

WORLD TRADE ORGANIZATION

S/WPDR/W/28

21 June 2004

(04-2694)

**Council for Trade in Services
Working Party on Domestic Regulation**

Original: English

COMMUNICATION FROM AUSTRALIA

Professional Recognition in Australia

The following communication, dated 21 June 2004, is being circulated at the request of the Delegation of Australia.

Professional Regulation in Australia

1. A *profession* may be defined as an occupation that requires the theoretical and practical application of a body of specialised knowledge gained through a specialised academic tertiary qualification generally at degree level or higher and, in some cases, relevant experience. The term *profession* also refers to the body of people in such an occupation.
2. Professional regulation helps ensure that professional services are provided by an individual with the appropriate knowledge, skills and experience, and that professional services are provided to an appropriate standard. Regulation in key professional areas serves the public interest, particularly in terms of health and safety, and contributes to the maintenance of public confidence in the standard of professional services provided and in the ethical standards of the individuals providing them.
3. Professional regulation has implications for overseas-trained individuals seeking to practise their profession in an Australian jurisdiction or have their qualifications recognised for the purposes of undertaking further education or training within Australia.
4. Section 51 of the Australian Constitution, which establishes Parliament's power to make laws for the peace, order, and good government of the Commonwealth, does not grant Parliament the power to make laws on the regulation of professions. The regulation of professions is therefore a matter for the state and territory governments. Certain activities which are engaged in by various professions are regulated under Commonwealth law, but not the professions themselves.
5. In most English-speaking countries, it has traditionally been considered appropriate to the status of the professions that their representatives be allowed to set their own requirements for admission. This tradition of substantial self-regulation has been reinforced by the cultivation of perceptions of public interest involved in safeguarding the standards of the professions. Even where professions are regulated by law, it has generally been accepted in Australia that the legislated requirements are established on the basis of advice from the profession concerned. Adding to this quite high degree of autonomy is the fact that higher education programs in professional disciplines are generally accredited by the relevant professional bodies, which maintain close ties with the academic institutions involved.

6. The professions in Australia can be divided into four categories:

- ***regulated professions*** must by law be registered/licensed in all jurisdictions within Australia;
- ***partially-regulated professions*** fall into three categories: either some states or territories require registration/licensing under state law; or some activities carried out by that profession are regulated under state/territory law; or some activities carried out by that profession are regulated under Commonwealth law; and where no such legal requirements exist, these professions are otherwise considered self-regulated;
- ***self-regulated professions*** have no requirement for registration/licensing under law, but clear entry requirements to the profession are established by the profession and employment may be dependent upon demonstration of eligibility for membership of the key professional body; and
- ***unregulated professions*** have no requirement for registration/licensing under law; professional bodies may exist but do not have control over professional standards. Employers make their own evaluation of employee skills rather than relying on membership of a professional body as a guide to standards.

Regulated professions

7. Where an individual in a professional occupation is registered or licensed, this means that they are registered or licensed under the terms of the relevant legislation.

8. Individuals wishing to practise a regulated profession in Australia must by law be registered with the appropriate registration or licensing board of the state or territory they wish to practise in. A professional body generally also exists to determine and maintain standards and processes for the regulation of the profession.

9. Australia's Mutual Recognition Agreement (see below for more on mutual recognition agreements) provides that if a person is registered or licensed to practise an occupation in one Australian state or territory, he or she is eligible for registration in an equivalent occupation in any other participating state or territory without the need to undergo further assessment of qualifications or experience.

10. Australian universities liaise with registration or licensing boards when developing new courses of study or changing existing courses to ensure that graduates will be eligible for registration and/or for membership of the relevant professional body.

11. The group of professions regulated by law includes:

- health-related professions;
- architecture;
- legal practice;
- quantity surveying; and
- veterinary science.

