

EXPLANATORY STATEMENT

Mutual Recognition Act 1992

Automatic Mutual Recognition (New South Wales) (Exemption – Various) Declaration 2024

This explanatory statement provides notes on the operation of the Automatic Mutual Recognition (New South Wales) (Exemption – Various) 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 specific registrations from ADR for the period 1 July 2024 to 30 September 2029.

The excluded registrations include specific (but not all the) registrations excluded for the earlier period of 1 July 2023 to 30 June 2024 listed in the following declarations:

- 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 up to five years ending on 1 October 2029. This will allow additional time for NSW agencies to address the risks identified to safely transition these specified occupational licences into AMR in the future and remove the requirement to reapply for significant risk exemptions every 12-months.

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 – Various) 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.

Exemptions for the purposes of paragraph 42S(1)(a)		
Column 1		Column 2
Item	Registration	Statement of risk
1.	Consulting radiation expert accreditation under the <i>Radiation Control Act 1990</i> (NSW)	Significant risk to consumer protection and health and safety of workers and patients through unintended exposure to radiation due to equipment being incorrectly serviced and calibrated. There are large differences in accreditation, terminology, operating conditions, and activities across the jurisdictions, which in many cases do not provide equivalent protection as that in NSW. The NSW Government and consumers need to have confidence that consulting radiation experts from other jurisdictions understand specific NSW laws and processes to ensure equipment that uses radiation is correctly assessed, calibrated and maintained.
2.	Site auditor accreditation under the <i>Contaminated Land Management Act 1997</i> (NSW)	Significant risk to consumer protection, the environment and public health as an incorrect assessment of the nature and extent of land contamination may be illegal, costly to rectify and result in adverse impacts on public health and the environment. There are technical, policy and legislative requirements that are specific to NSW. The NSW Government and consumers need to have confidence that site auditors from other jurisdictions understand specific NSW laws and processes to ensure audits and assessments are conducted correctly.
3.	Pyrotechnician's licences under the <i>Explosives Act 2003</i> (NSW)	Significant risk to public safety as NSW Police Force needs to retain the authority to conduct probity checks on operators entering NSW and restrict access to persons deemed unsuitable.
4.	Licences and registration schemes under the <i>Greyhound Racing Act 2017</i> (NSW)	Significant risk to consumer protection and animal welfare as the NSW racing controlling bodies are unable conduct a probity assessment which could lead to criminal elements, including organised crime, money laundering, race fixing and illicit or performance enhancing human and equine drug use. New South Wales has a statutory obligation to assess an applicant's fitness taking into account a broader list of criminal convictions than other Australian jurisdictions.
5.	Licences and registration schemes under the <i>Harness Racing Act 2009</i> (NSW)	Significant risk to consumer protection, health and safety of workers in the harness

Exemptions for the purposes of paragraph 42S(1)(a)		
Column 1		Column 2
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		<p>racing industry, and animal welfare as, without an exemption to AMR, the NSW harness racing controlling body would be unable to conduct an appropriate probity assessment. There is a substantial risk that this would lead to criminal elements, including organised crime, money laundering, race fixing and illicit or performance enhancing human and equine drug use infiltrating the sport in NSW increase safety and animal welfare concerns, and reduce consumer confidence. Harness Racing NSW has a statutory obligation to assess an applicant's fitness and propriety to a more rigorous and higher standard than other Australian jurisdictions.</p>
6.	Licences and registration schemes under the <i>Thoroughbred Racing Act 1996</i> (NSW)	<p>Significant risk to consumer protection and animal welfare as the NSW racing controlling bodies are unable conduct a probity assessment which could lead to criminal elements, including organised crime, money laundering, race fixing and illicit or performance enhancing human and equine drug use. NSW has a statutory obligation to assess an applicant's fitness taking into account a broader list of criminal convictions than other Australian jurisdictions.</p>
7.	Registered Surveyor – Mining, under the <i>Surveying and Spatial Information Act 2002</i> (NSW)	<p>Significant health and safety risk for workers in underground mines.</p> <p>The assessment of registered mining surveyors for underground work are not done to the same standards in other jurisdictions.</p>
8.	Registration under the <i>Combat Sports Act 2013</i> (NSW)	<p>Significant risks to consumer protection, combatant health and safety, and public safety.</p> <p>The Combat Sports Authority (NSW) and the NSW Police Force would have reduced ability to properly supervise and regulate combat sport industry activity in NSW through combatant and industry participant probity assessments. This could pose a health and safety risk to combatants, and damage public perceptions of the field's integrity and increase the likelihood of organised crime infiltration.</p>
9.	Licences under the <i>Pawnbrokers and Second-hand Dealers Act 1996</i> (NSW)	<p>Significant risk to consumer protection. Currently, ADR operators are unable to access the reporting portal for Pawnbrokers and Second-hand dealers monitored by the NSW Police Force.</p>

Exemptions for the purposes of paragraph 42S(1)(a)	
Column 1	Column 2
Item Registration	Statement of risk
	<p>This will mean that ADR operators are unable to comply with their mandatory obligations.</p> <p>Failure to keep proper records will also impede police investigation and may impact on recovery of stolen goods.</p>

Section 7 – Sunset

This section provides for the automatic repeal of the whole of this instrument at the end of 1 October 2029.

