



# Statutory Review of the Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014

Discussion Paper – July 2020

## Publication information

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# Introduction

## Purpose of this discussion paper

This Discussion Paper is part of a review of *the Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014* (the Act) and has been prepared to help you to have your say. The Paper aims to encourage public discussion about the Act and the scheme it establishes to enable NSW to automatically recognise occupational licences issued by other states and territories.

The purpose of the review is to determine whether the Act's policy objectives are still valid and whether the terms of the Act are still appropriate for meeting those objectives.

The issues and options identified in this Discussion Paper are not exhaustive and are intended to help discussion. It is important to note that these issues and options do not indicate future Government policy.

Your feedback will help us to determine what, if any, changes may be necessary to ensure that the legislation achieves its goals and operates effectively.

## Next steps

Once the consultation period has closed, all comments and submissions will be carefully analysed. A review report will then be submitted to the Minister for Better Regulation and Innovation.

## Have your say

We invite you to read this paper and provide comments.

To help you have your say, there is a brief submission form at the end of the Paper. A submission form is also available at: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au).

Use of these forms is not compulsory and submissions can be in any written format.

If you like, you can comment just on the matters that interest you, or on all the issues raised in this Paper.

You can provide us with your submission:

- by email to: [MutualRecognition@customerservice.nsw.gov.au](mailto:MutualRecognition@customerservice.nsw.gov.au) (preferred)
- through the NSW Fair Trading website: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)
- by post to the following address:

Statutory Review of the Mutual Recognition Act  
Policy & Strategy, Better Regulation Division,  
Department of Customer Service  
4 Parramatta Square  
12 Darcy Street  
PARRAMATTA NSW 2150

Please take careful note of the deadline for submissions: **5pm 31 July 2020**

## **Important note: release of submissions**

**All submissions will be made publicly available.** If you do not want your optional details or any part of your submission published, please show this clearly in your submission together with your reasons.

You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*).

# Executive Summary

The Mutual Recognition (Automatic Licensed Occupations Recognition) Act commenced in December 2014 so that specific occupational licences issued in a jurisdiction of Australia - or New Zealand - could be automatically recognised (or deemed) as an equivalent licence in NSW. This allows the holder of a relevant licence issued in their home jurisdiction to use that licence to work in NSW for short periods of time. In other jurisdictions where NSW licences are automatically recognised, the same opportunities are available to eligible NSW licence holders.

Automatic mutual recognition (AMR) has been described as the 'driver's licence model' as it allows an occupational licence issued in one jurisdiction to be recognised automatically by another jurisdiction – without the licence holder having to obtain a local licence or pay an additional licence fee.

AMR is particularly helpful in border towns as it can remove unnecessary barriers for licence-holders who want to work across borders while making sure that each jurisdiction can continue to operate its own occupational licensing laws.

Under AMR, licence holders are subject to the rules and regulations of the jurisdiction where they are working. By deeming the licence from the other jurisdiction as a NSW licence, the rights and responsibilities that apply to a NSW licence holder are automatically imposed on the deemed licence holder from across the border.

AMR can be especially effective in events such as natural disasters as the relevant tradesperson can relocate quickly, and will not need to apply for, pay for, and obtain a licence to carry out their work and business.

The greatest benefit of AMR is that it allows a seamless transition for licensed individuals working outside of their home jurisdiction. It increases labour mobility and reduces legal red tape and costs for businesses, which also helps increase competition. Benefits may also flow on to consumers through increased choice, reduced charges and more readily available services. The AMR model is also simpler than introducing and managing a fully harmonised nationally co-ordinated occupational licensing scheme.

If AMR could be expanded to encompass more licenced occupations, this could further reduce red tape and allow for higher labour mobility across borders. However, any potential expansion of AMR depends on the support and circumstances of each industry and government, and it is acknowledged that there are instances where an AMR scheme may not be suitable or appropriate.

The AMR regime complements that created by the *Mutual Recognition (New South Wales) Act 1992* which enlivens the Mutual Recognition Agreement of 1992 and the Trans-Tasman Mutual Recognition Agreement of 1996.

