



# MINERALS COUNCIL OF AUSTRALIA

## SUBMISSION TO THE AUTOMATIC MUTUAL RECOGNITION OF OCCUPATIONAL REGISTRATIONS CONSULTATION

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## TABLE OF CONTENTS

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1.	INTRODUCTION.....	3
2.	HISTORICAL PERSPECTIVE .....	4
3.	BENEFITS OF AUTOMATIC MUTUAL RECOGNITION PROPOSALS.....	6
4.	IMPLEMENTATION CHALLENGES .....	7
5.	CONCLUSION .....	9

# 1. INTRODUCTION

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## The Australian minerals industry

The Minerals Council of Australia (MCA) appreciates the opportunity to provide comments on proposals to introduce a uniform scheme for the automatic mutual recognition (AMR) of occupational registrations in Australia.

The Australian resources sector employs about 264,000 people in predominantly high skilled jobs, with a significant proportion of these jobs being in regional and remote Australia. These are also high-wage jobs, with average weekly earnings in the sector standing at \$2697.50; more than double the national average for all industries of \$1,713.90.<sup>1</sup>

The minerals industry is proud to be an active partner of communities across regional Australia. Working in partnership with host communities and regions, the industry supports shared and sustainable benefits from minerals development.

The Productivity Commission, in its 2014 report on geographic labour mobility noted that geographic labour mobility has been an important mechanism for adjusting to the demographic, structural and technological forces shaping the Australian economy.<sup>2</sup> This has become more apparent as the Australian economy recovers from impacts of the COVID-19 pandemic. The Commission also noted in its 2015 review of mutual recognition arrangements that new occupational licensing registrations made under mutual recognition were the highest in Western Australia and Tasmania (15 per cent).<sup>3</sup>

Previous attempts at achieving national consistency in occupational licensing have been flawed and unsuccessful. Models put forward under the national occupational licensing scheme era (2008 - 2015) required considerable change to existing state and territory systems; changes that ultimately diluted the will of jurisdictions to pursue full implementation of proposed reforms.

The MCA views current automatic mutual recognition deregulation reforms agreed by National Cabinet in December 2020 (with the exception of the Australian Capital Territory) as being more pragmatic in nature. The proposed reforms allow existing mutual recognition schemes to continue their operation and importantly, they contain safeguards and flexibilities so that states and territories can ensure proposed arrangements operate appropriately at the individual jurisdiction level.

Prompt passage of draft legislation will not only assist mining industry workers operating across state and territory borders, it will also assist more broadly in Australia's economic recovery and facilitate a more timely and fulsome national response to natural disasters. While acknowledging the proposed legislative implementation timelines may prove challenging for some jurisdictions, the MCA encourages governments to stay the course on this important reform measure.

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<sup>1</sup> Australian Bureau of Statistics, [Labour Force, Australia, Detailed, Quarterly, November 2020](#), ABS cat. No. 6291.0.55.003, Table EQ09, released 23 December 2020; and Australian Bureau of Statistics, [Average Weekly Earnings, Australia, May 2020](#), ABS cat. No. 6302.0, released 13 August 2020.

<sup>2</sup> Productivity Commission, [Geographic Labour Mobility](#), Research Report, Canberra, April 2014, viewed 8 February 2021

<sup>3</sup> Productivity Commission, [Mutual Recognition Schemes](#), Canberra, September 2015, p. 6. Viewed 11 February 2021.

## 2. HISTORICAL PERSPECTIVE

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Occupational licensing or occupational regulation refers to the regulatory frameworks that control entry to occupations such as electrical and plumbing trades, real estate agents and financial advisors. It is noted the [Mutual Recognition Act 1992](#) has been in place for some time and was designed to increase labour mobility for individuals across state and territory borders. The interim report of the Senate Select Committee on *Red Tape – Effect of red tape on occupational licensing* noted:

Mutual recognition of occupational licensing is essentially a matter for the states and territories: The Commonwealth has no legislative power to recognise licenses or registration, determine occupational equivalency, confer automatic mutual recognition or to make or rescind ministerial declarations.<sup>4</sup>

The *Mutual Recognition Act 1992* relies upon States referring to the Commonwealth the power to enact the legislation and for states and territories to adopt the act.

