

## **EXPLANATORY STATEMENT**

### ***Mutual Recognition Act 1992***

#### **Automatic Mutual Recognition (New South Wales) (Exemption –12-months) Declaration 2024**

This explanatory statement provides notes on the operation of the Automatic Mutual Recognition (New South Wales) (Exemption –12-months) Declaration 2024 (the Declaration). The specific provisions in the Declaration are outlined in Attachment A. The information in the explanatory statement is an aid to understanding the Declaration and should not be substituted for the Declaration.

#### **Context and purpose**

Part 3A of the *Mutual Recognition Act 1992* of the Commonwealth (the MRA) provides for the automatic mutual recognition of occupational registrations (AMR). AMR will provide an entitlement for an individual to carry on an activity in a second State, under the registration covering the activity in their home State through Automatic Deemed Registration (ADR).

Part 3A of the MRA provides for the making of declarations that exclude certain registrations from ADR where a Minister of a State is satisfied that the declaration is necessary because of a significant risk arising from circumstances or conditions in the declaration State, to consumer protection, the environment, animal welfare or the health or safety of workers or the public. The *Legislation Act 2003* of the Commonwealth provides for the making of legislative instruments.

The Declaration is not subject to disallowance as it meets the requirements under subsection 44(1) of the *Legislation Act 2003*.

#### **Summary**

Through the Declaration, the Treasurer of New South Wales has excluded several registrations from ADR for the period 1 July 2024 to 30 June 2025.

The excluded registrations include many registrations excluded for the earlier period of 1 July 2023 to 30 June 2024 listed in the following declaration:

- Automatic Mutual Recognition (New South Wales) (Exemption – Various) Declaration 2023

referred to as ‘the previous 2023 Declaration’.

By virtue of the making of the Declaration, the Minister is satisfied that the exclusion is necessary because of a significant risk to consumer protection or the health or safety of workers or the public. The Declaration provides an explanation of the specific risks arising from the registrations in the context of the circumstances and conditions in New South Wales. The information relied on to support the Treasurer is provided in Attachment B.

#### **Consultation**

Between November and December 2021, New South Wales conducted consultation with relevant stakeholders. The consultation supported consideration of the risk and the circumstances and conditions arising in New South Wales.

The consultation drew on the knowledge of relevant subject matter experts, industry bodies and relevant unions and ensured that persons likely to be affected by the previous 2023 Declarations had an adequate opportunity to comment on its proposed content.

In January and February 2024, the relevant government agencies raised their concerns with NSW Treasury and the Treasurer of New South Wales, noting that the risks identified in the previous 2023 Declarations remain with their occupational registrations. The consultation conducted in February 2024, yielded a similar outcome to the consultation that was conducted in 2023; that the previously identified risks remain with their occupational registrations and there is no perceivable change to this risk profile.

The proposed Declaration effectively extends the previous 12-month exemptions in the previous 2023 Declarations by a further 12-months to 30 June 2025. This will allow additional time for NSW agencies to address the risks identified to safely transition these occupational licences into AMR in the future.

## **Attachment A**

### **Details of the Mutual Recognition (New South Wales) (Exemption – Various) Declaration 2024**

#### **Part 1 – Preliminary**

##### **Section 1 – Name**

This section provides that the Declaration is to be cited as the Mutual Recognition (New South Wales) (Exemption – 12-months) Declaration 2024 (the Declaration).

##### **Section 2 – Commencement**

This section provides the date on which the Declaration comes into operation. The Declaration comes into operation on 1 July 2024.

##### **Section 3 – Authority**

This section outlines the authority through which the Declaration is made. The Declaration is made under section 42S of the *Mutual Recognition Act 1992* of the Commonwealth.

##### **Section 4 – Simplified outline of the instrument**

This section explains that the purpose of this instrument is to exempt specified registrations from the ADR provisions of the MRA, the application of the exclusion and the period of the exclusion.

##### **Section 5 – Definitions**

This section provides, for the purposes of the Declaration, self-explanatory definitions of the following terms:

- The Act is defined in this section as meaning the *Mutual Recognition Act 1992*.

##### **Section 6 – Exemptions**

This section lists the specific paragraph of the MRA relied on to make the Declaration, the specific registrations excluded from ADR, the explanation of the risk(s) and the self-repealed date for the exemptions.

