ATTACHMENT B

HOUSING INDUSTRY ASSOCIATION

Submission to the

Senate Red Tape Commitee

The effect of red tape on Occupational Licensing

14 May 2018

HOUSING INDUSTRY ASSOCIATION

contents

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ABOUT THE HOUSING INDUSTRY ASSOCIATION

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry, including new home builders, renovators, trade contractors, land developers, related building professionals, and suppliers and manufacturers of building products.

As the voice of the industry, HIA represents some 40,000 member businesses throughout Australia. The residential building industry includes land development, detached home construction, home renovations, low/medium-density housing, high-rise apartment buildings and building product manufacturing.

HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into manufacturing, supply, and retail sectors.

The aggregate residential industry contribution to the Australian economy is over $150 billion per annum, with over one million employees in building and construction, tens of thousands of small businesses, and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 23 centres around the nation providing a wide range of advocacy, business support including services and products to members, technical and compliance advice, training services, contracts and stationary, industry awards for excellence, and member only discounts on goods and services.

1. INTRODUCTION

The Housing Industry Association (HIA) is pleased to provide the following comments in relation to the Red Tape Committee's inquiry into the effects of red tape on occupational licensing.

The residential building industry is directly effected by the operation of occupational and business licensing requirements in each state and territory. These requirements vary across state borders in terms of both the types of occupations and the contracting arrangements that may trigger the need to hold either an occupational or business license.

Addressing red tape in the residential building industry involves a broad range of issues that impact on the day to day operation of building businesses. Occupational licensing is one of those many issues and HIA has supported many past moves by federal and state governments seeking to improve how residential builders manage both occupation and business licensing requirements.

Whilst HIA supports the operation of an appropriate licensing framework for the residential building industry, the key is for this framework to be set at a reasonable level to achieve the intended outcomes.

The primary reason usually advanced for regulating work in the residential building industry via licensing arrangements is that there are risks to the consumer if an 'unqualified' person or organisation is used to undertake such work.

Licensing in this sector, in theory, minimises risks by ensuring that people who perform work which is critical to the structure of a home or building have achieved a certain standard of technical skills. This work would, if done badly, have the potential to cause significant harm to people or cause costly property damage.

At the same time, licensing is an onerous and resource intensive regulatory option for both governments and the businesses subject to the licensing regime. It adds costs to business transactions which are subsequently passed onto the consumer. It also restricts market entry, reducing competition and in turn pushing up prices of the product being offered.

Currently occupational (and business) licensing arrangements across Australia are inconsistent, overlapping and place a high level of administrative burden on residential building businesses. This burden does not appear to be warranted in all instances and many would argue does not deliver the intended outcomes as they relate to public certainty, consumer protection and building safety.

HIA would support regulatory reforms that eliminate unnecessary regulation, reduce red tape and the administrative burden on residential building businesses, facilitates the orderly operation of the residential building industry and improves conditions so as to facilitate more efficient and effective delivery of housing across Australia.

In considering the effects of red tape on occupation licensing there is, in HIA's view, room for improvement.

1.1 TERMS OF REFERENCE

The terms of reference for the Inquiry are set out as follows:

As part of its inquiry into the effect of red tape on the economy and community, the committee will examine the effect of red tape on occupational licensing, in particular:

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.*

HIA members are involved in residential building activity, therefore in responding to the terms of reference our comments focus only on occupational licensing and other licensing requirements that apply to residential building work.

It is noted that the terms of reference refer to 'occupational' licensing.

Licensing in Australia takes many forms and it is important to be clear on the intended definition of 'occupational' licensing with respect to this inquiry.

Licensing may be introduced in different ways including by regulating occupational standards, prescribing skill and educational standards, and licensing businesses in their operational capacity.

Within the residential building industry, there are both 'business' and 'occupational' licences (or at least a hybrid of the two).

