

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

Organisation: NSW Utilities and Electrotechnology Industry Training Advisory
Body

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

NSW UE ITAB Submission to the

LEGISLATIVE COUNCIL

**PORTFOLIO COMMITTEE NO. 1 –
PREMIER AND FINANCE**

9th April 2021



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NSW UE ITAB Submission to the Portfolio Committee No. 1 - Premier and Finance

Introduction

The Parliament of NSW's Legislative Council has established a Committee to inquire into the Mutual Recognition (New South Wales) Amendment Bill 2021. The Bill makes amendments to enact uniform legislation, applying throughout Australia, to recognise regulatory standards adopted regarding goods and occupations. The Portfolio Committee No. 1 – Premier and Finance, has been charged with the Terms of Reference, to enquire and report on the Mutual Recognition (New South Wales) Amendment Bill 2021, before the house.

The Committee has invited submissions from interested parties regarding the merits or otherwise of the proposed Mutual Recognition (New South Wales) Amendment Bill 2021.

The NSW Utilities & Electrotechnology Industry Training Advisory Body (NSW UE ITAB) welcomes the opportunity to make a submission to the Portfolio Committee No. 1 – Premier and Finance in relation to the Terms of Reference. The NSW UE ITAB Board of Directors supported by its Electrotechnology Sector Advisory Committee (SAC), submits the following to the Portfolio Committee and would be more than happy to expand or clarify the matters contained herein via the scheduled public hearings.

For Committee consideration

In relation to the proposed amendment to the Bill, on behalf of the NSW UE ITAB Board of Directors, the NSW UE ITAB submits that the Committee corroborate the generally accepted community belief and the technical evidence available that the occupation of electrician is an occupation that poses a significant risk to the community and the public. That the Committee recommend to the Minister that a declaration ensue, as provided under the proposed Commonwealth amendment legislation, to exempt electrical licensed persons covered by the occupation of electrician from being the subject of automatic deeming registration provision. That the Part 2 section be adopted as the preferred path.

The NSW UE ITAB

The NSW Utilities and Electrotechnology (UE) ITAB is a not-for-profit skill, training, workforce development and careers advisory body. It is led by an autonomous bipartite industry stakeholder Board. It is recognised by NSW government as an independent voice on Vocational Education and Training (VET) matters. The ITAB provides advice on respective industry national Training Package qualifications, skill sets and competencies; industry workforce and skills development requirements; occupational licensure; job design and redesign; skill shortages; accredited training products and resources; apprenticeship requirements and career prospects; and funded training opportunities.

The ITAB's mission is to educate, influence and advise our stakeholders; the Utilities and Electrotechnology industry and related governments, regulatory and standards setting bodies, and training organisations of the range of initiatives and opportunities that can be used to facilitate or contribute towards developing a competent, skilled and capable workforce in our industry.

Referring legislation

The NSW UE ITAB acknowledges, as stated in the Amendment Bill 2021, that in “1992, New South Wales and Queensland (*the initial referring States*) referred the matter of the enactment of the text of a uniform mutual recognition Act to the Parliament of the Commonwealth for the purposes of the Constitution of the Commonwealth, section 51(xxxvii) (the existing reference)”.

In turn the Commonwealth enacted the Mutual Recognition Act 1992 of the Commonwealth (the Commonwealth Act) based on the references made by the initial referring States.

The amendment Bill

The amendment Bill, proposes to “amend the Mutual Recognition (New South Wales) Act 1992 (the NSW Act) to—

- (a) terminate the existing amendment reference, and
- (b) replace the existing amendment reference with a new reference **to enable the Commonwealth Parliament to make express amendments of the Commonwealth Act with respect to certain matters relating to the mutual recognition of occupations** and goods (the new amendment reference).

The proposed Act will be enacted for the purposes of the Constitution of the Commonwealth, section 51(xxxvii), which enables State Parliaments to refer matters to the Commonwealth Parliament.”

The new amendment reference extends to the making of express amendments of the Commonwealth Act if the amendments are with respect to (*insert after section 5 - 5A Reference of matters concerning amendment of Commonwealth Act*)—

- (a) the matter of *providing for individuals lawfully authorised to carry on an occupation in a State to carry on the occupation in another State or Territory*, and
- (b) the matter of providing for goods that may be sold lawfully in a State or Territory to be sold lawfully in another State or Territory, whether with or without the need to comply with some or all of the applicable legal requirements of the other State or Territory.

