

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

Organisation: CFMMEU (NSW Branch) Construction & General Division

Date Received: 8 April 2021

Dear Ms Bogatova Please find a copy of the submission made by the CFMMEU in relation to the proposed Federal Amendment Bill on the same subject matter. Our concern in respect of NSW a legislation would be the same.



**Submission on The Automatic Mutual Recognition of Occupational Registrations:
*Exposure Draft Legislation***

CFMEU
CONSTRUCTION

Introduction

1. On 17th December 2020 the Deregulation Taskforce, based in the Department of the Prime Minister and Cabinet, released exposure draft legislation to amend the *Mutual Recognition Act 1992* (**MR Act**) which it claimed was developed in collaboration with State and Territory governments.¹The draft legislation, *the Mutual Recognition Amendment Bill 2020*² (**Amendment Bill**), seeks to make a major change to the MR Act which would allow for the Automatic Mutual Recognition (**AMR**) of registered occupations between the States and Territories.
2. The consultation paper³ released with the Amendment Bill invited submissions on the Amendment Bill and the proposed AMR scheme more broadly. Any such submissions were to be submitted by 5pm on Friday 12th February 2020.
3. The Construction Forestry Maritime Mining and Energy Union (**CFMEU**) has a genuine interest in the Amendment Bill as many of our members are employed or work in registered occupations that would be affected by it. This is because “registered” is defined in the Amendment Bill as follows:

“**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.”

4. The CFMEU is not opposed to the mutual recognition of registered occupations where they are directly equivalent, but notes that this is not the case with all of the registered occupations that our members are engaged in, particularly in the building and construction industry.
5. The CFMEU believes that the top down approach of introducing an AMR scheme without first achieving industry and jurisdictional consensus on the requirements for registered occupations (particularly in regard to training, industry experience and competence) is not in the best interest of workers, the consumers of their services and the general public.
6. For the majority of building and construction occupations the current system of mutual recognition, based on Ministerial Declarations, is working well. Introducing AMR will only create confusion and uncertainty. For these and other reasons outlined in this submission, the CFMEU submits that the Amendment Bill should be abandoned and National Cabinet revoke the recently signed *Intergovernmental Agreement on Mutual Recognition*⁴.

¹ <https://pmc.gov.au/sites/default/files/amr-consultation-document.pdf> at p.1

² <https://pmc.gov.au/sites/default/files/exposure-draft-mr-bill.pdf>

³ <https://pmc.gov.au/sites/default/files/amr-consultation-document.pdf>

⁴ <https://pmc.gov.au/sites/default/files/publications/amr-iga-signed-11-december-2020.pdf>

Current Mutual Recognition Arrangements under the MR Act

7. In Australia, the States and Territories have responsibility for deciding which occupations require a registration or licence and any conditions for them.
8. The MR Act is an overarching piece of legislation which applies to the Commonwealth Government and to a State, but only while a State is a participating jurisdiction⁵. Its primary purpose is promoting the goal of freedom of movement of goods and service providers in a national market in Australia. Each State and Territory also has its own mutual recognition legislation to support the operation of the MR Act.
9. Part 3 of the current MR Act provides for the mutual recognition of equivalent occupations, and provides in s.17(1) 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.
10. S.17(2) however provides that the mutual recognition principle is subject to the exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws:
 - (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
 - (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.
11. There are a number of additional provisions in Division 4 of Part 3 that set out how equivalence of occupations is to be determined, that allow conditions to be imposed on registration to achieve equivalence between occupations in different States, and that give the Ministers and the Administrative Appeals Tribunal powers to make declarations as to equivalent occupations.

The Amendment Bill

12. The Amendment Bill contains a number of amendments to be made to the MR Act which essentially widen its application so that it applies, by the automatic deemed registration of occupations, to the activities carried out by occupations. This means that, where it applies, a person registered for an occupation in one State will not be required to apply for registration in another State to carry out the same work. The proposed date of operation of the amended Act is the 1st July 2021.

