

## TEMPORARY EXEMPTIONS: GUIDELINES

*Note: Jurisdictions can invoke temporary exemptions from the TTMRA and/or MRA for laws relating to goods only. There is no provision in the legislation or agreement for invoking temporary exemptions in relation to occupations.*

Step	Process/procedure	Timing
1.	<p><u>Before invoking a temporary exemption</u></p> <p>Agencies giving consideration to initiating a temporary exemption should ensure that the analysis of the regulatory proposal is based on the <i>COAG Principles and Guidelines for National Standard Setting and Regulatory Action</i> (for Australia) or <i>The Guide to Preparing Regulatory Impact Statements</i> (for New Zealand).</p> <p>Agencies should also inform their jurisdiction’s mutual recognition contact point of their considerations early in the policy development process and seek their advice as to whether a temporary exemption is appropriate in a given case.</p> <p>The jurisdiction’s mutual recognition contact point is responsible for informing other state and territory mutual recognition contacts.</p>	<p>Before commencing action in relation to a temporary exemption.</p>
2.	<p><u>Temporary exemption invoked</u></p> <p>Jurisdictions may unilaterally invoke a temporary exemption from the operation of the TTMRA and/or MRA for a period of up to twelve months <b>if</b> the good in question is considered to be a threat to health, safety or the environment.</p> <p>Temporary exemptions can be invoked by the gazettal of a regulation by the designated person (eg the Governor-General, State Governor, or relevant Minister) of a participating party.</p> <p>The regulation invoking the temporary exemption can be made under either the TTMR/MR Act of the relevant jurisdiction <u>or</u> the specific legislation which implements the standards or regulatory requirements for which exemption is being sought. However, if possible, it is preferable for regulations to be made under the TTMR/MR Acts, as this assists in the ongoing tracking and coordination of temporary exemptions.</p>	<p>Jurisdictions should notify the relevant Ministerial Council of their action as soon as possible.</p> <p>This will give the Ministerial Council sufficient time to consider the issue within the 12 month timeframe given.</p> <p>The Ministerial Council or initiating jurisdiction may need to consider developing a timetable to ensure the 12 month timeframe is met.</p>

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	<p>Only the particular regulatory requirements that are of concern should be covered by a temporary exemption – rather than the entire good in question. For instance, if labelling requirements are of concern then only those provisions of the law that relate to labelling should be exempted.</p> <p><i>Note for Australian States and Territories:</i></p> <p>For a single Australian State or Territory to act alone to exempt a particular good, a temporary exemption would need to be invoked under both the TTMRA and MRA, or the good would still be able to enter through the other Australian jurisdictions (in the case of Western Australia, who is not a party to the TTMRA, the exemption would only need to be invoked under the MRA).</p> <p>Alternatively, if all Australian States and Territories agreed on the need for a temporary exemption to be invoked under the TTMRA, they would need to co-ordinate the simultaneous gazettal of a regulation invoking the temporary exemption.</p>	
3.	<p><u>Ministerial Council determination</u></p> <p>During the 12 month period in which the temporary exemption is in place, the relevant Ministerial Council is to consider the good in question and determine whether a particular standard should apply to the good, and if so, the appropriate standard.</p> <p>If a good has been exempted under both the TTMRA and MRA, there should be a single combined process through which the Ministerial Council considers the regulatory requirements applying to the good both within Australia and between Australia and New Zealand.</p> <p>There are three possible outcomes from a Ministerial Council determination:</p> <ol style="list-style-type: none"> <li>i. mutual recognition should apply;</li> <li>ii. regulatory requirements should be harmonised or in some other way brought into alignment, for instance through the introduction of a new standard in some or all jurisdictions; or</li> </ol>	<p>Ministerial Council should consider options and come to a determination within approximately the first eight months of the 12 month period (sooner if possible).</p> <p><b>This decision should not be left until towards the end of the 12 months</b>, as time will be required to implement any amended regulations, or even to invoke a further 12 months temporary exemption (see ‘rolling over temporary exemptions’, below).</p>