Example: pharmacy in Western Australia

Pharmacists in Western Australia are registered under the terms of the *Pharmacy Act 1964 (WA)*. The Act establishes a register of pharmaceutical chemists; it identifies qualifications for registration and the activities

pharmaceutical chemists may and may not engage in; and it establishes the Pharmaceutical Society of Western Australia to which every pharmaceutical chemist belongs, and a Council to manage the Society, discipline registered pharmacists where appropriate and oversee educational standards for the pharmacy profession.

Example: nursing

There are two levels of nurse in Australia: the registered nurse and the enrolled nurse. Each level has its own educational requirements and professional standards. The Australian Nursing Council (ANC) is the national professional body for nursing. Its purpose is to establish and maintain standards and processes for the regulation of nursing within Australia. However, the ANC has no legal authority to provide any individual with registration as a nurse. It is a legal requirement that nurses must be registered or enrolled with the registration authority in the state or territory in which they intend to practise. For example, an individual wishing to practise as a nurse in New South Wales must be registered with the New South Wales Nurses Registration Board as required by the *Nurses Act 1991 (NSW)*.

Partially-regulated professions

12. Individuals wishing to practise a partially-regulated profession in Australia must be registered with the appropriate registration or licensing board of the state or territory in which they wish to practise where such legal obligations exist. A professional body exists to determine and maintain standards and processes for the regulation of the profession, and employment may require demonstration of eligibility for membership of the key professional body.

13. Alternatively, there may be statutory requirements under Commonwealth law that affect some, but not all, occupations within the profession.

14. Partially-regulated professions include:

- accountancy (some professional activities regulated);
- engineering (registration required in the State of Queensland; some professional activities regulated);
- medical radiation science (regulated in some state/territory jurisdictions);
- occupational therapy (regulated in some state/territory jurisdictions);
- podiatry (regulated in some state/territory jurisdictions);
- speech pathology (regulated in some state/territory jurisdictions);
- surveying (regulated in some state/territory jurisdictions); and
- teaching (regulated in some state/territory jurisdictions).

Example: accountancy

The accounting profession is regulated by several bodies. At a professional level they are CPA Australia and the Institute of Chartered Accountants in Australia (ICAA). The National Institute of Accountants (NIA) represents the profession at the technical and associate professional level. Each body has its own requirements for a variety of membership levels, dependent on educational qualifications and relevant professional experience. CPA

Australia and ICAA have a process for joint accreditation of many accounting degree programs in Australia.

Accountants working for companies or other organisations are generally expected to be members, or eligible for membership, of a professional accounting body. Membership of CPA Australia, ICAA, or NIA thus enhances employment prospects, but is undertaken on a voluntary basis, as there is generally no legal requirement for accountants to be registered in Australia. However, some specialist accountants, such as company auditors, registered tax agents, liquidators and financial advisers, are subject to Commonwealth statutory requirements. For example, company auditors have certain rights to information and certain reporting responsibilities under the *Corporations Act 2001 (Cwlth)*.

Example: engineering

Engineers must be registered in Queensland, but there are no registration requirements in other jurisdictions. However, some professional engineering activities are regulated. For example, the Building Code of Australia (BCA) is produced and maintained by the Australian Building Codes Board on behalf of the Australian Government and state and territory governments. The BCA has been given the status of building regulations by all states and territories. A certificate from a professional engineer is one form of evidence by which a building approval authority can assess whether a building solution complies with the BCA.

Engineers Australia (EA) is the professional body that establishes the standards used for the recognition of professional engineers in Australia by setting requirements for the accreditation of engineering education and the competency standards necessary for the various occupational categories within the profession. Membership of a professional engineering body or entry on the industry registers maintained by the National Engineering Registration Board are not necessary to practice as an engineer in Australia, but may enhance employment prospects.

Self-regulated professions

15. Individuals wishing to practise a self-regulated profession do not require registration in any jurisdiction of Australia. Each professional body determines and maintains standards and processes for the regulation of the occupation. Employers generally require prospective staff to be eligible for membership of the relevant professional body.

