

**Submission
No 1**

INQUIRY INTO MUTUAL RECOGNITION (NEW SOUTH WALES) AMENDMENT BILL 2021

Organisation: Electrical Trades Union of Australia, NSW Branch

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Electrical Trades Union

**ETU Submission to the NSW
Legislative Council's Portfolio
Committee No. 1 – Premier and
Finance**

**Inquiry into the Mutual
Recognition (New South
Wales) Amendment Bill 2021**

Submission by the Electrical Trades Union of Australia

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1 EXECUTIVE SUMMARY

- A. The ETU does not support the introduction of Automatic Mutual Recognition in the form proposed by the amendment to the Mutual Recognition (New South Wales) Amendment Bill 2021.
- B. The current mutual recognition scheme for electrical workers is adequate, robust and reliable. The case has not been made for the proposed Automatic Mutual Recognition amendments to the MR Act to apply to electrical occupations.
- C. The proposed draft amendment is not fit for purpose, will introduce regulatory uncertainty and risk, and will lead to a significant increase in electrical incidents, fires and fatalities creating an unacceptable risk to workers, consumers and the Australian public.
- D. The draft legislative amendment must exempt electrical occupations and their licencing as provided for in section 4.2 of the intergovernmental agreement.
- E. The National Cabinet must establish a working group of electrical industry representatives, including Unions, employers and Regulators to develop, implement and monitor a process to modernise and harmonise the relevant electrical standards across all jurisdictions with the aim of establishing a consistent, best practice legislative regime in Australia.

2 RECOMMENDATION

- 1. That State and Territory Government's only adopt the legislation if electrical occupations and electrical licencing is exempt.
- 2. That the NSW Government advocate for the National Cabinet to establish an Electrical Safety and Licencing Working Group with representation from Unions, employers and Regulators and sufficient resources to establish a process to modernise and standardise Australia's safety, electrical and licencing legislation across jurisdictions with the goal of lifting all jurisdictions to the highest possible standard to ensure worker, consumer and public safety.

3 INTRODUCTION

1. The Electrical Trades Union of Australia (“the ETU”) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 61,000 electrical and electronic workers around the country and the CEPU as a whole represents over 90,000 workers nationally.
2. The ETU welcomes the opportunity to make a submission on the proposed Mutual Recognition (New South Wales) Amendment Bill 2021 (the MR Act).
3. Under the proposal, Automatic Mutual Recognition (AMR) will allow a person who is licenced or registered for an occupation in one jurisdiction to be considered registered to perform the same activities in another, without going through further application processes, paying additional registration fees and without information, instruction and training in the second jurisdictions rules.
4. Whilst not opposed to the concept of AMR as a policy objective, the ETU has significant concerns with this proposal and the draft amendment.
5. The often-used comparison to drivers licencing being automatically recognised is instructive. Australia has one single set of uniform national road rules. Electrical work does not.
6. The proposed amendment to the MR Act will significantly erode safety standards, far outweighing any perceived benefit. They appear to be rushed, without thorough consultation occurring with industry stakeholders, electrical workers, or industry regulators. They are absent critical analysis of the jurisdictional variations and the impact they will have on electrical safety and effective regulation of a high-risk industry.
7. Electrical work is inherently dangerous and hazardous and there is a strong need to ensure that the state and territory conduct rules as they pertain to the electrical industry are harmonised to the highest possible standard including ensuring any safety and licencing legislation covering how and who can perform electrical work is aligned before there is any consideration given to AMR of electrical licences.
8. Furthermore, the proposed amendments lack of any consideration of the jurisdictional inconsistencies associated with safety, electrical and licencing legislation which exist across Australia and New Zealand means they provide no control measures for where these inconsistencies create risks, regulatory overlap, or duplication.
9. 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.
10. The proposed amendments are misguided and have been developed through a very narrow economic de-regulation lens, absent any real critical analysis of the dire safety implications which will result if this AMR system is implemented as is currently proposed.