Occupational licensing regulatory frameworks are managed by bodies that set knowledge and skill requirements necessary to achieve registration. This provides an element of accountability in relation to managing public risks involved in occupations that have a licensed outcome. Each state and territory have developed their own occupational licensing regime over time with some collaboration occurring between jurisdictions. Electrical regulators, for example, collaborate and share approaches through the Electrical Regulatory Authorities Council (ERAC). These developments have occurred in the absence of any overarching national unified or standardised approach, resulting in variances in regulatory approach and the scope of work regulated between individual jurisdictions.<sup>5</sup>

The absence of a national approach typically required workers in licensed occupations to be registered with the appropriate regulator in each jurisdiction they are required to perform work in. For geographically mobile workers, such as those in the mining industry, this resulted in workers holding multiple licenses – each with potentially a different scope of work, validity period and fee structure. In addition to imposing potentially significant compliance obligations upon individuals, there are also implications for the movement of skilled labour across state and territory borders.

A case study of the occupational licensing system identified twenty seven different licensing systems in operation, without a common or central source of information available to regulators or the public.<sup>6</sup> Other key findings included:

- Some licences were issued by large generic regulators such as government departments, others by small specialised agencies
- Regulatory approaches ranged from risk-management in New South Wales to detailed prescription in Queensland
- Fees and fee structures varied considerably – some jurisdictions operated on the basis of one-off fees, others on an annually renewed fee structure and some on the basis of three or five yearly renewals
- Some systems were state-funded, others dependent on cost recovery, and there were diverse uses for licence revenue
- Training providers had to deal with thousands of different licensing categories and scopes of work, and there was no consistency in the levels of training required.

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<sup>4</sup> The Senate, *Select Committee on Red Tape – Effect of red tape on occupational licensing*, [interim report](#), August 2018, p. 3.

<sup>5</sup> As noted in [National Occupational Licensing System Information Session Introduction – 13 September 2013](#), presented by Gary Newcombe, Director Strategic Policy and Development, Consumer Protection Division, Western Australian Department of Commerce.

<sup>6</sup> J Tyson, *The National Occupational Licensing Project*, for the Australia and New Zealand School of Government, 2016.

## **COAG Reforms**

From 2006 there was activity at the Commonwealth level aimed at devising a more efficient and nationally consistent way of managing occupational licensing. Late in 2007, the Council of Australian Governments (COAG) Skills Recognition Taskforce explored variances in occupational licensing arrangements across jurisdictions.

In July 2008, COAG acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth. As part of an agenda to create a seamless national economy, focus was placed on more effective Commonwealth-State arrangements and reform of business and other regulation. There was an implicit commitment given towards COAG reforms making it easier for business and workers to operate across State and Territory borders.<sup>7</sup>

This focus saw establishment of infrastructure to deliver the national occupational licensing reform, namely the National Occupational Licensing Authority and accompanying board.

In the period between 2008 and late 2013, consultation continued to occur at individual jurisdictional level with industry and other impacted stakeholders. Ultimately, jurisdictions were unable to agree on nationally uniform registration requirements across the occupational focus areas of air conditioning and refrigeration mechanics; building; electrical; land transport (passenger vehicle drivers, dangerous goods); maritime; plumbing; and property agents, with disagreement being centred around the proposed national occupational licensing scheme model and potential costs.<sup>8</sup>

Subsequently, in December 2013 COAG agreed to abandon national occupational licensing reforms as proposed and instead, work collaboratively through the Council for the Australian Federation to develop alternative options for minimising licensing impediments to improving labour mobility, and to manage the orderly disestablishment of the National Occupational Licensing Authority from early 2014.<sup>9</sup>

Since this time, individual jurisdictions have been pursuing bespoke arrangements, with mutual recognition arrangements for the licensing of electrical occupations between Victoria, New South Wales and Queensland being a case in point.

