

# Guidelines on the Operation of Mutual Recognition Radiation Protection Act 2005

## Contents

1.	Introduction .....	2
2.	Brief background to the mutual recognition legislation .....	2
3.	Mutual recognition principle .....	3
4.	Occupation and registration .....	3
5.	Role of a local registration authority .....	4
6.	There may be other relevant local registration authorities .....	4
7.	Radiation licensing requirements.....	4
8.	Accredited persons .....	5
9.	Entitlement to registration .....	5
10.	Equivalence.....	6
11.	How to apply – notification under the mutual recognition legislation .....	6
12.	The Director of Public Health must act on an application within a month.....	7
13.	Registration and the imposition of conditions.....	7
14.	Postponement of registration.....	8
15.	Refusal of registration.....	8
16.	Notification of decision.....	9
17.	The Director of Public Health may impose fees .....	9
18.	Deemed registration .....	9
19.	Imposition of conditions to achieve equivalence.....	10
20.	Declaration by Ministers on equivalence.....	10
21.	Appeal rights – review of decisions.....	10
22.	Disciplinary action.....	10
23.	Exemptions .....	11
24.	Privacy of personal information.....	11
25.	Enquiries .....	11

## 1. Introduction

Under the Radiation Protection Act 2005 (Tasmania), the Director of Public Health has the authority to issue licences for dealings with radiation sources (radiation apparatus, non-ionising radiation apparatus and radioactive material).

The Director of Public Health acts as the 'local registration authority under both the Mutual Recognition (Tasmania) Act 1993 and the Trans-Tasman Mutual Recognition (Tasmania) Act 2003, for occupations that deal with radiation sources in Tasmania.

Accordingly, a person who is registered in an equivalent occupation in another State, or in New Zealand, may be entitled to apply to the Director of Public Health, under the *Mutual Recognition (Tasmania) Act 1993* or the *Trans-Tasman Mutual Recognition (Tasmania) Act 2003* respectively, for a licence to deal with radiation sources so as to enable that person to carry on an equivalent occupation in Tasmania.

The local registration authority, has a duty under s39 (2) of the Mutual Recognition Act (and s38 (2) of the Trans-Tasman Mutual Recognition Act) to prepare and make available guidelines for the operation of Part 3 of the Mutual Recognition Act which deals with occupations that are subject to the licensing requirements of the Radiation Control Act.

## 2. Brief background to the mutual recognition legislation

The Mutual Recognition (Tasmania) Act was enacted in Tasmania as a result of an intergovernmental agreement between the Commonwealth and the States. The Tasmania Act applies the Commonwealth *Mutual Recognition Act 1992* as a law of Tasmania.

The principal aim of mutual recognition legislation is to remove unnecessary barriers to the interstate trade of goods and the mobility of labour caused by regulatory differences among Australian States and Territories.

The Trans-Tasman Mutual Recognition (Tasmania) Act was enacted in Tasmania in to implement the Trans-Tasman Mutual Recognition Arrangement, signed by the Commonwealth and the States on 14 June 1996 and by New Zealand on 9 July 1996. The Tasmania Act applies the Commonwealth *Trans-Tasman Mutual Recognition Act 1996* as a law of Tasmania.

The Explanatory Note to that Act indicates that the object of the 1996 Arrangement is to remove regulatory barriers to the movement of goods and service providers between Australia and New Zealand, and to thereby facilitate trade between the two countries. The 1996 Arrangement states that, as far as possible, the mutual recognition scheme contemplated by that Arrangement should be consistent with the scheme established by the 1992 Mutual Recognition Agreement. As a result, the terms of the *Trans-Tasman Mutual Recognition Act 1996* are based on, and are similar to, the *Mutual Recognition Act 1992*.

As these guidelines address the mutual recognition scheme operating under both Acts, any reference to 'jurisdiction' is to be read, as appropriate, as either a reference to participating States and Territories under the Mutual Recognition Act or as a reference

to New Zealand, the Commonwealth and any participating States and Territories under the Trans-Tasman Mutual Recognition Act.

Where particular sections of the Mutual Recognition Act are referred to in these guidelines, they are followed, in brackets, by the equivalent sections in the Trans-Tasman Mutual Recognition Act, accompanied by the abbreviation 'TTMR Act'.

