration arising under”, substitute “interim deemed registration arising as a result of”.

**84 Subsection 41(1)**

Omit “deemed registration, nor entitlement to registration, under”, substitute “interim deemed registration, nor entitlement to registration, as a result of”.

**85 At the end of subsection 41(1)**

Add “for the purposes of becoming registered”.

## 86 At the end of section 42

Add:

Note: A person may, in accordance with Part 3A, have automatic deemed registration to carry on an activity covered by an occupation, or may alternatively have substantive registration under a State law.

## 87 After Part 3

Insert:

# Part 3A—Automatic deemed registration to carry on activities covered by occupations

## Division 1—Preliminary

### 42A Mutual recognition—activities covered by occupations

- (1) The *mutual recognition principle* as applying to activities covered by occupations is as set out in this Part.

Note 1: Part 3 provides for mutual recognition of occupations that are equivalent.

Note 2: For the definition of *activity*, see subsection 4(1).

- (2) This Part deals with the ability of a person who is registered for an occupation in the person's home State to carry on an activity covered by an occupation in another State (the *second State*).
- (3) The *home State* for a person for an occupation is either of the following in which the person is registered for the occupation (other than because of this Part):
- (a) the State in which the person has their principal place of residence;
  - (b) the State in which the person has their principal place of work for the occupation.

If the person's home State under paragraphs (a) and (b) in relation to an occupation is different, the person's *home State* is whichever of the 2 States is chosen by the person.

- (4) A person can continue to claim their previous home State for an occupation as their *home State* for the occupation if:

- 
- (a) the person moves their principal place of residence or principal place of work for the occupation to another State; and
  - (b) the person continues to be registered for the occupation in their previous home State; and
  - (c) the person has interim deemed registration in the other State for an equivalent occupation.

Note 1: Interim deemed registration in one State does not of itself provide a basis for registration in another State (see subsection 25(3)).

Note 2: A reference in this Part to a State does not include a reference to a pre-adoption State, unless the expression “any State” is used (see subsection 42C(3)).

#### **42B Entitlement to carry on activities covered by occupations in a second State**

- (1) The mutual recognition principle is that, subject to this Part, a person who is authorised to carry on an activity covered by an occupation in the person’s home State is entitled to carry on that activity in the second State if the activity is covered by an occupation in the second State.
- (2) However, the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an activity covered by the occupation in the second State, so long as those laws:
  - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
  - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

#### **42C Application of this Part**

- (1) This Part applies to individuals, and activities carried on by them that are covered by occupations.
- (2) If, in relation to an activity covered by an occupation, an individual is subject to:
  - (a) more than one system of registration in a State; or
  - (b) more than one local registration authority in a State;

this Part applies in relation to each of those systems of registration or each of those authorities.

*References to States*

- (3) A reference in this Part to a State does not include a reference to a pre-adoption State, unless the expression “any State” is used.

## **Division 2—Entitlement to automatic deemed registration**

### **42D Entitlement to automatic deemed registration**

- (1) This section applies if:
- (a) a person is authorised to carry on an activity covered by an occupation in their home State; and
  - (b) the person is registered (the *home State registration*) for that occupation in their home State; and
  - (c) to carry on the activity in the second State, the person would have to be registered in the second State for an occupation (the *second State occupation*).

*Automatic deemed registration*

- (2) For the purposes of carrying on the activity in the second State, the person is taken:
- (a) to be registered in the second State for the second State occupation; and
  - (b) to have any additional registration required to carry on the activity in the second State.
- (3) The registration (or registrations) the person has because of subsection (2) is *automatic deemed registration*, which has effect once the person:
- (a) meets any requirements covered by paragraphs (4)(f) to (h); or
  - (b) if no such requirements apply—begins to carry on the activity in the second State.

Note: This does not authorise the person to carry on every activity in the second State covered by the second State occupation. Automatic deemed registration authorises in the second State only activities the person is authorised to carry on in their home State.

