

Chapter 2

Key issues

Introduction

2.1 Occupational licensing is government regulation of the conditions under which someone can practice an occupation. In Australia, there are a large number of licenced occupations, for example, doctors, solicitors, electricians, plumbers and hairdressers.

2.2 Some submitters and witnesses to the occupational licensing inquiry argued that this regulation is beneficial to consumers, workers and the community. Others argued that occupational licensing creates a wide range of regulatory costs and should not be supported in its current form.

2.3 This chapter discusses some of the issues raised with respect to:

- the rationale for occupational licensing;
- alternatives to occupational licensing;
- compliance costs of occupational licensing; and
- the regulatory framework for occupational licensing.

Rationale for occupational licensing

2.4 Daniel Wild, Research Fellow at the Institute of Public Affairs (IPA), stated:

The goal of public policy should be to allow all Australians to succeed based on their own hard work and merit. Earned success, which is the process of applying one's skills and talents to achieve a goal of one's own design, is the key to allowing people to reach their potential and to flourish. Unfortunately, too much government policy is actively undermining the ability of many Australians to reach their potential, and perhaps the most egregious area is red tape.¹

2.5 Mr Wild described occupational licensing as a government-enabled cartel that inflates the wages and market share of licensed workers at the expense of non-licensed workers:

Occupational licensing creates a barrier to market entry. This reduces the number of people in licensed professions and increases the number of people in non-licensed professions. This drives up labour supply in the licensed professions, which pushes up wages, while it floods labour supply in unlicensed professions, which pushes down wages in those professions.²

1 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 1.

2 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 1.

2.6 Graham Wolfe, Deputy Managing Director of Housing Industry Association (HIA) agreed that 'the licensing system is a barrier to entry', as licensing prerequisites for builders can be prohibitive or lead to 'shopping and hopping':

A certificate IV in building is one of the prerequisites, but in some states there are other prerequisites, and in New South Wales there has historically been a requirement that you have served time as a carpenter or in a similar trade. There have been examples where people haven't been a carpenter; they've been an estimator, a designer or something else. They have gone and done a certificate IV, but that's not sufficient in New South Wales, so they've stepped up into Queensland, got their licence and then come back to New South Wales.³

2.7 An Australian Council of Trade Unions (ACTU) and Unions NSW representative suggested that 'loosening' regulation is not the answer to removing entry barriers. Instead, Thomas Costa argued that every person who has the necessary skillsets and qualifications should be able to undertake a trade or calling. Accordingly, if there are barriers, the solution is education-based:

The solution...is to ensure that Australians have the opportunity to gain the skills they need to participate safely and effectively in licensed occupations. We have to ensure that we have a training system that is fit for purpose and which delivers—through apprenticeships, traineeships, TAFE or universities—good quality training at a cost that is affordable to even the most disadvantaged Australians.⁴

Benefits of occupational licensing

2.8 Mr Wild from the IPA raised the issue of whether occupational licensing confers any benefits from a community perspective. He referenced a report from the United States of America which concluded that there is no evidence-base for licensure improving the quality of public health or safety. Further:

Occupational licensing can actually reduce health and safety and quality outcomes by restricting competition. Less competitive markets contain businesses which are less responsive to the needs and preferences of consumers, and so they are less likely to deliver high-quality, low-cost products and services. Moreover, by raising prices occupational licensing

3 Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 17. Also see: p. 18; Penny Cornah, Secretary, Master Plumbers Australia, *Committee Hansard*, 13 June 2018, p. 10, who said that further training is sometimes required for endorsements on plumbers' licenses in Queensland.

4 Thomas Costa, Assistant Secretary, Unions NSW and Australian Council of Trade Unions, *Committee Hansard*, 13 June 2018, pp. 38–39. Also see: p. 43; Allen Hick, National Secretary, Communications, Electrical and Plumbing Union, *Committee Hansard*, 13 June 2018, p. 43.

reduces real income. This means that people economise on the use of licensed products and services, which can cause negative health outcomes.⁵

2.9 Jenny Lambert from the Australian Chamber of Commerce and Industry (ACCI) questioned the relevance of the American report to Australian conditions, adding that it defied common sense.⁶ Allen Hick, National Secretary of the Communications, Electrical and Plumbing Union (CEPU) agreed, arguing that occupational licensing is clearly a critical issue of health and safety:

There need be no further example of that than the electrical industry or the plumbing industries. With electricity, for example, you can't see it, you can't hear it, you can't taste it, you can't smell it, but normally the consequences of touching live electricity result in electric shock, burns or death. In regard to plumbing, there are a whole range of issues associated with that—obviously with waste, infection, and gases that can create significant medical emergencies for people or buildings through fire, explosion and the rest...[Occupational licensing is] something that we believe should be maintained in its current form and that the ability for states and territories to charge a licence fee to licence holders gives them the capacity to go out and ensure that those dangerous industries that our members work in are regulated and regulated appropriately.⁷

Health and safety

2.10 ACCI submitted that there are two main reasons for occupational licensing: to protect the safety of consumers and the public; and to ensure a sufficient and reliable level of service quality. A third reason is to signal that a person has the requisite training and skills to function competently and safely in an occupation.⁸

2.11 Similar views were expressed by trade unions that assisted the committee. Mr Costa from the ACTU and Unions NSW said, for example:

Occupational licensing is not red tape—something we consider to be a pejorative term—but a crucial element in ensuring the quality of work undertaken in licensed industries and in ensuring the safety of Australian workers and consumers...Licensing ensures that the worker has the required

5 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 1. Also see: Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, pp. 18–19; Penny Cornah, Secretary, Master Plumbers Australia, *Committee Hansard*, 13 June 2018, pp. 12–14, who reflected on the various reasons why consumers might not use licensed trades.

6 Jenny Lambert, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 13 June 2018, p. 22. Also see: Allen Hick, National Secretary, Communications, Electrical and Plumbing Union, *Committee Hansard*, 13 June 2018, p. 41.

7 Allen Hick, National Secretary, Communications, Electrical and Plumbing Union, *Committee Hansard*, 13 June 2018, p. 40.

8 Australian Chamber of Commerce and Industry, *Submission 8*, p. 2. Also see: Master Plumbers Australia, *Submission 7*, p. 3; Housing Industry Association, *Submission 9*, p. 1.

skills from an accredited provider...It gives the consumer peace of mind that the person doing the work can do the job properly.⁹

2.12 Mr Costa added:

Safety is, arguably, the most important benefit of licensing regimes. Many, if not all, of the jobs requiring specific licensing would represent significant danger both to the worker and to the consumer if they were to be exposed to unskilled labour...The quality and safety of work undertaken by workers in licensed industries must remain a top policy priority. Any attempt to water down these requirements in the name of red-tape reduction would be a retrograde step.¹⁰

2.13 Penny Cornah, Secretary of Master Plumbers Australia (MPA), observed that occupational licensing will not necessarily protect against all risks, for example, legionella and lead in the water supply. However, licensing regimes increase awareness of how to respond to such risks (particularly when combined with continuing professional development (CPD)).¹¹

Alternatives to occupational licensing

2.14 Some submitters and witnesses expressed views on alternatives to occupational licensing. Their primary arguments focussed on whether a particular trade should be licensed and if so, to what extent. For example, the Shopping Centre Council of Australia (SCCA) contended that commercial real estate agents should not be licensed, as large companies (the consumer) do not want or need regulatory protection:

To use a practical example, a staff member of Scentre Group, which is the company that owns Westfield shopping centres, may need to be a licensed real estate agent. As an example, they'll undertake leasing or property management activities. They need to be licensed to protect Scentre Group, the company they work for. In that case, Scentre Group is a...\$20 billion company listed on the Australian Stock Exchange. Its sole purpose is the ownership and management of commercial property, so it has long-term experience and sophistication in that area and essentially doesn't see the need to be protected.¹²

9 Thomas Costa, Assistant Secretary, Unions NSW and Australian Council of Trade Unions, *Committee Hansard*, 13 June 2018, p. 38. Also see: Construction, Forestry, Mining and Energy Union, *Submission 13*, p. 6; Electrical Trades Union, *Submission 14*, p. 4.

10 Thomas Costa, Assistant Secretary, Unions NSW and Australian Council of Trade Unions, *Committee Hansard*, 13 June 2018, p. 38. Also see: Electrical Trades Union, *Submission 14*, p. 4.

11 Penny Cornah, Secretary, Master Plumbers Australia, *Committee Hansard*, 13 June 2018, p. 13.

12 Angus Nardi, Executive Director, Shopping Centre Council of Australia, *Committee Hansard*, 13 June 2018, p. 24. Also see: Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 18, who argued that trades people working for a licensed builder should not themselves need to be licensed.

