



Senate Select Committee on Red Tape

The Effect of Red Tape on Occupational Licencing

Submission

Electrical Trades Union of Australia

12 June 2018

1 INTRODUCTION

1. On 11th October 2016, the Senate resolved to establish the Select Committee on Red Tape, to be known as the 'Red Tape Committee'. The role of the committee is to inquire into the effect of restrictions and prohibitions on business (red tape), on the economy and community, with particular reference to:
 - the effects on compliance costs (in hours and money), economic output, employment and government revenue, with particular attention to industries, such as mining, manufacturing, tourism and agriculture, and small business;
 - any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
 - the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
 - the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
 - the adequacy of current institutional structures (such as Regulation Impact Statements, the Office of Best Practice Regulation and red tape repeal days) for achieving genuine and permanent reductions to red tape;
 - alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
 - how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
 - any related matters.¹
2. The committee is due to report on or by 3rd December 2018. In performing its work, the committee has decided to conduct its business by separately inquiring into and reporting on a number of specific areas. One of those areas is occupational licensing.
3. It would appear from the relevant website that the committee is to advise the commencement of each inquiry on the committee's webpage, and at that time, organisations and individuals should be invited to participate.² The consequence of this approach is that unless an organisation is an avid follower of the Red Tape Committee they are unaware of a specific area being considered. This is the case in which the Electrical Trades Union (ETU) finds itself as it was only alerted to the inquiry into occupational licensing by the ACTU on 31st May 2018, nearly 4 weeks after the 4th May 2018 closing date for submissions.³
4. As an organisation representing over 60,000 members who perform work that requires some form of licensing and/or certification, the ETU is compelled to make a submission even though the closing date for doing so has passed. We would ask

¹ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape

² Ibid

³ https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Red_Tape/OccupationalLicensing

that the Red Tape Committee will understand the situation and consider this submission.

5. It is noted that the terms of reference for this specific area inquiry are slightly different, being the following:
 - the effects on compliance costs (in hours and money), economic output, employment and government revenue;
 - any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
 - the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
 - the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
 - alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
 - how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
 - any related matters.
6. The terms of reference rather than being open to explore the best outcome, are quite pointed and it would be reasonable to argue that they favour a particular outcome, i.e. to reduce regulation (red tape) and by doing so it assumes this will automatically reduce the costs to the individual and society. Unfortunately, it would appear that save for the last item, "any other matter", the terms of reference do not canvass the alternative view, i.e. the many benefits that occupational licensing provide to individuals and society.
7. The ETU accepts that there may be cost imposts brought about by licensing regulations such as the business aspects of licensing.⁴ It would appear that this is the main area that the terms of reference are focussed on. But there are other valid reasons for licensing or regulating occupations which relate to work, health and safety (WHS) requirements, the quality of work and the protection of workers, consumers and the general public. When these matters are given proper consideration, there is an obvious argument for the need for electrical occupations to be licensed.
8. Like every part of society, consideration must be placed on balancing the needs of an individual against the needs of the broader community.

2 WHAT IS OCCUPATIONAL LICENSING?

9. The use of occupational licensing is extensive throughout developed countries, including Australia. Given its prevalence, it is not surprising that occupational

⁴ See for example the requirements in Tasmania for an Electrical Contractor to have a certificate of currency for insurance which must be in the contractors trading name and cover personal injury and damage to property of at least \$5 million dollars for any once occurrence for Public Liability - <https://www.cbos.tas.gov.au/topics/licensing-and-registration/licensed-occupations/electrical/contractor>

licensing is viewed as one of the primary regulatory tools to address policy issues relating to trades and professions.