The NSW Amendment Bill also provides a new definition for ‘*Lawfully Authorised*’ and a revised definition for ‘*Occupation*’, stating:

- **lawfully authorised**, in relation to carrying on an occupation, means to hold or have a licence, permit, certificate, registration or other form of qualification or authorisation required by or under law to carry on the occupation.
- **occupation** means an occupation, trade, profession or calling of any kind.

The *current NSW legislation* states:

- **occupation** means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted.

- **registration** includes the licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation for the carrying on of an occupation.

Commonwealth's exposure draft

The exposure draft of the Commonwealth's proposed amended legislation, Mutual Recognition Act 1992 (No. 198, 1992), states, "the principal purpose of this Act is to enact legislation authorised by the Parliaments of States under paragraph (xxxvii) of section 51 of the Commonwealth Constitution, and requested by the legislatures of the Australian Capital Territory and the Northern Territory, for the purpose of promoting the goal of freedom of movement of goods and service providers in a national market in Australia."

The simplified outline of the Act states, "The purpose of this Act is to promote the goal of freedom of movement of goods and service providers in a national market in Australia."

Specific parts of the proposed Commonwealth amended legislation relates to occupations, in which the NSW UE ITAB has a declared interest in, given its role and expertise in industry and government related Vocation Education and Training (VET) matters, states:

"Part 3 provides for individuals who are registered for an occupation in one State to be registered for an equivalent occupation, and carry on the activities of that occupation, in a second State. **Ministers** from 2 or more States **may determine which occupations are equivalent between their States.**

Part 3A provides for individuals who are registered for an occupation in one State to be taken to be registered to carry on, in a second State, the activities covered by the occupation. This sort of registration is called **automatic deemed registration**. A **State Minister may exempt a registration from being subject to automatic deemed registration because of a significant risk to consumer protection or the health or safety of workers or the public**, or for a period of 6 months after the Part begins to apply to the State."

Several definitions of interest to occupational recognition and registration matter, include the following in the Commonwealth's amended legislation:

- **activity** means an activity authorised to be carried on under a registration for an occupation.
- **automatic deemed registration** has the meaning given by subsection 42D(5).
- **conditions**, when used in relation to occupations, means conditions, limitations or restrictions.
- **covers**: An occupation covers an activity, in relation to a State, if a registration of the occupation in the State authorises the carrying on of the activity.
- **equivalent**, when used in relation to occupations, has a meaning affected by Division 4 of Part 3.
- **interim deemed registration** has the meaning given by section 25.
- **occupation** means an occupation, trade, profession or calling of any kind that may be carried on only by registered persons, where registration is wholly or partly dependent on the attainment or possession of some qualification (for example, training, education, examination, experience, character or being fit or proper), and includes a specialisation in any of the above in which registration may be granted.

- **public protection requirement** means a requirement regarding insurance, fidelity funds, trust accounts or the like that is designed to protect the public, clients, customers or others.
- **registered:** a person who is registered for an occupation in a State includes a person who:
 - (a) is licensed, 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.

Part 3—Registration of equivalent occupations

A review of Part 3—Registration of equivalent occupations of the Commonwealth amended legislation, provides a sound and well-established avenue for occupational recognition, where an occupation is deemed equivalent by the relevant counter-part State Ministers, that, *“a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority of the second State for the equivalent occupation:*

(a) to be registered in the second State for the equivalent occupation; and

(b) pending such registration, to carry on the equivalent occupation in the second State.”

Part 3A—Automatic deemed registration to carry on activities

Whereas Part 3A—Automatic deemed registration to carry on activities creates an automatic entitlement to recognition such that, *“person who is registered in the person’s home State for an occupation is, by force of this Act, entitled to carry on in the second State the activities covered by the occupation,”* unless it can be demonstrated a significant risk to consumer protection or the health or safety of workers or the public exists. A State Minister may, where a significant risk is identified, exempt a registration from being subject to automatic deeming.

Matters for the Committee’s considerations

The NSW UE ITAB submits that electrical installation work, specifically licensed electrical work governed by each respective local registration authority, typically performed by the occupational nomenclature of ‘licensed electrician’ in a jurisdiction, is an occupation that satisfies the ‘significant risk’ test as it is a well-established and acknowledged high-risk occupation, not only in Australia but internationally. A quick review of international practices including the USA and Canada evinces the fact that the occupation is licensed, and licensed in the main because of the nature of the activity.