Occupational licensing usually involves an individual's qualifications/competency to carry out certain work (e.g. electrical or plumbing work). Business licensing means that the entity which is licensed possesses the necessary equipment and financial resources to complete a transaction with a customer.

Occupational licensing involves determining an individuals's qualification and competency to actually 'carry out' the proposed work, with such licensing required because of the nature and related health and safety risks of that work being performed. In most states and territories all individuals carrying out electrical, plumbing or gasfitting work must hold an occupational licence.

Business licensing, on the other hand, is generally associated with the practice of contracting to do work and therefore contemplates business skills and capacity (financial capacity), probity, conduct and being a "fit and proper person".

Currently, residential builders in all states and territores, need to be licensed or registered. This license represents a hybrid arrangement whereby a builder/building company must be of "fit and proper character", hold or be eligible for the relevant insurances, address financial capacity and operational capacity criteria and also have the requisite technical qualifications and skills (being an occupation). It is a mixture of business and skills/occupational licensing.

On this basis HIA's response to the inquiry assumes that the intention of the committee is to address the impract of red tape in both occupational and business licensing as it currently applies in the residential building industry.

1.2 Defining Red Tape

In considering the effect of red tape on the economy and community arising from occupational licensing in the residential building industry, HIA considers that the definition of red tape should focus primarily on the administrative burdens that arise from both legislation and regulation.

Individually legislation, being the primary Act, and regulations, being the supporting details for the primary Act, may appear quite benign in the actions they require. It is the translation of these regulatory instruments into practice that is at the heart of the red tape burden that then applies to businesses affected by those regulations.

In addition, there are instances where conflicting legislation or regulation can create confusion, duplication and uncertainty for businesses. For the purposes of this inquiry, HIA also considered those matters to be red tape.

1.3 ASSESSING REGULATORY IMPACTS

At a national level, there are clear rules in relation to the need to undertake a regulatory impact assessment of both Commonwealth regulations that support Commonwealth legislation, along with requirements for national standards which are deemed to be the equivalent of regulations by the Council of Australian Governments, to be the subject of regulatory impact assessment.

Administered by the Office of Best Practice Regulation (OBPR) the purpose of regulatory impact assessment is to provide a mechanism for governments to justify proposed regulation or national standards and confirm that other potential regulatory or non-regulatory solutions are not more appropriate. This assessment is generally completed in the form of an economic cost benefit assessment. These assessment rarely take adequate account of the administrative processes involved in a new regulation or standard. They seek to confirm in a simplistic manner, that a positive outcome will be achieved in a dollar value generating a ratio of greater than 0.

The use of regulatory impact assessment is a practical and appropriate method to determine the economic and community impacts of any given regulation or standard. However there are clearly fundmental flaws in the application of this method which may explain the consequential creation of unnecessary red tape and impact on the industry being regulated.

These flaws include the inability to adequately predict the administrative processes that will be applied by a regulator should the regulation proceed, the inability to adequately predict the rate at which the industry affected will learn and take on board the new administrative processes and inability to adequately predict the costs associated with these new processes in the short and long term for individual businesses.

Regulatory impact assessment seeks to consider an economic cost to a sector as whole. It fails to address the individual business costs but rather consolidates these into generic whole of economy costs. It fails to address the pass through costs for a business which is required to take on the new administrative process and fails to factor in the actual costs and the cost for time taken, which are then included in the cost of the product to the customer.

Similarly, regulatory impact assessments fail to apply a rationale or perspective on how much is too much. Where a positive cost benefit is found, yet a cost is incurred to the users of the system, there is no guide or limit on how much one individual regulation can apply to a particular sector.

More concerningly, there is no mechanism of recognising multiple regulatory changes that occur at the same time. For example, the residential building industry has at times been faced with the introduction of technical building changes to address the issue of energy efficiency, bushfire construction and accessibility all in the space of a 12 month period. Each of these changes is assessed in isolation and it may be that each achieve a marginal positive cost benefit, yet the overall impact on the product, being a new home, is to attempt to absorb the cost of all three changes in the one year period. This is not considered a desirable or appropriate outcome.

