The Australia and Trans-Tasman mutual recognition frameworks — characteristics and comparisons with the EU

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Structure of talk

1. The 2008 Productivity Commission review of mutual recognition schemes
2. Why mutual recognition?
3. MR principles for goods and services
4. Goods and services: scope, coverage, effects, limitations of mutual recognition
5. The way forward with mutual recognition
6. Questions

Mutual recognition down under

• Mutual Recognition Agreement (MRA) operating since 1992
• Trans-Tasman Mutual Recognition Arrangement (TMRA) since 1998
• Schemes reviewed at regular intervals to
  – check progress on outstanding issues
  – reassess schemes in light of latest national and international developments

2008 PC review of MRA and TTMRA

• Terms of reference of latest PC review (2008) were to
  – consider how administrative provisions can be amended and/or enhanced to support more efficient operation of the MRA and/or TMRA
  – examine whether any components of overseas models of mutual recognition or any other changes might be made to enhance the functioning of the MRA and TMRA
  – explore any possible implications for the operation of the TMRA arising from participating jurisdictions’ bilateral engagement with third countries
• Final report to 10 Governments in Feb 09
  – Contained 33 recommendations
  – Available at www.pc.gov.au
• Government response is being formulated by Cross-Jurisdictional Review Forum (representing all governments)

Policy environment

• Australia — Seamless national economy
  – COAG regulatory ‘hot spots’ reform agenda
  – Moves to harmonise and/or centralise regulation
• Trans-Tasman — Single Economic Market
  – Low tariffs on goods and services
  – Removal of ‘behind the border’ barriers to trade the next frontier
• International — rising bilateral engagement

MR principle

• Two jurisdictions with similar social, economic and political institutions can have confidence that their respective sets of laws and regulations meet expectations of all consumers regarding the safety of goods and occupations
• MR synonymous with trust in each other’s regulatory outcomes
Why mutual recognition?

- Regulatory differences create impediments to movement of goods, services and people
- Three main ways to reduce these impediments
  - Mutual recognition, harmonisation, uniformity of regs
- MR is a low-cost, decentralised option
  - operates by default, with no dedicated bureaucracy or tribunal
- MR preserves regulatory competition and incentives to innovate
  - can lead to less onerous regulatory burden in all jurisdictions

MR principle for goods

- Under the MRA and TTMRA, all Australian jurisdictions and New Zealand mutually recognise compliance with each others’ laws for the sale of goods — sellers into a second jurisdiction need not comply with that jurisdiction’s requirements for:
  - Production, composition, quality and performance
  - Packaging, labelling, date stamping or age of product
  - Inspection, testing and passing of product
  - Location of production
  - ‘Any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.’

Goods: ANZ-EU comparison

- 75% of goods traded within the EU are harmonised — ANZ percentage not known
  - but only for ‘essential requirements’
  - MR continues to apply to meeting technical (non-essential) requirements and proving conformity
- EU MR applies to non-harmonised goods
  - restrictions can remain, subject to tests: public interest; non-discrimination; proportionality
- Major point of ANZ-EU difference — regs governing ‘manner of sale’ and ‘use’ of goods
  - mutually recognised in EU, not in ANZ

MR principle for occupations

- Under the MRA and TTMRA, all Australian jurisdictions and New Zealand mutually recognise compliance with each others’ laws for the registration of occupations
  - People licensed to practise an occupation in one jurisdiction are entitled to practise an equivalent occupation in another jurisdiction (after notifying the local registration authority)
  - Some atypical forms of registration are ‘in’
    - coregulation and RSA certificates
  - Some forms of registration are ‘out’
    - self-regulation, partial licensing, de facto licensing, negative licensing

Occupations: ANZ-EU comparison

- MR of occupations in EU based on equivalence of qualifications
  - for occs where training is harmonised (doctors): MR of qualifications is automatic
  - for some occs (trades), MR of qualifications based on professional experience
  - for remaining occs, training and experience examined on a case basis (compensatory measures possible)
- In ANZ, qualifications and experience are irrelevant
  - what matters is the activities permitted by registration
  - no requirements for ongoing registration of MR licensees allowable
  - if activities permitted differ, conditions may be applied to MR licence
- Unlike EU, MR applies automatically to all occupations registered in individual states and territories and NZ (> 130)
  - but not to medical practitioners under TTMRA
  - MR irrelevant to nationally registered occs (pilots, tax agents)

What is the reach of the MR schemes?

- The reach of MR is restricted by the ‘3 Xs’: exclusions, exceptions and exemptions. Together, they define the scope and coverage of MR of goods and occupations
  - Scope
    - Exclusions (TTMRA only)
    - Exceptions
  - Coverage
    - Permanent exemptions
    - Special exemptions (TTMRA only)
    - Temporary exemptions
**Scope restrictions: goods**
- Not all goods-related laws and regs are in scope
- Exclusions under TTMRA comprise: customs, taxation, IP, international treaties
  - preserves a country’s sovereignty
- Exceptions include laws governing
  - manner of sale; transport, storage and handling; inspection; registration of sellers
  - subject to tests

**Coverage restrictions: goods**
- All goods are in scope, but some goods are not covered by MR
- Permanent exemptions
  - Some goods e.g. firearms, pornographic material
  - Some goods-related laws e.g. Container Deposit Legislation, quarantine, ozone protection
- Temporary exemptions (up to 12 or 24 months)
- Special exemptions exist under TTMRA
  - Therapeutic goods
  - Hazardous substances, industrial chemicals and dangerous goods
  - Radiocommunications devices
  - Road vehicles
  - Gas appliances