11. Electrical occupations must be exempted in any legislative amendment until such time as there is consistency in the conduct rules associated with each jurisdiction's electrical safety and licencing regimes.
12. The introduction of AMR must be approached on an industry-by-industry basis and through consensus within the industry (and the jurisdictions), not a top-down approach by those far removed from the work of the occupations it is to be applied to.

4 FOCUS ON PROPER REGULATION NOT DE-REGULATION

13. The use of occupational licensing is extensive throughout developed countries, including Australia. Given its prevalence, it is not surprising that occupational licensing is viewed as one of the primary regulatory tools to address policy issues relating to trades and professions.
14. Occupational Licencing, 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.
15. 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 warranty and re-work and the danger of electrical fire, injury and fatality to members of the public.
16. 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.
17. These two conditions are quite obviously satisfied in the case of licenced electrical occupations. The risk of deregulation such as those proposed in the amendments to the MR Act is high, electrical work could be performed in a sub-optimal manner or worse, in a completely dangerous way.
18. Electricity is an invisible, odourless, tasteless and usually silent energy source. The hazards this presents are many, including:
 - Inadvertently coming into contact with live electricity;
 - Energising private and public owned metallic objects and infrastructure;
 - Incorrectly joining two cables together
 - Incorrectly wiring equipment
19. 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 with a high

likelihood of multiple fatalities and significant damage to plant, equipment, buildings and infrastructure.

20. In Australia, as in many other countries, occupational licensing is not only used for confirmation of competence, it is also used for business purposes and for consumer protections.¹
21. The ETU believes that the proper and responsible way to streamline occupational licencing for electrical work and to maximise portability and transferability of skills and occupations is to reach agreement on an industry basis and to reach consensus within the industry (and the jurisdictions) to establish a harmonised regulatory environment as was the case in establishing the Model Work Health and Safety Laws rather than a top down approach by those far removed from the work of the occupations it is to be applied to.
22. In fact, there is no evidence that the current system of mutual recognition for electrical occupations is not working. For NSW border towns, the fact is electrical occupations already have a mutual recognition system in place. A system that maximises portability of skills but balances that portability against the risks that come from not having consistent standards across states and territories. A system that has been developed in consultation with industry.
23. The proposed amendment removes the existing system of balancing those risks for electrical occupations and replaces it with a scheme that completely ignores those risks, in fact it seeks to prevent those states that have higher standards, from putting anything in place to mitigate those risks of stats that do not.
24. The entire process associated with formulating this draft and the content of the proposed amendments is entirely inconsistent with the principles of best practice regulation² as published by the Office of Best Practice Regulation.
 - No case for this action has been made out with the only material relied upon being derived from a non-peer reviewed report by a Government consultancy firm that failed to consult with industry on either its reports or findings.
 - The Department has failed to consider a range of feasible policy options or assess their various costs and benefits.
 - No net benefit to the community has been established in this proposal.
 - The proposed amendment fails to provide effective guidance to relevant regulators and regulated parties and does not ensure that the policy intent and expected compliance requirements of the regulation are clear.
 - The Department had not consulted effectively with industry stakeholders and the proposed amendment contains no provision for ongoing meaningful engagement with industry stakeholders.

¹ See for example:

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

² https://pmc.gov.au/sites/default/files/publications/COAG_best_practice_guide_2007.pdf

25. The laissez-faire approach of implementing AMR in order to restrict States and Territories from regulating electrical licencing adequately and appropriately will introduce serious risks to the electrical industry with dangerous repercussions for workers, consumers and the public.