Against this historical context, and in the context of the current structural adjustment being caused by the COVID-19 pandemic, the MCA sees merit in current proposals to pursue automatic mutual recognition arrangements through amendments to the *Mutual Recognition Act 1992*.

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<sup>7</sup> Council of Australian Governments (COAG), [COAG Meeting Communique – 3 July 2008](#), viewed 9 February 2021.

<sup>8</sup> Council of Australian Governments (COAG), [COAG Meeting Communique – 13 December 2013](#), viewed 11 February 2021.

<sup>9</sup> *ibid*.

### **3. BENEFITS OF AUTOMATIC MUTUAL RECOGNITION PROPOSALS**

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The MCA supports proposed legislative amendments to support introduction of a uniform national scheme for the automatic recognition of occupational registrations in Australia.

Major elements of the proposed legislative amendments that require further comment include compliance, safeguards and consumer protection, and labour mobility.

#### **Compliance**

The automatic deemed registration principle and its associated removal of the need for individuals working in a second state to formally apply for registration reduces the compliance load on individuals and business. Removal of existing requirements to pay registration fees in a second state extend this compliance dividend into the financial realm which is welcomed.

It is noted, however, in s42(E)(1) of the proposed amendments, circumstances may arise whereby individuals are required to notify regulatory authorities of their intention to carry out work in a second state prior to commencement of the work or activity. In such cases, the MCA advocates for consistency across jurisdictions regarding notification requirements and also the administration arrangements that underpin them.

#### **Safeguards and consumer protection**

Previous reviews of the operation of mutual recognition arrangements by the Productivity Commission have raised the possibility of ‘shopping and hopping’ occurring – where differences in occupational standards across jurisdictions can create opportunities for registering in a jurisdiction with less stringent requirements in order to obtain registration through mutual recognition in a more stringent jurisdiction.<sup>10</sup> This practice can expose consumers to financial and health and safety risk.

Proposed legislative amendments providing ministerial power to exempt registrations because of significant risk to consumer protection (s42(R)), and placing obligations on regulatory authorities to notify regulatory authorities in other jurisdictions of disciplinary action taken against licence holders both provide jurisdictions with appropriate safeguards to manage risk relating to consumer health and safety. In addition, licence holders performing activities in a second state under automatic deemed registration will remain subject to the laws of that state. This does not diminish the right of that second state to take appropriate disciplinary action against a licence holder.

#### **Labour mobility**

Proposed amendments can be expected to facilitate the more efficient and timely mobility of licensed labour between states and territories. From a mining sector perspective, this measure is welcomed, particularly in relation to specialist and critical skills.

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<sup>10</sup> Productivity Commission op. cit. p. 9.

## 4. IMPLEMENTATION CHALLENGES

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It is recognised previous attempts at implementing national occupational licensing have been mired in differences at jurisdictional levels and concerns around potential costs.

Moving away from a nationally consistent and uniform architecture to a mutual recognition model that allows for some notion of individual jurisdictional variation does, however, present a number of challenges.

The MCA has identified challenges requiring consideration, including scope, information and communication, personal information, timelines, and potential regulatory over-reach.

### Scope

There exists a vast range of occupations across the nation that have some form of licensing requirement. These range from medical and para-professional occupations, through to trade and high risk work occupations. Absolute clarity needs to exist around which occupations are covered by the proposed legislation and which occupations are outside scope.

It is noted the existing definition of occupation under the *Mutual Recognition Act, 1992* is broad, yet proposals do not impact on existing mutual recognition arrangements, for example the range of occupations that are covered by Safe Work Australia. This has the potential to precipitate confusion in individuals, industry and consumers of services provided by licensed occupations. In extreme cases, it can result in individuals unintentionally operating contrary to the law as a result of difficulty in interpreting whether automatic mutual recognition arrangements apply to them in their occupation.

