

**Senate Select Committee on Red Tape**

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**The Effect of Red Tape on Occupational  
Licensing**

**SUBMISSION**

**BY THE**

**CONSTRUCTION, FORESTRY, MINING AND ENERGY UNION**

**6<sup>th</sup> June, 2018**

## Introduction

1. On 11<sup>th</sup> October 2016, the Senate resolved to establish the Select Committee on Red Tape, to be known as the 'Red Tape Committee'. The role of the committee is to inquire into the effect of restrictions and prohibitions on business (red tape), on the economy and community, with particular reference to:
  - the effects on compliance costs (in hours and money), economic output, employment and government revenue, with particular attention to industries, such as mining, manufacturing, tourism and agriculture, and small business;
  - any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
  - the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
  - the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
  - the adequacy of current institutional structures (such as Regulation Impact Statements, the Office of Best Practice Regulation and red tape repeal days) for achieving genuine and permanent reductions to red tape;
  - alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
  - how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
  - any related matters.<sup>1</sup>
2. The committee is due to report on or by 3<sup>rd</sup> December 2018. In performing its work the committee has decided to conduct its business by separately inquiring into and reporting on a number of specific areas. One of those areas is occupational licensing.
3. It would appear from the relevant website that the committee is to advise the commencement of each inquiry on the committee's webpage, and at that time, organisations and individuals would be invited to participate.<sup>2</sup> The consequence of this approach is that unless an organisation is an avid follower of the Red Tape Committee they would be unaware of a specific area being considered. This is the case in which the CFMEU finds itself as it was only alerted to the inquiry into occupational licensing by the ACTU on 31<sup>st</sup> May 2018, nearly 4 weeks after the 4<sup>th</sup> May 2018 closing date for submissions.<sup>3</sup>
4. As an organisation representing many members who perform work that requires a license the CFMEU is compelled to make a submission even though the closing date for doing so has

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<sup>1</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Red\\_Tape](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape)

<sup>2</sup> Ibid

<sup>3</sup>

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Red\\_Tape/OccupationalLicensing](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape/OccupationalLicensing)

passed. It is to be hoped that the Red Tape Committee will understand the situation and consider this submission.

5. It is noted that the terms of reference for this specific area inquiry are slightly different, being the following:
  1. the effects on compliance costs (in hours and money), economic output, employment and government revenue;
  2. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
  3. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
  4. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
  5. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
  6. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
  7. any related matters.
6. The terms of reference however are quite pointed and appear to favour a particular outcome, i.e. to reduce regulation (red tape) and by doing so reduce the costs to the individual and society. Unfortunately it would appear that save for the last item, “any other matter”, the terms of reference do not canvass the alternative view, i.e. the benefits that occupational licensing provide to individuals and society.
7. The CFMEU accepts that there may be unnecessary cost imposts brought about by licensing regulations that focus on the business aspects of licensing.<sup>4</sup> It would appear that this is the main area that the terms of reference are focussed on. But there are other valid reasons for licensing or regulating occupations which relate to work, health and safety (WHS) requirements and the protection of workers, consumers and the general public. When these matters are given proper consideration there is a strong argument for increasing the number of occupations required to be licensed in the building and construction industry.

### What is Occupational Licensing?

7. According to Wikipedia, Government regulation of occupations can generally fall into three categories:
  - **Licensing:** Licensing refers to situations in which it is unlawful to carry out a specified range of activities for pay without first having obtained a license. This confirms that the license holder meets prescribed standards of competence. Workers who require such licenses to practice include doctors, lawyers, nurses, civil engineers, and surveyors.

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<sup>4</sup> See for example the requirements in South Australia where People who do 'specified building work' - eg bricklayers, carpenters - need to have at least \$10,000 in net assets to apply for a contractor's licence ( <https://www.sa.gov.au/topics/business-and-trade/licensing/building-and-trade/building-work-contractor-s-licence> )

- **State Certification:** is generally necessary in order to obtain a license to practice an occupation. The certification requirements include passing of a standardized, state-administered test and proof of minimum experience working under the supervision of a licensed practitioner. New entrants to the occupation can start working as trainees such as "journeyman electrician". Some workers in an occupation may never get certified and licensed but can continue working under the supervision of a licensed person indefinitely.
  - **Registration:** Registration refers to situations in which one can register one's name and address and qualifications with the appropriate regulatory body. Registration provides a standard for being on the list, but complaints from consumers or improper listing of credentials can result in removal from the list.<sup>5</sup>
8. The general public view of occupational licensing (or occupational licensure as it is called in the US) would fit into the first category. But in Australia, and in many other countries, occupational licensing is not only used for confirmation of competence, it is also used for business purposes and consumer protection laws.<sup>6</sup>
9. The CFMEU believes that the term occupational licensing should not include the business requirements, and should be limited to certifying that an individual has completed the required training and has been assessed by an independent authority (directly answerable to government and enacted by legislation) as meeting the required standards of competence to perform the work.

