



SUBMISSION BY THE
Housing Industry Association

to the
Productivity Commission
on the
Mutual Recognition Scheme Issues Paper

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HIA ::

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HIA is the leading industry association in the Australian residential building sector, supporting the businesses and interests of over 40,000 builders, contractors, manufacturers, suppliers, building professionals and business partners.

HIA members include businesses of all sizes, ranging from individuals working as independent contractors and home based small businesses, to large publicly listed companies. 85% of all new home building work in Australia is performed by HIA members.





1. Introduction

- 1.1. HIA is Australia's only national industry association representing the interests of the residential building industry, including home builders, renovators, trade contractors, related building professionals, and suppliers and manufacturers of building products. As the voice of the home building sector, HIA represents 40,000 members throughout Australia. The residential building industry includes land development, detached home construction, home renovations, medium-density housing and high-rise apartment buildings.
- 1.2. HIA welcomes the opportunity to provide comment in response to the Mutual Recognition Schemes Issues paper.
- 1.3. Each state and territory has distinct occupational and business licensing arrangements in place for builders, trade contractors and workers in the residential building industry.
- 1.4. HIA supports efforts which seek to reduce unnecessary duplication of regulations restricting the movement of these trades from state to state.
- 1.5. Mutual recognition of regulations relating to goods and occupations was legislated in 1992 and mutual recognition arrangements have made it easier for licensed tradespeople, and authorities that issue licenses, to know what license a worker is entitled to when applying for a license in another jurisdiction.
- 1.6. Arguably, however the full benefits of mutual recognition are yet to be attained.
- 1.7. HIA notes that the 2009 Productivity Commission review into mutual recognition schemes considered the benefits that full labour mobility could deliver to the Australian economy, estimating that the removal of restrictions could lead to a 0.3 per cent increase in real GDP.
- 1.8. More effective automatic mutual recognition (of occupational licences in particular) would also help overcome some of the barriers state based licensing systems provide when interstate trades attempt to temporarily work in regions affected by natural disasters, such as the bushfires in Victoria in 2009 and floods in Queensland in 2011. At the moment, the only way such occupations can lawfully work in such situations is through special permissions and exemptions.
- 1.9. Importantly for HIA members, the majority of whom are first and foremost operating building or trade contracting businesses within their own distinct jurisdictional borders, the focus of any nationally coordinated approach should be to improve and simplify conditions (not increasing the stringency) for licensees.

2. General Comments on Mutual Recognition

- 2.1. HIA notes that in 2006 the Council of Australian Governments (CoAG) reached agreement to achieve full mutual recognition of skills qualifications across Australia. The intention was for there to be more effective mutual recognition of electricians, plumbers, refrigeration and air-conditioning mechanics, carpenters, joiners and bricklayers.
- 2.2. However during the period between 2008 and 2013, rather than enhancing mutual recognition arrangements, it appears that CoAG focused its efforts on establishing a national occupational licensing system for selected occupations, including building trades.
- 2.3. Under the national licensing model, all holders of state and territory licences were to be automatically deemed across to the new licence system. Cooperative national (but still state based) legislation was being developed with national governance



arrangements established to handle standard setting and policy issues and to ensure consistent administration and compliance practices.

- 2.4. Whilst the principle of a nationally consistent licensing system was admirable, during the harmonisation process HIA became increasingly concerned with the red tape burden that would result in the event that jurisdictions resisted any reduction in their particular regulatory objectives.
- 2.5. In December 2013, CoAG decided to discontinue the proposed reforms and instead announced that the States would work to develop alternative options.
- 2.6. The advantage of mutual recognition over harmonisation is that (in theory) maintaining options and capacity for differing requirements enables competitive federalism to drive best practice regulation.
- 2.7. In the meantime, there are some noticeable issues with the operation of the mutual recognition system for the residential building industry. These include:

The marked disparity in the licensing of builders and trade contractors from state to state

