

**Submission  
No 5**

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

**Organisation:** Air Conditioning & Mechanical Contractors Association of NSW  
**Date Received:** 9 April 2021

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9<sup>th</sup> April 2021

Reference: L21.003

Portfolio Committee No. 1 – Premier and Finance  
Legislative Council – Parliament of New South Wales  
CANBERRA ACT 2600

Dear Sir/ Madam,

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

Thank you for the opportunity to participate in the consultation process being undertaken by the Parliament of New South Wales Portfolio Committee No. 1 - Premier and Finance (Committee) regarding Automatic Mutual Recognition (AMR).

This submission is by the Air Conditioning and Mechanical Contractors Association of New South Wales (AMCA NSW) and I am authorised by the Board Chairman to submit on behalf of the AMCA NSW. The AMCA NSW is the peak trade association for member companies operating in the commercial and industrial heating, ventilation, and air conditioning industry (HVAC) in New South Wales.

Our members are highly skilled commercial business operators with expertise in the design, manufacture and installation of air conditioning and specialised ventilation systems, as well as their ongoing service and maintenance.

The AMCA NSW seeks to draw your attention to some significant risks and impacts we have identified concerning the Bill, specifically in relation to the Air Conditioning and Mechanical Services, Plumbing and Fire Protection Industry (*the Industry*).

**Definition**

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The Bill adopts a broad definition of the term 'registered', being that which includes:

*a person who:*

- (a) is licenced, approved, admitted, certified (including by way of practising certificates), or otherwise authorised, under a law of the State to carry on the occupation; or*
- (b) holds a licence, approval, admission, certification or any other authorisation under a law of the State to carry on the occupation.*

In some jurisdictions, this definition potentially captures both Industry workers and contractors.



For Industry in New South Wales, licensing and accreditation is predominantly used to regulate the work performed by AMCA NSW members. In this submission, 'registered' is used to identify both registration, accreditation and licensing.

### **Scope of Works and Underpinning Competencies & Qualifications**

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We are gravely concerned that **the Bill would enable individuals (as employees or as contractors) to perform work in Australian states and territories in circumstances where they otherwise would have been unable to obtain registration to perform that work.**

The Bill would allow individuals registered in their 'home' jurisdiction (**home jurisdiction**) to perform any work within the scope of their home jurisdiction registration, in another jurisdiction (**alternative jurisdiction**). In many cases, the work they are permitted to perform in their home jurisdiction could exceed the scope of work that individual would be considered competent and qualified to perform in New South Wales. This presents dangerous health and safety risks for New South Wales consumers, communities and workers. Despite this fact, the Bill does nothing to address the significant Industry discrepancies across jurisdictions.

The AMCA NSW does not oppose, in principle, improving occupational mobility by streamlining processes for workers in Australian jurisdictions by targeting overlapping and duplicative cross-jurisdictional regulatory burdens associated with applying for registration.

However, **we oppose AMR being used as a mechanism for individuals to circumvent state and territory registration requirements.**

**We oppose AMR being used to bypass competency and qualification requirements underpinning registration**, where it may be easier to become registered in another jurisdiction because the criteria required for registration is less than in another jurisdiction. This is particularly dangerous for consumers, workers, and the community, in jurisdictions which have adopted stringent registration criteria. New South Wales is one of these jurisdictions, as we have among the most rigorous registration standards across Australia in the Industry. **Recognition must not be automatic where an individual does not meet the competency and qualification requirements which comprise the criteria for registration in NSW, simply because they meet these requirements in an alternative jurisdiction.**

This is particularly concerning for Industry as registration scopes of work and underpinning competencies and qualification criteria vary significantly across all jurisdictions. For this reason, it is critical that the Committee undertake a mapping exercise across jurisdictions of all registration scopes of work and registration criteria in Industry. This would identify the dangerous shortfalls where AMR could be used by individuals to circumvent state or territory's quality licensing requirements resulting in unsafe and potential risk to the health and safety of community.

## Independent Contractors & Sole Traders

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The Bill's broad definition of 'registered' either intentionally or unintentionally ignores cross-jurisdictional Industry distinctions between, for example, 'registration' and 'licensing'. When applied to Industry, the definition captures both workers and businesses in some jurisdictions. This consequence must be given thorough consideration.

By this definition, the Bill could enable independent contractors and sole traders to undertake businesses in alternative jurisdictions without subjecting themselves to the alternative jurisdiction's commercial laws, and without meeting the alternative jurisdiction's community and consumer protections.

For example, as an integrity mechanism, some jurisdictions require independent certification of work. Other jurisdictions permit self-certification. The Bill potentially enables individuals registered in a jurisdiction which permits self-certification to perform work and self-certify that work in an alternative jurisdiction which instead requires independent certification.

The background materials to the Bill appear to express the legislative goal as being occupational mobility for *workers*. AMCA NSW would submit that if this is the true intent of the Bill, then the legislation should not apply beyond 'employees' and even in this instance there are potential issues.

## Private Accreditation

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A further complicating factor in Industry for the Committee to consider is that registration in some jurisdictions is via private accreditation schemes, whereas in others this task is performed by robust Government regulating bodies. To safeguard the risks, any form of AMR should not apply to registration by non-Government bodies. This is particularly given the risk for those private schemes to be underpinned by revenue-generating purposes instead of consumer and community safety.

## Summary

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Our primary concern is for ensuring the health and safety of the community, consumers and workers. We are also concerned for avoiding the potentially disastrous economic consequences of work being performed to an inadequate standard, thereby leading to defaults and rectification costs for homeowners and commercial property owners.

The Bill, if progressed unchanged, threatens the integrity of the services trades industry in New South Wales and other jurisdictions. In areas of work within Industry such as air conditioning and mechanical services, fire protection, medical gas, and sanitary plumbing, the potential risks to public



health and safety presented by this Bill are significant. In its current form, the Bill puts peoples' safety at risk and poses an unfair risk of financial burden for property owners and management.

We therefore submit that:

1. the Committee should, in conjunction with Industry and as a priority, undertake a mapping exercise of registration scopes of work and criteria. This exercise should be used to determine the appropriateness of the Bill for Industry and, if appropriate, it should identify restraints necessary to protect consumer, community, and worker health and safety;
2. the Bill should be amended so that individuals seeking to perform work in an alternative jurisdiction:
  - a. are not permitted to perform work in the alternative jurisdiction beyond the scope of work they are registered to perform in their home jurisdiction;
  - b. are not automatically permitted to perform work in the alternative jurisdiction unless they have completed the competencies and qualifications required to perform that work in the alternative jurisdiction (i.e., they must meet the registration criteria for that work as set by the alternative jurisdiction);
3. where registration is not required to perform work in an individual's home jurisdiction, however registration is required to perform that work in an alternative jurisdiction, they must not be automatically permitted to perform that work in the alternative jurisdiction without having to first obtain registration in the alternative jurisdiction;
4. AMR should not apply to registration by non-Government bodies; and
5. AMR should be restricted to employees and not extend to contractors.

We thank you for considering our submission and would appreciate any opportunity to work with the Committee to address our concerns. We are happy for our submission to be made public and we would welcome the opportunity to appearing as a witness. Should you have questions, require further information, or wish to discuss this submission, please contact Mr Adrian Shackleton, Executive Director on \_\_\_\_\_ or via email \_\_\_\_\_.

Yours sincerely

Adrian Shackleton  
**Executive Director**  
**AMCA New South Wales**