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*Exceptions to automatic deemed registration*

- (4) However, subsection (2) does not apply if:
- (a) the person:
    - (i) is the subject of criminal, civil or disciplinary proceedings in any State (including any preliminary investigations or action that might lead to criminal, civil or disciplinary proceedings) in relation to an occupation that covers the activity; and
    - (ii) the person has been informed or is otherwise aware of those proceedings; or
  - (b) any registration the person is required to have to carry on the activity, or an occupation that covers the activity, in any State is cancelled or currently suspended as a result of disciplinary action; or
  - (c) the person is otherwise personally prohibited from carrying on the activity, or an occupation that covers the activity, or is subject to any conditions in carrying on the activity, as a result of criminal, civil or disciplinary proceedings in any State; or
  - (d) the person is refused registration in any State for an occupation that covers the activity; or
  - (e) the person is authorised otherwise than under this Part to carry on the activity in the second State; or
  - (f) the person fails to meet any public protection requirements required by the law of the second State before carrying on the activity, or while they are carrying on the activity, or fails to provide evidence of meeting those requirements; or
  - (g) if the law of the second State requires a vulnerable person character test to be satisfied to carry on the activity—the person fails to satisfy the test, or fails to provide evidence of satisfying the test; or
  - (h) if a determination under section 42J requires the person to notify the local registration authority for the second State occupation:
    - (i) the person fails to notify the authority; or
    - (ii) if the person’s home State changes—the person fails to notify the authority of the change; or
  - (j) the person fails to give any information:
    - (i) required under section 42U; or
-

- (ii) as required by, or in accordance with, a law of the second State that relates to carrying on the activity.

Note: In addition, sections 42S (exempting registrations because of significant risk to consumer protection etc.) and 42T (exempting registrations temporarily) provide for States to exempt a specified registration from the operation of this Part.

*Automatic deemed registration does not create entitlement to other registrations*

- (5) Automatic deemed registration in one State does not of itself provide a basis for registration in another State.

#### **42E Person may carry on activities in second State**

- (1) To avoid doubt, a person who has automatic deemed registration to carry on an activity is entitled to carry on the activity in the second State to the same extent that the person is authorised to carry on the activity in their home State.
- (2) However, subject to this Division, the carrying on by the person of the activity in the second State is subject to the laws of the second State, to the extent that those laws:
  - (a) apply equally to all persons carrying on or seeking to carry on the activity under the law of the second State; and
  - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the activity.
- (3) To avoid doubt, a law imposing a public protection requirement or requiring a vulnerable person character test is not a law based on the attainment or possession of some qualification or experience relating to fitness to carry on activities.

Note: A person will not have automatic deemed registration if they do not meet or satisfy relevant public protection requirements or a relevant vulnerable person character test (see paragraphs 42D(4)(f) and (g)).

#### **42F Conditions on automatic deemed registration**

- (1) A person's automatic deemed registration to carry on an activity is subject to:



- 
- (a) any condition or undertaking to which the person's home State registration is subject; and
  - (b) if the person requires additional registration to carry on the activity in their home State—any condition or undertaking to which that additional registration is subject.

Note: See also section 45 (machinery provisions regarding limitations etc.).

- (2) Any such condition or undertaking is taken to be imposed by the second State.
- (3) If the local registration authority for the second State occupation thinks it appropriate to do so in the circumstances, the authority may waive a condition or undertaking imposed because of subsection (1).

Note: Application may be made to the Tribunal for review of a decision under this subsection (see subsection 34(1)).

- (4) The second State (including the local registration authority for the second State occupation) must not impose any additional individual conditions on the person's automatic deemed registration.

Note: Subsection (4) does not prevent general conditions from applying in relation to the person's automatic deemed registration (see subsection 42E(2)).

