Australian Government
Department of Education and Training

Submission to the Select Committee on Red Tape

Inquiry into the effect of restrictions and prohibitions on business (red tape) on the economy and community, specifically on occupational licensing

Role of the Department of Education and Training

The Commonwealth, along with the states and territories have implemented a mechanism of mutual recognition to support labour mobility through the *Mutual Recognition Act 1992 (MRA)* and the *Trans-Tasman Mutual Recognition Act 1997 (TTMRA)* (the Acts). These Acts enable individuals registered to practice an occupation in one jurisdiction to seek recognition and gain access to an equivalent occupational registration in another jurisdiction and continue to practice their occupation[1].

Under the Administrative Arrangement Orders of September 2016, the Department of Education and Training (DET) has responsibility for administering the MRA and the TTMRA in so far as to relates to occupations[2].

With exception of nationally recognised occupations, each state and territory government (the states) administer their own occupational registrations.

Mutual recognition framework

Mutual recognition aims to reduce the costs to business and individuals seeking to undertake interstate trade or to practise their occupation in more than one state[3]. It is intended to be a simple, low cost and low maintenance mechanism for overcoming impediments to the movement of registered workers within Australia and between Australia and New Zealand, helping to meet changing skill needs between jurisdictions and to support labour mobility. The Productivity Commission Research Report: Mutual Recognition Schemes (the 2015 PC report) found that mutual recognition was working well [4].

Under the legislation each jurisdiction, represented by the relevant local registration authority (LRA) for a specific occupation, has an obligation to consider any requests for mutual recognition. The mutual recognition is based on a person's existing occupational registration issued by a different jurisdiction. Should the LRA determine that the occupations are equivalent, they are obligated under the Acts to provide an equivalent occupational registration.

There are three primary ways to establish equivalency within the mutual recognition scheme. These include:

1. **Direct application to a LRA:** An individual who holds an occupational registration from one jurisdiction can apply to the LRA in the second jurisdiction for registration in an equivalent occupation. Under the Acts, the LRA must assess the occupational registration to determine if there is an equivalent occupation and if so issue a registration for the equivalent occupation.
2. **Ministerial declarations:** Equivalency of occupations are bilaterally agreed and signed off by the responsible state ministers in legislative instruments, called ministerial declarations. Applications for registration for occupations covered by the declaration are then processed without the need for further assessment by the LRA to determine occupational equivalency.

[1] Under the MRA, s(4), the term registration "includes the licensing, approval, admission, certification (including by way of practising certificates, or any other form of authorisation, of a person required by or under legislation for carrying on an occupation". The term registration in this paper is used in order to be consistent with the legislation and is regarded as synonymous with occupational licensing.
[2] https://www.pmc.gov.au/resource-centre/government/aao-amendment-made-20-dec-2017 accessed 16 April 2018.
[3] Mutual Recognition Bill 1992, Explanatory memorandum.
[4] Productivity Commission Research Report: Mutual Recognition Schemes, Australian Government Productivity Commission (September 2015) pg 2.

3. **Automatic Mutual Recognition (AMR):** Where agreed, on a bilateral or multilateral basis, certain occupations do not need to apply for further registration from the second jurisdiction but can operate under their original occupational registration.

Under the first two methods, direct application and ministerial declarations, requesting access to occupational registration in a jurisdiction requires an individual to lodge an application and provide supporting documentation. In the second method, the use of ministerial declarations provides certainty to an individual about the equivalency of their occupation before they apply. The third method, AMR, does not require the individual to undertake any action.

The Commonwealth has no legislative power to recognise licenses or registration, determine occupational equivalency, confer automatic mutual recognition, or to make or rescind ministerial declarations.

A brief history of mutual recognition

Mutual recognition can be implemented by any number of models. Australia has considered a number of options and there is a long history of government work in this area.

Mutual recognition as a concept was established in 1992 by the Council of Australian Governments (COAG), to provide a mechanism for individuals and businesses wishing to practice their trade or move goods between states through recognition by the respective regulatory authorities.

Since 1992 there have been a number of approaches investigated to further streamline occupational licensing. This has included two significant approaches. Firstly, the consideration of a national licensing system and secondly, the expansion of mutual recognition to an automatic recognition or external equivalence scheme.

National Occupational Licensing Scheme

In July 2008, COAG agreed to establish a National Occupational Licensing System (NOLS), to be administered through the establishment of a National Occupational Licensing Authority (NOLA). NOLS proposed to cover licensing requirements for air-conditioning and refrigeration mechanics, building-related occupations, electricians, drivers of passenger vehicles and dangerous goods vehicles, maritime occupations, plumbing and gas-fitting roles, and property agents[5].