10. Occupational Licensing, in essence, is applying a system of Government Regulation to occupational skillsets where there are identified risks for workers, consumers and the general public should the work be performed in an unregulated manner.
11. To ensure optimal outcomes, occupational licensing requires careful consideration, particularly since there are countless studies that have examined the potential costs of occupational licensing in terms of higher prices, reduced competition, and poorer consumer choice versus the potential costs of occupational de-regulation in terms of workplace injuries and fatalities, the cost of re-work and the danger of injury or fatality to members of the public.
12. The questions need to be asked if there is a role for Government. In answering the question of whether there is a role for government, there are two conditions that the ETU would argue must be satisfied.
 - First, there must be some form of market failure or over-arching policy rationale for government intervention, such as social welfare objectives.
 - Second, the consequence of that problem must be high, the potential to remedy the problem once it occurs must be poor, and there must be limited potential for the market or consumers to resolve the issue over time of their own accord.
13. These two conditions are quite obviously satisfied in the case of licenced electrical occupations. If completely deregulated, electrical work could be performed by anyone. Electricity is an invisible, odourless, tasteless and usually silent energy source. The hazards this presents are many, including;
 1. Inadvertently coming into contact with live electricity;
 2. Energising private and public owned metallic objects and infrastructure;
 3. Incorrectly joining two cables together
 4. Incorrectly wiring equipment
14. The risks of the above hazards are substantial with all leading to fire, electrocution, explosion and damage to equipment and serious injury or death of people.
15. In Australia, and in many other countries, occupational licensing is not only used for confirmation of competence, it is also used for business purposes and consumer protection laws.⁵
16. The ETU believes that the term occupational licensing is being used inappropriately in the context of assessing business requirements for licenced electrical practitioners rather than focusing those requirements against electrical contractors. Occupational licensing should be limited to certifying that an individual has completed the required training, has been assessed by an independent authority (directly answerable to

⁵ See for example:

http://www.fairtrading.nsw.gov.au/ftw/Tradespeople/Home_building_licensing/Licence_classes_and_qualifications.page?

government and enacted by legislation) as meeting the required standards of competence to perform the work and reviewed at regular renewal points to ascertain competence has been maintained.

3 WHY DO WE NEED OCCUPATIONAL LICENSING?

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

“In economics, there are two competing explanations for occupational licensure: rent-seeking and public interest (Maurizi 1974). Under the public interest theory, additional licensure is justified to the extent that it protects the public from the danger of unlicensed professionals. Consumers may lack sufficient information to make a proper decision (Arrow 1963), and the negative consequences of those poor decisions may hurt society at large (Svorny 1993). On the other hand, the rent-seeking theory of licensure argues that, more often than not, licensure serves to limit access to occupations, raising the wages of those in the field and increasing costs for consumers (Friedman 1962).”⁶

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

“An important cause and consequence of this newfound focus on licensing reform has been the recognition that excessive licensing imposes costs on a wide variety of distinct groups, including people with criminal records, immigrants, military families, low-skilled workers, and entrepreneurs—not to mention consumers. Regardless of ideology, it is hard not to be moved by the difficulties that many of these groups encounter in the face of such licensing requirements. To name a few, individuals with criminal records are sometimes barred from working, for instance, as sheet metal workers or barbers, many military veterans with relevant skills are prevented from entering licensed occupations, and entrepreneurs are foiled by an inflexible vision of how work should be organized.”⁷

19. This mantra is increasingly being used in Australia, particularly by the right-wing think tank the Institute of Public Affairs⁸ which in the ETU’s view, should be summarily dismissed for its blind ideological ignorance. The reality in Australia is clearly different to that found in the US and there is no evidence of similar individuals being excluded from entering licensed occupations.