#### **42G When automatic deemed registration ends**

- (1) A person's automatic deemed registration to carry on an activity ends if:
  - (a) the person is no longer authorised to carry on the activity in their home State; or
  - (b) a circumstance covered by subsection 42D(4) (exceptions to automatic deemed registration) occurs in relation to the person; or
  - (c) the person becomes substantively registered for the second State occupation; or
  - (d) the automatic deemed registration is cancelled or suspended under subsection (2) of this section.
- (2) Without limiting subsection 42M(1), a local registration authority in the second State for an occupation that covers an activity may:

- (a) cancel a person's automatic deemed registration to carry on the activity in that State if the person requests the cancellation; or
- (b) cancel or suspend a person's automatic deemed registration if the person provides false or misleading information to a local registration authority in any State.

Note 1: Application may be made to the Tribunal for review of a decision under this paragraph (b) (see subsection 34(1)).

Note 2: See also section 42N (notifying other local registration authorities of suspension or cancellation).

## **42H Operation of State laws regarding registration**

### *References to persons who are registered*

- (1) A reference in the law of the second State to a person registered (however described) for the second State occupation includes a reference to a person who has automatic deemed registration to carry on an activity covered by the occupation.
- (2) For the purpose of any law of a State, a person who has automatic deemed registration in the State is taken:
  - (a) to have had the registration conferred by operation of the law of the State; and
  - (b) not to have had the registration conferred by the operation of this Part.

Note: One effect of this provision is that a decision of a local registration authority in a State in relation to a person's automatic deemed registration is generally reviewable in accordance with the Acts of that State.

### *References to registration in other States*

- (3) If a law of a State refers to a person's registration (however described) in another State, the reference does not include a reference to automatic deemed registration.
- (4) In this section:
  - (a) a reference to registration includes a reference to previous registration; and
  - (b) a reference to automatic deemed registration includes a reference to previous automatic deemed registration.

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**42J Notification for automatic deemed registration**

- (1) If a Minister of a State makes a determination under subsection (4) in relation to a registration for an activity covered by an occupation, a person who intends to carry on the activity in the State in reliance on automatic deemed registration must notify the local registration authority for the occupation before the person begins to carry on the activity.

Note: The person does not have automatic deemed registration without making the notification if it is required (see subparagraph 42D(4)(h)(i)).

*Limitation on notifications*

- (2) The local registration authority must not require notification of anything that is not required by section 19 for the occupation that covers the activity, other than evidence of meeting relevant public protection requirements or satisfying a relevant vulnerable person character test.

Note: For public protection requirements that must be met, see paragraph 42D(4)(f), and for any vulnerable person character test that must be satisfied, see paragraph 42D(4)(g).

- (3) No fee is payable to the local registration authority in relation to the notification.

*Determination by Minister*

- (4) A Minister of a State may, by legislative instrument, determine one or more registrations for which notification is required by subsection (1).

Note: The determination is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (5) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of Chapter 3 (sunsetting) of that Act applies to a determination under subsection (4) of this section.

**42K No fee for automatic deemed registration**

- (1) A person must not be required to pay a registration fee in the second State in relation to the person's automatic deemed registration to carry on an activity.

Note: The local registration authority must also not charge a fee in relation to notifying the authority that the person intends to rely on automatic deemed registration (see subsection 42J(3)).

(2) A **registration fee** is:

- (a) a fee (however described) that is required to be paid before a person is registered, or to continue a person's registration (for example, on an anniversary of the person's registration); or
- (b) a fee (however described) that is payable to a local registration authority for an occupation to generally support compliance activities by the local registration authority (or any other person) in relation to the person's automatic deemed registration, other than:
  - (i) a fine, penalty or legal costs; or
  - (ii) a fee that is payable for a specific and identifiable compliance action taken in relation to carrying on an activity;

but does not include a fee relating to public protection requirements or a vulnerable person character test.