NOLS was intended to be based on the state and territory governments (the states) adopting uniform legislation and standardised occupational requirements with a single national register to be established. It would then operate as a delegated model, which left operational implementation with the states. It was intended that NOLS would offer the ability for people to practice occupations on a national scale without applications for multiple registrations and enable regulators to access national level information on an applicant's working history and skills.

Considerable steps were taken to progress NOLS. These included an inter-governmental agreement on national licensing[6], the introduction of the *Occupational Licensing National Law Act 2010* and the subsequent referral of powers under the act from the states to the Commonwealth[7]. NOLA as the statutory authority was established on 1 January 2011 to develop policy about occupational licensing and to

[5] 2015 Productivity Commission Research Report on the Mutual Recognition Schemes, Australian Government Productivity Commission (September 2015) pg 35

[6] https://www.coag.gov.au/sites/default/files/agreements/National_Licensing_System_IGA_.pdf

[7] WA and ACT did not finalise legislation to refer powers. NOLA submission to the Productivity Commission in relation to Geographic Labour Mobility Issues Inquiry https://www.pc.gov.au/__data/assets/pdf_file/0007/125818/sub017-labour-mobility.pdf

administer the NOLS. The NOLA was funded jointly by the participating states and had powers in licensing matters. Policy matters and the administration of publicly accessible national registers of licensees were to be undertaken by NOLA and all other licensing functions delegated to participating jurisdictions.

After extensive consultation and engagement with states and regulators over five years, in December 2013 COAG agreed to no longer pursue NOLS[8]. A majority of jurisdictions had identified a number of concerns with the regulatory approaches and potential costs associated with the NOLS model. NOLA was subsequently disbanded and repeal legislation passed by each participating state to finalise the process. Instead, it was agreed that states would work through the Council for the Australian Federation (CAF) to investigate and develop alternative options for minimising registration-related impediments of labour mobility[9].

CAF and Automatic Mutual Recognition

Following the decision by COAG in December 2013 to halt work on NOLS, further work on alternative licensing reforms was passed to CAF to explore. This includes licensing reforms which would enable 'external equivalence' for selected licence categories across jurisdictional boundaries[10]. This model replicates the principal points involved in AMR. Under an external equivalence model, licence holders would be able to work in another state or territory without having to apply for a new licence or pay a licence fee[11].

CAF supports licensing reform which enhances flexibility and mobility for Australian workers that does not increase costs for businesses and individuals[12]. The decision on whether to implement CAF occupational licensing reforms, including external equivalence, rests with individual states and reforms can be implemented on a unilateral, bilateral or multilateral with states having the flexibility to opt-in to reforms over time[13]. States are working alongside one another to investigate further options to support labour mobility and business flexibility.

Currently, AMR works only for specific licences and for selected states offering those licences and arrangement details differ between states. For example, Queensland recognises the main electrical worker licences from all states and New Zealand. Victoria recognises the main electrical worker licences from all states but requires notification by the licensee. Neither of these states recognise contractor licences, by themselves. New South Wales recognises electrical contractor licences but only recognises electricians from Victoria, Queensland and the ACT.

In discussion on facilitating cross-border service provision, the 2015 PC report recommended that jurisdictions 'give higher priority to expanding the use of AMR' and that states should implement 'initiatives to adopt AMR for licensed professionals who provide services across borders on a temporary basis'[14].

National registration

Despite the decision to halt the NOLS, there are some occupations where registration is required that have moved to a national scheme. At the same time as NOLS was being considered and established, COAG decided to establish a single national registration and accreditation scheme (NRAS) for certain registered

[8] https://www.coag.gov.au/meeting-outcomes/coag-meeting-communiqu%C3%A9-13-december-2013
[9] ibid
[10] Occupational Licensing Reform, Council of the Australian Federation https://www.caf.gov.au/OccupationalLicensingReform.aspx (accessed 16 April 2018)
[11] ibid
[12] ibid
[13] ibid
[14] 2015 Productivity Commission Research Report on the Mutual Recognition Schemes, Australian Government Productivity Commission (September 2015) pg 26.

health practitioners[15]. Work on NRAS commenced in 2008 and the first tranche of nationally regulated health professions commenced in 2010. Additional professions were added in 2012. Health professionals such as nurses, physiotherapists, radiologists and so forth are now nationally regulated. There are national registration standards for these occupations and a health professional once registered can practice in any jurisdiction within Australia.

[15] http://www.ahpra.gov.au/About-AHPRA/What-We-Do/FAQ.aspx accessed 17 April 2018