- 2.8. No two states have the same licensing or registration system, making it difficult to compare or marry up licence classes.
- 2.9. In addition, the residential building industry is complicated by the distinction between occupational and business licensing.
- 2.10. Under an occupational licensing regime, all practitioners require a license, usually linked to mandatory qualifications or skills. In these cases, public health and safety are protected by restricting the right to undertake work to license holders. Plumbers, gasfitters and electricians, for example, are required to hold occupational licenses.
- 2.11. Under business licensing, the business contracting to do work must hold a license. Licenses in these cases do not require the person doing the work to be licensed or qualified, only that the work is supervised or done by a registered business.
- 2.12. There is a marked disparity in the extent of business and occupational licensing amongst jurisdictions, with licensing of all builders and trade contractors mandatory in Queensland and South Australia whilst in some other jurisdiction, such as the Australian Capital Territory only residential builders are required to be licensed.
- 2.13. For builders, there appear to be two main approaches taken by the states and territories in defining general building licence categories in legislation. It should be noted that some states and territories have a combination of both approaches (e.g. South Australia).
- 2.14. Some jurisdictions only require a licence for certain kinds of building work e.g. New South Wales and Northern Territory, only require licenses for residential building (and not for commercial buildings).
- 2.15. Some jurisdictions base license classes on the Building Code of Australia (BCA) to describe what work a licence covers e.g. Queensland, Australian Capital Territory and Tasmania.
- 2.16. Other jurisdictions align licences to domestic/residential and/or industrial/commercial building (New South Wales, Victoria and South Australia).
- 2.17. Western Australia issues a single open class of builder's licence which covers all work above \$20,000 regardless of the type of building or the consumer/client.



2.18. There is a relatively consistent range of approaches across jurisdictions to the types of licences issued – with these covering:

- Contractor licences (for both business, entities, partnerships and individual); and
- Supervisor or nominee type licences.

2.19. All states and territories issue ‘contractor’ licences to those who contract directly with the general public for general building work. These licences may be issued to an individual, a partnership, or a corporation.

2.20. Where jurisdictions issue licenses to individuals, partnerships or bodies corporate, this is accompanied by a requirement for some technically qualified person to be nominated as a licensed ‘supervisor’. This person needs to be an employee, partner or director.

2.21. Notably MRA does not yet enable mutual recognition of a company’s building licence.

Licence type	NSW	Victoria	Queensland	South Australia	Western Australia	Tasmania	Australian Capital Territory	Northern Territory
Individual	Y	Y	Y	Y	Y	Y	Y	Y
Partnership	Y	N	N	N	Y	N	Y	N
Body Corporate	Y	N	Y	Y	Y	N	Y	Y

2.22. In addition, the residential construction sector is unique as the majority of the work in the industry is undertaken by trade contractors rather than employees.

Different eligibility requirements for licensing make the mutual recognition process inconsistent

2.23. While the mutual recognition process treats comparable licences as equivalent, the eligibility requirements underpinning those licences can differ significantly.

2.24. In Queensland, South Australia, the Northern Territory and Western Australia builders must produce financial material to demonstrate they have sufficient financial assets and resources.

2.25. In Victoria registration/accreditation depends on the applicant holding the required insurance.

2.26. Training qualifications also vary across the states. Most states base their qualifications for builders on the Certificate IV in Building, together with at least two years relevant experience carrying out or supervising building works, although the number of years of experience does vary from region to region.

2.27. In addition to different licensing requirements, states and territories currently have unique legislation regulating the minimum conduct requirements required of licensees.

2.28. These ‘conduct’ requirements include the way licensees perform the work, consumer protection and contract requirements, statutory warranties, warranty insurance and financial controls.

2.29. Whilst there are common themes imposed under each jurisdictions’ legislation, many of the specific requirements are inconsistent.

2.30. For instance there are significant variations in the regulation of domestic building contracts across jurisdictions.