### 3. Mutual recognition principle

The basic mutual recognition principle in relation to occupations is that if a person is registered to carry out an occupation in one participating jurisdiction, then s/he should be able to be registered and carry on the equivalent occupation in any other participating jurisdiction. In other words, if someone is assessed to be good enough to practise a profession or occupation in one participating jurisdiction, then s/he should be able to do so anywhere in Australia or New Zealand.

That principle, as specifically set out in section 17 (1) of the Mutual Recognition Act (section 16 (1) TTMR Act), is that, subject to Part 3 of the Act, a person who is registered in connection with an occupation in one jurisdiction (the 'first jurisdiction') is, after notifying the local registration authority for the equivalent occupation of another jurisdiction (the 'second jurisdiction'), entitled:

- (a) to be registered in the second jurisdiction for the equivalent occupation; and
- (b) pending such registration, to carry on the equivalent occupation in the second jurisdiction.

Section 17 (2) of the Mutual Recognition Act (section 16 (2) TTMR Act) states that the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second jurisdiction so long as those laws:

- (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second jurisdiction; and
- (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

### 4. Occupation and registration

Section 17 of the Mutual Recognition Act (section 16 TTMR Act) makes it clear that for entitlement to mutual recognition of an occupation, a person must be **registered** in an **occupation** in the first jurisdiction.

Under section 4 of the Mutual Recognition Act (section 4 TTMR Act):

**occupation** means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted.

**registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of an occupation.

## **5. Role of a local registration authority**

Under section 4 of the Mutual Recognition Act (section 4 TTMR Act):

**local registration authority** of a State for an occupation means the person or authority in the State having the function conferred by legislation of registering persons in connection with their carrying on that occupation in the State.

The Director of Public Health acts as a local registration authority under the Mutual Recognition Act and the Trans-Tasman Mutual Recognition Act.

## **6. There may be other relevant local registration authorities**

Section 18 of the Mutual Recognition Act (section 17 TTMR Act) recognises that an individual may be subject to more than one system of registration for a single occupation. That is, in order to carry on some occupations, a person may need to be registered (e.g. licensed or approved) by more than one body. If that is the case, each such body is a local registration authority and the individual would also need to be registered by each of these local registration authorities to carry on their occupation in Tasmania.

This means that the Director of Public Health might not be the only relevant local registration authority, to which a person may need to apply in order to be entitled to carry on a particular occupation. The Director of Public Health is entitled only to license persons for to deal with of radiation sources. If a person requires some other form of registration (eg approval or practising certificate) then they are required to apply to the registration authority that has the function of granting such registration.

## **7. Radiation licensing requirements**

Under section 13 of the Radiation Protection Act 2005, it is an offence for a person to deal with a radiation source without a licence issued by the Director of Public Health. It is also an offence to deal with a radiation source in contravention of the conditions on the licence. Note that some users of radiation sources, for example medical registrars in training, or university students undertaking research, are exempt from the requirements to hold a user licence.

The effect of section 13 of the Radiation Protection Act 2005 is that a person cannot lawfully carry out certain occupations in Tasmania, unless that person is licensed by the Director of Public Health to deal with the radiation source in question. This means that the Director of Public Health acts as a local registration authority to such occupations. Accordingly, a person who, as part of his/her occupation in another State, is registered to deal with radiation sources is entitled to seek registration from the Director of Public Health under the Mutual Recognition Act for a licence to deal with that source so as to enable that person to carry on an equivalent occupation in Tasmania. In addition, a person who, as part of his/her occupation in New Zealand, is registered to deal with a radiation source may apply to the Director of Public Health under the Trans-Tasman Mutual Recognition Act for a licence to deal with that radiation source so as to enable that person to carry on an equivalent occupation in Tasmania.

There are many occupations that may require dealings with radiation sources under the Radiation Protection Act 2005. Such occupations may include, but are not limited to:

- Chiropractor
- Dental Assistant
- Dental Hygienist
- Dentist
- Dermatologist
- General Medical Practitioner
- Industrial Radiographer
- Medical Diagnostic Radiographer
- Nuclear Medicine Physician
- Nuclear Medicine Technologist
- Nurse
- Ophthalmologist
- Radiation Oncologist
- Radiation Therapist
- Radiologist
- Scientist
- Service Engineer/Technician
- Veterinarian.

## **8. Accredited persons**

Under section 22 of the Radiation Protection Act 2005 the Director of Public Health is responsible for accrediting persons to test and certify radiation sources and places:

Where a person is already accredited to perform some or all of these activities in another Australian State or Territory they may apply to the Director of Public Health under the Mutual Recognition Act to practice in Tasmania.