This submission will expand on the underpinning body of evidence that would affirm the claim that the licensed electrical person covered by the occupation of electrician, is a high-risk occupation that should be declared by the NSW State Minister as except from being automatically deemed registered.

There are substantive reasons to warrant the exception not least of which may be characterised as follows with respect to NSW, and some extent more broadly. Firstly, recognising a base-level Australian qualified electrician may hold the same qualification comprised of the requisite array of competencies, and use a common set of Australian/New Zealand installation wiring standards (Wiring Rules) to perform common level electrical installation work, there are nonetheless local state/territory differences that if not recognised and accounted for, have the potential to result in incidents or life-taking accidents.

Secondly, these differing considerations have serious cross-jurisdictional impacts, and include but are not limited to:

1. Local 'Service and Installation Rules' differ

Each state/territory has in place different Electrical '*Service and Installation Rules*' that augment the common use Australian/New Zealand (AS/NZS 3000) installation wiring standards (colloquially known as the 'Wiring Rules').

Each state's '*Service and Installation Rules*' rules take into account local issues and conditions that if not known and complied with by licensed persons can result in catastrophic events, incidents or accidents. These differences often relate to, but are not limited to:

1. Installation compliance certificates, with differing requirements and authorisations that must be submitted by licensed persons to certify an electrical installation is safe and compliant with the Wiring Rules and the local '*Service and Installation Rules*';
2. Technical differences in permissible cable sizes and systems, distribution systems, distances between conductors, earthing arrangements, neutral links, metering systems, protection devices, service arrangements and systems including equipment requirements;
3. Equipment and/or materials that may or may not be permitted to be used in or in association with electrical installations;
4. Construction, attachment and connection methods and processes that may or may not be permitted to be used in or in association with electrical installations;
5. Connection and disconnection arrangements of electrical installations and services including access and isolations arrangements, alternative sources of supply such as solar and battery systems;
6. High Voltage (HV) customer installations arrangements and requirements;
7. Use and application of different terminologies and taxonomies for same meanings, leading to unintended or wrong connections, or wrong equipment installations, potentially leading to fatal results;
8. Urban, rural and regional requirements that may pertain to bushfires, other environmental or associated hazards (including local requirements for switching systems or materials / equipment containing asbestos);
9. Electrical inspection arrangements and systems; and
10. Frequently updated to reflect modern practices and processes.

2. National Qualification encompasses respective local '*Service and Installation Rules*' of the qualification holder's state

Each state and territory applies different conditions to eligibility requirements for obtaining an electrical license that are in addition to the commonly recognised competency qualification, which require the prospective licensee to have gained as part of their competency qualification knowledge of the local '*Service and Installation Rules*'. That is, a person qualified in a jurisdiction is required under the qualification completion rules to have demonstrated knowledge of the local '*Service and Installation Rules*'.

For example, a prospective qualified and licensed person from another state (i.e. Victoria) will not have acquired or demonstrated knowledge of the *'Service and Installation Rules'* pursuant to NSW. They will, however, have been issued the same Electrician's qualification by a Registered Training Organisation (RTO) that a NSW Electrician receives from an RTO in NSW.

That is, throughout Australia the same national qualification is issued to graduates of the Electrician's competency development program (currently [UEE30811 - Certificate III in Electrotechnology Electrician](#)). However, the respective RTO in each jurisdiction will have covered-off the AS/NZS 3000 Wiring Rules and the local *'Service and Installation Rules'* as per the requirements specified in the competency standards making up the qualification. This practice is well recognised in the industry and by the respective RTOs.

That being the case, it is self-evident, that there arises a guaranteed **Minimum Jurisdictional Context Gap** (*respective State Service and Installation Rules*) of a qualified and licensed person moving from one state to another state.

The local jurisdiction authority (regulator) is permitted under the current mutual recognition arrangements and in some cases its own legislation to determine if an applicant from another state seeking to work in its state, as a 'licensed electrical person' may indeed need to acquire and demonstrate knowledge of the local rules. In many instances it has been a custom and practice to mutually recognise **as equivalent** an applicant from another state who holds both the requisite national qualification and an electrical license from the applicant's original state.

This arrangement has largely been possible because of some earlier work by the Council of Australian Governments' National Licensing Steering Committee, that produced a formal matrix of recognition for the Electrical Regulatory Authorities Council (ERAC) members (local jurisdiction authorities from each state) over a decade ago (2006-2012). So, there were instituted checks and balances developed to assist the mutual recognition processes that to this day work well and should continue into the future until a more robust system can be established as was envisaged by the COAS working group (will be addressed in a later point). There is no doubt that the matrix will have to be kept up to date if the arrangement is to extend into the future.