- 2.31. There are also separate home owner warranty insurance schemes.
- 2.32. Warranty insurance, is an insurance taken by the residential builder, and covers the homeowner/consumer against loss from post construction defects or non-completion of building work in certain conditions. In every state and territory, except Tasmania, the insurance is mandatory and must be obtained either before signing a contract, taking a deposit or commencing work.
- 2.33. In Queensland the assessment of eligibility for warranty insurance forms part of the annual licence review process and is directly undertaken by the building industry regulator, the Queensland Building and Construction Commission (QBCC). In other states warranty insurance is separate to the licensing process.
- 2.34. In New South Wales, the suspension of a builder's licence can trigger a (consumer's) right to claim on the policy.
- 2.35. An analysis of the conduct requirements for each State and Territory is provided at APPENDIX A
- 2.36. The inconsistencies in conduct requirements can produce irregularities such as where a builder who holds a mutually recognised licensee, has internal systems and procedures that would satisfy the conduct requirements in one jurisdiction, but not another.

Cultural Impediments

- 2.37. In HIA's experience, one of the major issues with expanding mutual recognition (much as with attempts at national licensing) is that those jurisdictions with the higher entry standards and regulatory thresholds may continue to look for ways in which to maintain these higher standards.
- 2.38. For occupational licensing (as opposed to business to consumer licensing) there appears to be little reason why more effective automatic licensing arrangements are not already in place.
- 2.39. With relative simplicity, in 2014 New South Wales Parliament passed the Mutual Recognition (Automatic Licensed Occupations Recognition) Act to enable New South Wales, Queensland and Victorian electricians to work across state borders using the licence issued by their home state without having to apply for the issue of a New South Wales licence under mutual recognition.
- 2.40. This demonstrates the underlying capacity of state government to introduce more effective mutual recognition arrangements that drive down unnecessary red tape and regulation when accompanied by political willingness for reform.

3. Responses to Particular Issues

26. *To what extent do interjurisdictional differences in laws for the 'manner of carrying on' an occupation hinder labour mobility within Australia and across the Tasman? Are such differences warranted because, for example, individual jurisdictions have to address significantly different risks and community expectations?*

As noted above, the minimum conduct requirements applying to licensees in the residential building industry can directly impact on the mobility of trades, in particular the cost of carrying out work in another jurisdiction once an equivalent licence is recognised and obtained.

Whilst the requirements are not so significant for trade contractors, those requirements particularly around eligibility and obtaining home owners warranty insurance, over and above the licensing requirements, reduce the comparative benefits of mutual recognition for these businesses.

There are many reasons for legislative divergence in licensing arrangements among jurisdictions. The very causes for the current differences between state regulations is not however a result of inherently different risks in construction from state to state – since 1997 there has been one national building code, the National Construction Code (NCC), governing the technical provisions for the design and construction of buildings. Rather the regional differences flow for a variety of reasons, reflecting the outcomes of state/territory coronial inquiries, parliamentary committees (and government responses to), court decisions, election commitments, budget constraint, regulatory culture, and the like.

27. *What, if anything, should be done to reduce barriers to labour mobility caused by different laws for the ‘manner of carrying on’ an occupation, and what would be the costs and benefits of doing so?*

A major issue with the delivery of warranty insurance in recent years has been access to a fair and competitive private insurance market.

The alternative state-based government monopolies provide a less competitive approach for a number of reasons. Firstly, the delivery of insurance by government is an inefficient allocation of public resources. Secondly, private insurers are more willing to take a market based approach, with premiums competitively set by insurers based on a builder’s risk, turnover and performance. Under government schemes ‘flat’ ratings have undercapitalized builders subsidised by well performing builders.

HIA has recommended to jurisdictions that they move towards a national warranty insurance market with a nationally ‘split’ insurance product – providing consumers with a mandatory completion guarantee product and separately the option to voluntarily purchase a defective works insurance product for post occupancy warranty claims.

Establishing of a national warranty insurance market, with a nationally consistent insurance product, a national claims database and claims management process would have a number of advantages. Not only would it encourage private insurers to return, removing the risk and freeing Government resources for policy and regulatory activities, a competitive market would facilitate competitive premium rates.

28. *To what extent could cross-border provision of services by particular occupations be facilitated by the Agreement on Trans-Tasman Court Proceedings and Regulatory Enforcement?*

No comment.