**Effects of MR: goods (1)**
- MR potentially benefits to thousands of firms, but take-up and specific impact on compliance costs difficult to isolate and measure
- Effects (circumstantial) on merchandise trade
  - Australia: share of interstate trade in GSP has increased for all S&Ts between 01-02 and 05-06
  - Trans-Tasman: ANZ trade as a proportion of total merchandise trade of Australia and NZ intensified slightly in the 1998-2007 period (despite China)

**Effects of MR: goods (2)**
- MR facilitates the emergence of technical standards
  - highlights differences in requirements
  - mandates regulatory dialogue about ways to resolve differences (TTMRA), including via standards
  - from 1997 to 2008, the number of joint Australia-New Zealand standards (AS/NZS) grew by over 200 per cent
  - once in operation, joint standards expand the coverage of mutual recognition/harmonisation by removing the need for special exemptions
  - Impact on trade? ICS v. SITC
  - Road vehicles standards

**Limitations of MR: goods**
- Some limitations exist in ANZ schemes, compared to the EU
- ANZ regs governing manner of sale, storage, transport, handling, inspection are exceptions to MR, provided
  - non-discriminatory
  - motivated by public health and safety, the environment
- MR and TTMR Acts silent on regs governing use of goods
  - but mentions regs that prevent or restrict sale of goods (drafters’ intent?)
- PC recommended exceptions continue, but use of goods regs should be covered by MR, subject to public interest tests
  - For both, better advice, appeal and redress mechanisms are needed to allay fears that such regs are a protective device
  - Onus of proof on regulators

**Scope and coverage restrictions: occupations**
- Scope restrictions
  - MR only covers service provision insofar as initial registration requirements for individual providers
  - Businesses providing services not in scope
  - ‘Manner of carrying on an occupation is an exception to the schemes (premises, insurance) but must be non-discriminatory and not qualification/training related
- Coverage
  - 18 per cent of employed Australians and 16 per cent of employed New Zealanders work in (fully or partially) registered occupations
Effects of MR: occupations

• Anecdotal evidence MR reduces costs of moving between jurisdictions
  – PC estimated $6m saved by 5 occs in 2006 alone
• Impact on labour mobility
  – overall worker mobility is much higher in Aus than in the EU (low relative to US)
  – compared to other workers, registered workers have increased their annual propensity to move between Aus jurisdictions, between 1996 and 2006
  – average wage for these workers converging across jurisdictions
• Greater mobility of registered workers enhances Australia’s ability to benefit from structural change (resources boom)
  – immobile workforces result in less than optimal allocation of resources as result of resources boom, lower GDP and average wages

Limitations of MR: occupations

• Individual jurisdictions’ licences rarely equivalent in some occupations
  – Use of licence conditions for MR can be subjective
  – Ministerial Declarations for some trades have helped (but not NZ)
  – National licensing of 9 health professions and 7 ‘skills shortages’ trades happening in Australia
• Non-mutual recognition of business licences discriminates between providers of identical services
  – imposes duplication of costs on some providers but not others
  – legal advice suggests that sole traders are covered by MR when qualifications are the key to a licence

MR: the way forward

• Governance arrangements
• Cross-border services
• MR and rising bilateral engagement

Governance: goods and services

• Strong case for improving public awareness, regulator expertise & govt oversight
• Role of CJRF inter-govt group of officials has been low-key
• COAG should appoint two specialist units
  – one for goods in DIISR
  – one for occupations in DEEWR
  – under the direction of CJRF.
• These units to combine the functions of EU ‘points of single contact’ and SOLVIT centres
  – ‘one stop shops’ and ‘complaints box’
  – promote awareness, advise, mediate, facilitate appeals and redress
  – update Ministerial Declarations
  – annual testing of regulators knowledge of MR

Cross-border services

• Amount of cross-border and short-term work rising (WTO modes 1 and 4)
  – Internet; fly-in, fly-out; border towns; trans-Tasman professional firms
• MR works with initial registration of individuals, but duplication and heterogeneity of post-registration requirements persists
• MR does not assist businesses providing services across borders
• Movement of services still hampered by regulatory heterogeneity, duplication and specificity
• A process similar to the EU Services Directive is needed
  – Regulatory stocktake or ‘mutual evaluation’ of restrictions on trade in services (e.g. NZ accountants)
  – Abolish all restrictive requirements that do not meet ‘public interest’ test
  – Allow ‘jurisdiction of origin’ for some manner of requirements
  – ‘Country of origin principle already applies in some TT areas (securities offerings)
  – Legal infrastructure required for CoOP is already in place (treaty-on-court proceedings)

Rising bilateral engagement

• Interactions between FTAs and MR
  – No obvious ‘quantity’ downsides (goods and labour)
  – Adverse ‘quality’ effects a possibility, but would require unilateral lowering of standards by an MR partner
  – Positive spill-overs for MR partner more likely (Australia and China-NZ EEEMA)
• But advance consideration of FTA effects on MR needed to avoid e.g.
  – Competing conformance marks: C-Tick and CCC(NZ)
  – Stakeholder perceptions of lower quality
• Potential Australia-EU FTA would see two major MR ‘zones’ engage with each other → opportunities and risks
Questions?