Example: A fee (however described) that is charged to pay for an inspector to provide a certificate of compliance is not a registration fee as it is payable for a specific and identifiable compliance action taken in relation to carrying on an activity.

## 42L Evidence of automatic deemed registration

### *Evidence of registration*

- (1) For the purposes of a law of the second State, if a person has automatic deemed registration to carry on an activity in the second State:
  - (a) evidence of the person's home State registration is taken to be evidence of the person's automatic deemed registration to carry on the activity in the second State (even if the evidence has been issued by the second State); and
  - (b) if the person is relying on evidence from the person's home State, the person must comply with any requirement of the law of the second State to provide evidence of the person's registration to the extent possible.

Note: For example, a requirement in a second State for a person's registration number to be shown in the person's advertising would be

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complied with by the person showing their home State registration number in the advertising.

*Licences etc.*

- (2) Despite any law of a State:
- (a) a local registration authority in the State for an occupation that covers an activity is not required to give a person any evidence of the person's automatic deemed registration (such as a licence, approval or certification) to carry on the activity; but
  - (b) the local registration authority may give the person such evidence of the person's automatic deemed registration.

If the person is not given such evidence, the person is taken, for the purposes of a law of the State, to hold a licence, approval or certification or other evidence of registration for the activity.

*Registers*

- (3) Despite any law of a State:
- (a) a local registration authority in the State for an occupation that covers an activity is not required to include a person's name on a register (however described) if the person has automatic deemed registration to carry on the activity; but
  - (b) the local registration authority may include on the register the person's name, and any other information authorised or required to be on the register.

If the person's name is not included on the register, the person's name (and other information) is taken, for the purposes of a law of the State, to be included on the register.

## **42M Disciplinary action in relation to automatic deemed registration**

*Impact of disciplinary action in relation to automatic deemed registration*

- (1) If a person's automatic deemed registration in a State:
- (a) is cancelled or suspended on disciplinary grounds; or
  - (b) ends as a result of or in anticipation of criminal, civil or disciplinary proceedings;

then any substantive or interim deemed registration the person has in another State for an occupation that covers the activity is affected in the same way.

Note 1: Cancellation or suspension on disciplinary grounds and other prohibitions on carrying on an occupation, or activities covered by an occupation, can prevent a person from having, or continuing to have, automatic deemed registration (see paragraphs 42D(4)(a) to (d)).

Note 2: A person who has automatic deemed registration to carry on an activity in the second State is subject to any disciplinary provisions and arrangements that are applicable to persons who are otherwise registered for the occupation in that State (see subsections 42E(2) and 42H(1) and (2)).

Note 3: This also means that a decision of a local registration authority in a State in relation to a person's automatic deemed registration is generally reviewable in accordance with the Acts of that State.

- (2) However, the local registration authority of the other State may reinstate any cancelled or suspended substantive or interim deemed registration if it thinks it appropriate in the circumstances.

Note: Application may be made to the Tribunal for review of a decision under this subsection (see subsection 34(1)).

*Determination by Minister*

- (3) For the purposes of taking action in relation to automatic deemed registration, a Minister of a State may, with the consent of a Minister of another State, determine officers or authorities (however described) of the other State that are taken to be officers or authorities for the purposes of a law of the first-mentioned State.
- (4) For the purposes of obtaining the consent of the other State, a person authorised by the Minister of the first-mentioned State may provide information to a person authorised by a Minister of the other State. The information may be given despite any requirements relating to secrecy, privacy or confidentiality.
- (5) A person that receives information under subsection (4) is subject to any requirements relating to secrecy, privacy or confidentiality that would apply if the information were provided from within the person's State.

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**42N Notifying other local registration authorities of suspension or cancellation**

- (1) This section applies if a local registration authority (the *second State authority*) in the second State suspends or cancels a person's automatic deemed registration to carry on an activity.