It is contended therefore, as much of the good work of the past has withered and waned that the COAG Matrix would sadly now be out of date or dating and, in desperate need of maintenance.

The case mounts, therefore, without adequate and up to date equivalence documents made available between jurisdictions, that a lack of demonstrated knowledge of the local rules by such persons moving between jurisdictions and not accounted for by the local jurisdiction authorities (regulators), poses a significant danger to the community and the public. To this end, a formal means of ensuring such persons have acquired knowledge of the **Minimum Jurisdictional Context Gap** is needed to safeguard all concerned.

3. NSW Accredited Service Provider (ASP) Scheme

NSW Government has in place a unique and stand-alone Accredited Service Provider (ASP) scheme that renders NSW significantly different to other states in relation to work arrangements and practices for electrical works on electricity distribution networks. It adds an additional level of complexity or for those in the scheme, a level of clarity and simplicity to who can undertake work and what work, is permitted. The ASP Scheme is managed under the ASP and Contestable Works regime and administered pursuant to Clause 26, of the Electricity Supply (Safety and Network Management) Regulation 2014 and aspects of the requirements are contained in the

NSW Service and Installation Rules. Electricians and electrical contractors are the core of the scheme. They are required to be conversant with the Scheme's requirements.

The definition ascribed to an Accredited Service Provider (ASP): *“means a person accredited to provide customer connection services in accordance with the Electricity Supply Act and Regulations. This includes installation of electricity distributor owner load control equipment (if any) and removal and, in certain circumstances, and reconnection of Type 5 and 6 meters where this is permitted by the electricity distributor and does not constitute a new or replacement metering installation under Chapter 7 of the National Electricity Rules.”*

In NSW customers are required to use a qualified Accredited Service Provider (ASP) to install or alter their electricity connection. For new connections from an existing street main customer must use a Level 2 ASP. In some circumstance and areas, they may need to use Level 1 and Level 3 ASPs to extend the network to their property. An entity intending to undertake works required to enable new or expanded connection to the electrical network must become Accredited Service Provider (ASP). Three levels of accreditation are available. Examples of work done on electricity distribution networks that require accreditation include but are not limited to:

- designing network assets
- extending or increasing the capacity of the network
- connecting or disconnecting installations
- installing and energising service lines
- installing meters
- relocating network assets.

The scheme provides for the performance of some *‘live electrical work’*, which is not a work practice supported or utilised in the rest of the electrical industry. Thus, the potential for major incidents and/or accidents is high without adequate training and safeguards.

Fortunately, there are requirements for training for those in the scheme, however at a time of significant shortages of electricians throughout the state of NSW, (evident also in other states and territories complicated by the COVID-19 whereby overseas migration has slowed), which are predicted to continue over the next decade, there is a growing body of evidence of increased turnover of staff moving and seeking higher rewards and/or opportunities emerging in the labour market. This raises the sceptre of increased transient workers who will, if drawn from other states will be undertrained or have not acquired the necessary training and competency.

This heightens the need to be vigilant and concerned with the prospects ahead. Permitting the automatic deemed recognition of a licensed electrical person from another jurisdiction entering the NSW market with little or no knowledge of the NSW *‘Service and Installation Rules’* or ASP Scheme poses significant risk to individuals, work colleagues, the community and the public. It cannot be accepted that automatic deemed recognition of a licensed electrical person, of itself, will not pose a danger.

It is self-evident to any practitioner with technical knowledge or any experience as either a competent employer or employee recruiting or recruited in the industry, that differences in arrangements across jurisdictions and a lack of knowledge of such without implementation of a recognised minimum context gap training regime or harmonisation of standards across the jurisdictions will lead to downstream problems. Electricians will without proper gap training may

employ out of date or inappropriate practices to perform work that will lead to incidents or unfortunately accidents of a fatal nature.