Greater guidance is needed regarding the full scope of occupations directly impacted by proposed legislative amendments.

### Information and communication

The mining industry has, through necessity, developed mechanisms and practices to ensure its direct workforce and contractors working in licenced occupations are doing so in accordance with applicable legislation. This is an essential part of risk management at the individual employer level.

As noted previously, individuals also have compliance based obligations that need to be met relating to matters such as scope of work across jurisdictional boundaries, individual state and territory legislative requirements and regulatory requirements including licence validity periods and payment of licence fees.

Proposed legislative amendments will impact on most if not all of these matters. Accordingly, and to promote smooth implementation of the proposed legislation, the MCA strongly suggests consideration be given to a nationally consistent information campaign that clearly articulates proposed changes. Any such campaign would need to take a segmented approach as the content and messaging would vary considerably between say industry, individuals and end consumers.

### Personal information

Fundamental to the success of an automatic mutual recognition scheme is the exchange of sensitive personal information between regulatory bodies. To be effective, legislative arrangements require occupational licensing regulators across state and territory boundaries to share information that rests in information systems specific to each jurisdiction.

It is noted that s42(L)(4) allows the exchange of information (relating to suspension or cancellation of automatic mutual recognition on disciplinary or criminal grounds) between ministers of jurisdictions to be made despite any law relating to secrecy, privacy or confidentiality.

Accordingly, establishment of mechanisms to facilitate the secure exchange and storage of personal information across potentially incompatible systems at the jurisdictional level will be required.

## **Timelines**

Individual jurisdictions will be required to pass legislation to give effect to proposed amendments under the *Mutual Recognition Act (1992)*.

The absence of uniformity of associated legislation across jurisdictions means, potentially, the pathway to implementation may vary considerably between individual states and territories. To meet the ambitious July 2021 implementation schedule, all jurisdictions will need to give priority to passage of such legislation and any consequential amendments to existing individual state and territory based legislation in legislative timetables.

In addition, as highlighted earlier in the submission, the need for clear and comprehensive information and advice on implementation will need to also be taken into account.

## **Regulatory over-reach**

As has been recognised, proposed legislative amendments provide safeguards at the jurisdictional level and provide discretion of ministers to make exemptions on specific ground such as significant risks to consumer protection. Proposed amendments also preserve a role for existing state and territory regulatory bodies impacted by these amendments.

It is possible, however, that resistance to on the ground implementation of automatic mutual recognition arrangements may occur at the state and territory level and for this resistance to manifest itself in advice to ministers that registrations in a second state be exempted on the false premise they may satisfy one of the grounds for exemption under the legislation.

The requirement for ministers exercising exemption powers to make a declaration explaining the risk to consumer protection or the health or safety of workers or the public (s42(R)(2)) provides a check and a balance against such a circumstance occurring.

## 5. CONCLUSION

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Regulatory reform that enhances the mobility of Australia's workforce without negatively impacting the health, safety and security of individuals, industry or the community at large should be supported and is welcomed by the MCA.

Legislative amendments proposed reduce red-tape for individuals practicing in impacted occupations, provide a framework that allows existing mutual recognition arrangements to be unaffected and recognises the rights of states and territories to maintain control over arrangements at the jurisdictional level. This approach avoids the pitfalls of previous attempts at achieving a nationally consistent occupational licensing scheme administered by a single body.

The multiple benefits at an industry level of automatic mutual recognition reforms speak directly to the challenges facing industry as the economy makes its transition out of the COVID-19 pandemic. The ability to move skilled labour across state and territory borders to perform activities in a timely and safe way can also promote a swift and prompt approach to responding to national disasters and the recovery from such events.

It is not unusual for such reforms to also have a series of challenges to overcome. If this was not the case, such reforms would already have been made and implemented. The MCA considers addressing these challenges is possible within the spirit of collaboration that has, to date, been apparent in progressing automatic mutual recognition reforms and encourages states and territories, and the commonwealth to continue this important reform to the benefit of all Australians.