The Declaration is made in accordance with paragraph 42S(1)(a) of the MRA; the specific registrations listed in column 1 are excluded from ADR. This means that an individual cannot carry on the activities authorised under the registrations listed in column 1 in New South Wales without first obtaining that registration. An individual may obtain the registration listed in column 1 from the local registration authority through Part 3 of the MRA.

The Minister making the Declaration is satisfied that there is a significant risk of not excluding the registrations in column 1. In accordance with subsection 42S(2) of the MRA, column 2 in the table provides the statement of the risk to consumer protection, the environment, animal welfare, or the health and safety of workers or the public for each of the registrations listed in column 1.

The information relied on to support the Treasurer is provided in Attachment B.

The following table replicates the provisions in the Declaration.

<b>Exemptions for the purposes of paragraph 42S(1)(a)</b>		
	<b>Column 1</b>	<b>Column 2</b>
<b>Item</b>	<b>Registration</b>	<b>Statement of risk</b>
1.	Licences, certificates, and accreditations under the <i>Property and Stock Agents Act 2002</i> (NSW)	Significant risk to consumer protection. Currently, the regulator cannot prescribe an amount for ADR operators to contribute to the compensation funds, nor is there a means for operators to make these payments. This will mean that ADR operators are unable to comply with their obligations and public protection requirements will not be met.
2.	Licences and certificates under the <i>Motor Dealers and Repairers Act 2013</i> (NSW)	Significant risk to consumer protection. Currently, the regulator cannot prescribe an amount for ADR operators to contribute to the compensation funds, nor is there a means for operators to make these payments. This will mean that ADR operators are unable to comply with their obligations and public protection requirements will not be met.
3.	Licences under the <i>Conveyancers Licensing Act 2003</i> (NSW)	Significant risk to consumer protection. Conveyancers' compensation fund contributions are set by referral to the <i>Property &amp; Stock Agents Act 2002</i> (NSW). Currently, the regulator cannot prescribe an amount for ADR operators to contribute to the compensation funds, nor is there a means for operators to make these payments. This will mean that ADR operators are unable to comply with their obligations and public protection requirements will not be met.
4.	Contractor licence and supervisor certificate for general building work under the <i>Home Building Act 1989</i> (NSW)	Significant risk to consumer protection and the public safety. The building and construction sector in NSW is subject to additional requirements and protections. Building failures result in costs to homeowners in remedying defects and an increased risk to safety for people living with non-compliant building work. The NSW Government and consumers need to have confidence in the building and construction sector.
5.	Contractor licence and supervisor certificate for the erection of prefabricated metal-framed home additions and structures under the <i>Home Building Act 1989</i> (NSW)	Significant risk to consumer protection and the public safety. The building and construction sector in NSW is subject to additional requirements and protections. Building failures result in costs to homeowners in remedying defects and an increased risk to safety for people living with non-compliant building work. The

<b>Exemptions for the purposes of paragraph 42S(1)(a)</b>		
<b>Column 1</b>		<b>Column 2</b>
<b>Item</b>	<b>Registration</b>	<b>Statement of risk</b>
		NSW Government and consumers need to have confidence in the building and construction sector.
6.	<p>Registration or recognition within the meaning of the <i>Design and Building Practitioners Act 2020</i> (NSW):</p> <ul style="list-style-type: none"> <li>• Design practitioner - fire systems (all classes)</li> <li>• Design practitioner – fire safety engineering</li> <li>• Professional engineer – fire safety;</li> </ul> <p>Registered certifiers – fire safety and accredited practitioner – fire safety under the <i>Building and Development Certifiers Act 2018</i> (NSW);</p> <p>Licences and certificates for water plumbing – fire protection and fire sprinkler systems under the <i>Home Building Act 1989</i> (NSW)</p>	<p>Significant risk to consumer and the health and safety of the public.</p> <p>The NSW Government and consumers need to have confidence in the building and construction sector.</p>
7.	Licences and certificates for mechanical services and medical gas work, medical gas technician work, medical gas fitting work under the <i>Home Building Act 1989</i> (NSW)	<p>Significant risk to consumers and the health and safety of the public.</p> <p>The risks of improper medical gas work can lead to loss of life. A new framework for medical gas was implemented in New South Wales to ensure that medical gas work is done to a high standard and safety. Interstate licence holders would not have the relevant expertise to work in New South Wales.</p>
8.	Licences and certificates for electrical wiring, air-conditioning and refrigeration work under the <i>Home Building Act 1989</i> (NSW)	Significant risk to the safety of consumers, workers, and the public. Licensing bodies and regulators will be unable to verify or validate interstate workers' skills, knowledge and understanding against NSW standards and regulations. The failure to understand or comply with the relevant legislation can result in potential dire consequences, including equipment failure, fires, electrical shock, and death.