## **9. Entitlement to registration**

A person who is registered in one jurisdiction is entitled to be registered in the equivalent occupation by the registration authority of a second jurisdiction by lodging a notice under section 19 of the Mutual Recognition Act (section 18 of the TTMRA). Under section 20(1) of the Mutual Recognition Act (section 19(1) TTMRA), registration in the second jurisdiction is to be given as if the legislation that provides for registration in the second jurisdiction expressly includes a provision that registration in the first jurisdiction is sufficient grounds for registration in the second jurisdiction.

## **10. Equivalence**

Under the Mutual Recognition legislation, a person is entitled to register in a second jurisdiction provided that the occupation that the person is entitled to carry on in the first jurisdiction is equivalent to what that person is applying for in the second jurisdiction.

Under section 29 (1) of the Mutual Recognition Act (section 28 (1) TTMR Act), an occupation in the first jurisdiction is taken to be equivalent to an occupation in the second jurisdiction if the activities authorised to be carried out under both jurisdictions are substantially the same.

Even if occupations are not equivalent, they will be deemed to be equivalent if equivalence can be achieved by the imposition of conditions.

## **11. How to apply – notification under the mutual recognition legislation**

Section 19 of the Mutual Recognition Act (section 18 TTMR Act) sets out the procedure to be followed by a person who is registered for an occupation in another jurisdiction and who wishes to apply to the Director of Public Health for a licence to deal with radiation sources in Tasmania.

In lodging an application under the Mutual Recognition Act, the procedure set out in section 19 (2) (section 18 (2) TTMR Act) must be followed. Section 19 of the Mutual Recognition Act is as follows:

19. (1) A person who is registered in the first State for an occupation may lodge a written notice with the local registration authority of the second State for the equivalent occupation, seeking registration for the equivalent occupation in accordance with the mutual recognition principle.

(2) The notice must:

(a) state that the person is registered for the occupation in the first State and specify that State; and

(b) state the occupation for which registration is sought and that it is being sought in accordance with the mutual recognition principle;

(c) specify all the States in which the person has substantive registration for equivalent occupations; and

(d) state that the person is not the subject of disciplinary proceedings in any State (including any preliminary investigations or action that might lead to disciplinary proceedings) in relation to those occupations; and

(e) state that the person's registration in any State is not cancelled or currently suspended as a result of disciplinary action; and

(f) state that the person is not otherwise personally prohibited from carrying on any such occupation in any State and is not subject to any special conditions in carrying on that occupation, as a result of criminal, civil or disciplinary proceedings in any State; and

(g) specify any special conditions to which the person is subject in carrying on any such occupation in any State;

(h) give consent to the making of inquiries of, and the exchange of information with, the authorities of any State regarding the person's activities in the relevant occupation or occupations or otherwise regarding matters relevant to the notice.

(3) The notice must be accompanied by a document that is either the original or a copy of the instrument evidencing the person's existing registration (or, if there is no such instrument, by sufficient information to identify the person and the person's registration).

(4) As regards the instrument evidencing the person's existing registration, the person must certify in the notice that the accompanying document is the original or a complete and accurate copy of the original.

(5) The statements and other information in the notice must be verified by statutory declaration.

(6) The local registration authority may permit the notice to be amended after it is lodged.

The Director of Public Health's registration role is to allow only licensed persons to deal with radiation sources in Tasmania. A person applying for a licence to deal with such items in Tasmania, under section 19 of the Mutual Recognition Act (section 18 TTMR Act), should provide evidence that the person holds a licence to deal with these substances and/or apparatus in the first jurisdiction.

An application lodged pursuant to section 19 of the Mutual Recognition Act (section 18 TTMR Act), should contain the following:

- completed the licence application form (including supporting documentation)
- appropriate licence application fee, and
- statutory declaration

## **12. The Director of Public Health must act on an application within a month**

If the Director of Public Health receives an application under section 19 of the Mutual Recognition Act (section 18 TTMR Act), they must act on the application within one month [section 21 (section 20 TTMR Act)] and may either grant the application [section 21 section 20

TTMR Act)] or postpone the application [section 22 (section 21 TTMR Act)] or refuse the application [section 23 (section 22 TTMR Act)].

