Speech by

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TRANS-TASMAN MUTUAL RECOGNITION (QUEENSLAND) BILL

Mrs LAVARCH (Kurwongbah—ALP) (2.48 p.m.): I rise to support this Bill. The Trans-Tasman Mutual Recognition Bill is a logical step in the continued integration of the Australian and New Zealand economies. The objective of this Bill is to eliminate regulatory barriers to the movement of goods and service providers between Australia and New Zealand. In his second-reading speech, the Premier highlighted that this Bill will promote an increase in trade between Queensland and New Zealand which should, on all accounts, increase job opportunities for Queenslanders. For Queensland businesses considering or participating in trade with New Zealand, red tape and costs will decrease and trade should be more vigorous.

Access to a larger market coming and going across the Tasman will, of course, increase competition and suppliers of goods will need to ensure efficiency to cope with that increase. However, for the consumer greater competition means more choice. In allowing for mutual recognition of registered qualifications, the Bill will also make appointments easier between the two regions. As with the mutual recognition scheme covering Australia, occupations are considered equivalent if the activities authorised to be carried out under each registration are substantially the same, whether or not this result is achieved by the means of the imposition of conditions. The Commonwealth Administrative Appeals Tribunal may make a declaration that occupations carried on in two jurisdictions are not equivalent if certain facts exist. Alternatively a Minister from New Zealand and a Minister from each one or more Australian jurisdictions may jointly declare that specified occupations are equivalent or describe conditions that will achieve equivalence.

I want to take the opportunity today to look at a matter of which I have a particular interest. In my contribution today, I want to recap and review mutual recognition in Australia in relation to the legal profession. The legal profession is covered under the Australian mutual recognition scheme and will be covered by the proposed trans-Tasman scheme. Under the Australian scheme, lawyers who are admitted to practise in one State or Territory are deemed to be allowed admission in others despite the fact that different admission requirements for lawyers still exist from State to State. If one looks at each State's admission requirements for lawyers, one finds the following: in Queensland, we still have a divided profession.

A law graduate intending to practise as a solicitor in Queensland must serve either two years' articled clerkship to a solicitor or complete the one year legal practice course conducted by QUT. Persons who complete that one year course receive a conditional admittance and must serve as an employed solicitor for one year in order to obtain a full practising certificate. In New South Wales, a law graduate must complete one of the practical training courses recognised by the Legal Practitioners Admission Board. In Victoria, a law graduate must complete either a period of one year as an articled clerk or the course on practical training run by the Leo Cussen Institute. In Western Australia, a law graduate must complete one year as an articled clerk before gaining admission. In South Australia, a law graduate must complete the five-month graduate certificate in legal practice to qualify for admittance. In Tasmania, a law graduate must either complete the six-month legal practice course followed by a one-year articled apprenticeship or complete two years as an articled clerk. In the Australian Capital Territory, a law graduate must complete the five-month legal workshop course to qualify for admission. Finally, in the Northern Territory, a law graduate must complete one year as an

articled clerk before being admitted. As members can see, there is a great variance in the admission requirements between the States and the Territories.

As a practical matter, the admission of a solicitor or barrister in Queensland under the mutual recognition laws is more of a paper admission rather than an initial admission to enter the roll. Under standard initial admission procedures, a graduate who qualifies for admission by completing the legal practice course, articles of clerkship or, for a barrister, the bar practice course, is admitted by the Supreme Court under the Supreme Court rules. Where an interstate admitted solicitor or barrister applies for admission to practise in Queensland, under the mutual recognition laws this admission is authorised by the Supreme Court registrar upon the receipt of the correct forms and fee without any formalities.

I understand that at the time mutual recognition of the legal profession was first discussed, the Australian legal profession was presented with a choice: it could either formulate a national uniform standard or be forced under the mutual recognition legislation to recognise and work with colleagues from interstate who may have been admitted in their own States with so-called lesser qualifications. For many of the professions, this trend is the impetus behind moves to create a uniform national admission standard.