### Why Have Occupational Licensing?

9. Most of the debate about occupational licensing stems from the US. It is based on economic theory and has been generated by those advocating for free markets and less government regulation. According to a recent research paper for the Wisconsin Institute for Law and Liberty:

*“In economics, there are two competing explanations for occupational licensure: rent-seeking and public interest (Maurizi 1974). Under the public interest theory, additional licensure is justified to the extent that it protects the public from the danger of unlicensed professionals. Consumers may lack sufficient information to make a proper decision (Arrow 1963), and the negative consequences of those poor decisions may hurt society at large (Svorny 1993). On the other hand, the rent-seeking theory of licensure argues that, more often than not, licensure serves to limit*

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<sup>5</sup> [https://en.wikipedia.org/wiki/Occupational\\_licensing](https://en.wikipedia.org/wiki/Occupational_licensing)

<sup>6</sup> See for example: [http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Home\\_building\\_licensing/Licence\\_classes\\_and\\_qualifications.page?](http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Home_building_licensing/Licence_classes_and_qualifications.page?)

*access to occupations, raising the wages of those in the field and increasing costs for consumers (Friedman 1962).”<sup>7</sup>*

10. There is a common mantra in the US amongst those against occupational licensing, or who seek a reduction in occupational licensing:

*“An important cause and consequence of this newfound focus on licensing reform has been the recognition that excessive licensing imposes costs on a wide variety of distinct groups, including people with criminal records, immigrants, military families, low-skilled workers, and entrepreneurs—not to mention consumers. Regardless of ideology, it is hard not to be moved by the difficulties that many of these groups encounter in the face of such licensing requirements. To name a few, individuals with criminal records are sometimes barred from working, for instance, as sheet metal workers or barbers, many military veterans with relevant skills are prevented from entering licensed occupations, and entrepreneurs are foiled by an inflexible vision of how work should be organized.”<sup>8</sup>*

11. This mantra is increasingly being used in Australia, particularly by the right wing think tank the Institute of Public Affairs.<sup>9</sup> But the reality in Australia is clearly different to that found in the US and there is no evidence of similar individuals being excluded from entering licensed occupations.

12. Moreover, there are good and sound reasons for having occupational licensing. In Australia work health and safety legislation requires individuals who perform high risk work to be licensed. Division 1 of Part 4.5 of the model Work Health and Safety Regulations<sup>10</sup> sets out the licensing requirements and in Schedule 3 identifies the work covered which includes:

- Scaffolding work
- Dogging and rigging work
- Crane and hoist operation
- Reach stackers
- Forklift operation
- Pressure equipment operation (e.g. boilers and steam turbines)

13. Significantly in the WHS field (as opposed to the consumer protection area) the legislation gives recognition of high risk work licences granted in other jurisdictions.<sup>11</sup>

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<sup>7</sup> Flanders W & Roth C, Fencing Out Opportunity - The Effect of Licensing Regulations on Employment, WILL, March 2017 (<https://www.will-law.org/wp-content/uploads/2017/03/FOO2-FINAL-v3.pdf> )

<sup>8</sup> Nunn R, <https://www.brookings.edu/opinions/the-future-of-occupational-licensing-reform/>

<sup>9</sup> <https://www.smh.com.au/opinion/occupational-licensing-hinders-job-creation-and-economic-growth-20150917-gjp7m7.html>

<sup>10</sup> <https://www.legislation.gov.au/Details/F2017C00580>

<sup>11</sup> See regulation 83.

14. There is industry support for the regulation and licensing of key professions, trades and disciplines undertaking work in the building and construction industry. The Australian Construction Industry Forum recognises that:
1. *The inherent danger in many aspects of the construction process, including some high risk work types e.g. electrical installation work, demands it be done by providers with appropriate qualifications and experience.*
  2. *The potential for inadequate work quality to seriously affect the safety and amenity of the users of buildings leads to a need for consumer protection regulation via appropriate licensing.*
  3. *Community standards demand that there are protections in place to mitigate the effects of contractors and service providers failing and leaving incomplete work.*<sup>12</sup>
15. The CFMEU believes, however, that there is a significant gap in the occupational licensing requirements for the building and construction industry. Whilst in most jurisdictions a builder who undertakes work over a certain value is required to be licensed, and be covered by home building warranty insurance, there is no requirement for the individual worker who performs the work for the builder to be licensed or indeed be a qualified tradesperson. This includes workers such as carpenters, bricklayers, stonemasons, etc.
16. The detrimental social, economic, and industrial effects of not mandating licensing of the trades has been acknowledged by industry parties who agree that the requirement for fully qualified tradespeople is in the interests of workers, employers and consumers.
17. The CFMEU is firmly of the view that this gap needs to be addressed and that all building and construction trades should be recognised as requiring occupational licensing.
18. The benefits of licensing the trades is that it brings with it legislation that defines standards and ensures that people undertaking trades work are properly trained, hold the relevant qualifications for the scope of works they are carrying out and that their skills and knowledge have been verified. A well-functioning licensing system provides intelligence to government on the performance of vocational education and training in meeting the skill needs of industry.
19. Licensing the trades would also increase the completion rates of apprentices.

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<sup>12</sup> <https://www.acif.com.au/policies/policies/4-occupational-licensing>