2.15 The IPA argued that licensing should be substantially reduced for high-risk occupations (medicine) and entirely abolished for low-risk occupations (hairdressers, beauticians, beekeepers, and some trade and property occupations).¹³

2.16 Sandra Campitelli, Chief Executive Officer of the Hairdressing and Beauty Industry Association (HBIA), argued that the focus of occupational licensing is consumer protection. In her view, hairdressing and beauty is not a low-risk industry, with various harms frequently reported. Ms Campitelli argued that, rather than a reduction, that 'industry is crying out for regulation'.¹⁴

2.17 Similarly, the Construction, Forestry, Mining and Energy Union (CFMEU) submitted that there is a 'significant gap' in the building and construction industry that needs to be addressed:

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.¹⁵

2.18 In evidence, the ACCI representative endorsed an industry's right to decide whether licensing is warranted in respect of a particular occupation: 'industry has a strong right and a professional knowledge about what the concerns are in relation to consumer protection and public safety'. Ms Lambert added that 'if there is no strong reason then obviously they would need to be encouraged not to go down [the licensure] path'.¹⁶

Reputational platform

2.19 Gideon Rozner, Research Fellow at IPA, expressed a view that the historical rationale for occupational licensing—consistency of quality and public safety—is less relevant and less necessary in the modern age:

13 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 2. Also see: Institute of Public Affairs, *Submission 6*, p. 10.

14 Sandra Campitelli, Chief Executive Officer, Hairdressing and Beauty Industry Association, *Committee Hansard*, 13 June 2018, p. 27. Also see: Sandra Campitelli, Chief Executive Officer, Hairdressing and Beauty Industry Association, tabled document, received 13 June 2018; Melissa Coad, Executive Projects Coordinator, United Voice, *Committee Hansard*, 13 June 2018, p. 39, who called for occupational licensing in the aged care and disability sectors to protect vulnerable people, enhance consumer choice and control, and professionalise the workforce; Housing Industry Association, *Submission 9*, p. 4, which argued that risk is the paramount consideration.

15 Construction, Forestry, Mining and Energy Union, *Submission 13*, p. 6. Also see: Electrical Trades Union, *Submission 14*, p. 7; Housing Industry Association, *Submission 9*, p. 4, who indicated support for the licensing of certain trades in the building and construction industry.

16 Jenny Lambert, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 13 June 2018, p. 21.

There are a range of options by which consumers can inform themselves of the quality and safety of a provider or service that mitigate the information asymmetry—that is, the difference in the knowledge of the provider and the knowledge of the lay consumer—in providing a good or service. Consumers in this day and age don't have to rely on centrally mandated licensing in order to check up on a provider, a shop, a café or even a specialist or tradesman; they can revert to crowdsourced websites like Yelp or Google Reviews and the like.¹⁷

2.20 The IPA argued that, as an alternative to occupational licensing, policy-makers should focus on enabling consumers to make more informed decision-making through the technological provision of 'more and better information'.¹⁸ A public policy commentator—Sanjeev Sabhlok—agreed that occupational licensing could be replaced with an online 'voluntary reputational platform':

A platform being voluntary would ensure that only good professionals step forward to be rated. Customers will, of course, not provide custom to anyone who is not willing to get himself/herself rated. Those who agree to be rated would also have an incentive to provide excellent quality of service to ensure continued high ratings. This would improve the quality of services provided by the professionals.¹⁹

2.21 Ms Campitelli expressed some misgivings about this proposal, saying that 'the average consumer is unaware of what to look for'.²⁰ Mr Wolfe similarly noted:

[HIA does] get asked regularly by media outlets and other communication journals about how a consumer might go about choosing a builder. Typically, we have a few responses, and one of those is to ask for previous clients, get in contact with those clients and see how they went. Whether or not people do that every time, I don't know.²¹

2.22 Mr Costa from the ACTU and Unions NSW highlighted that, in the gig economy, unlicensed operators engage online and it is difficult for the host and prospective consumers to ascertain those operators' qualifications and skills:

17 Gideon Rozner, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 3. Also see: Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 2, who argued that, in a competitive market, bad businesses would suffer through negative reputational consequences.

18 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 2. Also see: Institute of Public Affairs, *Submission 6*, p. 10.