## **13. Registration and the imposition of conditions**

If the Director of Public Health grants an application, the registration takes effect from the date the notice was lodged [section 21 (2) (section 20 (2) TTMR Act)]. Under section 20 (5) of the Mutual Recognition Act (section 19 (5) TTMR Act), a local registration authority may impose conditions on registration, but may not impose conditions that are more onerous than conditions it could impose in similar circumstances (having regard to relevant qualifications and experience) if the applicant were applying apart from the Act, unless they are conditions that apply to the person's registration in the first jurisdiction or that are necessary to achieve equivalence of occupations.

This means that if the Director of Public Health were to decide to grant registration under the mutual recognition legislation, by licensing the applicant to deal with the radiation source, they could attach conditions to the licence. However, the Director of Public Health could not impose conditions more onerous than the conditions it could attach to a licence if the applicant had applied under the normal mechanisms of the Radiation Protection Act 2005, unless they are conditions that apply to the person's registration in the first jurisdiction or are necessary to achieve equivalence of occupations.

#### **14. Postponement of registration**

Section 22 (1) of the Mutual Recognition Act (section 21 (1) TTMR Act) states that a local registration authority may postpone the grant of registration, if:

- (a) any of the statements or information in the notice as required by section 19 (section 18 TTMR Act) are materially false or misleading; or
- (b) any document or information as required by section 19 (3) (section 18 (3) TTMR Act) has not been provided or is materially false or misleading; or
- (c) the circumstances of the person lodging the notice have materially changed since the date of the notice or the date it was lodged; or
- (d) the authority decides that the occupation in which registration is sought is not an equivalent occupation.

Section 22 (3) of the Mutual Recognition Act (section 21 (3) TTMR Act) states that a local registration authority may not postpone the grant of registration for longer than six months.

#### **15. Refusal of registration**

Under section 23 of the Mutual Recognition Act (section 22 TTMR Act), a local registration authority may refuse the grant of registration if:

- (a) any of the statements or information in the notice as required by section 19 (section 18 TTMR Act) are materially false or misleading; or
- (b) any document or information as required by section 19 (3) (section 19 (3) TTMR Act) has not been provided or is materially false or misleading; or
- (c) the authority decides that the occupation in which registration is sought is not an equivalent occupation and equivalence cannot be achieved by the imposition of conditions.

Under section 23 (2) of the Mutual Recognition Act (section 22 (2) TTMR Act), a decision to refuse registration on the ground that the occupation in which registration is sought is not an equivalent occupation takes effect at the end of a specified period (not less than two weeks) after the person is notified of the decision, unless it has been previously revoked or there is an application for review to the Administrative Appeals Tribunal. The Tribunal may make whatever orders it considers appropriate.



## **16. Notification of decision**

A local registration authority must give the person, who lodges a notice in accordance with section 19 of the Mutual Recognition Act (section 18 TTMR Act), a notice in writing of its decision to grant registration (either conditionally or unconditionally) or postpone registration or refuse registration. [section 24 (section 23 TTMR Act)].

## **17. The Director of Public Health may impose fees**

The Director of Public Health can impose fees in relation to its processing of applications under the Mutual Recognition Act and in relation to the granting and/or renewal of licences. However, those fees may not be greater than the fees the specified in relation to licensing under the Radiation Protection Act 2005.

## **18. Deemed registration**

A person who lodges a notice under section 19 of the Mutual Recognition Act (section 18 TTMR Act) with a local registration authority is, pending the grant or refusal of registration, taken to be registered as provided in section 20 of the Mutual Recognition Act (section 19 TTMR Act). [section 25 (1) (section 24 (1) TTMR Act)].

However, section 27 of the Mutual Recognition Act (section 26 TTMR Act) limits the activities that may be carried out by a person who is deemed to be registered under section 25 of that Act (section 24 TTMR Act). While that person is entitled to carry on the occupation in the second jurisdiction, s/he may do so only:

- (a) within the limits conferred by the person's substantive registration in the first jurisdiction; and
- (b) within the limits conferred by the person's deemed registration in the second jurisdiction; and
- (c) subject to any conditions or undertakings applying to the person's registration in the first jurisdiction; and
- (d) subject to any conditions applying to the person's deemed registration. Under section 27(5) of the Mutual Recognition Act (section 26 (5) TTMR Act), a local registration authority may impose conditions on a person's deemed registration in the same way it can impose conditions on substantive registration and subject to the same limitations. (See section 11 above).

