

## Victorian Building Authority v Andriotis [2019] HCA 22

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### Facts

- Mr Andriotis was a waterproofer. Andriotis falsely stated in his application to the New South Wales local registration authority that he had certain work experience and held an "Endorsed Contract Licence – Waterproofing".
- Section 17(1) of the *Mutual Recognition Act 1992* (Cth) ("**the MRA**") allows for a person registered in the first State for an occupation to be registered in a second State for the equivalent occupation.
- Section 17(2) of the MRA provides for an exception to the mutual recognition principle, which is 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, relevantly, are "*not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation*".
- Andriotis sought registration as a waterproofer in Victoria pursuant to the MRA. The Victorian Building Practitioners Board ("**the Board**") refused Andriotis' registration because his New South Wales application was dishonest, and he was therefore not of "*good character*" as required by s 170(1)(c) of the *Building Act 1993* (Vic) ("**the Building Act**"). This decision was upheld by the AAT.
- On appeal, the Federal Court held that s 20(2) of the MRA conferred a discretion to refuse registration. The Court also held that the "*good character*" element of the Building Act was an exception within the meaning of the MRA. This was rejected on appeal to the Full Court.
- The Victorian Building Authority appealed.

### Issues

- Did section 20(2) of the the MRA provide a local registration authority with a discretionary power to refuse registration under the MRA?
  
- Did the "good character" requirement in the Building Act fall within the exception to the "mutual recognition principle" in section 17(2) of the MRA?

## **Held**

- The Court dismissed the appeal.
  - The Court held that the words "*qualification ... relating to fitness to carry on the occupation*" in section 17(2) have a broader meaning than a qualification of an educational or technical kind, and clearly encompasses the subject matter of section 170(1)(c) of the Building Act.
  - The mutual recognition principle which the MRA was founded on accepts that registration for an occupation in a first State is sufficient for recognition in the second State. There does not need to be any further requirements of the law of the second State.
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- Section 20(2) of the MRA does not provide a broader discretion to refuse registration and only confers a power to grant registration.

## **Full Text**

The full text is available here: <http://eresources.hcourt.gov.au/downloadPdf/2019/HCA/22>

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