19 Sanjeev Sabhlok, *Submission 15*, p. 1. Also see: Productivity Commission, *Shifting the Dial, 5 Year Productivity Review*, Supporting Paper No. 13, Regulation in the Digital Age, 3 August 2017, pp. 2 and 9–17, <https://www.pc.gov.au/inquiries/completed/productivity-review/report/productivity-review-supporting13.pdf> (accessed 9 August 2018).

20 Sandra Campitelli, Chief Executive Officer, Hairdressing and Beauty Industry Association, *Committee Hansard*, 13 June 2018, p. 34.

21 Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 17.

Sites like Airtasker and platforms like that provide an audience that is much larger than what would have normally been available to an unlicensed operator or an improperly licensed operator, which means that the risks are far greater. People may be engaging with these unlicensed people without really knowing whether they have the appropriate licence. They may be engaging with them assuming that they have the appropriate licence, relying on regulators that we think are inefficient at policing the online space.²²

Industry self-regulation

2.23 IPA representative Mr Wild contended that abolition or relaxation of government-mandated licensing requirements does not mean that there would be no regulation. He said existing self-regulatory regimes would probably expand to fill the void and cautioned against subsequent enactment of these codes in legislation, possibly leading to a closed shop dynamic.²³

2.24 Tashi Edwards, Vice President of the Australian Tattooists Guild (ATG), argued that licensing has adversely impacted the tattoo industry and advised that tattoo artists had successfully self-regulated for over 20 years:

Within this model of self-regulation, the profession and the general public were protected from backyard amateur operators due to their inability to gain any form of legitimacy within the trade. The licensing regimes have undermined the existing structure of the profession and, through the licensing of amateurs, have created a public health risk.²⁴

Existence of other protections

2.25 Some witnesses—such as from IPA—queried whether occupational licensing prevents the occurrence of catastrophic outcomes. IPA representatives argued that there are existing legal protections for consumers in such circumstances but Mr Wild continued:

The goal shouldn't be to remove the prospect of those risks materialising; the goal should be to ensure that consumers have adequate information on which to base their decisions, rather than just saying, 'We want to have a risk-free society'.²⁵

22 Thomas Costa, Assistant Secretary, Unions NSW and Australian Council of Trade Unions, *Committee Hansard*, 13 June 2018, p. 41. Also see: p. 42, where Mr Costa supported the development of an effective online regulator; Melissa Coad, Executive Projects Coordinator, United Voice, *Committee Hansard*, 13 June 2018, p. 42, who expressed concerns about the use of apps to obtain care services in the aged care sector.

23 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, pp. 2–3.

24 Tashi Edwards, Vice President, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, p. 28.

25 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 3. Also see: Gideon Rozner, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, pp. 5 and 6.

2.26 Mr Wolfe from HIA said that occupational licensing in the residential building industry intends to protect consumers (normally, home owners). He argued that licensing operates in conjunction with the Building Code of Australia:

What [a licence] does, in the first instance, is indicate that the person has attained a certain degree of qualification—they've done certain training; they've got skills; they've got competencies...If you didn't have that, for example, it may very well be that the person who calls themselves a builder goes on and does some work and doesn't even know the Building Code exists, let alone know knows what's in the building code, so at least you'll have that first determination that says, 'I know the building code exists. I know that the hundreds of standards that underpin the building code exist. I know where to find them, I know how to read them and I can interpret those things'.²⁶

2.27 Melissa Coad from United Voice similarly considered that occupational licensing acts to prevent poor or catastrophic outcomes. She noted that there are some consumer protections in the aged care sector but the gaps could be covered by licensing:

When you have a licensing system, that allows for you to be assured that everyone delivering those services has a really good understanding of the way that you interact with elderly people, their rights and responsibilities, your rights and responsibilities as a worker, and they have a clear understanding of what may or may not be elder abuse, because it's not always a clear-cut criminal offence.²⁷

2.28 The SCCA and ATG observed that regulation of their industries is premised upon protecting consumers whose interests are protected by other state-based legislation (retail and criminal law, respectively).²⁸ Rhys Gordon and Matthew Cunnington, members of ATG, described how that disproportionate regulation has adversely affected their tattoo studios.²⁹ For example, Mr Cunnington described one item of record keeping required of artists in Queensland (a Form 9) that he said has no

26 Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 16. Also see: p. 15.

27 Melissa Coad, Executive Projects Coordinator, United Voice, *Committee Hansard*, 13 June 2018, p. 42.

28 Angus Nardi, Executive Director, Shopping Centre Council of Australia, *Committee Hansard*, 13 June 2018, p. 25; Tashi Edwards, Vice President, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, p. 31. Ms Edwards noted that regulation of the tattoo industry is inappropriately based on a false assumption that a high level of criminality exists in the industry.