Under section 27 (3) of the Mutual Recognition Act (section 26 (3) TTMR Act), a person who has deemed registration:

- (a) may not carry on the occupation in the second jurisdiction without complying with any requirements regarding insurance, fidelity funds, trust accounts and the like that are designed to protect the public, clients, customers or others; and
- (b) is subject to any disciplinary provisions and arrangements that are applicable to persons registered in that jurisdiction; and
- (c) is subject to the laws applying to persons registered in that jurisdiction.

## **19. Imposition of conditions to achieve equivalence**

Even if an occupation in Tasmania is not equivalent to the occupation for which the person is registered in another jurisdiction, it will be deemed to be equivalent if equivalence can be achieved by the imposition of conditions. Accordingly, the authority is entitled under section 29 (2) of the Mutual Recognition Act (section 28 (2) TTMR Act) to impose conditions upon registration to achieve equivalence.

An appeals tribunal, in reviewing a decision of a local registration authority (see 'Appeal Rights' below), may, in certain specified circumstances, make a declaration under s 31 (2) of the Mutual Recognition Act (section 30 (2) TTMR Act) that occupations carried on in two jurisdictions are not equivalent.

## **20. Declaration by Ministers on equivalence**

Under section 32 (1) of the Mutual Recognition Act (section 31 (1) TTMR Act), Ministers from each of two jurisdictions may jointly declare that specified occupation are equivalent and may specify or describe conditions that will achieve equivalence. Such a declaration has effect only in the two jurisdictions concerned.

## **21. Appeal rights – review of decisions**

Section 34 (1) of the Mutual Recognition Act (section 33 (1) TTMR Act) provides that, subject to the *Administrative Appeals Tribunal Act 1975* (the AAT Act), application may be made to the Administrative Appeals Tribunal (the Tribunal) for a review of a decision of a local registration authority.

That means that if the Director of Public Health makes a decision in their capacity as local registration authority under the mutual recognition legislation, a person affected by that decision may apply to an appeals for a review of the decision.

## **22. Disciplinary action**

Under section 33 of the Mutual Recognition Act (section 32 TTMR Act), if a person's registration in one jurisdiction is cancelled, suspended or subjected to conditions on disciplinary grounds or in anticipation of criminal, civil or disciplinary proceedings, then the person's registration in another jurisdiction is affected in the same way.

This means, among other things, that:

(a) if a person's licence to deal with a radiation source in another jurisdiction is cancelled or suspended, then, if the Director of Public Health has granted that person a licence to deal with those items in Tasmania, that licence will also be automatically cancelled or suspended; and

(b) if the Director of Public Health cancels or suspends a person's licence, then, if that person holds a licence in another jurisdiction, that licence will automatically be cancelled or suspended.

## **23. Exemptions**

The Mutual Recognition Act provides for certain goods and laws relating to goods to be permanently exempt from the arrangements. These exemptions do not currently impact on the Director of Public Health responsibilities in relation to licensing under the Radiation Protection Act 2005. There are no other exemptions under this Act.

The Trans-Tasman Mutual Recognition Act provides for a broader range of exemptions. These include the permanent exemption of certain laws relating to goods and the temporary exemption of certain laws relating to goods. There are currently no exemptions under these sections that impact on the Director of Public Health licensing responsibilities under the Radiation Protection Act 2005. In addition, the Trans-Tasman Mutual Recognition Act provides for the special exemption of certain laws. These special exemptions are renewable.

The Trans-Tasman Mutual Recognition Act also recognises that registration from several local registration authorities may be required to carry on an occupation in another jurisdiction (see section 6). The requirement that a practitioner be registered under both the Radiation Protection Act 2005 and the *Health Practitioner Regulation National Law* is not inconsistent with the requirements of the Trans-Tasman mutual recognition scheme.

## **24. Privacy of personal information**

Schedule 5 of the Trans-Tasman Mutual Recognition Act outlines the privacy principles that should be followed by a local registration authority when dealing with applications under the mutual recognition arrangements.

## **25. Enquiries**

If a person wishes to apply to the Director of Public Health under the Mutual Recognition Act or the Trans-Tasman Mutual Recognition Act for a licence to deal with a radiation source or an accreditation and requires more information, s/he should write to:

Radiation Protection Unit  
GPO Box 125, Hobart, Tasmania  
radiation.protection@health.tas.gov.au