29. *Are coregulatory, de facto and negative licensing arrangements covered by the mutual recognition schemes? Should they be? Why or why not? What issues would arise as a result of their inclusion?*

See HIA’s comment on warranty insurance above.

30. *Are there other areas in which the occupations covered by the MRA and TTMRA are unclear?*

No comment.

31. *Which occupations require registration by some, but not all, practitioners? What would be the costs and benefits of expanding the MRA and TTMRA to these occupations?*

As noted in Section 2, in all jurisdictions, a ‘contractor’ or ‘builder’ licence is required by those who contract directly with the general public for general building work.

On the other hand, licensing of the ‘subcontractor’ relationship, in particular, varies across the jurisdictions:

- Victoria requires the builder/trade contractor (various classes) to be licensed. Where a subcontractor is engaged by a licensed builder/trade contractor, that subcontractor is not required to be licensed.
- Queensland requires the builder/trade contractor (various classes) to be licensed. Where a subcontractor is engaged by a licensed builder, that subcontractor is required to be licensed. Where a subcontractor is engaged by another subcontractor they are not required to be licensed. Employees also are not required to be licensed.
- New South Wales does not require subcontractors to be licensed where the nominated supervisor for the licensed general building contractor or building trade contractor is present on the building site.
- South Australia requires a subcontractor to be licensed if performing building work.
- Western Australia¹, Tasmania, the Northern Territory and the Australian Capital Territory do not require registration or licensing of trade contractors.

32. *Are marked differences between jurisdictions in the nature (or even existence) of licences for specific occupations hindering the assessment of occupation equivalence? If so, how can these differences be resolved?*

The Ministerial declaration, in particular the equivalence tables have assisted in identifying applicants and regulators in making decisions on the appropriate licence under mutual recognition.

Since the abandonment of national licensing in 2013, it is likely that in the coming years a number of jurisdictions will undertake reviews of their licensing schemes and arrangements that did not occur during the 2008-2013 period.

It will be important in this period that any changes to licence classes or conditions are reflected in the equivalence tables.

33. *To what extent have Ministerial Declarations had a positive impact on geographic labour mobility? How could the declarations process be made more efficient and what would be the advantages and disadvantages of any change?*

34. *The Ministerial declaration, in particular the equivalence tables have assisted in identifying applicants and regulators in making decisions on the appropriate licence under mutual recognition.*

35. *Have current arrangements ensured that Ministerial Declarations are kept up to date? If not, what changes are required, and what would be the costs and benefits?*

36. *Are there registered occupations not currently subject to a Ministerial Declaration — including occupations registered in New Zealand — which should be? Are there any barriers to this occurring?*

For questions 33 – 36, see comments above

37. *How often do occupation-registration bodies impose conditions on people registering under mutual recognition? In which occupations or jurisdictions does this most often occur, and what conditions are imposed?*

Occasionally, certain conditions are imposed because of the complexity in marrying the different licence classes across.

For instance in Western Australia there is only one category of registration for builders with relatively high entry requirements². Restrictions are therefore placed on applicants from other jurisdictions.

¹ Except for painters
² In Western Australia, a person must complete the prescribed course of training and accumulate at least seven years practical experience in the work of a builder, or as a supervisor of building work. The current prescribed course is at Diploma (Certificate V) level.



As an example, a builder with a low-rise (building) contractor's licence in Queensland, may hold a builder's licence in Western Australia, but with restrictions limiting the work to certain low-rise building classes covered under the NCC.

38. *Are the systems for setting conditions on occupations effective and efficient? If not, what changes are required, and what would be the costs and benefits?*

No further comment.

39. *Have the review processes available through the Administrative Appeals Tribunal and Trans-Tasman Occupations Tribunal been effective in addressing disputes about conditions imposed on occupational registrations?*

No comment.

40. *Should people registered under mutual recognition be subject to the same ongoing requirements as other licence holders in a jurisdiction? Why or why not?*

Some states maintain demerits points systems³ and compulsory professional development (CPD)⁴ as part of their builder's licensing system.