⁵ Defined under s.4 as “a State (other than a Territory) for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact this Act as originally enacted, or that adopts this Act as originally enacted, under paragraph 51(xxxvii) of the Commonwealth Constitution; or a Territory (being the Australian Capital Territory or the Northern Territory) for which there is in force an Act of its legislature that requests the Parliament of the Commonwealth to enact this Act as originally enacted, or that enables this Act as originally enacted to apply to it).”

13. The main amendment is the proposed insertion of a new **Part 3A Automatic deemed registration to carry on activities**. According to clause 3A of Schedule 1 in the Amendment Bill,

“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.”

14. The most significant of the new provisions are summarised below :

- **42A Mutual recognition of activities through automatic deemed registration** – this provides that the mutual recognition principle as applying to activities covered by occupations is as set out in this Part of the MR Act and that it deals with the ability of a person who is registered for an occupation in the person’s home State to carry on, in another State, the activities covered by the occupation. For a person registered for an occupation in the person’s home state, the home state is the State in which the person has :

- their principal place of residence or
- their principal place of work in relation to the activity

and if they are different, the person’s home State is whichever of the two States is chosen by the person.

- **42C Application of this Part** – this provides that Part 3A applies to individuals, and activities covered by occupations carried on by them. It also provides that if, in relation to an activity carried on by an individual, the individual is subject to:

- more than one system of registration in a State; or
- more than one local registration authority in a State;

then Part 3A applies in relation to each of those systems of registration or each of those authorities.

- **42D Entitlement to automatic deemed registration** – this provides that despite any law of a State, a person who is registered in the person’s home State for an occupation is taken to be registered in the second State to carry on each of the activities covered by the occupation for which the person is required to be registered in the second State. The person is taken to be registered in the second State to carry on each activity covered by the occupation at the following time, or the latest of the following times, (as the case requires):

- if the second State requires the person to notify the local registration authority for the occupation—at the time the person notifies the authority;
- if the second State requires the person to meet one or more public protection requirements before carrying on the activity in the second State—at the time the person meets the requirements;
- if the second State requires the person to meet a vulnerable person character test—at the time the person meets the test; or

- if none of the above applies—when the person first begins carrying on the activity in the second State.
- **42H Person may carry on equivalent activities** – this provides that the carrying on of the activity in the second State is subject to the laws of the second State that apply equally to all persons that carry on or seek to carry on the activity but that this does not include laws that are based on the attainment of some qualification or experience relating to fitness to carry on the activity. This is a similar provision to the existing s.17(2) .
- **42R Exempting registrations because of significant risk to consumer protection etc.** – this allows a Minister of a State to declare, by legislative instrument, that a specified registration:
 - is excluded from the operation of automatic deemed registration; or
 - is excluded from the operation of automatic deemed registration on the basis of a specified substantive registration in one or more other specified States;
 if the Minister is satisfied that the declaration is necessary because of a significant risk, arising from particular circumstances or conditions in their State, to:
 - consumer protection; or
 - the health or safety of workers or the public.

Any such declaration must include a statement explaining the risk to consumer protection or the health or safety of workers or the public. Such declaration has effect only in relation to the declaration State. Further the declaration sunsets after 5 years.

Any such declaration is invalid to the extent that it gives preference to one State or part of a State over another State or part of a State.

- **42RA Exempting registrations temporarily** – this provides that a Minister of a State may make a declaration on the same grounds as set out in s.42R, before the end of 6 months after this section commences, that a specified registration is excluded from the operation of automatic deemed registration until the end of that 6 month period.

Registered Occupations in the Building and Construction Industry

15. The application of the Amendment Bill will be far wider than the “electricians, plumbers, teachers and real estate agents” referred to in the consultation paper.⁶ It will have an impact on many occupations in the building and construction industry.
16. Although there is a variance in the registration of occupations across the jurisdictions in Australia, there are generally four types of licensing arrangements in the building and construction industry that would fall under the definition of “registration” as contained in the Amendment Bill:
 - a. Builder’s Licence

⁶ See p.1

- b. Contractor's Licence
- c. Supervisor's Licence
- d. Work Health & Safety (**WHS**) Licence

Builder's Licence

17. Builder's licences are usually for contractors who want to contract or subcontract to carry out building work. For example in Victoria builder's licences fall under 3 classes:

- Commercial Builder
- Domestic Builder
- Demolisher⁷

18. Within each of these classes there are different subclasses, for example the sub-classes of commercial builder are:

- Commercial Builder (Unlimited)
- Commercial Builder (Limited to the construction of low rise buildings work)
- Commercial Builder (Limited to the construction of medium rise buildings work)
- Commercial Builder (Limited to the construction of shade structures work)
- Commercial Builder (Limited to the erection of signs work)
- Commercial Builder (Limited to installation of blinds and awnings work)
- Commercial Builder (Limited to non-structural fit-out work)
- Commercial Builder (Limited to steel erection work)
- Commercial Builder (Limited to structural fit-out work)
- Commercial Builder (Limited to structural landscaping work)
- Commercial Builder (Limited to waterproofing)⁸

19. For domestic builders the sub-classes are:

- Domestic Builder (Unlimited)
- Project Manager (Domestic)
- Domestic Builder (Limited to a class of domestic building work)
- Domestic Builder (Limited to bathroom, kitchen and laundry renovation)
- Domestic Builder (Limited to bricklaying and blocklaying)
- Domestic Builder (Limited to cabinet making, joinery and stair construction)
- Domestic Builder (Limited to carpentry)
- Domestic Builder (Limited to construction of gates and fences)
- Domestic Builder (Limited to the construction of non-habitable building structures)
- Domestic Builder (Limited to construction of private bushfire shelters)
- Domestic Builder (Limited to construction of retaining walls)
- Domestic Builder (Limited to the construction of shade structures)
- Domestic Builder (Limited to construction of swimming pools and spas)
- Domestic Builder (Limited to door and window replacement and installation)
- Domestic Builder (Limited to earthworks and excavation work)
- Domestic Builder (Limited to external wall cladding)

⁷ <https://www.vba.vic.gov.au/building/registration>

⁸ <https://www.vba.vic.gov.au/building/registration/commercial-builder/what-is-commercial-building-work>

- Domestic Builder (Limited to footings and slab work)
- Domestic Builder (Limited to framing)
- Domestic Builder (Limited to re-stumping and re-blocking)
- Domestic Builder (Limited to roof tiling)
- Domestic Builder (Limited to site works involved in relocating a dwelling)
- Domestic Builder (Limited to the construction of structural landscaping)
- Domestic Builder (Limited to waterproofing)

Registration in the following classes is only required if someone intends to carry out two or more of these classes of domestic building work under one contract.

- Domestic builder (limited to attaching external fixtures)
- Domestic builder (limited to erection of poles, masts and antennas)
- Domestic builder (limited to floor finishing and covering)
- Domestic builder (limited to glazing work)
- Domestic builder (limited to insulation work)
- Domestic builder (limited to painting and decorating)
- Domestic builder (limited to sheet plastering)
- Domestic builder (limited to solid plastering and rendering)
- Domestic builder (limited to wall and floor tiling work)⁹

20. As stated previously there are significant variances between the jurisdictions. In Queensland an individual or company who wants to carry out, undertake to carry out, or supervise building work valued at over \$3,300 (including labour and materials), or valued over \$1,100 where it involves Hydraulic Services Design, or of any value for other specified work, must hold the appropriate licence.¹⁰ Licensees who do not contract with builders or the public and only contract to trade contractors (i.e. sub-trade contractors) do not require a Queensland Building and Construction Commission (QBCC) licence. Queensland has the following licence classes for builders:

Builders

- Builder – Low Rise
- Builder – Medium Rise
- Builder – Open
- Builder Project Management Services

Builder Restricted

- Builder Restricted to Kitchen Bathroom and Laundry
- Builder Restricted to Shopfitting
- Builder Restricted to Structural Landscaping
- Builder Restricted to Special Structures

21. In NSW a building licence is required before you can do any residential building work valued at more than \$5000 (incl GST) in labour and materials. A general builder may do any work that is residential building work. Residential building work means any work involved in constructing a dwelling, or altering or adding to a dwelling. It also includes repairing,

⁹ <https://www.vba.vic.gov.au/building/registration/domestic-builder>

¹⁰ <https://www.qbcc.qld.gov.au/when-you-need-licence/do-you-need-licence>

renovating, decorating or applying protective treatment to a dwelling.¹¹ There are no separate licences for commercial builders.