29 Rhys Gordon, Member, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, p. 32; Matthew Cunnington, Member, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, p. 33. Also see: Name Withheld, *Submission 11*, p. 1.

apparent value and which Ms Edwards described as duplicating obligations under state-based health legislation.³⁰

Compliance costs of occupational licensing

2.29 A few submitters and witnesses referred to compliance costs associated with occupational licensing. For example, ACTU and Unions NSW representative Mr Costa strongly argued that these costs, as well as the need to fill out forms, is entirely justifiable:

Australian unions do not believe...that any process which involves payment to a governing body or the filling out of a form is inherently wrong or unnecessary. In the scheme of the benefits provided to workers in these fields, which include better pay, safer workplaces and a proper recognition of their skills, these imposts are minor.³¹

2.30 More broadly, MPA submitted that compliance costs are offset by the delivery of safe and effective trades:

The licensing system reduces business costs in the long run because it ensures that when a customer engages a licensed plumbing, drainage and gas fitter contractor, the work performed and products installed are fit for purpose and do not create health and safety risks...[Further], continuing enhancement of industry knowledge would almost certainly flow on to a reduction in compliance, rectification [and] in regulatory disciplinary action.³²

2.31 SCCA observed that 'compliance costs can be burdensome' and, by way of illustration, estimated annual licensing costs at about \$1.6 million and 13 800 hours of staff productivity in Western Australia:

This includes issues such as the need for staff to hold a real estate license, and the cost of associated requirements such as attending annual training courses to maintain their license through 'Continuing Professional Development' [CPD].³³

30 Matthew Cunnington, Member, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, p. 32; Tashi Edwards, Vice President, Australian Tattooists Guild, *Committee Hansard*, 13 June 2018, pp. 28 and 32. Also see: Tashi Edwards, Vice President, Australian Tattooists Guild, tabled document, received 13 June 2018.

31 Thomas Costa, Assistant Secretary, Unions NSW and Australian Council of Trade Unions, *Committee Hansard*, 13 June 2018, p. 38.

32 Master Plumbers Australia, *Submission 7*, pp. 2–3.

33 Shopping Centre Council of Australia, *Submission 5*, p. 2. Also see: Shopping Centre Council of Australia, *Supplementary Submission 5*, p. 3; Australian Chamber of Commerce and Industry, *National Red Tape Survey*, March 2015, pp. 9 and 11, <https://www.australianchamber.com.au/publication/taxonomies/red-tape-survey/> (accessed 9 August 2018), in which over 64 per cent of respondents identified applying for regulatory approvals or other licences as a somewhat to very large cost of compliance.

Continuing Professional Development

2.32 CPD concerned a number of submitters and witnesses. For example, Ms Cornah from MPA supported mandatory implementation of CPD for plumbers throughout Australia, emphasising that this is critical to achieving higher industry standards. She acknowledged that mandatory CPD would increase regulatory costs for the plumbing industry but 'the majority of the industry is supportive of a continuing professional development program'.³⁴

2.33 Representatives from the HIA agreed that mandatory CPD might increase occupational licensing costs however, Mr Wolfe said that this would not necessarily be the case for most builders:

The alternative view is that builders should be doing this anyway and probably are in the majority of instances and, therefore, they are already carrying some cost in maintaining their own level of continued professional development. The question of whether they would do more or less under a mandatory scheme is not clear...the major purpose behind a CPD program mandated would be capture those who are less inclined to keep up to date.³⁵

Regulatory framework for occupational licensing

2.34 Some submitters and witnesses referred to the National Occupational Licensing Scheme (NOLS) that COAG agreed in 2013 not to progress. ACCI submitted that this reform was abandoned when:

The states and territories were unable to agree on nationally uniform registration requirements for each occupation. This position was also a reflection that there was not sufficient support amongst industry (both union and employer groups in many cases) for a lowest common denominator approach that was being advocated.³⁶

2.35 Submitters—such as HIA, National and Electrical Communications Association (NECA) and Electrical Trades Union (ETU)—reiterated their views that

34 Penny Cornah, Secretary, Master Plumbers Australia, *Committee Hansard*, 13 June 2018, p. 11. Also see: p. 9. Ms Cornah stated that mandatory continuing professional development would benefit consumers, as shown by experience in Tasmania which already has such regulation.

