



New South Wales

# Mutual Recognition (New South Wales) Amendment Bill 2021

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

In 1992, New South Wales and Queensland (the *initial referring States*) referred the matter of the enactment of the text of a uniform mutual recognition Act to the Parliament of the Commonwealth for the purposes of the Constitution of the Commonwealth, section 51(xxxvii) (the *existing reference*).

The Commonwealth enacted the *Mutual Recognition Act 1992* of the Commonwealth (the *Commonwealth Act*) based on the references made by the initial referring States. South Australia, Tasmania, Victoria and Western Australia subsequently adopted the Commonwealth Act for the purposes of the Constitution of the Commonwealth, section 51(xxxvii). The Commonwealth Act applies to the Australian Capital Territory and the Northern Territory by virtue of the Constitution of the Commonwealth, section 122. All States and Territories are currently *participating jurisdictions* for the purposes of the Commonwealth Act.

The initial referring States and Tasmania also referred the matter of the amendment of the Commonwealth Act to the Parliament of the Commonwealth (the *existing amendment reference*).

The objects of this Bill are to amend the *Mutual Recognition (New South Wales) Act 1992* (the *NSW Act*) to—

- (a) terminate the existing amendment reference, and
- (b) replace the existing amendment reference with a new reference to enable the Commonwealth Parliament to make express amendments of the Commonwealth Act with respect to certain matters relating to the mutual recognition of occupations and goods (the *new amendment reference*).

The proposed Act will be enacted for the purposes of the Constitution of the Commonwealth, section 51(xxxvii), which enables State Parliaments to refer matters to the Commonwealth Parliament.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Mutual Recognition (New South Wales) Act 1992 No 61**

**Schedule 1[2]** omits provisions in relation to the termination of the existing reference and the existing amendment reference and a redundant provision.

**Schedule 1[3]** provides for the following—

- (a) the new amendment reference,
- (b) the termination of the existing reference and the new amendment reference,
- (c) the consequences of terminating the new amendment reference before the existing reference.

The new amendment reference extends to the making of express amendments of the Commonwealth Act if the amendments are with respect to—

- (a) the matter of providing for individuals lawfully authorised to carry on an occupation in a State to carry on the occupation in another State or Territory, and
- (b) the matter of providing for goods that may be sold lawfully in a State or Territory to be sold lawfully in another State or Territory, whether with or without the need to comply with some or all of the applicable legal requirements of the other State or Territory.

The new amendment reference does not affect the operation of the existing reference. The new amendment reference supports the making of express amendments of the Commonwealth Act on the condition that the amendments are within the scope of the matters referred.

The matters referred do not extend to the matter of providing for an amendment to the process of making regulations to amend the Schedules of the Commonwealth Act or the repeal or amendment of exemptions specified in the Commonwealth Act, Schedule 1 or 2. This exception is to ensure that the existing process for the making of regulations to amend the Schedules to the Commonwealth Act is retained. The repeal or amendment of the exemptions specified in the Schedules must be by regulations made by the Governor-General and supported by a request from each jurisdiction that is a participating jurisdiction at the time of the repeal or amendment.

The separate termination of the period of the new amendment reference does not affect laws already in place. Accordingly, the new amendment reference continues to have effect to support those laws unless the period of the existing reference is also terminated.

**Schedule 1[1]** makes a consequential amendment.



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New South Wales

# Mutual Recognition (New South Wales) Amendment Bill 2021

No. \_\_\_\_\_, 2021

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## **A Bill for**

An Act to amend the *Mutual Recognition (New South Wales) Act 1992* to refer certain additional matters relating to mutual recognition of occupations and goods to the Parliament of the Commonwealth for the purposes of the Constitution of the Commonwealth, section 51(xxxvii); and for related purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Mutual Recognition (New South Wales) Amendment Act 2021*.

3

**2 Commencement**

4

This Act commences on the date of assent to this Act.

