



Building Services Board Policy Applications for Registration under Mutual Recognition legislation

OBJECTIVE

The objective of this document is to guide members of the Building Services Board (the Board), officers with powers delegated by the Board, and other Departmental staff in making consistent decisions when determining mutual recognition licence applications under the provisions of the *Mutual Recognition Act 1992* (Cth) (the MRA).

SCOPE

This policy applies to applications for registration lodged under the provisions of the MRA, specifically building practitioners who are subject to the Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (the Declaration).

CONTEXT

Section 32 of the MRA allows Ministers from two or more States to declare specified occupations as equivalent. The Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (the Ministerial Declaration) on the Federal Register of Legislation, specifies licence equivalents for builders and painters.

This Ministerial Declaration was made when the now repealed *Builder's Registration Act (1939)* and *Painters' Registration Act (1961)* applied to the registration of builders and painters in Western Australia (WA). The *Building Services (Registration) Act 2011* currently applies to building and painting practitioners and contractors (individual) in WA.

In relation to applications for registration under the MRA, registration authorities must comply with the principal of mutual recognition as it applies to occupations. Section 17 of the MRA provides the following:

17 Entitlement to carry on occupation

- (1) The mutual recognition principle is that, subject to this Part, a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:
 - (a) to be registered in the second State for the equivalent occupation; and
 - (b) pending such registration, to carry on the equivalent occupation 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 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.

Subject to exceptions to the principle of mutual recognition under Section 17 of the MRA, and as a result of the change in legislation in Western Australia, applicants for registration as Building Services Practitioner and Contractor (individual) under mutual recognition are subject to further assessment by the Board in relation to financial, management and supervisory requirements before the applicant can carry on business under deemed registration.

TERMS USED

MRA	Mutual Recognition Act 1992 (Commonwealth).
The Declaration	Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (Commonwealth).
Mutual Recognition (in relation to occupations)	The principle that a person authorised to carry out an occupation in one jurisdiction can, after notifying the relevant local registration authority, is entitled to registration in another jurisdiction.
Ministerial Declaration	Section 32 of the MRA allows Ministers from two or more States to declare specified occupations as equivalent. In this policy the term refers to the Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 (the Declaration).
First State	Refers to the jurisdiction where a person is registered first.
Second State	Refers to the jurisdiction where a person is seeking registration under the provisions of the MRA.
Equivalent (in relation to occupations)	An occupation where the activities authorised to be carried out under registration in different jurisdictions are substantially the same.
Occupation	A trade, profession or calling of any kind that may be carried on only by registered persons (as defined in the MRA).

POLICY PRINCIPLES

Generally

All determinations relating to applications for registration under mutual recognition will comply with current applicable legislation. The following policy does not constrain the Board's capacity to depart from this policy as appropriate in order to comply with provisions of the MRA or any other legislation applicable to the registration of building service providers.

Determinations in keeping with the MRA and applicable Ministerial Declarations

All determinations relating to applications for registration for building service providers under the provisions of mutual recognition will be in keeping with the Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009 in so far as they comply with all other applicable legislation. Applicants seeking registration as a Building Services Contractor (individual) are subject to further assessment of their financial, management and supervisory capacity before the applicant can carry on business under deemed registration.


Determinations outside the applicable Ministerial Declaration

Where a licence is not listed in the current applicable Ministerial Declaration, registration decisions will be made on a case-by-case basis in line with the general principles of this policy.

POLICY IMPLEMENTATION

The Licensing Services directorate will process mutual recognition applications in a manner which conforms to this policy and inform applicants of this policy.

GOVERNANCE

Resolved by the BSB	Meeting Date 15 October 2019	Item Number 3.5
Chairperson	Signature 	Date 15/10/19.
Keywords	Enter keywords here	
Next review	October 2022	