35 Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, pp. 16–17. Also see: Melissa Adler, Executive Director, Industrial Relations and Legal Services, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 15.

36 Australian Chamber of Commerce and Industry, *Submission 8*, p. 2. Also see: Penny Cornah, Secretary, Master Plumbers Australia, *Committee Hansard*, 13 June 2018, p. 10; Graham Wolfe, Deputy Managing Director, Housing Industry Association, *Committee Hansard*, 13 June 2018, p. 18; Allen Hick, National Secretary, Communications, Electrical and Plumbing Union, *Committee Hansard*, 13 June 2018, p. 40.

NOLS would not have achieved simpler and more effective regulation based on high quality standards.³⁷

2.36 Instead, each jurisdiction has its own occupational licensing regime, which IPA argued is complex, expansive and duplicative. Its submission noted that the range of licensed occupations varies considerably—from the predictable to the esoteric—as do the licensing requirements across jurisdictions.³⁸ However, Mr Wild did not necessarily view this situation in a negative light:

State governments should have far more autonomy across a range of areas to implement public policy, as opposed to that coming from Canberra. [We] don't have any strong objections to state governments voluntarily deciding to come together and form uniform requirements on certain areas, if they deem that to be in the best interests of the votes and citizens in their states.³⁹

2.37 NECA commented that there is a practical outcome for businesses operating in more than one jurisdiction: regulatory complexity with small to medium enterprises bearing disproportionate compliance costs.⁴⁰

Mutual recognition arrangements

2.38 Submitters and witnesses commented on mutual recognition arrangements implemented under the *Mutual Recognition Act 1992* (Cth). ACCI submitted that there are issues with these arrangements, as discussed by the Productivity Commission (PC) in its 2015 research report *Mutual Recognition Schemes* (for example, regulators' reluctance to implement mutual recognition).⁴¹ ATG provided the following example:

The current model of recognition is an arrangement between NSW and Qld, with Tasmania being the only other Australian state to have a licensing requirement. However, because Tasmania's licensing system is tested on health practice-based competency rather than criminality [as in New South

37 Housing Industry Association, *Submission 9*, p. 5; National Electrical and Communications Association, *Submission 10*, p. [3]; Electrical Trades Union, *Submission 14*, p. 7. Also see: Australian Environmental Pest Managers Association, *Submission 3*, pp. 4–5; Electrical Trades Union, *Submission 14*, p. 7, who continued to support the concept of a national licence.

38 Institute of Public Affairs, *Submission 6*, p. 4. Also see: Australian Environmental Pest Managers Association, *Submission 3*, pp. 2–3 (inconsistent licensing regimes); Housing Industry Association, *Submission 9*, pp. 1–2 and 4 (inconsistent licensing requirements).

39 Daniel Wild, Research Fellow, Institute of Public Affairs, *Committee Hansard*, 13 June 2018, p. 7. Also see: Jenny Lambert, Director, Employment, Education and Training, Australian Chamber of Commerce and Industry, *Committee Hansard*, 13 June 2018, p. 22, who acknowledged that there might be an argument for competitive federalism.

40 National Electrical and Communications Association, *Submission 10*, pp. [1–2]. Also see: Australian Environmental Pest Managers Association, *Submission 3*, p. 1.

41 Productivity Commission, *Mutual Recognition Schemes*, Research Report, September 2015, <https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes/report> (accessed 9 August 2018). Also see: Australian Chamber of Commerce and Industry, *Submission 8*, p. 3; Master Plumbers Australia, *Submission 7*, pp. 1–2, which suggested that variance in state-based training requirements is also problematic.

Wales and Queensland] the Tasmanian state license is not recognised under mutual recognition agreements.⁴²

2.39 HIA contended that 'the full benefits of mutual recognition are yet to be attained'. Its submission noted the 2009 PC research report *Review of Mutual Recognition Schemes*, which found that 'perfect labour mobility of registered workers adds about 0.3 of a percentage point to the baseline growth of real gross domestic product of 2.1 per cent'.⁴³

2.40 Several submitters supported more effective automatic mutual recognition (AMR), with NECA describing this as a 'driver's licence model':

This low-cost model would increase labour mobility and flexibility and assist to reduce some of the compliance and regulatory burdens of current arrangements while removing the need for multiple license registrations, renewals and additional license fees. This model also avoids the complexities of introducing and managing a fully harmonised, nationally co-ordinated approach.⁴⁴