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. Consulting radiation expert accreditation under the *Radiation Control Act 1990* (NSW)

The consulting radiation expert (CRE) accreditation should be exempt from AMR due to the serious health consequences from unintended exposure to radiation due to equipment being incorrectly serviced and calibrated. Significant risks to consumers and public health and safety will arise if interstate workers are able to rely on ADR to undertake activities of a NSW CRE that they are unqualified for.

There are large differences in accreditation, terminology, operating conditions, and activities for CREs across the jurisdictions. Equipment compliance certification varies by jurisdiction and standards do not meet NSW CRE requirements. There are no nationally agreed equipment standards and the operating conditions attached to an accreditation are usually State or Territory specific. CRE's that have not been accredited in NSW may not be familiar with NSW laws, processes and equipment standards which may lead to unintended exposure to radiation for both the operator and patients. There are risks that the NSW Government and consumers will not have full confidence that interstate CREs are competent in NSW laws and processes.

The terminology and activities under this accreditation are inconsistent with licences in other jurisdictions. For example, interstate CREs are termed 'approved testers' or 'compliance testers' which are more aligned with the testing of equipment.

Work is currently underway to harmonise accreditation standards. An exemption for a reasonable period will provide time to align systems, and implement the necessary administrative, ICT, policy, and regulatory changes necessary.

2. Site auditor accreditation under the *Contaminated Land Management Act 1997* (NSW)

The site auditor accreditation should be exempt from AMR due to the significant risks posed to consumer protection, the environment and public health resulting from jurisdictional disparities in environmental regulation and accreditation standards. Site auditors from other jurisdictions may not have the technical, policy and legislative knowledge specific to NSW to ensure audits and assessments of contaminated land are conducted correctly. Incorrect assessments may be illegal, extremely costly to rectify and result in significant adverse impacts on human health and the environment. There are risks that the NSW Government and consumers will not have full confidence that interstate auditors are competent in NSW laws and processes.

The Environment Protection Authority (EPA) has guidance material for site auditors but the risk for errors is still too high without sufficient experience applying them in NSW. Addressing non-compliance with NSW law may occur after an incident, which means damage to human health, or the environment will have already occurred. Work is underway to transition to the scheme, but more time is required to make the necessary changes to mitigate the risks arising from jurisdictional disparities.

3. Pyrotechnician's licences under the *Explosives Act 2003* (NSW)

Recognising these licences under AMR poses significant risks to public safety and national security, as inappropriate persons may be cleared to have access to explosives. AMR will limit the ability of regulators to restrict access to explosives by unsuitable persons, as

individuals will not be required to obtain a security clearance from NSW Police Force prior to working. NSW Police Force must be able to conduct its own probity checks and restrict access to persons they deem unsuitable and exemption from the scheme is justified on these grounds.

4. **Licences and registration schemes under the *Greyhound Racing Act 2017* (NSW);**
5. **Licences and registration schemes under the *Harness Racing Act 2009* (NSW);**
6. **Licences and registration schemes under the *Thoroughbred Racing Act 1996* (NSW);**

AMR of racing licences and registration schemes would bring significant risks to consumer protection and animal welfare in NSW due to the scale of the industry and its reliance on wagering. The relevant controlling bodies will not be able to conduct probity checks to assess for criminal activity, such as organised crime, money laundering, race fixing and both animal and human illicit performance-enhancing drug use. There is a statutory requirement for racing controlling bodies to determine the fitness and propriety of individuals seeking to be licenced or registered, which does not exist in other States. NSW also considers a broader list of criminal convictions than other jurisdictions when assessing an applicant's fitness (such as murder and sexual assault).

Variance in the licensing requirements for breeders and trainers across different jurisdictions will impact the integrity of the industry in NSW. Interstate licensing is not as robust as in NSW and penalties for non-compliance may be more lenient. These high standards may be eroded if interstate workers 'licence shop' to bypass more stringent requirements, justifying the requested exemption.

7. Registered Surveyor – Mining under the *Surveying and Spatial Information Act 2002* (NSW)

The current registration scheme for registered mining surveyors works well under Mutual Recognition, without the AMR scheme. A mining surveyor wishing to work in NSW as a registered mining surveyor must undertake an interview to familiarise themselves with local laws and knowledge prior to working in NSW. This interview helps to mitigate issues with differences in jurisdictional standards, which would not be possible under AMR.

Prior incidents have strengthened mining surveyor requirements in NSW. The Gretley Coal Mine disaster resulted in the loss of life as incorrect and inaccurate survey plans were used. NSW's registration process curriculum was changed in response and includes specific guidelines on archival research not used in other jurisdictions.