⁶ Flanders W & Roth C, Fencing Out Opportunity - The Effect of Licensing Regulations on Employment, WILL, March 2017 (<https://www.will-law.org/wp-content/uploads/2017/03/FOO2-FINAL-v3.pdf>)

⁷ Nunn R, <https://www.brookings.edu/opinions/the-future-of-occupational-licensing-reform/>

⁸ <https://www.smh.com.au/opinion/occupational-licensing-hinders-job-creation-and-economic-growth-20150917-gjp7m7.html>

20. Moreover, there are good and sound reasons for having occupational licensing, particularly for electrical occupations. In Australia work health and safety legislation requires employers to demonstrate employees are provided with information, instruction and training prior to performing work.
21. Significantly in the WHS field (as opposed to the consumer protection area) the legislation gives recognition of high risk work licences granted in other jurisdictions.⁹
22. There is industry support for the regulation and licensing of key professions, trades and disciplines undertaking work in the building and construction industry. The Australian Construction Industry Forum recognises that:
 1. *The inherent danger in many aspects of the construction process, including some high risk work types e.g. electrical installation work, demands it be done by providers with appropriate qualifications and experience.*
 2. *The potential for inadequate work quality to seriously affect the safety and amenity of the users of buildings leads to a need for consumer protection regulation via appropriate licensing.*
 3. *Community standards demand that there are protections in place to mitigate the effects of contractors and service providers failing and leaving incomplete work.*¹⁰
23. The ETU is well aware of the risks associated with unlicensed work. In the early years of electrification in Australia, the numbers of electrical injuries and fatalities was extraordinarily high. Through the lobbying efforts of past ETU members, the registration and licencing of electrical workers was the predominant contributor to a reduction in these incidents.
24. A more contemporary example can be seen in Queensland following a review conducted in 2002¹¹. Between 1990 and 2000, there were 116 deaths in the following categories: electrical workers in the electricity supply industry (5); electrical workers in general industry (13); other workers (28) and the general public (71). Around two non-fatal electrical incidents were reported daily. During 1999-2000, electricity deaths were greatest for non-electrical workers (50%), followed by the public (30%). Interestingly, electrical workers represented 20% of all fatalities.
25. Following this review, significant reforms were undertaken by the Government which included the improvement of licencing of electrical workers. Following these reforms, the rate of electrical incidents, injuries and fatalities reduced dramatically.
26. The ETU believes, however, that there remain unacceptable gaps in the occupational licensing requirements of electrical occupations across jurisdictions. Whilst in all jurisdictions an electrical contractor who undertakes work is required to be licensed, trained in minimum standards of running a contracting firm and be covered by

⁹ See regulation 83.

¹⁰ <https://www.acif.com.au/policies/policies/4-occupational-licensing>

¹¹ [Ministerial Electrical Safety Taskforce Final Report qld 2002](#)

insurance, there is no requirement in some jurisdictions for the individual electrical practitioner who performs the work for the electrical contractor to be licensed or indeed in limited cases a qualified tradesperson.

27. The detrimental social, economic, and industrial effects of not consistently mandating to a high standard the licensing of the electrical trades has been acknowledged by industry parties, including in the submissions from employer associations, such as NECA, to this inquiry, who agree that the requirement for fully qualified and licenced tradespeople is in the interests of workers, employers and consumers.
 28. The ETU is firmly of the view that the outstanding gaps need to be addressed and that all electrical trades should be recognised as requiring nationally consistent occupational licensing.
 29. The benefits of consistent national licensing of electrical trades are that it brings with it legislation that defines standards and ensures that people undertaking electrical work are properly trained, hold the relevant qualifications for the scope of works they are carrying out and that their skills and knowledge have been verified. A well-functioning licensing system provides intelligence to government on the performance of vocational education and training in meeting the skill needs of industry. It also ensures an appropriate level of portability of skills providing assurances to different jurisdictions to quickly identify and have confidence in a practitioner's skills, quality and abilities.
 30. Licensing all electrical trades in a nationally consistent fashion would also increase the completion rates of apprentices.
 31. That the relatively recent attempts at a national electrical licencing system failed is not an argument to scrap occupational licencing for electrical work. Regrettably the predominant focus appeared to be on the aforementioned business purposes and to a lesser extent on consumer protection. The issues of safety, skills, quality and competence appeared absent from the deliberations at the time.
 32. Future efforts to create a nationally consistent electrical licence must be focussed on upholding a sound standard of safety, skills, quality and competence and not be used to dilute safety standards or technical expertise.
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