These agreements, by governments in Australia and New Zealand, mutually recognise compliance with each other's laws for the sale of goods and registration of occupations.

These mutual recognition arrangements were established well before the introduction of the current AMR scheme, and there are key differences between these mechanisms. This is clarified in the next section of this paper.

# Background

## Mutual Recognition

Under the mutual recognition principle, registration for an occupation in the first jurisdiction is sufficient grounds for registration in the second jurisdiction. In practice, this means that occupational licence holders from one state or territory can apply to be registered in another state or territory on the basis that their home licence entitles them to work in that occupation. However, interstate licence holders must still contact the regulator in each state or territory they wish to work in, demonstrate what activities they are qualified to undertake in their home state, and pay a fee for a relevant licence in the second state. The new licence may still be issued with conditions restricting the range of work, depending on the suitability of the licence category and the skills and qualifications of that class of licence holder.

Mutual recognition is only available to individual licence holders and is not accessible to corporations, partnerships or similar entities.

To facilitate the operation of mutual recognition, Ministerial declarations have been made under section 32 of the *Mutual Recognition Act 1992* (Cth). The declarations contain charts describing occupational licence equivalents across all jurisdictions. These declarations cover a wide range of licensed occupations, including builders and building-related occupations, conveyancers, valuers, driving instructors, pilot and escort vehicle drivers, maritime occupations, pest and weed controllers, gaming occupations, and pyrotechnicians.

The mutual recognition scheme arguably works well for the traditional situation where a person moves permanently to live and work solely in a new jurisdiction. However, it does impose additional costs which could act as a barrier to people wanting to work in multiple jurisdictions or wanting to move back and forth between jurisdictions.

For people who base themselves primarily in one jurisdiction but regularly work in other jurisdictions, AMR would be more appropriate than standard mutual recognition.

## National Occupational Licensing Scheme (NOLS)

Another initiative that sought to help the mutual recognition of occupations was the National Occupational Licensing Scheme (NOLS).

Between 2009–2013, the Council of Australian Governments (COAG) made progress towards implementation of the NOLS. The aim of NOLS was to achieve national consistency in the issue of licences. This would allow licensees to operate in all Australian states and territories and would also determine a consistent skill base for licensed occupations.



However, in December 2013, the majority of states and territories decided not to pursue the reform, citing concerns with the proposed model and its potential costs. States instead decided to investigate alternate approaches that would increase labour mobility and deliver net benefits for businesses and governments.

Through the Council of the Australian Federation, State and Territory governments committed to developing licensing reforms to enhance flexibility and mobility for Australian workers, while avoiding increased costs for businesses and individuals.

## Automatic Mutual Recognition (AMR)

After work on the NOLS stopped in late 2013, NSW continued to explore the possible use of AMR schemes. This was the impetus for the development of the Act.

When the Act commenced in 2014, it introduced a mechanism to recognise a licence issued by another jurisdiction as being equivalent to a NSW licence. As a result, the holder of a prescribed licence can carry out their trade without registering in, or being required to hold a licence issued by, NSW. The licence that the person has been issued in their principal place of residence permits them to work in the same occupation in NSW.

The NSW laws apply to the deemed local licence. Disciplinary and enforcement action can be taken against the holder of a deemed local licence in the same circumstances that action can be taken against the holder of a local licence. The same rights of appeal and review apply in respect of any action against a local licence. If a person is disqualified from holding a licence in NSW, the person is prohibited from working under a licence issued by another jurisdiction as a deemed local licence in NSW.

The *Mutual Recognition (Automatic Licensed Occupations Recognition) Regulation 2014* contains a schedule of recognised interstate licences that are deemed as equivalent under the scheme, and the equivalent local licences (see Table 1). The prescribed licences are currently limited to electrical trade work licences in the ACT, Victoria and Queensland.

## The Office of the NSW Cross-Border Commissioner

The Office of the NSW Cross-Border Commissioner was established by the NSW Government in 2012 to identify and help resolve issues that NSW residents, businesses and other organisations face as a result of being located near a NSW state border. The Office continues to work with their cross-border counterparts to advocate for a common approach to regulation in cross-border areas, including measures to improve cross-border labour mobility such as AMR of licences and qualifications.