## Section 7 – Sunset

This section provides for the automatic repeal of the whole of this instrument at the end of 30 June 2025.

## **Section 8 – Repeals**

This section provides that instruments that are specified in Schedule 1 are repealed as set out in the applicable items in that Schedule.

The Hon. Daniel Mookhey MLC

Treasurer of New South Wales

## **Attachment B - Information relied on to support the Minister**

- 1. Licences, certificates, and accreditations under the *Property & Stock Agents Act 2002* (NSW)**
- 2. Licences and certificates under the *Motor Dealers and Repairers Act 2013* (NSW)**
- 3. Licences under the *Conveyancers Licensing Act 2003* (NSW)**

Under NSW licensing legislation, conveyancers, motor dealers and repairers and property and stock agents are required contribute to compensation funds as a condition to hold a licence. The contribution is charged to the individual at the time of applying for the grant or renewal of a licence.

Under the MRA, in order to hold an ADR an individual must satisfy any such "public protection requirement" relating to insurance, fidelity funds, trust accounts, minimum financial requirements or the like that is designed to protect the public, clients, customers, or others.

This raises a significant risk to consumer protection. Currently, the regulator cannot prescribe an amount for ADR operators to contribute to the compensation funds, nor is there a means for operators to make these payments. This will mean that ADR operators are unable to comply with their obligations and public protection requirement will not be met.

- 4. Contractor licence and supervisor certificate for general building work under the *Home Building Act 1989* (NSW);**
- 5. Contractor licence and supervisor certificate for the erection of prefabricated metal-framed home additions and structures licence under the *Home Building Act 1989*;**

The costs of substandard work are felt by everyday homeowners and building owners who rely on builders and tradespeople to produce compliant work. Building failures result in costs to homeowners in remedying defects and an increased risk to safety for people living with non-compliant building work. These failures tarnish the industry for those who produce quality work and impact consumer confidence in the building and construction industry.

The NSW Government is undertaking a comprehensive review of the *Home Building Act 1989* to lift confidence in the building and construction industry.

- 6. Design practitioner - fire systems (all classes) – *Design and Building Practitioners Act 2020* (NSW);**  
**Design practitioner – fire safety engineering - *Design and Building Practitioners Act 2020* (NSW);**  
**Professional engineer – fire safety - *Design and Building Practitioners Act 2020* (NSW);**  
**Registered certifiers – fire safety and accredited practitioner under the *Building and Development Certifiers Act 2018* (NSW);**  
**Licences and certificates for water plumbing – fire protection and fire sprinkler systems under the *Home Building Act 1989* (NSW)**

There is significant risk to consumers and the health and safety of the public if these licences are recognised under AMR. Regulators in NSW have developed their own training and industry standards over time for the relevant fire protection systems licences.

The fire industry performs life critical work and needs time to ensure consistent regulation, terminology, and licensing standards across jurisdictions. Further analysis is required to

ensure regulatory regimes and licensing standards are consistent across jurisdictions before this scheme is recognised under AMR.

**7. Licences and certificates for mechanical services and medical gas work, medical gas technician work, medical gas fitting work under the *Home Building Act 1989* (NSW)**

Incorporating the scheme into AMR presents significant risks to public safety as interstate licence holders do not have the relevant expertise or experience to undertake this specialised work in NSW.

The Bankstown-Lidcombe Hospital incident highlights this risk and a new framework for medical gas was implemented in May 2022 to ensure that medical gas work is done to a high standard and safely. This will require additional competencies and on-the-job training which is absent in other jurisdictions. AMR would effectively obviate the new scheme by waiving these requirements so soon after the scheme has commenced.

**8. Licences and certificates for electrical, air conditioning and refrigerating work under the *Home Building Act 1989* (NSW)**

The regulatory and compliance frameworks for electrical wiring, air conditioning and refrigeration work vary across jurisdictions, which poses as significant risk to the safety of consumers, workers, and the public.

The failure of a worker to understand or comply with the relevant legislation can result in potential dire consequences, including equipment failure, fires, electrical shock, and death. Electrical fires are an ongoing issue in New South Wales.