22. In the ACT the *Construction Occupations (Licensing) Act 2004* applies to a limited number of occupations, one of which is builder. Builder is defined in s.8 -What is a builder?, and provides as follows:

- (1) A builder is an entity that provides, has provided or proposes to provide a building service.
- (2) A building service is the doing or supervising of building work.

Note 1 Building work—see the Building Act 2004, section 6.

Note 2 For building work that involves asbestos removal, a builder must hold an asbestos removal licence (see Work Health and Safety Regulation 2011, div 8.10.1).

21. Under the ACT *Construction Occupations (Licensing) Regulation 2004* the maximum period for which a licence may be issued or renewed is 3 years. The classes of a builder licence and their functions are as follows:

column 1 item	column 2 construction occupation class	column 3 construction work
1	class A	building work other than specialist building work
2	class B	(a) building work (other than specialist building work) in relation to a building that is 3 storeys or lower; and (b) basic building work
3	class C	(a) building work (other than specialist building work) in relation to a building that is 2 storeys or lower and is a class 1, class 2 or class 10a building; and (b) building work (other than specialist building work) in relation to a building that is a class 10b structure (other than a swimming pool or swimming pool fence) and is ancillary to a building mentioned in paragraph (a); and (c) basic building work
4	class D	non-structural basic building work, other than specialist building work

¹¹ <https://www.fairtrading.nsw.gov.au/trades-and-businesses/licensing-and-qualifications/general-building-work>

column 1 item	column 2 construction occupation class	column 3 construction work
5	owner-builder	building work, other than specialist building work, in relation to a class 1, class 2 or class 10 building that is, or is to be, the licensee's main home or ancillary to it

Note For building work that involves asbestos removal, a builder must hold an asbestos removal licence (see [Work Health and Safety Regulation 2011](#), div 8.10.1).

23. In Western Australia under the *Building Services (Registration) Act 2011*, only a registered building practitioner or a registered building contractor can perform particular building work. The Building Services Board is the registration authority. Contractor registration is for individuals, partnerships and companies that intend to trade as builders. This registration allows a business to provide services as a builder for work that requires a building permit, has a value of \$20,000 or more and is located within the area of the Building Services Board's jurisdiction.¹²

24. In Western Australia, the building trades required to be licensed include:

- Builders who are required to be registered with the [Building Services Board](#).
- Painters who are required to be registered with the [Building Services Board](#).
- Demolition work (high risk) who require a licence issued by [WorkSafe](#).

25. It should be noted that it is highly likely that there will be changes in WA. The Department of Mines, Industry Regulation and Safety – Building and Energy Division (Building and Energy) has recently released its “*Registration of Builders (and related occupations) Reforms: Consultation Regulatory Impact Statement*”¹³, which according to its Executive Summary:

“is part of the first steps towards meeting the McGowan Government’s commitment to implement Recommendations 1, 2 and 6 of the report *Building Confidence: improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia* (the Building Confidence Report).

Approaches to builder registration and licensing differ across Australia. On 26 June 2020, the Australian Building Codes Board (ABCB) Building Confidence Report Implementation Team released the *National Registration Framework for Building Practitioners: discussion paper* (NRF discussion paper).

The *Building Services (Registration) Act 2011* (BSR Act) (WA) establishes the registration regime for builders, building surveyors and painters in Western Australia (WA). This CRIS seeks comment on a range of proposed reforms aimed at supporting and improving builder expertise, career pathways and builder regulation in WA.

¹² <https://www.commerce.wa.gov.au/building-and-energy/builders-registration-overview>

¹³ https://www.commerce.wa.gov.au/sites/default/files/atoms/files/registration_of_builders_and_related_occupations_reforms_cris.pdf

Consistent with recommendations in the Building Confidence Report and the NRF discussion paper, proposals in this CRIS seek to replace the current single class of registration for builders in WA with three classes (tiers) of registration: Level 1 (Open), Level 2 (Medium rise) and Level 3 (Low rise). This CRIS examines the proposals in some detail and discusses how this reform could be implemented in WA.”

