

EXPLANATORY STATEMENT

Mutual Recognition Act 1992

Automatic Mutual Recognition (Tasmania) (Exemptions—Three-Year) Declaration 2022

This explanatory statement provides notes on the operation of the Automatic Mutual Recognition (Tasmania) (Exemptions—Three-Year) Declaration 2022 (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 allows 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.

Summary

Through this Declaration, the Treasurer (Tasmania) has excluded a number of registrations from ADR for the period 1 July 2022 to 30 June 2025. By virtue of the making of the Declaration, the Treasurer is satisfied that the exclusions are necessary because of a significant risk to consumer protection and/or to 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 Tasmania.

Consultation

In making this Declaration, the Treasurer (Tasmania) was advised by the Department of Education on appropriate longer-term exemption arrangements in relation to teachers, which included details of stakeholder consultation undertaken. Consultation was undertaken with a range of stakeholders including relevant industry bodies and associations (across Australian jurisdictions), employers, teachers and other relevant groups. The consultation supported consideration of the risks specific to teaching, the circumstances and conditions in Tasmania that give rise to these risks, future mitigation strategies, and the appropriate length of an exemption.

In relation to the exemptions for High Risk Work Licences (HRWL) Assessors, Security-sensitive Dangerous Substance (SSDS) Permits and Responsible Worker Statuses, the Treasurer (Tasmania) was advised by WorkSafe Tasmania on appropriate longer-term exemption arrangements, which included details of stakeholder consultation undertaken. Consultation was undertaken with relevant bodies, such as Tasmania Police, along with the relevant cross-jurisdictional regulator body.

The Treasurer (Tasmania) is satisfied that the consultation undertaken is appropriate and practical for the purposes of making the Declaration. The consultation drew on the knowledge of relevant subject matter experts and ensured that persons likely to be affected by the proposed Declaration had an adequate opportunity to comment on its proposed content.

A regulation impact statement or analysis (RIS/RIA) is not required in Tasmania for this legislative instrument. To note, the Commonwealth engaged PricewaterhouseCoopers Australia to undertake an Economic Impact Assessment of AMR, which was finalised in December 2020.

Attachment A

Details of the Automatic Mutual Recognition (Tasmania) (Exemptions—Three-Year) Declaration 2022

Part 1 – Preliminary

Section 1 – Name

This section provides that this Declaration is to be cited as the Automatic Mutual Recognition (Tasmania) (Exemptions—Three-Year) (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 2022.

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* (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 this 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-repeal date for the exemption.

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 the Tasmania without first obtaining that registration. An individual may obtain the registration listed in column 1 from the Local Registration Authority (LRA) 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 and the public for each of the registrations listed in column 1.

Teachers

A significant risk would arise in relation to consumer protection, and the health and safety of the public (in particular, students), if teachers are not excluded from ADR. This risk arises due to differences between jurisdictions in the use and extent of good character and fitness to teach tests, as well as inadequate information sharing arrangements which do not currently allow for the timely and accurate sharing of information between jurisdictions.

The risk associated with these issues is significant as it means that teachers seeking to work under AMR may not meet the relevant standard required in Tasmania, as they may not have been assessed to the same degree. Additionally, it may not be possible to obtain pertinent information about teachers seeking to work under AMR, which could, if known, prevent them from being registered in the State. Given teachers work with vulnerable people (children), the risks are considered to be significant.

A three year exemption is the most appropriate way to manage this risk, as it will provide time for the consideration and implementation of legislative changes in Tasmania, and potentially other jurisdictions. Additionally, it will allow time for appropriate information sharing arrangements to be put in place between jurisdictions, to ensure that the local registration authority can access accurate information on teachers seeking to work under AMR in a timely manner.

Security-sensitive Dangerous Substances (SSDS) Permits and Responsible Worker Statuses

A significant risk would arise in relation to the health or safety of workers or the public, if these registrations are not excluded from ADR. The risk arises due to substantial differences between jurisdictions for the issuing of these registrations, including in relation to the standard of fit and proper person tests.

The risk associated with these issues is significant due to the nature of the activities that these registrations involved. They deal with dangerous substances and allow workers to engage in high risk activities, such as the transport, use, manufacture and storing of explosives. Misuse or mishandling of dangerous substances poses a significant risk to the health and safety of both workers and the public.

A three-year exemption is the most appropriate way to manage this risk, as it will provide time for appropriate legislative changes to be considered and implemented.

High Risk Work Licence (HRWL) Assessors

A significant risk would arise in relation to the health or safety of workers or the public, if HRWL assessors are not excluded from ADR. The risk arises due to the substantial differences between jurisdictions as to the accreditation of, and conditions imposed upon, HRWL Assessors.

This means that assessors seeking to work under AMR may not assess HRWLs in Tasmania to the expected standard, which creates a significant risk if HRWLs are issued when they would not otherwise be. A HRWL allows the holder to engage in high risk activities, which, if not performed correctly, could result in injury or death to either the HRWL holder, or other members of the public. Additionally, operating requirements relating to high risk activities can differ between jurisdictions, meaning the HRWL assessor needs to be able to assess the licence based on Tasmanian requirements.

A three-year exemption is the most appropriate way to manage this risk, as it will provide time for further cross-jurisdictional consultation to take place, and solutions to be developed and implemented to mitigate the current risks.

Subsection 4 provides a self-repeal date for section 6 of 30 June 2025.

Michael Ferguson

Treasurer (Tasmania)