2.41 AMR currently applies to specific licences and selected states only. Further, the arrangements vary between states. The Department of Education and Training (Department) provided an example of the existing complexity:

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.⁴⁵

Department's comment

2.42 The Department submitted that current mutual recognition arrangements were implemented after lengthy consideration.⁴⁶ Its submission noted a PC

42 Australian Tattooists Guild, *Submission 6*, p. 26.

43 Productivity Commission, *Review of Mutual Recognition Schemes*, Research Report, January 2009, p. 73, <https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes-2009/report> (accessed 9 August 2018). Also see: Housing Industry Association, *Submission 9*, p. 6.

44 National Electrical and Communications Association, *Submission 10*, p. [3]. Also see: Master Plumbers Australia, *Submission 7*, p. 2; Australian Chamber of Commerce and Industry, *Submission 8*, p. 3 (low-risk occupations only); Housing Industry Association, *Submission 9*, p. 6.

45 Department of Education and Training, *Submission 4*, p. 4.

46 Department of Education and Training, *Submission 4*, p. 3.

recommendation that 'state and territory governments should give higher priority to expanding the use of automatic mutual recognition'.⁴⁷

Committee view

2.43 Occupational licensing is a barrier to market entry that prevents some people from practising their chosen trade. As such, it should only be imposed when there is strong justification.

2.44 The committee heard that the primary role of licensure is the protection of the health and safety of the public, consumers and licensees. No detailed evidence-base for this argument was provided to this inquiry, although the committee acknowledges the anecdotal evidence from industry participants. At present, the CAF is tasked with developing licensing reform throughout Australia, and it is the committee's view that this task would be assisted by an Australian-based study of the health and safety benefits associated with occupational licensing.

2.45 Another reason advanced in support of occupational licensing was the assurance that minimum quality standards ultimately benefit consumers. The committee agrees that licensure signals that a person has acquired a certain level of qualification and skill. However, it is the quality of training and experience that determine a tradesperson's actual skill and ability to meet the needs of consumers, not the holding of a license.

2.46 There are a range of views regarding the value of licensure, with some industries supportive of occupational licensing and others not. The committee agrees with ACCI that each industry is best suited to determining the particular needs of its consumers and membership, and must be consulted in respect of any proposed reform.

2.47 The committee recognises that there are alternative forms of regulation and legal protection capable of achieving similar objectives to occupational licensing. In this regard, the committee believes the concept of an online platform has merit: empowering consumers is both attractive and progressive. The committee suggests that industry, under the leadership of a peak body (perhaps ACCI), could investigate this option. The committee certainly does not consider it appropriate for government to increase its involvement in occupational licensing.

2.48 Australian governments have previously considered and rejected implementation of a proposed national occupational licensing scheme. While the concept of competitive federalism has some appeal, the committee also considers that it would be preferable not to have a myriad of licensing regimes which, the committee heard, are complex, duplicative, inconsistent and burdensome. However, state and territory governments support state-based occupational licensing regimes and the committee therefore suggests that it would be beneficial for the CAF to renew its focus on reform with an emphasis on specific, measurable outcomes rather than the means of achieving them.

47 Productivity Commission, *Mutual Recognition Schemes*, Research Report, September 2015, Recommendation, p. 26, <https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes/report> (accessed 9 August 2018).

2.49 In addition to the red tape identified in the occupational licensing inquiry, the committee heard that issues with the mutual recognition scheme are undermining achievement of its objectives (enhanced labour mobility). In the committee's view, AMR could be expanded to cover a broader range of occupations, thereby significantly reducing red tape in those occupations.

2.50 The committee makes the following recommendations:

Recommendation 1

2.51 The committee recommends the Council for the Australian Federation, in close consultation with relevant stakeholders, renew its efforts toward occupational licensing reform, with a starting presumption against licensing.

Recommendation 2

2.52 Subject to its retention, the committee recommends that occupational licensing be based on specific, measurable outcomes and the identification of best practice models for occupations throughout Australia.

Recommendation 3

2.53 The committee recommends the expansion of automatic mutual recognition based on the objective of increasing labour force mobility.

Recommendation 4

2.54 The committee recommends the Council for the Australian Federation commission a study into the health and safety benefits of occupational licensing, to strengthen efforts toward reform.

Senator David Leyonhjelm

Chair