8. Registration under the *Combat Sports Act 2013* (NSW)

The combat sports area in NSW is governed by the *Combat Sports Act 2013* (NSW) (the "CS Act"), as administered by the Combat Sports Authority of New South Wales (the "CSA") in conjunction with the NSW Police ("NSWPF"). The statutory objects of combat sports regulation in NSW are set out at section 3 of the CS Act, and include:

- (a) to promote the health and safety of combat sport contestants,
- (b) to promote the integrity of combat sport contests,
- (c) to regulate combat sport contests on a harm minimisation basis,

The CSA's functions (as defined under Section 81 of the CS Act) include to "supervise and regulate professional and amateur combat sport in New South Wales" (s. 81(a) of the CS Act).

In fulfilling its regulatory mandate, the activities of the CSA, which in some instances are performed in conjunction with the NSWPF, include a focus on medical safety and the maintenance of probity in relation to combat sport and combat sport contests as defined in the CS Act.

Medical safety

The CSA has legislative responsibilities under the CS Act to oversee the administration of:

- mandatory pre-contest and post-contest medical examinations for all combatants; and
- annual medical examinations and six/twelve monthly serological (blood) tests for all registered combatants.

Probity (including security considerations)

The CSA conducts probity assessments for promoters and industry participants, and in some instances in conjunction with the NSWPF.

The CSA's decision to grant, renew or cancel the individual registrations for combatants, industry participants or promoters, or to allow specific professional combat sport contests to occur, may also be subject to security considerations. For example:

- The CSA must cancel the registration of a person if the CSA becomes aware that the person is a controlled member of a declared organisation under the *Crimes (Criminal Organisations Control) Act 2012* (see s. 34(2) of the CS Act).
- The CSA's decision to grant, renew or cancel the individual registrations of combatants, industry participants or promoters may be subject to a security determination by the Commissioner of Police which can be based on open-source information, or on specific criminal intelligence (the details of which should only be known to the NSWPF). In such instances, the CSA must, under the CS Act, enforce the Commissioner's determination.
- In approving a final fight, card checks are also conducted by the NSWPF on each combatant to identify risks to public safety and property damage if the contest is to proceed. If a serious risk is identified, the Commissioner may revoke contest permits preventing the contest from being held.

This robust assessment process is required particularly for roles that can significantly influence the outcome of contests, the industry, and the safety of combatants. The ability of the CSA to discharge its statutory obligations (without further legal consideration and consultation and engagement with interstate regulatory authorities), and to properly supervise and regulate combat sport industry activity in NSW (including via combatant and industry participant probity assessments), may be undermined by a transition to the Automatic Mutual Recognition scheme.

Within this context, and in direct response to the coronial inquest into the death of professional boxer David Browne Jnr, the NSW Government is considering introducing mandatory concussion and other serious head injury identification training to minimise such injuries. This includes the provision of mandatory and required training of registered industry participants (including referees) who have legislated responsibility to stop contests where a combatant's health may be at risk if the contest continues (for example, displays signs of concussion). Strategies are being developed that will require for persons subject to registration under the CS Act to undertake the training specific to NSW. The CSA will require time to complete this work, including implementing any resulting regulatory changes.

In the context of this reform work and the complexity of the existing regulatory arrangements governing the NSW combat sports industry, the immediate inclusion of this professional registration area in the AMR scheme could reduce the CSA's and NSWPF's ability to properly supervise and regulate combat sport industry activity in NSW (including via combatant and industry participant probity assessments). Such a change could disrupt this regulatory activity and thus pose a health and safety risk to combatants, with further possible negative consequences for public perceptions of the field's integrity and the likelihood of organised crime infiltration.

An exemption from inclusion in the AMR scheme would provide the CSA and the NSW Government with additional time to fully assess the risks, and to work with interstate regulatory authorities to address those risks, to ensure combatant health and safety, public safety and integrity at combat sport contests held in NSW.

9. Registration under the *Pawnbrokers and Second-hand Dealers Act 1996* (NSW)

In NSW, pawnbrokers and second-hand dealers are required to comply with compulsory and time sensitive reporting requirements of the goods in which they deal.

The obligation requires licence holders to send all records of prescribed goods acquired to NSW Police via a weblink site within 3 days after the record was made. The purpose of this requirement is to ensure pawned goods and second-hand dealings are regulated and recorded to minimise movement of stolen goods through these channels, as well as assist investigations into related matters.

However, the reporting mechanism to NSW Police (Police Weblink Service) cannot recognise interstate licence numbers, and AMR operators are not issued with a NSW licence number. This means that AMR operators are unable to report relevant transactions and therefore unable to comply with the legal obligations imposed on licence holders in NSW.

Allowing AMR users to operate in NSW may delay or impede investigations and/or recovery of stolen goods, posing a significant risk to consumer protection. Not only would AMR users be non-compliant by operating in NSW, but this would also disadvantage NSW licence holders who must operate subject to these compliance obligations.

This situation risks significantly undermining the integrity and effectiveness of the NSW regulatory framework.