## Productivity Commission 2015 Report

In September 2015, the Federal Productivity Commission released a report<sup>1</sup> on its review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA).

The review assessed the coverage, efficiency and effectiveness of the MRA and TTMRA, to recommend ways to further improve the inter-jurisdictional movement of goods and skilled workers, reduce red tape, the scope for AMR, and to assess and review related matters.

The report stated that the schemes were generally working well, and found that AMR provided a flexible, low cost way of facilitating service provision across borders on a temporary basis.

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<sup>1</sup> Productivity Commission 2015, Mutual Recognition Schemes, Research Report, Canberra.

# Objective of the Act

The objective of the Act is to allow holders of prescribed licences from other jurisdictions to carry out their trade in NSW without registering in, or being required to hold a licence issued by, NSW.

To achieve this objective, the Act:

- provides for the automatic mutual recognition of specified occupational licences issued in other jurisdictions (recognised licences) so that an individual who holds a recognised licence will be deemed to hold the equivalent New South Wales licence
- requires a NSW licensing authority to notify the relevant interstate licensing authority of any disciplinary or enforcement action taken by the NSW licensing authority in respect of a deemed local licence; and
- provides that particulars about disciplinary and enforcement action taken in another jurisdiction against a NSW licence holder may be recorded in a relevant register kept by a NSW licensing authority.

**1. Is the objective of the ACT, as outlined in the Discussion Paper, still valid? Why or why not?**

**2. Are there other ways that the objective of the Act could be achieved more efficiently and effectively?**

**3. What are the benefits of the system in NSW? How does it compare with systems in other jurisdictions? Please provide comments.**

## Scheme Eligibility

Section 4 of the Act sets the threshold criteria for a licence holder's eligibility to access the AMR scheme. Firstly, a licence must be prescribed by the Regulation as a deemed local licence and secondly, the licence holder must have their principal place of residence in the jurisdiction that has issued their recognised licence. This is extended to include a place of residence within the last three months, meaning that a licence holder who moves to NSW remains eligible to work for up to three months from the time of moving their principal residence from the other jurisdiction to NSW.

The reason for the three-month period is to allow for situations where a licence holder moves to NSW for a short time, such as when undertaking works on a construction project, but then returns to their home jurisdiction. This also means that a recognised licence holder who moves their principal place of residence to NSW with the intent of remaining in NSW has three months within which to get a NSW licence. This may be possible through the general mutual recognition policy that has been in place since 1992.

The scheme allows eligible licence holders to freely work on both sides of the border without having to hold two different state licences.

Section 9 of the Act allows for the participating jurisdictions to establish a shared register of licence holders who are eligible to participate in the AMR scheme.

**4. Is three months an appropriate period to allow before requiring a licence holder who has moved to NSW to apply for a licence from the NSW licensing authority?**

The mechanism to establish a shared register was included in the Act to allow licensing authorities to easily verify the home licence, and any imposed conditions or limitations, of applicants. When the Minister introduced the Bill to Parliament, he stated that the shared register could be established "should that be warranted in the future". To date, it has not been considered necessary to establish a register.

**5. Do you see any benefit in creating a shared register of eligible licence holders?**

# Seamless movement across borders

When introducing the AMR laws to Parliament, the Minister stated that:

*“..the main driver of the policy was a red tape reduction commitment to small business and to improve the economic conditions of regional communities, especially those who live on borders, thereby reducing their costs”<sup>2</sup>*

Determining how many licence holders from participating jurisdictions are operating in other jurisdictions under the AMR scheme is not possible as currently there are no registration or notification requirements. In this instance, the trade-off to reducing red tape and increasing mobility has been an absence of precise licensing data.

Under the current east coast electricians AMR scheme, individual NSW electricians can avoid paying the licensing fees charged in the participating jurisdictions. Likewise, electricians from the participating jurisdictions can save the fees charged in NSW.