As a matter of record, the Electrical Regulatory Authorities Council's (ERAC's) 2019/20-year¹, Accident and Fatality Report, cites in terms of electrical accidents and fatalities the following:

- 8 electrical deaths in Australia and 4 in NZ - (12 in total)
- 6 deaths were network related: (5 with overhead and 1 associated with a substation)
- 6 deaths involved customer installations, appliances and equipment
- 5 electrical workers
- 6 non-electrical workers
- 1 member of the public
- 92% of the deaths occurred in the workplace
- 90% of deaths over the last 20 years were associated with overhead powerlines

4. Electricity is a hazardous medium

Working with a medium that is hazardous and not visible and has the high potential, if safeguards (especially local safeguards) are not deployed as intended, may cause major incidents and/or accidents such as fires, loss of business, damage to equipment/livestock, cause electric shock or electrocution.

There is widespread knowledge of the potential risks associated with electricity, particularly in unsafe electrical systems or where protection systems fail to activate as intended, to protect property, equipment, commerce or livestock or for that matter safe lives.

The evidence of the potential risk speaks for itself. Suffice to suggest that given such widespread knowledge in the community and the public, it is axiomatic that the occupation too would be recognised as a high-risk occupation and satisfy the test, as alluded to earlier of significant risk to the community and the public.

Acknowledging the above, agreeing that the occupation of electricians falls within the category of 'automatic deemed registration to carry on activities' untethered, would be a travesty of the extreme. It would promote complete disregard for the wellbeing of the community or the public for the sake of other values.

The NSW UE ITAB submits that the licensed electrical person should be exempted from the 'automatic deemed registration' by the NSW Minister.

5. COAG National Licensing Model (2102) – Mutual Recognition

Automatic mutual recognition of licensed arrangements was discussed in the National Licensing - Consultation Regulation Impact Statement Report, Proposal for national licensing. produced by the Council of Australian Governments' National Licensing Steering Committee, 2012. It recommended a caveat on automatic recognition of electrical licensed persons because of the

¹ http://www.erac.gov.au/wp-content/uploads/2021/01/ERAC-Electrical_fatality_benchmarking_2019-2020.pdf

nuances of each jurisdiction, suggesting that working towards harmonised national model was a better prospect in the longer term.

It stated in the Report at Page 9:

*“In regard to the 2009 Decision RIS, it should be noted that the standard automotive driver’s licence arrangement works because the regulated work – driving – is essentially the same in all jurisdictions. Automatic mutual recognition has also proved effective in an occupational context in the area of national deeming arrangements for veterinarians, for the same reason. For driver’s licences, minor differences exist relating to licence conditions (including age eligibility and driving restrictions, such as acceptable blood alcohol content levels, hours of driving experience, etc.) as well as some jurisdiction-specific road rules (such as restrictions on mobile phone use, restrictions for buses over level crossings, different U-turn rules, etc.). These differences equate to the conduct rules for occupational licensing. **However, for electrical occupations, as an example, the current differences in eligibility requirements and scopes of work between jurisdictions are more complex than for driver’s licence holders.***

...

3.3.3.1 Conduct and compliance requirements (page 10)

*Under an automatic mutual recognition regime, there would be no need for licensees working in a second jurisdiction to pay additional fees or lodge licence applications. Licensees choosing to **work in an additional jurisdiction would also still need to comply with any relevant jurisdiction-specific conduct and compliance requirements that apply to the work they intend to perform.** For example, licensees may be required to familiarise themselves with jurisdiction-specific variations in electrical work, purchase and lodge compliance certificates with the regulator, and/or notify the regulator of the work and arrange for an inspection. **The need to comply with such requirements would be a requirement of any option.***

An automatic mutual recognition regime could be supported by a central register of disciplinary actions to enable jurisdictional regulators to be aware of any pending actions, disciplinary actions underway, etc. To provide a level of transparency for consumers of the services or for compliance purposes, the requirements for a register (in terms of scope, build costs, etc.) would need to be considered and costed. A register containing only disciplinary actions would, however, fall short of the complete national register of licence holders proposed under national licensing.

...

3.3.5 Limitations of automatic mutual recognition (Page 11)

3.3.5.1 Consumer protection and health and safety

*A key issue relates to the certainty of consumer protection and health and safety outcomes. While all persons undertaking work across jurisdictions will have the appropriate licensing to perform that work in both their primary and any secondary jurisdictions, there will be differences in permitted scopes of work. It is the primary responsibility of the licensee to ensure that they are licensed to perform any work undertaken in secondary jurisdictions. **Differences in scopes of regulated work could raise the risk of licensees working outside their scope of work in secondary jurisdictions, thus affecting consumer protection and health and safety.***

*It should be noted, however, that this is an ever-present risk under mutual recognition arrangements. Along with changes in **conduct requirements, licensees moving to another jurisdiction would need to be cognisant of any differences in scopes of regulated work.***

3.3.5.2 Compliance difficulties

Automatic mutual recognition would require local regulators that monitor and enforce compliance with licensing to understand several jurisdictions' licensing requirements rather than just their own. While licence mapping or tables may assist, the mutual recognition tables do not take into account any conditions or restrictions applied to the original licences, and any such conditions or restrictions would be carried through to the second jurisdiction. This represents a further complication for compliance purposes if the condition or restriction is not apparent on the face of the licence.