16. Professional bodies for the self-regulating professions have a high degree of autonomy and establish their own requirements for membership. A basic requirement for membership is that the applicant holds the appropriate academic qualification.

17. Australian universities liaise with professional bodies where appropriate when developing new courses of study or changing existing courses, in order to ensure that graduates will be eligible to practise their profession and/or for membership of the relevant professional body.

18. Self-regulated professions include:

- dietetics;

- librarianship;
- medical laboratory science;
- social work;
- translating & interpreting; and
- welfare work.

Example: dietetics

For most employment and professional situations dieticians are expected to have qualifications that meet the eligibility requirements for membership of the Dieticians Association of Australia (DAA) and accreditation as an Accredited Practising Dietitian (APD). The APD program is conducted by DAA as a means of self-regulation by the profession to obtain and maintain high levels of professional practice.

Example: translating & interpreting

The National Accreditation Authority for Translators and Interpreters (NAATI) is the body responsible for the accreditation of translators and interpreters in Australia. NAATI accreditation is the only qualification officially accepted for the profession of translating and interpreting in Australia. Accreditation by NAATI usually enhances employment prospects. However, the national association for the profession is the Australian Institute of Interpreters and Translators (AUSIT).

Unregulated professions

19. Individuals wishing to practise an unregulated profession do not require registration in any jurisdiction of Australia. Employers make their own assessment of a prospective employee's qualifications and experience. Professional bodies may exist, but do not set and maintain standards and processes for the regulation of the occupation.

20. Unregulated professions include:

- information and communications technology (ICT); and
- management.

Example: ICT professional

The ICT profession is not regulated by law and there are no formal minimum requirements for employment. Employers generally make their own assessment of a prospective employee's qualifications and experience, although membership of a professional body is given preference by some employers. The Australian Computer Society (ACS) is the major body for ICT professionals in Australia, but has no role in regulating the profession within Australia.

Mutual Recognition

21. There are various means by which mutual recognition of professional qualifications and skills can be established between different jurisdictions. These agreements can take the form of:

- treaties - government-to-government agreements, the terms of which are binding on both parties; or
- non-treaty agreements - government-to-government agreements, which indicate the intent and goodwill of the parties but do not bind them to any action.
- Agreements – established between professional bodies without the force of law.

22. Difficulties can arise with nomenclature; for example, an agreement may be a treaty even though it is not named as such. Non-treaty agreements can have a wide variety of names. Some agreements established by professional bodies may have names similar to those of government-to-government agreements, but are private agreements without the force of law.

23. A Mutual Recognition Arrangement (MRA) streamlines recognition of professional qualifications and skills between two or more jurisdictions providing an impetus for the harmonisation of standards and reducing differences in registration requirements. MRAs can be established between governments, between professional bodies, or between both. Where MRAs are entered into by professional bodies, they are private agreements without the force of law.

Australian Government MRA and TTMRA

24. Australia's Mutual Recognition Agreement (MRA), which commenced operation on 1 March 1993, provides that if a person is registered or licensed to practise an occupation in one Australian state or territory, he or she is eligible for registration in an equivalent occupation in any other participating state or territory without the need to undergo further assessment of qualifications or experience, though registration authorities may impose conditions on registration to achieve equivalence. The terms of this agreement were subsequently implemented by legislation in all Australian jurisdictions. The Trans-Tasman Mutual Recognition Arrangement (TTMRA), which commenced operation on 1 May 1998, extended this arrangement to New Zealand.

Professional bodies' MRAs

25. The negotiation of MRAs requires a detailed knowledge of the education and competency standards, experience, and legislative and other requirements for independent practice in the profession concerned in Australia. The ability to make such judgements rests with the registration authorities in the Australian system. Australian professional bodies have historically exercised considerable autonomy in entering into MRAs.