22. In Tasmania there are three classes of licensed builder:

- Builder (General Construction) - a general builder responsible for managing or carrying out construction, demolition, alteration, addition, relocation or repair of any building or structure
- Fire protection services builder - a specialist builder responsible for managing or carrying out fire protection services work in a building
- Demolisher - a specialist builder responsible for managing or carrying out demolition of existing buildings, structures and building work. A demolisher cannot perform any new building work.

Each class of licensed builder is further divided into sub-classes of Low Rise, Medium Rise and Open. The General Construction class also has a sub-class of Domestic. These sub-classes determine the scope of work of licensees.¹⁴

23. Further information on the different licensing requirements for builder’s licences in the states can be found at <https://www.opencolleges.edu.au/careers/blog/getting-a-builders-licence-nsw-vic-wa-sa-qld-nt> .

Contractor Licence

24. Contractors licences apply in a number of States and to some extent overlap with trade certificates. In NSW a contractor licence allows a person to contract and advertise to do work. They can only do the types of work described on their licence card. Contractor licences can be issued to individuals and to companies and partnerships. From 1 July 2020, a person can apply for a 1, 3 or 5 year contractor licence. Under the NSW *Home Building Act 1989 No 147A*, a tradesperson certificate authorises its holder to do any specialist work that is described in the certificate when it is issued (being work of a category or categories prescribed by the regulations), but only under the general supervision, and subject to the control, of the holder of an endorsed contractor licence or a supervisor certificate authorising supervision of the work.

25. Trade work requiring licences in NSW includes:

- Bricklaying
- Carpentry
- Decorating
- Dry plastering
- Excavating
- Fencing
- General concreting
- Glazing
- Installation of security doors, grilles and equipment
- Joinery

¹⁴ <https://www.cbos.tas.gov.au/topics/licensing-and-registration/licensed-occupations/building-provider-licences/builder#Checklist---builder-licence>

- Metal fabrication
- Minor maintenance/cleaning
- Minor tradework
- Painting
- Roof plumbing
- Roof slating
- Roof tiling
- Stonemasonry
- Swimming pool repairs and servicing
- Underpinning/piering
- Wall and floor tiling
- Waterproofing
- Wet plastering¹⁵

26. In Queensland there are similar contractor licences that apply to the trades although the technical requirements¹⁶ may differ to NSW. The trade contractor licences include:

- Air Handling Duct Installation
- Brick and Segmental Paving
- Bricklaying and Blocklaying
- Cabinet Making
- Concreting
- Carpentry
- Drainage
- Drainage – On-site Sewage
- Floor Finishing and Covering (Hard Sector)
- Foundation Work (Piling and Anchors)
- Gasfitting
- Glass, Glazing and Aluminium
- Irrigation
- Joinery
- Metal Fascias and Gutters
- Non-Structural Metal Fabrication and Installation
- Painting and Decorating
- Plastering Drywall
- Plastering Solid
- Plumbing and Drainage
- Roof and Wall Cladding
- Roof Tiling
- Site Classifier PI*
- Sheds, Carports and Garages

¹⁵ Schedule 4 of the Home Building Regulation 2014 provides descriptions of work authorised by contractor licences or certificates, see <https://www.legislation.nsw.gov.au/view/html/inforce/current/sl-2014-0811#sch.4>

¹⁶ See https://www.epw.qld.gov.au/_data/assets/pdf_file/0021/16149/technical-qualifications-for-licensing-january-2021.pdf

- Shopfitting (Trade)
- Steel Fixing
- Stonemasonry
- Structural Landscaping (Trade)
- Structural Metal Fabrication and Erection
- Swimming Pool Construction, Installation and Maintenance
- Termite Management – Chemical PI*
- Termite Management – Physical
- Wall and Floor Tiling
- Waterproofing

26. In South Australia there are two licence classes under the *Building Work Contractors Act 1995*:

- (a) building work contractors licence—a licence authorising a person to carry on business as a building work contractor; and
- (b) building work contractors licence with conditions—a licence authorising a person to carry on business as a building work contractor subject to conditions limiting the work that may be performed under the authority of the licence.