HIA does not support mutually recognised licensees being similarly subject to CPD. It would unnecessarily and artificially increase the costs of mutual recognition.

CPD is an unnecessary piece of red tape that adds costs to an already significantly regulated industry. As IPART in 2014 concluded about the New South Wales scheme, CPD neither guarantees that learning takes place nor does guarantee that these 'learnings' will be translated into changes that improve practice within the industry.

Whilst it is necessary that a mutually recognised licensee complies with and is subject to the same laws and regulations when doing work in another state, HIA does not support the extension of a uniform demerit point system.

41. *Are amendments to mutual recognition legislation needed to clarify whether requirements for ongoing registration apply equally to all registered persons within an occupation? Are there alternative options? What are the costs and benefits of these approaches?*

No comment.

42. *Is there any evidence of jurisdiction 'shopping and hopping' occurring for occupations which is leading to harm to property, health and safety in another jurisdiction via mutual recognition? If so, what is the extent of the problem and is it a systemic issue affecting an entire occupation? Is there evidence of any benefits, such as regulatory competition and innovation between jurisdictions?*

Anecdotally HIA is aware of allegations of forum shopping, where unsuccessful applicants move to another state or territory to obtain registration, where there are less onerous requirements (such as no need to sit a written exam) then re-apply in their original jurisdiction for registration utilising mutual recognition.

HIA agrees this conduct, when it occurs, subverts the intent of mutual recognition.

All state licensing schemes have 'fit and proper' person requirements and HIA would recommend that a positive obligation be placed on applicants to declare whether or not they have applied for an equivalent licence in another state as part of the registration process.

³ Queensland

⁴ NSW and Tasmania



43. *How effective are current informal and formal processes — dialogue between jurisdictions, referral of occupational standards to Ministerial Councils, and recourse to a tribunal — in addressing concerns about differing standards across jurisdictions?*

No comment

44. *What are the costs and benefits from jurisdictions working on reducing differences in their registration requirements? How significant are they? What is the evidence?*

No comment

45. *Is there a strong case for adopting automatic mutual recognition more widely? What would be the implications for the MRA and TTMRA?*

Since December 2014, New South Wales, Queensland and Victorian electricians have been able to work across state borders using the licence issued by their home state without having to apply for the issue of a New South Wales licence under mutual recognition. This removes the need for two licences to perform the same work in a bordering region, saving time and fees.

HIA commends the efforts of the New South Wales Government and supports an extension of automatic mutual recognition to other trades, particularly those that have occupational based licensing.

46. *What are the advantages and disadvantages of the 'external equivalence' model being considered by the Council for the Australian Federation?*

47. *What are the strengths and weaknesses of the different models of automatic mutual recognition adopted by New South Wales and Queensland for electrical occupations? Would it be desirable to expand either of these approaches to other occupations and jurisdictions? Are there better models of automatic mutual recognition in place elsewhere?*

See comments above



APPENDIX A

Issue	NSW	Qld	Vic	WA	SA	NT	ACT	TAS
HOWI	Mandatory for work over \$20,000	Mandatory for work over \$3,300	Mandatory for work over \$16,000	Mandatory for work over \$20,000	Mandatory for work over \$12,000	Mandatory for new dwelling construction over \$12,000	Mandatory for work over \$20,000	Not mandatory
Building contract legislation	<i>Home Building Act 1989</i>	<i>Queensland Building and Construction Commission Act 1991</i>	<i>Domestic Buildings Contracts Act 19995</i>	<i>Home Building Contracts Act 1991</i>	<i>Building Contracts Act 1995</i>	<i>Building Act</i>	<i>Building Act</i>	<i>Housing Indemnity Act</i>
Builders must warrant their work	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Builders must enter into formal building contracts in addition to warranting their work	Yes	Yes	Yes	Yes	Yes	Yes	No	No
CPD	Yes, compulsory 12 point system	Yes, although yet to be introduced via regulations	Voluntary	No	No	No	No	Yes, point system