Role of the Australian Government in concluding MRAs between Australian and overseas professional bodies

26. The Australian Government supports the development of MRAs by professional bodies. It encourages the adoption of fair and transparent assessing arrangements and facilitates mutual recognition arrangements and mobility frameworks (such as APEC Engineer and APEC Architect – see below) by which countries or economies agree to substantially or wholly exempt each other's professionals from meeting the usual requirements to practise.

Asia-Pacific Economic Cooperation (APEC) professional recognition projects

(i) APEC Engineer

27. The APEC Human Resources Development Working Group Steering Committee for mutual recognition of professional engineers developed the initiative for the APEC Engineer Register over the period 1997 – 1998. The APEC Engineer Registers was launched in 2000.

28. The Register has been established to recognise the equivalencies in the qualifications and experience of practising professional engineers in participating economies. It is the aim of the Register that registered engineers will be exempt from further assessment when practising in any of the participating economies.

29. The APEC Engineer Manual, published in 2000, foreshadows that the multilateral APEC Engineer framework will be bolstered by full bilateral mutual recognition arrangements. These are now being developed, with the intention that they use a uniform format. In October 2003, Engineers Australia signed the *Framework to Facilitate Mobility for Mutual Recognition of Registered Licensed Engineers* with the Institution of Professional Engineers Japan. AEI-National Office of Overseas Skills Recognition (NOOSR), the Australian Government's national expert and coordinating body on overseas skills assessments and recognition, was very supportive of this process and provided financial assistance.

(ii) APEC Architect

30. Participating economies are working to establish a mechanism to facilitate mobility for architects for the provision of professional architectural services in participating APEC economies. This will be achieved through the identification of agreed common elements in the education, training and assessment of architects qualified to be registered to provide professional architectural services in the home economy.

31. The procedure will lead to the identification of APEC Architects and the establishment of an APEC Architect Register. Host economies might choose to adopt special requirements for architectural practice, but it is intended that any such requirements should be fully transparent. Subject to these requirements being met, the fulfilment of the APEC Architect procedure would facilitate mobility for those listed on the Register to provide professional architectural services in the participating economies.

Trade Agreements

32. Trade agreements are recognized internationally as an opportunity to facilitate bilateral recognition of professional qualifications between economies.

(i) Japan

33. The Australia-Japan Trade and Economic Framework, which is not a free trade agreement, was signed on 17 July 2003. It recognises the mutual recognition of professional qualifications as an area of cooperation:

A forward work program on mutual recognition of professional qualifications consistent with GATS Article VII in the area of professional qualifications, beginning with priorities such as in specific engineering categories. Both countries intend to conclude promptly a framework for mutual recognition covering the areas of mechanical, electrical and chemical engineers.

34. A Bilateral Framework to Facilitate Mobility for Mutual Recognition of Registered Licensed Engineers between Australia and Japan was signed in Tokyo on 1 October 2003 by the Presidents of Engineers Australia, the National Engineering Registration Board of Australia and the Institution of Professional Engineers Japan.

(ii) New Zealand

35. The Closer Economic Relations (CER) Agreement between Australia and New Zealand entered into force in 1983, and has had its scope broadened on three occasions since then. The 1998 Trans-Tasman Mutual Recognition Arrangement (TTMRA) was established under the CER.

(iii) Singapore

36. The Singapore-Australia Free Trade Agreement (SAFTA) entered into force on 28 July 2003. Article 23 (Recognition) reads:

- . *For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Party may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Party.*
- . *The Parties shall encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.*

(iv) USA

37. The Cross-Border Trade in Services chapter of the Australia-United States Free Trade Agreement (AUSFTA), which is based on the US-Singapore FTA, provides for the establishment of a Working Group on Professional Services to facilitate the development of mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition in relation to professional services. The agreed text of the AUSFTA was concluded on 8 February 2004, and both Governments are working towards entry into force on 1 January 2005.