Unfortunately, much of the good work that was undertaken over the period 2006 to 2012 and beyond, involving an array of key government and industry stakeholders came to nought in terms of the proposed National Licensing model.

Now, more than a decade later there is a proposition to automatically recognise an acknowledged high-risk occupation without the safeguards that were proposed in the National Licensing model. It would be remiss not to assert the importance of the good work of that was undertaken by the Council of Australian Governments' National Licensing Steering Committee, 2012 to develop a workable model, and that maybe it is time to re-visit it if a true, credible and effective automatic recognition system of electrical licensed persons is the goal.

The NSW UE ITAB supports much of the work that ensued during that period and recommends that NSW spearhead the call for the reestablishment of the Committee, and continuance in the pursuit of the goals and objectives.

6. Commonwealth recognises electrician is a high-risk occupation for migration processes

The Commonwealth already recognises the high-risk nature of the occupation of electrician, for recognition of overseas applicants. Trades Recognition Australia (TRA) (a federal government agency is responsible for skills assessment service for people with trade skills gained overseas or in Australia for the purpose of migration), currently manages a process for gaining a current, identified Australian occupational licence. There is **no automatic recognition** of an electrician wishing to migrate to Australia. There is a process which recognises that an electrician from another country may have the same occupational classification and the same skill set / competencies, however such person would not be familiar with local Australian rules, and thus pose a danger to the community and the public.

The process is known as the Offshore Technical Skills Record (OTSR²), where an assessment is conducted of an electrician's competence overseas against the current Australian electrician's qualification referred to earlier.

² Trades Recognition Australia (TRA) – OTSR: <https://www.tradesrecognitionaustralia.gov.au/programs-tss-skills-assessment/licensing>

Having been declared competent by an Australian RTO following an assessment in the home country of the applicant (and issued a transcript attesting such), the OTSR holder must still undertake an approved **Australian Context Gap Training** program and a period of supervised employment in the specific trade to be awarded the Australian VET qualification for that occupation.

Overseas trained tradespeople who hold an OTSR are eligible to apply for a provisional licence. A provisional licence allows the holder to perform work in the licensed occupation under supervision while completing the Australian context gap training program. A provisional licence can be obtained on application from Australian state and territory licensing regulators, subject to applicants meeting other non-skill requirements.

There are three occupations covered by the migration assessment and licensed regime:

- 1) Electrician (general and special class),
- 2) Plumber (general),
- 3) Airconditioning and Refrigeration Mechanic.

In NSW, to apply for a Provisional Tradesperson Certificate, OTSR holders wishing to work in New South Wales (NSW) must contact New South Wales Fair Trading, who is the regulator responsible for issuing NSW electrical licences.

Holders of a Provisional Tradesperson Certificate must:

- **enrol in and complete Australian context gap training³**, and;
- work under the supervision of a holder of a current and full electrician's licence or qualified supervisor's certificate for a minimum period of twelve (12) months.

On successful completion of the Australian context gap training and supervised employment, applicants are eligible to apply for a [Certificate III in Electrotechnology Electrician](#) qualification.

On receipt of the [Certificate III in Electrotechnology Electrician](#) and obtaining a Certificate of Proficiency through the NSW Vocational Training Review Panel, an applicant may then apply for a full electrical licence.

Given the Commonwealth does not automatically grant recognition to an overseas electrician with comparable and equivalent skill sets/competencies, then why would it now proceed to apply a different same principle in country to the same occupation?

The very nature of the arrangement in place, managed by TRA verifies the occupation along with that of Airconditioning and Refrigeration Mechanic and Plumber (general), are occupations that represent a significant risk to the community and public, and therefore Commonwealth too should seek to exempt these occupations from automatic recognition.

³ NOTE: An Australia ASQA nationally accredited program covering the Minimum Australian Context Gap (MACG) training requirement for Electricians exists – it is called 'MACG'. There is also one for Airconditioning and Refrigeration Mechanic, and as well Plumbing).