*Providing information of suspension or cancellation*

- (2) The second State authority must, without delay, notify all other local registration authorities for occupations that cover the activity in all other States of the following:
- (a) the person's name and address;
  - (b) information identifying the person's automatic deemed registration;
  - (c) the fact that disciplinary action was taken to suspend or cancel the automatic deemed registration (unless the cancellation was done at the request of the person as mentioned in paragraph 42G(2)(a));
  - (d) whether the suspension or cancellation would be subject to an appeal;
  - (e) information relating to the reason for taking the action;
  - (f) if the registration is suspended—the period of the suspension;
  - (g) any information requested by another local registration authority to:
    - (i) determine whether a person's registration for an occupation should be reinstated; or
    - (ii) ensure completeness of its registers.
- (3) The other local registration authorities must notify the second State authority of any other information reasonably required in relation to the suspension or cancellation.

*Registers and publication*

- (4) The second State authority must:
- (a) record the suspension or cancellation in any register in which the second State authority records other suspensions or cancellations of registrations; and
  - (b) publish notice of the suspension or cancellation in accordance with any law that requires the local registration

authority to publish suspensions or cancellations of registrations.

- (5) Any other local registration authority may also:
- (a) update its registers accordingly; and
  - (b) publish information about the suspension or cancellation in accordance with any law that requires the other local registration authority to publish suspensions or cancellations of registrations.

*Application of this section*

- (6) Information may be provided under this section despite any requirements relating to secrecy, privacy or confidentiality.
- (7) Nothing in this section affects any obligation or power to provide information apart from this section.

*Receiving information*

- (8) A local registration authority that receives information under this section:
- (a) is subject to any requirements relating to secrecy, privacy or confidentiality that would apply if the information were provided from within the State in which the authority is constituted or exercises its functions; and
  - (b) may use the information for the purposes of the person's registration (whether under this Act or otherwise) in the State.

**42P Notifying other local registration authorities of other disciplinary action**

- (1) This section applies if:
- (a) a local registration authority (the *second State authority*) in the second State is aware of disciplinary action (including any preliminary investigations or action that might lead to criminal, civil or disciplinary proceedings) that is being taken in relation to a person's automatic deemed registration to carry on an activity; and
  - (b) the person has been informed of the action.



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*Providing information of disciplinary action*

- (2) The second State authority must, without delay, notify all other local registration authorities for occupations that cover the activity in all other States of the following:
  - (a) the person's name and address;
  - (b) information identifying the person's automatic deemed registration;
  - (c) the fact that disciplinary action (including any preliminary investigations or action that might lead to criminal, civil or disciplinary proceedings) is being taken in relation to the automatic deemed registration;
  - (d) whether suspension or cancellation of the automatic deemed registration would be subject to an appeal;
  - (e) information relating to the reason for taking or considering the action.

*Application of this section*

- (3) Information may be provided under this section despite any requirements relating to secrecy, privacy or confidentiality.
- (4) Nothing in this section affects any obligation or power to provide information apart from this section.

*Receiving information*

- (5) A local registration authority that receives information under this section:
  - (a) is subject to any requirements relating to secrecy, privacy or confidentiality that would apply if the information were provided from within the State in which the authority is constituted or exercises its functions; and
  - (b) may use the information for the purposes of the person's registration (whether under this Act or otherwise) in the State.

**42Q Formalities requiring personal attendance**

Neither automatic deemed registration, nor entitlement to automatic deemed registration, requires compliance with any statutory or other formalities (whether before or after the automatic

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deemed registration begins) requiring personal attendance in the second State for the purposes of becoming registered.

#### **42R Effect of automatic deemed registration on obligations in other States**

Unless the contrary intention appears, if a law of the second State imposes an obligation on a person who has automatic deemed registration to carry on an activity in that State, the person is not required to comply with the obligation in relation to any other State.

Note: For example, the law of the second State requires a registered person to keep a record of workers who are employed by the person. The obligation does not apply in relation to workers who are employed by the person to work solely outside the second State.