There is also a fundamental flaw in the nature of regulatory assessment, as opposed to legislative assessment.

Whilst regulations are the subject of the rules and processes described above, and at a national level these rules are generally applied, it is essentially a tokenistic process which occurs after a decision has been made to proceed with legislation. It is the legislation which should be assessed for its impacts on the economy and the community before it proceeds rather.

The first question before legislating should be ‘Does a head of power to regulate a particular matter need to be created to solve the problem or are other non-regulatory options available?’. Once the decision is made to pass legislation, it becomes almost impossible to put the genie back in the bottle. Regulation must flow, processes must follow and red tape is created.

In putting this view, HIA is not questioning the political nature of the legislative process, but rather we are seeking to highlight the more appropriate point in time within the existing regulatory processes where key questions should be asked and answered. This should occur well before any red tape is created.

2.0 OCCUPATIONAL LICENSING FOR RESIDENTIAL BUILDING

Although there are benefits in licensing, licensing also constrains the market's ability to provide services. By restricting entry, license holders maintain an entrenched market position thus reducing competition.

In this regard, the need for licensing of any particular trade or occupational activity should be assessed against the risk involved. If licensing is justified according to the risk, an important task is to identify those risks that require regulation.

HIA has a long held position in relation to business licensing for the residential building industry which includes those who hold an occupational license where required. Streamlining the administrative processes that currently exist to obtain licenses, and to then retain those licenses over time, should be a priority for all regulators.

There are numerous inconsistencies across state borders in relation to the licensing requirements for residential bulding work. These include:

- Variations in the types of individuals required to hold an occupational license
- Variations in the type of businesses required to hold a business license
- Variations in the training and experience required to hold equivalent licenses
- Variations in the types of work or value thresholds that require a licensed builder, a building approval and/or home warranty insurance

With respect to the red tape created by the interplay of different legislation for licensing to undertake residential building work, only one jurisdiction currently has a monetary (value of work) business licence threshold and Home Owners Warranty Insurance threshold that are the same.

One option to reduce this complexity would be to align business licensing thresholds with warranty insurance thresholds.

With respect to inconsistency across state borders, not all jurisdictions licence both commercial and residential builders. Amongst those that do, there is a wide variation in the way licences are categorised (e.g. type of work covered) and defined (e.g. type of occupation, business arrangements permitted).

From a consumer protection point of view, consistent categories and definitions could assists the market by indicating the most appropriately qualified builders for their needs.

Also across state borders, despite the existence of a national training framework, the number of years of experience required and the level of training qualifications required to be licensed varies from region to region. Hence there isn't uniformity in the levels and skills and knowledge provided by different courses, which range from diploma and degree courses to Certificate IV in Building. Likewise, there can be a significant variation in the experience levels of recently licensed builders in gaining a new license.

HIA's position on licensing for residential builders and trade contractors is set out in Attachment A, recognising that the policy relates to the existing hybrid arrangement referred to as business licensing, and not occupational licensing.

3.0 REGULATORY REFORM AND RED TAPE REDUCTION

The terms of reference include a question as to *"the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape."*

Over the last decade, much of the the focus in removing red tape for occupational licensing was to have nationally harmonised arrangements and establish a National Occupational Licensing Scheme (NOLS). Work to achieve this outcome occurred through the Council of Australian Government's National Seamless Economy program. This approach was ultimately unsuccessful and at the December 2013 COAG meeting, it was decided not to pursue the reform.

National licensing was intended to harmonise licensing regulation between states and territories for a number occupations across a range of industry sectors, including the residential building industry.

In principle HIA supports the concept of alignment across complementary and competing licensing requirements, within state legislation and across state borders. Indeed increased trade mobility and the reduction of ratification economic barriers to interstate trade is an admirable and desirable goal.