ASQA = Australian Skills Quality Authority (National Regulator for Vocational Education and Training [VET]).

[ASQA](#) registers training providers and accredits VET courses to ensure nationally approved standards are met.

Given that it hasn't, then the NSW government and the Minister must be called upon to act to apply the same standard the Commonwealth applied to overseas electricians. That is, the Minister should exempt these occupations and seek the NSW jurisdiction authority (regulator) to implement arrangements with other states to 'deem equivalent' the Electrician's occupation as well as the other two high-risk occupations referred to above, under Part 2 of the proposed Commonwealth legislation, requiring that applicants demonstrate acquisition of the Minimum Context Gap (i.e. NSW Electrical Service and Installation Rules) be part of the deeming.

7. NSW Legislative Council's PAC findings and recommendations pertaining to electrical licensing

The NSW Legislative Council's Public Accountability Committee (PAC) recognised the dangers of not attending to and addressing quality issues related to licensed electrician's work in its Regulation of building standards, building quality and building Final Report, (Report 6), April 2020 at Recommendation 3, stating:

"That the NSW Government empower the NSW Building Commissioner to oversee all licencing inspections, within the newly created Building Commission. Further, that the Building Commission hire additional, specialised inspectors to create a more robust inspection regime for building, electrical and plumbing work in New South Wales."

Further, in its 19 recommendations made in the committee's first report, it stated at Recommendation 10:

"That the NSW Government, as part of its implementation of Recommendation 1 of the Shergold Weir report, immediately investigate the current licencing system for building trades in New South Wales, giving particular consideration to:

- *the effectiveness of the existing inspection regime*
- *the need for an independent examination of building trades before a licence is granted, especially for electrical trades*
- *which additional building practitioners should be licenced, including, but not limited to, installation of medical gas and maintenance of fire safety systems."*

The Reports findings related to electrical matters stated, in relation to the Committee's comments at page 13, item 1.48 and 1.49:

"1.48 The inquiry also received compelling evidence of unlicensed workers, particularly electrical workers, and a small number of specialised inspectors within the Department of Fair Trading. The committee is concerned that these new inspectors will not have specialised expertise for electrical, gas or plumbing, or be conducting licence checks.

1.49 The committee believes that licencing and inspections, with the specialist expertise for these, should be centralised, under the supervision of the NSW Building Commissioner, within the newly created Building Commission. The committee also believes there should be additional licencing and specialist inspections across electrical, gas and plumbing in the New South Wales construction industry.

There is clear acknowledgement in the report of a failure in effectiveness of the existing regulatory inspection regime that governs the nature and compliance of electrical installation work and quality of licensed electrical persons, such that it recommended independent examination before a licence was granted.

If, as asserted by the PAC, the occupational licensing system in NSW has some quality issues associated with the duty of care responsibilities of the local registration authority (regulator) who is required to ensure licensed persons comply with their licensure remit to perform regulated electrical work and certify compliance of that work/installation in accordance with the law of the state, and there is little monitoring of performance or compliance certificates requiring inspections, or indeed penalties administered for poor quality work that could lead to an incident or fatal accident, then should the automatic recognition deeming amendment provision ensue?

Will it not foster potential risks to other jurisdictions and as well customers and the public in all jurisdictions?

The same would apply in the reverse. A poor performing jurisdiction who continues to license a poor performing person, without sanctions, who then proceeds to permit the licensed electrical person to transit and work in another jurisdiction such as NSW, may become a clear and present danger to the community, the public and to employers.

At the core of a mutual recognition system must be an agreement to quality, effectiveness and trust or the credibility of the licensed occupation(s) is brought into question and brought into disrepute in the perception of the community, the public and to employers.

NSW occupational licensing system quality and effectiveness has been brought into question, following the Committee's good work, especially in relation to electrical persons. It is without question a licensed occupation for a reason. It is high-risk and has the potential to affect many of those in the population who use electrical systems, equipment, appliances and devices in their routine daily activities.

The NSW UE ITAB submits that more work is needed, supporting the goal of mutual recognition with safeguards in place as posed earlier. In the meantime the Minister should exempt the occupation from automatic deeming registration.

8. NCC does not cover licensed electrical persons or specific electrical work

The National Construction Code (NCC) does not cover licensed electrical persons or specific electrical work, recognising the responsibility and regulation and local requirements rests with the local registration authority (regulator) within the state or territory. This signifies the notion and importance of the electrician's occupation that is licensed in a hierarchy of high-risk occupations/activities (recognition of the lethality of the medium of electricity and need to regulate permission associated with performing such specified work).

