EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 303

Issued by the Authority of the Minister for Industry and Innovation

Trans-Tasman Mutual Recognition Act 1997

Trans-Tasman Mutual Recognition (Amendment of Act) Regulation 2012

Purpose
The purpose of the Regulation is to permanently exempt the Firearms Regulations 1974 (WA), the Weapons Act 1999 (WA), and Weapons Regulations 1999 (WA) from the operation of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) as provided for under Section 45 of the Trans-Tasman Mutual Recognition Act 1997 (the Act).


The Regulation also repeals a number of regulations that were used to make previous amendments to the Act which have now served their purpose. The regulations that are repealed are listed in Schedule 1 to the Regulation.

The Regulation is machinery in nature and will bring Western Australia’s legislation into line with permanent exemptions for weapons and firearms legislation already in place in all other participating jurisdictions.

Section 45 of the Act sets out the circumstances in which a permanent exemption may be made under the Act. Subsection 45(3) provides that the Governor-General may make regulations amending Schedule 2 (Permanent Exemptions) of the Act.

Background
The TTMRA is a non-treaty agreement between the Commonwealth, State and Territory Governments of Australia and the Government of New Zealand (the participating jurisdictions), which gives effect to mutual recognition principles relating to the sale of goods and the registration of occupations. In respect of goods, a good that can be sold legally in Australia may be sold in New Zealand and vice versa. The Minister for Industry and Innovation is responsible for administering the goods component of the TTMRA.

Legislation implementing the TTMRA overrides any laws that regulate the manufacture or sale of goods. The Act does provide, however, for circumstances where the mutual recognition principle will not apply. These circumstances are covered by provisions for exclusions, permanent exemptions, and temporary exemptions.

In May 2011, in accordance with Section 46 of the Act, Western Australia enacted a 12 month temporary exemption for the Firearms Regulations 1974 (WA), Weapons Act 1999 (WA) and Weapons Regulations 1999 (WA) from the provisions of the Trans-Tasman Mutual Recognition Act 2007 (WA). The Firearms Regulations 1974 (WA) clarify the operation of the Firearms Act 1973 (WA) which provides for the control and regulation of firearms and ammunition, and the licensing of persons possessing, using, dealing with, or manufacturing firearms and ammunition. The Weapons Act 1999 (WA) and Weapons Regulations 1999 (WA) prohibit the bringing or sending into the State, carriage, possession, purchase, sale, supply and manufacture of certain weapons and control the carriage and possession of other weapons.
Subsection 46(4) of the Act provides, however, that temporary exemptions may only operate for a maximum period of 12 months after which the principles of mutual recognition apply. Western Australia’s temporary exemption lapsed in May 2012 whereupon a permanent exemption was sought.

Consultation
Heads of Government of the participating jurisdictions have given their unanimous agreement to the permanent exemption.

In November 2011, in accordance with Section 45 of the Act, Western Australia sought the agreement of the Standing Council on Police and Emergency Management (SCPEM) to permanently exempt the Firearms Regulations 1974 (WA), the Weapons Act 1999 (WA), and Weapons Regulations 1999 (WA) from the operation of the Act. The SCPEM agreed and the SCPEM Chair wrote to the Prime Minister in December 2011 seeking the agreement of Heads of Government of participating jurisdictions to the permanent exemption.

In order for the Regulation to be made, all participating jurisdictions are required to endorse the Regulation. Section 43 of the Act provides that in order to endorse a Regulation, a jurisdiction must publish a notice endorsing the terms of the regulation in its official gazette (subsection 43(1)).

In accordance with the Act, the designated person for each participating jurisdiction has endorsed the Regulation and it has been published in the official gazette of all participating jurisdictions. The making of this Regulation represents the endorsement of the Commonwealth.

The Regulation implements the Heads of Government decision to permanently exempt the Firearms Regulations 1974 (WA), Weapons Act 1999 (WA), and Weapons Regulations 1999 (WA) from the operation of the Act.

Regulation Impact Statement
The Office of Best Practice Regulation has advised that a Regulation Impact Statement is not required as the exemption is machinery in nature. The reference number is 11841.

Statement of Compatibility with Human Rights
The Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth). The Regulation does not engage any of the applicable rights or freedoms.

The Regulation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The regulation commences on the day after it is registered on the Federal Register of Legislative Instruments. It expires at the end of the day it commences.

Authority: Section 45 of the Trans-Tasman Mutual Recognition Act 1997