

# Built Environment

BULLETIN

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## Occupational Mobility – Commonwealth Mutual Recognition Act Amendments

The Federal government have introduced an Amendment Bill called the “Mutual Recognition Amendment Bill 2021” to change the *Mutual Recognition Act 1992*. The Bill will introduce a uniform scheme of automatic mutual recognition (AMR) by enabling an individual who is registered for an occupation in their home state to carry on those activities in other states and territories.

The draft legislation appears to be well through Parliament and is likely to be implemented by July 2021.

An extract of the proposed changes is captured below:

### *42B Entitlement to carry on activities covered by occupations in a second State*

*(1) The mutual recognition principle is that, subject to this Part, a person who is authorised to carry on an activity covered by an occupation registration/license in the person’s home State is entitled to carry on that activity in the second State if the activity is covered by an occupation registration/license in the second State.*

*(2) However, 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 activity covered by the occupation in the second State, 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 State; and*

*(b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.*

Subclause (2) essentially means that requirements on operators, such as those contained in the General Fire Regulations 2010, would continue to affect how they operate but potentially not whether they are qualified to operate.

The draft legislation appears to have some options regarding the exception or exclusion of some occupations and/or licensing schemes however that is at the discretion of a State Minister.

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Tasmania Fire Service



Tasmanian Government

A summary of these available options is listed below:

1. **Acceptance** – full acceptance will mean that anyone who has achieved the corresponding qualification in another state or territory will be able to undertake their occupation in Tasmania as if they were still within the state that issued the qualification or license. This will be the default position.
2. **Notification** – clause 42J of the draft Bill appears to provide for a mechanism where a Minister (which may in Tasmania mean the Treasurer) may declare in relation to an activity that a person who intends to operate in Tasmania must notify the “local registration authority for the occupation” before the person begins to carry on the activity.
3. **Temporary exemption** – clause 42T allows for two 6-month temporary exemptions (so would apply from commencement on 1 July 2021 and go through to mid-2022) by legislative instrument, no particular reasons are required to be evidenced, but it is likely TFS would have to make the case to Treasury.
4. **Exemptions due to significant risk** – clause 42S provides for exemptions by legislative instrument that last for a period of 5 years if the Minister is satisfied that the declaration is necessary because of a significant risk, arising from particular circumstances or conditions in the declaration State, to:
  - (c) consumer protection; or
  - (d) the environment; or
  - (e) animal welfare; or
  - (f) the health or safety of workers or the public.

From the proposed legislation:

**Activity** means an activity authorised to be carried on under an occupation that requires registration.

**Covers:** an occupation covers an activity if a person must be registered for the occupation to carry on the activity.

**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 practicing certificates), or any other form of authorisation, of a person required by or under legislation for carrying on an occupation.

This means that TFS would have to demonstrate that automatic recognition poses a “significant risk” AND that the risk arises from a Tasmanian peculiarity that means we cannot rely on another state’s registration. Whilst the Chief Officer may wish to apply for an exemption to all or part of the permitting system for the fire protection industry in Tasmania the relevant Minister may not approve this.