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	<p>iii. the good or law should be permanently exempted from mutual recognition.</p> <p>Two-thirds of the Ministerial Council must agree to a determination. Determinations can be made either in or out of session.</p> <p>The initiating jurisdictions should provide the Ministerial Council with a Regulatory Impact Statement (cleared by the Australian Office of Best Practice Regulation or the New Zealand Regulatory Impact Analysis Unit) to help inform the Ministerial Council determination. In particular, if a jurisdiction is considering a permanent exemption, they should ensure that other, less trade restrictive options are also considered.</p> <p><i>Note</i></p> <p>Agencies initiating a temporary exemption should ensure their jurisdiction's mutual recognition contact is kept informed of developments in relation to any such considerations (as well as notifying them prior, as per step 1).</p> <p>Once the Ministerial Council has been advised of the temporary exemption, the Council's Secretariat should ensure the Cross-Jurisdictional Review Forum is informed of the Council's progress in the matter and of any further activity such as that outlined below.</p>	
4.	<p><u>Implementation of Ministerial Council determination</u></p> <p><i>i) Mutual recognition should apply:</i></p> <p>No further action is required. Mutual recognition will recommence once the temporary exemption period expires.</p> <p><i>ii) New standard:</i></p> <p>The approval of two-thirds of Heads of Government is required. However, the <i>active</i> approval of Heads of Government is not necessary – silence is taken as support after three months has expired from when the request for approval was made.</p> <p>Once approval is given, jurisdictions should take action to implement the determination as soon as possible.</p> <p>The proposed new regulations would also need to go through a regulatory impact assessment process.</p>	<p>Work towards implementing a determination should begin as soon as it has been made.</p> <p>The presumption is that the 12 month temporary exemption time period will be sufficient in most cases.</p> <p>However, there is the potential under the <b>TTMRA only</b> for a further 12 months temporary exemption period (see 'rolling over</p>

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	<p><i>iii) Permanent exemption:</i></p> <p>The Ministerial Council needs to seek the <b>unanimous</b> agreement of Heads of Government for a permanent exemption. To do this, the Chair of the Ministerial Council should write to the chair of COAG (the Australian Prime Minister) applying for a permanent exemption. Heads of Government agreement is achieved by each jurisdiction gazetting a notice to that effect.</p> <p>Heads of Government may “take into account such matters as they consider relevant” when considering whether or not a permanent exemption should be granted. If a permanent exemption is to be sought, therefore, the jurisdiction(s) requesting the exemption would need to provide a rigorous risk analysis and demonstrate that less trade restriction options had been considered.</p> <p><i>Note:</i> To date, no additional permanent exemptions have been formally sought, with jurisdictions having been able to find alternative means of resolving issues.</p>	<p>temporary exemptions’, below).</p>
<p>5. (TTMRA only – optional)</p>	<p><u>Rolling over temporary exemptions</u></p> <p>The TTMRA (<b>but not the MRA</b>) allows for temporary exemptions to be continued for a further 12 months to enable legislative or other action to be taken to give legal force to a Ministerial Council determination.</p> <p>The Ministerial Council should decide whether or not an implementation period is required when making a determination regarding the good or law. Two-thirds of the Ministerial Council would have to agree. An implementation period of less than 12 months could be recommended, if appropriate.</p> <p>Heads of Government approval must be sought, and the endorsement of not less than two-thirds of the Heads of Government of the participating parties received. Heads of Government endorsement is achieved by each jurisdiction gazetting a notice to that effect.</p> <p>The implementation period is invoked by way of a regulation made under the Commonwealth and/or New Zealand TTMR legislation.</p>	<p>The process of seeking and obtaining Heads of Government approval for an extension may take up to three months. Therefore, the rollover process will need to commence at least four months prior to the expiry of the temporary exemption.</p> <p>All required work to implement a proposed regulatory change, or to invoke a permanent exemption, will need to be completed by the end of the further 12 month exemption period.</p>