5

<b>Schedule 1</b>	<b>Amendment of Mutual Recognition (New South Wales) Act 1992 No 61</b>	1
		2
<b>[1] Section 4</b>	<b>Enactment of uniform mutual recognition legislation</b>	3
	Omit “fixed under subsection (4)” from section 4(1).	4
	Insert instead “provided under section 5B”.	5
<b>[2] Section 4(4)–(6)</b>		6
	Omit the subsections.	7
<b>[3] Sections 5A–5C</b>		8
	Insert after section 5—	9
<b>5A</b>	<b>Reference of matters concerning amendment of Commonwealth Act</b>	10
(1)	The mutual recognition matters are referred to the Parliament of the Commonwealth, but only to the extent of the making of laws with respect to those matters by making express amendments of the Commonwealth Act.	11 12 13
(2)	The <i>mutual recognition matters</i> are—	14
(a)	the matter of providing for individuals lawfully authorised to carry on an occupation in a State to carry on the occupation in another State, and	15 16
(b)	the matter of providing for goods that may be sold lawfully in a State to be sold lawfully in another State, whether with or without the need to comply with some or all of the applicable legal requirements of the other State.	17 18 19 20
(3)	However, subsection (2)(b) does not include the matter of providing for—	21
(a)	an alteration of the process specified by the Commonwealth Act, section 47(2) and (3), as in force when this section commences, for making regulations amending the Commonwealth Act, Schedule 1 or 2, or	22 23 24 25
(b)	the repeal or amendment of exemptions from the operation of the Commonwealth Act, Part 2, specified in the Commonwealth Act, Schedule 1 or 2.	26 27 28
(4)	The operation of each of section 4(1) and subsection (1) is not affected by the other subsection.	29 30
(5)	The reference of a matter under subsection (1) has effect only if and to the extent that—	31 32
(a)	the matter is not included in the legislative powers of the Parliament of the Commonwealth otherwise than by a reference under the Constitution of the Commonwealth, section 51(xxxvii), and	33 34 35
(b)	the matter is included in the legislative powers of the Parliament of the State.	36 37
(6)	To avoid doubt, it is the intention of the Parliament of the State that the Commonwealth Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this section by—	38 39 40
(a)	provisions of Commonwealth Acts the operation of which are based on legislative powers that the Parliament of the Commonwealth has apart from the reference under subsection (1), and	41 42 43

(b)	provisions of instruments made or issued under the Commonwealth Act or under provisions referred to in paragraph (a).	1 2
(7)	Despite any other provision of this section, a reference under subsection (1) has effect for, but no longer than, the period—	3 4
(a)	beginning when this section commences, and	5
(b)	ending at the end of the day fixed under section 5B as the day on which the reference is to terminate.	6 7
(8)	In this section—	8
	<i>applicable legal requirements</i> , in relation to goods that are sold, means requirements, prohibitions, restrictions or conditions imposed by or under law that apply to the goods or their sale.	9 10 11
	<i>express amendment</i> of the Commonwealth Act means the direct amendment of the text of that Act, whether by the insertion, omission, repeal, substitution or relocation of words or matter, by another Commonwealth Act, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Commonwealth Act.	12 13 14 15 16 17
	<i>goods</i> means goods of any kind, and includes animals.	18
	<i>lawfully authorised</i> , in relation to carrying on an occupation, means to hold or have a licence, permit, certificate, registration or other form of qualification or authorisation required by or under law to carry on the occupation.	19 20 21
	<i>occupation</i> means an occupation, trade, profession or calling of any kind.	22
	<i>sold</i> includes—	23
(a)	sold by wholesale or retail, and	24
(b)	distribution for sale or have in possession for sale, and	25
(c)	agree to sell, and	26
(d)	barter, and	27
(e)	expose or offer for sale, and	28
(f)	supply by way of exchange, lease, hire or hire-purchase.	29
	<i>State</i> , when used in relation to a State other than New South Wales, includes a Territory.	30 31
<b>5B</b>	<b>Termination of references</b>	32
(1)	The reference made by section 4(1)(b) is terminated on the commencement of section 5A.	33 34
(2)	The Governor may, at any time, by proclamation published on the NSW legislation website, fix a day as the day on which—	35 36
(a)	the references made by section 4(1)(a) and 5A(1) both terminate, or	37
(b)	the reference made by section 5A(1) terminates.	38
(3)	The Governor may, by proclamation published on the NSW legislation website, revoke a proclamation published under subsection (2), in which case the revoked proclamation is taken, for the purposes of sections 4 and 5A, never to have been published.	39 40 41 42
(4)	A revoking proclamation has effect only if published before the day fixed under subsection (2).	43 44
(5)	The revocation of a proclamation published under subsection (2) does not prevent publication of a further proclamation under that subsection.	45 46

<b>5C</b>	<b>Effect of termination of amendment reference before other reference</b>	1
(1)	If the reference made by section 5A(1) (the <i>amendment reference</i> ) terminates before the reference made by section 4(1)(a), the termination of the amendment reference does not affect—	2 3 4
(a)	laws that were made under that reference before that termination, whether or not they have come into operation before that termination, or	5 6
(b)	the continued operation in the State of the Commonwealth Act as in operation immediately before that termination or as subsequently amended or affected by—	7 8 9
(i)	laws referred to in paragraph (a) that come into operation after that termination, or	10 11
(ii)	provisions referred to in section 5A(6).	12
(2)	Accordingly, the amendment reference continues to have effect for the purposes of subsection (1) unless the reference under section 4(1)(a) is terminated.	13 14 15