The NCC website states, "The NCC is a performance-based code containing all Performance Requirements for the construction of buildings. It is built around a hierarchy of guidance and code compliance levels, with the Performance Requirements being the minimum level that buildings, building elements, and plumbing and drainage systems must meet. A building, plumbing or drainage solution will comply with the NCC if it satisfies the Performance Requirements, which are the mandatory requirements of the NCC."

NCC Regulatory Framework⁴

The NCC is given legal effect by relevant legislation in each State and Territory. This legislation prescribes or "calls up" the NCC to fulfil any technical requirements that are required to be satisfied when undertaking building work or plumbing and drainage installations.

Each State and Territory's legislation consists of an Act of Parliament and subordinate legislation which empowers the regulation of certain aspects of building work or plumbing and drainage installations, and contains the administrative provisions necessary to give effect to the legislation.

Administrative Provisions

Administration provisions typically covered in the enabling or subordinate legislation include:

- Plan submission and approval procedures
- Issue of permits
- Inspections and audits
- Provision of evidentiary certificates
- Issue of certificates
- Review and enforcement of standards
- Fees and charges

Summary

Each state and territory has developed laws and regulations to ensure that electrical installations are safe and fit for purpose.

It would be an advantage to have uniform laws and regulations in each state and territory. However, if mutual recognition is applied to electricians to work in any state or territory provided that they hold a licence issued by any one state or territory, the industry will be effectively de-regulated, leading to a lowering of already low standards.

As has been widely discussed and demonstrated, self-regulation in the construction industry is ineffective in maintaining required industry standards in all trades including electrical work.

Currently, in New South Wales, there are real concerns about licensing and the professional conduct of electricians. Licences are renewed automatically, no matter how long it has been since the licence was first issued. There is no check of current competence, and therefore no evidence that their work will be either safe or fit for purpose.

Electricians are required to provide customers and in some cases the regulator and supplier with a Certificate of Completion Electrical Work (CCEW). Similar requirements apply in other states and territories. There is widespread ignoring of this requirement by both electricians and the regulator. Mutual recognition will compound this situation.

In other instances, regulations in different states and territories vary widely, as is the case with safe approach distances. They all develop different solutions to common problems.

⁴ <https://ncc.abcb.gov.au/ncc-online/Regulatory-Framework>

There is no evidence that different states and territories will learn from each other to improve their laws and regulations or the way the industry is regulated. There is no evidence that regulators will take a common approach to improving their monitoring and enforcing performance in the industry.

Mutual recognition is a worthwhile objective, but only if the laws and regulations designed to ensure that electrical installations are safe and fit for purpose are harmonised first.

Recommendation

Under the proposed Commonwealth's amendment to the Mutual Recognition legislation, Part 3A— Automatic deemed registration to carry on activities, a State Minister may, where a significant risk is identified, exempt a registration from being subject to automatic deeming registration.

The NSW UE ITAB submits that the Committee recommend to the Minister the following:

1. exempt electrical licensed persons covered by the occupation of electrician from being subject to automatic deeming registration, as the occupation of electrician poses a significant risk to the community and the public;
2. adopt the Part 3 Registration of equivalent occupations section of the proposed legislation as the preferred path for the electrician occupation, and that the relevant regulatory department be charged with, in consultation with NSW industry stakeholders, establishing the necessary equivalence tables including the Minimum Jurisdictional Context Gap requirements that apply between states for the Minister to sign with counter-part state Ministers; and
3. call on the Commonwealth to re-establish the former Council of Australian Governments' National Licensing Steering Committee (or a replacement) with the terms of reference to re-initiate the earlier work and work towards the original goal of harmonisation for the occupation.

End of submission.

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WEBSITE: Electrical Safety Project: www.esproject.com.au - provides information about improving electrical Safe Work Practice and exemplar Safe Work Procedures (SWPs) for use in training, or adaptation by micro-businesses and self-employed in the utilities and electrotechnology industries.

NSW UE ITAB bi-partite Board composition:

- Institute of Gas Engineers (Jemena)
- National Electrical and Communications Association NSW (NECA NSW)
- Electrical Trades Union NSW (ETU NSW)
- Essential Energy
- Australian Workers Union (AWU)
- Sydney Trains NSW
- Australian Services Union NSW (ASU NSW)
- Endeavour Energy