

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 41

Issued by the authority of the Minister for Innovation, Industry, Science and Research

Mutual Recognition Act 1992 Amendment Regulations 2010 (No. 1)

The Mutual Recognition Agreement (MRA) is an agreement between the Commonwealth, State and Territory Governments of Australia, 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 one jurisdiction may be sold in any other; in respect of occupations, a person registered to practise an occupation in one jurisdiction is entitled to practise the same occupation in any other. The Minister for Innovation, Industry, Science and Research is responsible for the goods component of the MRA.

The *Mutual Recognition Act 1992* (the Act) implements the MRA. However, the Act also provides for circumstances where the mutual recognition principle will not apply; these circumstances are covered by provisions for temporary exemptions and permanent exemptions; permanent exemptions are set out at Schedules to the Act.

The purpose of the Regulations is to permanently exempt from the operation of the Act section 9B of the South Australian *Summary Offences Act 1953* (SA section 9B). SA section 9B prohibits the sale of drug paraphernalia known colloquially as bongs, ice pipes, hash pipes, cocaine kits, hookahs, shishas and ghalyans.

On 8 June 2008, South Australia made regulations to temporarily exempt SA section 9B from the operation of the Act in order that SA section 9B would remain enforceable. However, Subsection 15(3) of the Act provides that temporary exemptions operate for a maximum period of 12 months. South Australia then sought the agreement of the Ministerial Council on Drug Strategy (MCDS) to permanently exempt SA section 9B from the operation of the Act. The MCDS agreed, and the MCDS Chair sought the agreement of the Council of Australian Governments to the permanent exemption. The proposal has been supported unanimously by all participating jurisdictions.

Section 47 of the Act sets out the circumstances in which a permanent exemption may be made under the Act. Subsection 47(1) provides that the Governor-General may make regulations amending the Schedules to the Act. Subsection 47(2) provides that a regulation may not be made unless the designated person from each participating jurisdiction has published a notice endorsing the terms of the regulation in the jurisdiction's official gazette.

Heads of Government have agreed to the permanent exemption and endorsement of the Regulations has been published in the official gazettes of participating jurisdictions as required under subsection 47(2) of the Act.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.