However, the vast majority of residential construction businesses – builders and tradespeople alike – are small businesses who do not work across state boarders and have little need to do so. For those small businesses there was little to no tangible benefit in having national consistency unless it is accompanied with better quality regulation.

Although work was undertaken for several year on the NOLS project, HIA was concerned with the prospect of actually achieving better regulation through NOLS. NOLS would have required the development of an entirely new licensing structure and the establishment of a new national licensing bureaucracy, the National Occupational Licensing Authority) (NOLA).

Successive state regulator appeared to resist efforts to either alter the status quo , streamline their existing processes (there would be no consistent treatment of licence fees for instance) or rationalise often confusing and overlapping licensing classes.

As the Productivity Commission stated in its 2015 report:

> *"rather than adopt a simplified national system, the jurisdictions decided to keep their local regulators, record-keeping arrangements and unique registration fees. A complex system of national governance was to be grafted onto existing institutional arrangements (summarised in the figure below), which created considerable confusion about stakeholder consultation and the roles of different parties in making policy decisions. Moreover, it would have increased the cost of administering occupational registration. Another fundamental issue was that jurisdictions were unable to agree on nationally uniform registration requirements for each occupation."*[1]

in HIA's view the NOLS, if implemented, would have likely resulted in increased red tape and regulation for many small businesses in the industry.

In lieu of an formal harmonised approach to licensing requirements, HIA continues to support mutual recognition arrangements as a way to align similar license requirements and allow the movement of profressionals across state borders.

As outlined earlier, each state and territory has distinct occupational and business licensing arrangements in place for builders, trade contractors and workers in the residential building industry.

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[1] Productivity Commission 2015, *Mutual Recognition Schemes*, Research Report, Canberra at page 36.

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.

Arguably, the full benefits of mutual recognition are yet to be attained.

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.

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.

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.

A more detailed explanation of the opportunities and current impediments to mutual recognition for residential building are set out in Attachment B, being HIA's submission to the Productivity Commission's 2015 inquiry into Mutual Recognition Schemes.

Where national harmonisation is proposed, it should be established through an agreement of the Council of Australia Government's (COAG) and provide for all parties to make a contribution (financial or similar) to the delivery of the agreed outcome.

Any new proposals for harmonisation that effect residential building businesses by either State or the Commonwealth government (including through COAG) should not be agreed to without first conducting a cost benefit analysis that considers the impact of the reforms on housing affordability and the thousands of small businesses that do not operate outside of their state's jurisdiction.

HIA would support a coordinated approach to regulatory reform that seeks to deliver improvements in the coordination of commonwealth, state and local government administrative requirements within a region.

Business most commonly incur red tape that cuts across parallel regulators rather than across state borders. For residential building a focus on this aspect is more likely to lead to a reduction in red tape than steps to have the same license requirements across borders. Mutual recognition can then be used to support the limited number of businesses that do seek to operate across borders.

HIA does not support harmonisation where it aims to achieve a nationally consistent outcome at the expense of genuine, positive regulatory reform for the residential building industry. States should continue to retain their right to determine what risk, both public and private, they seek to manage by the operation of licensing arrangements. National harmonisation which simply seeks to mandate one or more states to unjustifiably increase their current regulation stringency for the sake of consistency alone is not a reduction in red tape and should not be purported to be such.

ATTACHMENTS:

A. HIA POLICY – BUILDERS LICENSING

HIA Policy

Builders Licensing

Policy Background

- Although there are benefits in licensing, licensing also constrains the market's ability to provide services. By restricting entry, license holders maintain an entrenched market position thus reducing competition.

- In this regard, the need for licensing of any particular trade activity should be assessed against the risk involved. If licensing is justified according to risk, an important task is to identify those risks that require regulation.

- Where there is a high monetary threshold for licensing, a greater range of building work will not require a licence. This might have the consequence of increasing competition amongst non-licensed practitioners at the lower-end of the market, which in turn could have potential to expose consumers to increased risk from unlicensed builders.