However, what has been implemented for the legal profession is merely a national acknowledgment of 11 core subjects that must be completed in a law degree to satisfy the academic admission requirements of any State and Territory. Aside from requiring that these core subjects are studied, the admission requirements still vary from State to State. At present, there is no uniform national admission standard aside from the 11 core subject requirement. Further, in response to the threat, the Law Council of Australia presented to the Council of Australian Government proposals for a national legal services market. The proposal was a detailed document titled The Blueprint for the Structure of the Legal Profession, a National Market for Legal Services. The general principles in this blueprint were developed by a network of committees and working parties established by the law council and its constituent bodies in July 1994. The focus of the law council's work was to establish the key elements of a national legal services market in which there could be easy mobility of practitioners between jurisdictions. The objective was to establish a system whereby a lawyer who is admitted and has a right to practise in a State or Territory will be entitled to practise anywhere in Australia without having to meet any further requirements.

In a letter to the then Prime Minister and other COAG members, the then Law Council President, Stuart Fowler, said that for a national legal services market to operate efficiently it was essential for a lawyer who practised in more than one State or Territory to be subject to the rules and regulations which were substantially similar throughout Australia. To further this aim, the Law Council developed its blueprint for a national market, which aimed to keep the standards and practice at a high level. It includes uniform requirements for practical legal education before and after admission, the establishment of a national committee to accredit the nation's law schools and a uniform code governing legal practice throughout Australia. There was also a national specialist accreditation scheme proposed.

Concerns expressed regarding mutual recognition were that it might encourage a levelling down to the lowest common denominator. A national model may alleviate that problem. New mutual recognition legislation for the legal profession would need to be enacted for the Law Council's blueprint proposal to be implemented and its reforms are far too advanced to fit under the existing mutual recognition regime. Although mutual recognition has gone some way towards facilitating a national market for legal services, considerable barriers remain. Admission and entitlement to practise in one jurisdiction do not entitle a practitioner to practise in all other jurisdictions. Rather, interstate practitioners must apply for recognition and pay for admission and practising rights in each State where recognition is sought.

I have been and continue to be a keen advocate of a national legal profession. Since its inception in colonial Australia, the legal profession has been organised around each State's jurisdiction. Before mutual recognition, the argument against the mobility of the profession was that each State had its own laws and each State's laws are different. More and more we are seeing uniform legislation being initiated from a Federal level and enacted in each State. Many areas of law are now covered by Federal courts.

This leads me to the last point that I wanted to make in today's debate, and that is, the ability of the Parliamentary Scrutiny of Legislation Committee to adequately scrutinise Commonwealth legislation. I know that previous committees have continually raised this point and it has been raised again by my own committee. Bills that form part of the national scheme legislation impact upon the institution of the State's Parliament bringing in that legislation. In fact, I understand that scrutiny of national scheme legislation is a hot topic for a number of States. Of course, the reality is that once legislation is passed in the Federal Parliament there is little or no opportunity for a scrutiny of legislation

committee in a State to determine whether the Act meets fundamental legislative principles for that State.

The objective of this Bill is to make Queensland a participating party in the trans-Tasman mutual recognition arrangement by national scheme legislation via adopting the Commonwealth Trans-Tasman Mutual Recognition Commonwealth Act 1997. The Commonwealth Act implements the mutual recognition principles. However, under the Commonwealth Act these principles are subject to a number of exclusions and exemptions. These are on the grounds of public health and safety and protection of the environment.

In addition, the Bill sets out in detail that this mutual recognition scheme will not affect the operation of Queensland laws regulating the manner and sale of goods; the transportation, storage or handling of goods and directed at protecting health and safety or preventing environmental pollution; or the inspection of goods if the inspection is a prerequisite to sale and the laws are directed at protecting health and safety or preventing environmental pollution. It also restricts sales to goods that can only be sold legally in Queensland.

The Bill also makes several attempts to ensure that any future changes affecting the operation of the scheme in Queensland will not occur without the consent of the Queensland Parliament. Predetermined legislation and predetermined amendments to State legislation have raised strong objections from State Parliaments.

It has also been essential to the argument that there should be a process whereby the States have input into the scrutiny of the head Commonwealth legislation. This is an evolving concept and, no doubt, the Scrutiny of Legislation Committee of the Queensland Parliament will be making its contribution to the national debate. Having said that, I still welcome the legislation and look forward to a new and more mature arrangement and interactions with our trans-Tasman neighbour. I commend the Bill to the House.