### **Division 3—General provisions**

#### **42S Exempting registrations because of significant risk to consumer protection etc.**

- (1) A Minister of a State (the *declaration State*) may declare, by legislative instrument, that:
- (a) a specified registration, whether for an occupation or for an activity covered by an occupation, in the declaration State is excluded from the operation of automatic deemed registration; or
  - (b) a specified registration, whether for an occupation or for an activity covered by an occupation, in the declaration State is excluded from the operation of automatic deemed registration on the basis of a specified registration in one or more other specified States;
- if the Minister is satisfied that the declaration is necessary because of a significant risk, arising from particular circumstances or conditions in the declaration State, to:
- (c) consumer protection; or
  - (d) the environment; or
  - (e) animal welfare; or
  - (f) the health or safety of workers or the public.

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Note: The declaration is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (2) The declaration must include a statement explaining the risk to consumer protection, the environment, animal welfare or the health or safety of workers or the public.
- (3) The declaration has effect only in relation to the declaration State.
- (4) The local registration authority in the declaration State for the occupation concerned is to give effect to the declaration.
- (5) Despite subsection 54(1) of the *Legislation Act 2003*, Part 4 of Chapter 3 (sunsetting) of that Act applies to a declaration under subsection (1) of this section.
- (6) That Act applies, in relation to a declaration under subsection (1), as if the reference to tenth anniversary in subsection 50(1) of that Act were a reference to fifth anniversary.

Note: The effect of subsection (6) is that the declaration sunsets under the *Legislation Act 2003* after 5 years (instead of 10 years).

*Declaration not to give preference*

- (7) A declaration under subsection (1) is invalid to the extent that it gives preference (within the meaning of section 99 of the Commonwealth Constitution) to one State or part of a State over another State or part of a State.

#### **42T Exempting registrations temporarily**

- (1) A Minister of a State (the ***declaration State***) may declare, before the end of 6 months after this section commences, by legislative instrument, that:
  - (a) a specified registration, whether for an occupation or for an activity covered by an occupation, in the declaration State is excluded from the operation of automatic deemed registration; or
  - (b) a specified registration, whether for an occupation or for an activity covered by an occupation, in the declaration State is excluded from the operation of automatic deemed registration on the basis of a specified registration in one or more other specified States;

until the end of that 6 month period.

Note: The declaration is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (2) A Minister of the declaration State may declare, before the end of 31 December 2021, by legislative instrument, that a declaration in force under subsection (1) continues in force until the end of 30 June 2022.

Note: The declaration is not subject to disallowance under the *Legislation Act 2003* (see subsection 44(1) of that Act).

- (3) Declarations under this section have effect only in relation to the declaration State.
- (4) The local registration authority in the declaration State for the occupation concerned is to give effect to the declarations.
- (5) Unless revoked earlier:
- (a) a declaration under subsection (1) is repealed at the end of:
    - (i) unless paragraph (b) applies—the 6-month period mentioned in subsection (1); or
    - (ii) if the declaration is continued in force under subsection (2)—30 June 2022; and
  - (b) a declaration under subsection (2) is repealed at the end of 30 June 2022.

*Declaration not to give preference*

- (6) A declaration under subsection (1) is invalid to the extent that it gives preference (within the meaning of section 99 of the Constitution) to one State or part of a State over another State or part of a State.

**42U Person providing information about home State to local registration authority**

A local registration authority in a State for an occupation that covers an activity may require a person who has automatic deemed registration to carry on the activity in the State to provide evidence of one or more of the following:

- (a) the person's current place of residence;
- (b) the person's principal place of residence;

- (c) the person's current place of work;
- (d) the person's principal place of work.