- However, removing compliance costs for the lower end of the market will result in lower costs, greater choice for consumers and more targeted regulation where it matters the most.

- An added complexity is that in only one jurisdiction the monetary licence threshold and the Home Owners Warranty Insurance threshold are the same.

- One option to reduce complexity is to align licensing thresholds with warranty insurance. If adopted nationwide, this would assist compliance for contractors who are burdened with unnecessary paperwork and documentation for the smaller valued projects.

- Not all jurisdictions licence both commercial and residential builders and amongst those that do, there is a wide variation in the way licences are graded or classified. From a consumer protection point of view, the grading of licences assists market choice by indicating the most appropriately qualified builders for their needs.

- Despite the existence of a national training framework, the number of years of experience required and the level of training qualifications required to be licensed varies from region to region. Hence there isn't uniformity in the levels and skills and knowledge provided by different courses, which range from diploma and degree courses to Certificate IVs in Building. Likewise, there can be a significant variation in the experience levels of recently licensed builders.

HIA's Policy Position on Builders Licensing

HIA supports (business) licensing for:

1. Builders undertaking domestic building work.
2. Builders undertaking multi-residential building work, and that domestic, multi-residential and high rise licenses be separate categories.
3. Builders undertaking commercial and other building work - and that non-residential licenses be a separate category from a residential builders' license.

4. Trade contractors undertaking high risk work relating to electrical, plumbing and gas fitting work.
5. Trade contractors engaged (contracting) directly with consumers (subject to a monetary threshold).
6. Trade contractors engaged (contracting) directly with 'commercial' consumers.
7. Project managers who undertake building work.

Monetary Threshold

8. HIA supports a monetary threshold for building work, above which a license is required.
9. The monetary threshold should align with the warranty threshold for residential building work.

License Eligibility

HIA supports license eligibility for the requirement for builders and subcontractors being based on:

10. Technical competency
11. Industry experience
12. Business skills
13. Financial viability – for example, insolvency should trigger an automatic suspension of license
14. Business financial checks to be undertaken annually by warranty insurance providers, not consumer/licensing agencies
15. Personal probity
16. Warranty insurance eligibility
17. Other insurance requirements
18. CPD not being required for renewal purposes.

Transition to National Licensing System

HIA supports a transition to a National Licensing System that provides for:

19. Existing license holders to transition directly to licenses of the same or equivalent National Licensing System category.
20. Existing license holders to transition directly to licenses of a similar new National Licensing System category.
21. State/Territory agencies to administer the National Licensing system.
22. State/Territory to opt out of National Licensing System categories that do not currently exist in their jurisdiction.
23. HIA does not support the licensing of trade (sub)contractors who work exclusively for builders/principal contractors, except where they undertake work involving structural safety risk, such as concrete form workers, roof framing carpenters, structural masonry work. (Note, HIA supports licensing of contractors who undertake work directly for consumer above a monetary threshold.)
24. Licensing agencies should have a role in inspecting (alleged) defective work and issue rectification notices.
25. Licensing agencies should not have authority to issue 'show cause' notices, penalty notices or suspend licenses in circumstances where a builder or contractor does not comply with a rectification notice.

B. Submission To Productivity Commission Inquiry Into Mutual Recognition Schemes, March 2015

SUBMISSION BY THE

Housing Industry Association

to the

Productivity Commission

on the

Mutual Recognition Scheme Issues Paper

3 March 2015

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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. Reponses to Particular Issues

26. To what extent do interjusidictional 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 Australia[1], 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 requirements[2]. Restrictions are therefore placed on applicants from other jurisdictions.

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.

[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.

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 systems[3] 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.

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

[3] Queensland
[4] NSW and Tasmania

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	*Home Building Act 1989*	*Queensland Building and Construction Commission Act 1991*	*Domestic Buildings Contracts Act 19995*	*Home Building Contracts Act 1991*	*Building Contracts Act 1995*	*Building Act*	*Building Act*	*Housing Indemnity Act*
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