**Table 1 – licence fees<sup>3</sup>**

Jurisdiction	Licence	Duration	Cost
Victoria	Registered Electrical Contractor	5 years	\$625.69
Victoria	Licensed Electrical Worker	5 years	\$401.71
Queensland	Electrical Contractor Licence	1 year	\$395.90
ACT	Electrician	3 years	\$380.00
NSW	Specialist Contractor Licence	1 year	\$316.00
NSW	Specialist Contractor Licence	3 years	\$631.00

If it is assumed that the application process takes two hours to complete, costed at \$85<sup>4</sup> per hour, NSW electricians working in Queensland can save \$565.90 per annum and a Queensland electrician can save \$486 per annum should they wish to work in NSW.

Estimates prepared for COAG in 2013 suggest that around 4 per cent of electrical, plumbing and property professionals residing in NSW had a licence in multiple jurisdictions. In August 2019, NSW Fair Trading reported that there were 60,957

<sup>2</sup> [Second Reading Speech](#), 17 September 2014

<sup>3</sup> Licence fees are as at 30 June 2020

<sup>4</sup> Calculated using Manager default hourly rate in [Measuring the Cost of Regulation](#) published by NSW Better Regulation Office, June 2008. The figure has been adjusted by reference to the [Wage Price Index March 2020](#) published by the Australian Bureau of Statistics to arrive at an estimated 2020 hourly rate.

electrician licences held by individuals. Based on the COAG estimate approximately 2,438 individuals may have taken advantage of AMR.

AMR also provides a broader community benefit by allowing for a rapid deployment of qualified licence holders from other jurisdictions during times of natural disaster, such as the recent bushfires, when there is an immediate demand for labour to aid recovery efforts.

## Potential for recognition of other occupations

The Act would support the rollout of AMR to more licenced occupations, which could reduce red tape and increase labour mobility across jurisdictions. However, this opportunity may be limited due to jurisdiction's individual policy on occupational licensing and the circumstances of each industry. This might mean there are instances where AMR may not be suitable.

Since the Act commenced, there has been consideration of whether an AMR scheme could be appropriate for occupations that already have nationally aligned qualifications, such as architects. Another unique situation where AMR schemes could be beneficial is in the aftermath of the recent devastating bushfires. It is considered likely that there will be a strong, ongoing increase in demand for building professionals such as bricklayers, carpenters, painters, tilers and other trades, to assist in bushfire recovery programs.

**6. Has automatic mutual recognition reduced costs and red tape for small business?**

**7. Has automatic mutual recognition delivered economic or other benefits for border and regional communities? What have these benefits been? Have there been any limitations or unintended negative consequences?**

# Compliance and Enforcement

Section 5 of the Act enables the laws of NSW to apply to a deemed local licence holder as if they held a local licence. Because a deemed local licence is treated as a local licence for all purposes, disciplinary and enforcement action can be taken against the holder of a deemed local licence in the same circumstances as that action can be taken against the holder of a local licence. Likewise, the same rights of appeal and review will apply.

No substantive compliance issues have been identified for electrical trades work conducted under the AMR scheme by deemed licence holders in NSW. Likewise, regulators from the other participating jurisdictions have not linked any compliance issues to deemed licence holders.

Section 6 of the Act ensures that if a person has been disqualified from holding a relevant licence in NSW, they are not eligible to use the AMR scheme to regain a deemed NSW licence. This provision prevents a person who has been disqualified from holding a licence in NSW from using the scheme to circumvent the disqualification.

Section 7 of the Act requires that if a licence is suspended by the home jurisdiction the deemed licence issued under the Act is also suspended in NSW.

Section 8 imposes any licence conditions or limitations of the home jurisdiction on the deemed licence in NSW. This aims to make sure that the licence holder who has restrictions on what work they can do in their home jurisdiction is subject to the same restrictions when working outside their home jurisdiction.

Section 11 of the Act says that the local licensing authority is to report particulars about disciplinary and enforcement action taken against the holder of a deemed licence to the home licensing authority.

Section 12 allows a licensing authority to keep a register of any disciplinary or enforcement action taken. This allows a record of relevant information to be kept in a public register.

## Australian Consumer Law

Regardless of any licence requirement, all consumers are protected by the Australian Consumer Law (ACL) which commenced in 2011. The provision of services by all licence holders must comply with the ACL.