27. Under the *Building Work Contractors Act 1995*, building work contractor means:

- (a) A person who carries on the business of performing building work for others; or
- (b) A person who carries on the business of performing building work with a view to the sale or letting (whether by lease, licence or other agreement) of land or buildings improved as a result of the building work.

28. In Victoria amendments were made, in 2018, to the *Building Act 1993* to introduce a new registration and licensing scheme for tradespeople. The scheme aims to reduce non-compliant building work, enhance industry accountability and encourage skills formation. Changes will be implemented for carpentry first, with other trades to follow over a five-year period.¹⁷

29. According to an FAQ document:

- Registration or a licence will be required to perform building work prescribed in the building regulations.
- Both registration and the employee occupational licence give the right to physically perform prescribed work. But registration may also give the right or duty to perform certain business functions – for example, to contract for building work. An employee occupational licence does not relate to performing business related functions.¹⁸

Supervisor Licence

30. Supervisor licences vary across the jurisdictions. In Western Australia there is the Practitioner registration for individuals which allows a person to be the nominated supervisor of a registered building contractor and to use the title 'registered building practitioner'. A practitioner may not provide building services directly to another person.¹⁹

¹⁷ <https://engage.vic.gov.au/registration-and-licensing-building-trades>

¹⁸ https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/7015/8327/9945/FAQs_pdf.pdf

¹⁹ <https://www.commerce.wa.gov.au/building-and-energy/builders-registration-overview>

31. In NSW a qualified supervisor certificate allows a person to supervise and do the work described on the certificate. Qualified supervisor certificates are only issued to individuals. A qualified supervisor certificate does not allow a person to contract for work. There is also an endorsed contractor licence which is issued to individuals who apply for a contractor licence and who also have the qualifications and experience needed to be a qualified supervisor. Endorsed contractor licence cards have 'contractor licence (Q)' printed on them to show they are also equivalent to a Qualified Supervisor Certificate.²⁰
32. In Queensland a site supervisor licence allows an employee or officer of a licensed contractor to supervise building work under the contractor's licence. A site supervisor's licence may be issued for any class of licence.
33. In South Australia the *Building Work Contractors Act 1995* allows for registrations which authorise a person to supervise building work of any kind (Any Building Work) and for registrations with conditions which may limit the scope of building work (all other registration conditions). General Building Work Registrations cover more complicated building work in the supervision and coordination of other trades. The supervisor takes responsibility for providing adequate supervision over the complete building processes. The general condition may be limited by height, type or class of building. Specified Building Work Registrations cover a single building trade activity and take responsibility for providing adequate supervision over the building trade processes.²¹

WHS Licence

34. WHS Licences are, in the main, different to other forms of licence in that there is uniformity in the licences and their qualification requirements. This is due to the adoption of the model WHS legislation and model WHS regulations by the majority of States and Territories.
35. Schedule 3 of the model *Work Health and Safety Regulations 2011*²² (**WHS Regulations**) sets out the high risk work that requires a licence. This includes work undertaken by the following occupations:

Occupation	High Risk Work Requiring a licence
Scaffolder	Basic scaffolding
	Intermediate scaffolding
	Advanced scaffolding
Dogger	Dogging work
	Basic rigging
	Intermediate rigging
Rigger	Advanced rigging
	Use of a tower crane
	Use of a self erecting tower crane
Crane Operator	Use of a derrick crane
	Use of a portal boom crane
	Use of a bridge crane or gantry crane

²⁰ <https://www.fairtrading.nsw.gov.au/trades-and-businesses/licensing-and-qualifications/general-building-work>

²¹ <https://www.cbs.sa.gov.au/sites/default/files/building-work-supervisors-standard-registration-conditions.pdf>

²² <https://www.safeworkaustralia.gov.au/sites/default/files/2021-01/Model-WHS-Regulations-1January2021.docx>