5 ERODING ELECTRICAL SAFETY

26. Electrical work is inherently dangerous and hazardous and there is a strong need to ensure that the state and territory electrical safety legislation on how and who can perform electrical work is aligned first before there is any consideration given to AMR of electrical licences.
27. The legislation on how and who can perform electrical work varies significantly across jurisdictions. There are different classes of electrical licences across electrical trades. For example, electrical mechanics, electrical fitters, refrigeration mechanics and restricted electrical licences are issued different licences depending on which jurisdiction you reside in. In some jurisdictions, certain occupations are not licensed at all.
28. There is important historical context to why there is such a variation. Many of the variances in electrical legislation exist because of the wide range of localised and geographical environments in which electrical work is carried out and the equipment, systems and voltages that have historically been adopted in different jurisdictions in response to their own unique challenges and industries.
29. Additionally, responses to electrical related incidents and workplace accidents over numerous years has shaped this legislation further, addressing industry and sector specific risks that have arisen in each jurisdiction.
30. The introduction of AMR will open up a race to the bottom in licencing requirements, rather than upholding the highest standards that the trade and industry needs. This is an existing issue that the established licensing authorities grapple with regularly and their capacity to respond to emerging threats of 'licencing shopping, and the erosion of standards will in effect be severely curtailed, if not eliminated.
31. This proposed erosion of our high standards will undoubtedly see increased levels of injury to electrical workers and a greater risk to consumers and the general public. These protections must be upheld.
32. As an example, under AMR, there is no process for electrical workers to register in the second state or territory they will be working in, in fact AMR proposes to introduce regulatory barriers to this practice. As a result, Regulators will be unable to disseminate updates and alerts directly to those carrying out electrical work in their jurisdictions. Electrical workers will be placed at risk of exposure to huge fines and possible jail terms for unknowingly breaching electrical laws in a state or territory which they are unfamiliar with the conduct rules or have not been trained in or due to missing out on critical industry updates or possibly all three.
33. Moreover, there are good and sound reasons for having and upholding high standards of occupational licensing, particularly for electrical occupations. In Australia work health and safety legislation requires employers to demonstrate workers are provided with information, instruction and training prior to performing work.

34. Significantly in the Work Health and Safety field (as opposed to the consumer protection area) the legislation gives recognition of high-risk work licences granted in other jurisdictions.³
35. There is industry support for the regulation and licensing of key professions, trades and disciplines undertaking work in certain sectors such as the building and construction industry. For example, the Australian Construction Industry Forum recognises that:
- 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.
 - 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.
 - Community standards demand that there are protections in place to mitigate the effects of contractors and service providers failing and leaving incomplete work.⁴
36. 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.
37. A more contemporary example can be seen in Queensland following a review conducted in 2002⁵. 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).
 - On average two non-fatal electrical incidents were reported daily.
38. During 1999-2000, electricity deaths in Queensland were greatest for non-electrical workers (50%), followed by the public (30%). Interestingly, electrical workers represented 20% of all fatalities.
39. 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 for both workers and members of the public reduced dramatically.
35. The ETU believes, however, that there remain unacceptable gaps in the occupational licensing requirements of electrical occupations across jurisdictions. By way of example, 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

³ See regulation 83.

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

⁵ [Ministerial Electrical Safety Taskforce Final Report qld 2002](#)

be covered by 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 even be a qualified tradesperson.

36. The detrimental social, economic, and industrial effects of not consistently mandating the licensing of the electrical trades to a high standard has been acknowledged by other industry parties, such as National Electrical Contractors Association, in their submissions to various inquiries. NECA are on the public record agreeing that the requirement for fully qualified and licenced tradespeople is in the interests of workers, employers, consumers and the broader general public.
37. 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.
38. The proposed AMR amendments are the complete opposite of this and instead seek to create barriers which prevent jurisdictions from demanding the highest standards of electrical work and create loopholes for unscrupulous operators to exploit for their own personal gain.
39. Section 4.2 of the Intergovernmental Agreement on the Automatic Mutual Recognition of Occupational Registration⁶ recognises that appropriate safeguards need to be retained to protect consumers, and the health and safety of workers and the public. This threshold is clearly met for electrical occupations and their registration and an exemption for five years is necessary to address the significant risks to consumer protections and the health and safety of workers and the public.
40. The benefits of consistent national registration of electrical occupations would include legislation that defines best practice 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 and are maintained.
41. 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.
42. That the relatively recent attempts at a national electrical licencing system failed is not an argument to scrap uniform 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.
43. 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.
44. The five-year exemption timeframe provided for in the intergovernmental agreement provides a realistic timeframe to establish appropriately represented and resourced working groups to consult, develop and implement the regulatory reforms required to