#### **42V Local registration authorities providing and receiving information**

- (1) This section applies if the local registration authority (the *second State authority*) of the second State requires information from a local registration authority in another State in connection with a person's automatic deemed registration.
- (2) The local registration authority of the other State must give, as soon as reasonably practicable, any information reasonably required about the person, including the following information:
  - (a) the person's name and address;
  - (b) information identifying the person's home State registration;
  - (c) information relating to any civil, criminal or disciplinary action taken against the person;
  - (d) information relating to conditions on the person's home State registration;
  - (e) information relating to actual or possible disciplinary action against the person.

#### *When this section applies*

- (3) The obligation imposed in accordance with this section does not apply unless the second State authority notifies the local registration authority of the other State that the information is required in connection with:
  - (a) the person's automatic deemed registration in the second State; or
  - (b) actual or possible disciplinary action against the person.
- (4) The local registration authority of the other State may give the information despite any requirements relating to secrecy, privacy or confidentiality.
- (5) Nothing in this section affects any obligation or power to provide information apart from this section.

*Use of information*

- (6) Information given under subsection (2):
  - (a) is subject to any requirements relating to secrecy, privacy or confidentiality that would apply if the information were given from within the second State; and
  - (b) may be used by the second State authority in connection with:
    - (i) the person's registration in the second State (including actual or possible disciplinary action against the person); or
    - (ii) a notice lodged by the person in accordance with section 19 seeking registration in the second State.

**42W General responsibilities of local registration authorities**

*Facilitating operation of this Part*

- (1) It is the duty of each local registration authority in a State to facilitate the operation of this Part in relation to the occupations covering activities for which the authority is responsible.

*Guidelines and information*

- (2) It is the duty of each local registration authority in a State to prepare and make available guidelines and information regarding the operation of this Part in relation to the occupations covering activities for which the authority is responsible.
- (3) Without limiting subsection (2), it is the duty of each local registration authority in a State to make publicly available information about how personal information may be used by the authority for the purposes of this Part.
- (4) The guidelines and information under subsection (2) or (3) are to be available within 6 months of the commencement day for the State.

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**42X Saving**

Nothing in this Part prevents a person from seeking registration or being registered to carry on an activity under a law apart from this Part.

**88 Section 43**

Repeal the section, substitute:

**43 This Act does not confer judicial power on State local registration authorities or tribunals etc.**

- (1) This Act has no effect to the extent (if any) to which it purports to confer judicial power on a local registration authority, or a tribunal or other body of a State (other than a Court of the State).
- (2) In this section:

*judicial power* means the judicial power of the Commonwealth referred to in section 71 of the Constitution.

**89 At the end of section 44**

Add:

Note: The mutual recognition principle applies in relation to goods (see section 8), occupations that are equivalent (see section 16) and activities covered by occupations (see section 42A).

**90 Section 45**

Omit “In cases where”, substitute “(1) If”.

**91 At the end of section 45**

Add:

- (2) If Part 3A provides that conditions or undertakings that apply or are relevant to registration in the home State also apply or are relevant to automatic deemed registration in the second State, they are to be construed with any necessary adaptations, including the following (where appropriate and so far as practicable):
  - (a) references to the home State are to be read as references to the second State;

- (b) references to officers or authorities of the home State are to be read as references to the corresponding officers or authorities of the second State.

**92 After section 46**

Insert:

**46A Application of amendments made by the *Mutual Recognition Amendment Act 2021***

- (1) The amendments of section 19 made by Schedule 1 to the *Mutual Recognition Amendment Act 2021* apply in relation to any notice given to a local registration authority in a State under that section after the commencement day for the State.
- (2) Part 3A of this Act, as inserted by Schedule 1 to the *Mutual Recognition Amendment Act 2021*, applies in relation to the carrying on of an activity in the State after the commencement day for the State.
- (3) Section 43 of this Act, as inserted by Schedule 1 to the *Mutual Recognition Amendment Act 2021*, applies in relation to any conferral of power on a local registration authority, or a tribunal or other body of a State (whether before or after the commencement day for the State).