The ACL provides for consumer guarantees. A licence holder is obliged to guarantee that their services are provided with due care and skill. This means that they must use an acceptable level of skill or technical knowledge when providing services and take all necessary care to avoid loss or damage when providing those services. The services provided must achieve the consumer's stated purpose and the services must be of sufficient quality to achieve the desired results.

**8. Are you aware of any compliance or enforcement issues that have arisen with licences recognised by the automatic mutual recognition scheme?**



# Supporting Regulation

The Mutual Recognition (Automatic Licensed Occupations Recognition) Regulation 2014 supports the Act and lists the deemed interstate licences against the relevant NSW licence. Currently the scheme applies to electricians from Victoria, Queensland and the Australian Capital Territory (see Table 2).

The inclusion of applicable licences in the Regulation allows the scheme to extend or contract its reach without the need to amend the Act. This maximises administrative flexibility whilst still allowing Parliamentary oversight through the power to review any regulation made by the responsible Minister.

## 9. Do you support listing the relevant licences in the Regulation or is there a better mechanism?

**Table 2 - Deemed local licences**

Recognised licence issued under law of another jurisdiction	NSW licence that is equivalent to that licence
An unrestricted electrician's licence held by an individual under the <i>Construction Occupations (Licensing) Act 2004</i> of the Australian Capital Territory	An endorsed contractor licence under the <i>Home Building Act 1989</i> authorising a person to do electrical wiring work without supervision
An unrestricted electrical mechanic licence held by an individual under the <i>Electrical Safety Act 2002</i> of Queensland	A supervisor certificate under the <i>Home Building Act 1989</i> authorising a person to do electrical wiring work without supervision
An unrestricted electrical mechanic licence and an electrical contractor licence, both held by the same individual, under the <i>Electrical Safety Act 2002</i> of Queensland	An endorsed contractor licence under the <i>Home Building Act 1989</i> authorising a person to do electrical wiring work without supervision
An electrician's licence held by an electrical installation worker under the <i>Electricity Safety Act 1998</i> of Victoria	A supervisor certificate under the <i>Home Building Act 1989</i> authorising a person to do electrical wiring work without supervision
An electrician's licence held by an electrical installation worker who is also a registered electrical contractor under the <i>Electricity Safety Act 1998</i> of Victoria	An endorsed contractor licence under the <i>Home Building Act 1989</i> authorising a person to do electrical wiring work without supervision

## Other comments?

You are not limited to the questions listed in this paper and may raise any other issues or make any other comment you wish to make on the operation of the Act.

Further comments on any other general matters relevant to improving the current regulatory framework are welcome.

# Appendix A – Key Stakeholders

The discussion paper was circulated to the following parties:

- Air Conditioning and Mechanical Contractors' Association (NSW)
- Australian Industry Group
- Australian Institute of Builders
- Business Council of Australia
- CHOICE
- Civil Contractors Federation NSW
- Electrical Trades Union
- Housing Industry Association
- Master Electricians Australia
- Master Plumbers Association
- Master Builders Association
- Master Painters and Decorators Australia
- National Electrical and Communications Association
- Public Interest Advocacy Centre
- Refrigeration and Air Conditioning Contractors Association

## Appendix B – Review Questions

1. Is the objective of the Act, as outlined in the Discussion Paper, still valid? Why or why not?
2. Are there other ways that the objectives of the Act could be achieved more efficiently and effectively?
3. What are the benefits of the system in NSW? How does it compare with systems in other jurisdictions? Please provide comments
4. Is three months an appropriate period to allow before requiring a licence holder who has moved to NSW to apply for a licence from the NSW licensing authority?
5. Do you see any benefit in establishing a shared register of eligible licence holders?
6. Has automatic mutual recognition reduced costs and red tape for small business?
7. Has automatic mutual recognition delivered economic or other benefits for border and regional communities? What have these benefits been? Have there been any limitations or unintended negative consequences?
8. Are you aware of any compliance or enforcement issues that have arisen with licences recognised by the automatic mutual recognition scheme?
9. Do you support listing the relevant licences in the Regulation or is there a better mechanism?