⁶ <https://pmc.gov.au/sites/default/files/publications/amr-iga-signed-11-december-2020.pdf>

modernise and harmonise the relevant electrical standards across all jurisdictions with the aim of establishing a consistent, best practice legislative regime in Australia

6 TECHNICAL & DRAFTING ISSUES

45. The drafting of the proposed amendments creates a significant number of irregularities, inconsistencies and vagaries to the electrical licencing regime in Australia, including:
- Introducing a concept of 'interim' deemed registration without explaining how that turns into actual deemed registration – it would appear that the act of notifying the state you go to work in (only if they require it) converts you from interim to deemed with no system of verifying this is the case or if the worker is aware of the jurisdictional differences.
 - A worker is deemed automatically qualified to perform the work in a 2nd state by virtue of commencing work in the 2nd state unless the 2nd state proactively requires them to take steps to be recognised (42D (2)) which, amongst other things, places all the responsibility on the individual worker who may have little say in where they are directed to work or when.
 - The 2nd state cannot impose any fee or any test on the worker (except if the 2nd state imposes a specific test for 'public protection' or 'vulnerable person') – the default is no 'public protection' test is required unless a state proactively creates one which fails to recognise the vast number of jurisdictional differences in licencing and conduct rules.
 - A state can mandate that they are notified before a worker can commence working but broadly, they cannot impose any additional obligation with the exception of public protection/vulnerable person tests in limited circumstances which is contrary to existing powers and functions of existing licencing bodies.
 - A 2nd state is explicitly prohibited from charging any fees except if it relates to public protection or vulnerable person which raises the question of how will cost be recovered for regulatory activities including providing education and awareness to the jurisdiction and who is responsible for providing it to an interstate licence holder.
 - There is never any requirement for renewal in a 2nd state – so long as you remain licenced in the 1st state you are deemed licenced in the second which will be used to avoid safety and compliance obligations in jurisdictions with higher standards such as continuing professional development requirements, creating a race to the bottom.
 - It does not require a worker working in a 2nd state to be added to any register of workers (although a state can choose to add them if they want to) removing employer and consumer protections to identify if individuals are appropriately qualified and licenced to perform the work.
 - There is no requirement for the 2nd state to issue any evidence the worker is deemed registered (although a state can choose to) also removing employer and consumer protections to identify if individuals are appropriately qualified and licenced to perform the work.

- Where a worker is licenced in the 1st state and that licence has conditions on it, the 2nd state can waive some or all of those conditions at its sole discretion, many states are likely to not have the maturity to understand these conditions.
 - If discipline is taken against someone in a 2nd state, that state is required to notify every single state and territory.
 - It introduces the concept of inspectors working across borders subject to 2 states agreeing despite no framework existing to support this.
 - If a state requires an employer to keep a list of workers the legislation exempts that employer from being required to keep on the register workers who work in another state.
 - It exempts a worker from being required to attend in person to the licencing authority of a 2nd state.
 - It outlines a process for additional testing but in short it needs to be proactively declared by legislated instrument by the State Minister and not the licencing board or authority contrary to the powers and functions of existing licencing bodies.
46. These issues will only serve to increase regulatory uncertainty rather than remove it. They also have the effect of neutering the existing licencing regulators who have largely proven responsive to emerging risks in the sector.
47. They also introduce uncertainty and duplication while removing valuable protections to workers, employers, consumers and the public.

7 CONCLUSION

48. The proposed AMR amendments are not fit for purpose as they relate to electrical occupations and their licencing.
49. If implemented as proposed AMR will lead to unsafe electrical work, increased electrical risks, electrical fires, electrical injuries, and electrical fatalities.
50. Workers, consumers and the general public will not benefit from these changes. In fact, there is no evidence that workers, consumers or the general public even asked for these changes.
51. The Government needs to start consulting with actual industry representatives and the National Cabinet must direct the establishment of a working group of electrical industry representatives, including Unions, employers, and Regulators to establish, implement and monitor a process to modernise and harmonise the relevant electrical standards across all jurisdictions with the aim of establishing a consistent, best practice legislative regime in Australia.
52. Electrical occupations and their licensing must be exempted from the proposed legislative changes as provided for in section 4.2 of the intergovernmental agreement.