	Use of a vehicle loading crane with a capacity of 10 metre tonnes or more
	Use of a non slewing mobile crane with a capacity exceeding 3 tonnes
	Use of a slewing mobile crane with a capacity of 20 tonnes or less
	Use of a slewing mobile crane with a capacity of 60 tonnes or less
	Use of a slewing mobile crane with a capacity of 100 tonnes or less
	Use of a slewing mobile crane with a capacity exceeding 100 tonnes
Hoist Operator	Use of a materials hoist
	Use of a personnel and materials hoist
EWP Operator	Use of a boom type elevating work platform where the length of the boom is 11 metres or more
Concrete Boom Operator	Use of a concrete placing boom
Reach Stacker Operator	Operation of a reach stacker of greater than 3 tonnes capacity that incorporates an attachment for lifting, moving and travelling with a shipping container, but does not include a portainer crane
Forklift Operator	Use of a forklift truck other than an order picking forklift truck
	Use of an order picking forklift truck

36. Schedule 4 of the WHS Regulations sets out the Vocational Education and Training (VET) qualifications required for these high risk work licences:

Table 4.1

Item	Licence Class	VET course
1	Basic scaffolding	Licence to erect, alter and dismantle scaffolding basic level
2	Intermediate scaffolding	Licence to erect, alter and dismantle scaffolding basic level; and Licence to erect, alter and dismantle scaffolding intermediate level
3	Advanced scaffolding	Licence to erect, alter and dismantle scaffolding basic level; and Licence to erect, alter and dismantle scaffolding intermediate level; and

Item	Licence Class	VET course
		Licence to erect, alter and dismantle scaffolding advanced level
4	Dogging	Licence to perform dogging
5	Basic rigging	Licence to perform dogging; and Licence to perform rigging basic level
6	Intermediate rigging	Licence to perform dogging; and Licence to perform rigging basic level; and Licence to perform rigging intermediate level
7	Advanced rigging	Licence to perform dogging; and Licence to perform rigging basic level; and Licence to perform rigging intermediate level; and Licence to perform rigging advanced level
	Tower crane	Licence to operate a tower crane
8		
9	Self-erecting tower crane	Licence to operate a self-erecting tower crane
10	Derrick crane	Licence to operate a derrick crane
11	Portal boom crane	Licence to operate a portal boom crane
12	Bridge and gantry crane	Licence to operate a bridge and gantry crane
13	Vehicle loading crane	Licence to operate a vehicle loading crane (capacity 10 metre tonnes and above)
14	Non-slewing mobile crane	Licence to operate a non-slewing mobile crane (greater than 3 tonnes capacity)
15	Slewing mobile crane — with a capacity up to 20 tonnes	Licence to operate a slewing mobile crane (up to 20 tonnes)
16	Slewing mobile crane — with a capacity up to 60 tonnes	Licence to operate a slewing mobile crane (up to 60 tonnes)
17	Slewing mobile crane — with a capacity up to 100 tonnes	Licence to operate a slewing mobile crane (up to 100 tonnes)
18	Slewing mobile crane — with a capacity over 100 tonnes	Licence to operate a slewing mobile crane (over 100 tonnes)
19	Materials hoist	Licence to operate a materials hoist

Item	Licence Class	VET course
20	Personnel and materials hoist	Licence to operate a personnel and materials hoist
21	Boom-type elevating work platform	Licence to operate a boom-type elevating work platform (boom length 11 metres or more)
22	Concrete placing boom	Licence to conduct concrete boom delivery operations
23	Reach stacker	Licence to operate a reach stacker of greater than 3 tonnes capacity
24	Forklift truck	Licence to operate a forklift truck
25	Order-picking forklift truck	Licence to operate an order picking forklift truck

27. The model WHS Regulations also include provisions dealing with general construction induction training and asbestos removal. For general construction induction training the regulations include:

316 Duty to provide general construction induction training

A person conducting a business or undertaking must ensure that general construction induction training is provided to a worker engaged by the person who is to carry out construction work, if the worker:

- (a) has not successfully completed general construction induction training; or
- (b) successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

317 Duty to ensure worker has been trained

(1) A person conducting a business or undertaking must not direct or allow a worker to carry out construction work unless:

- (a) the worker has successfully completed general construction induction training; and
- (b) if the worker completed the training more than 2 years previously—the worker has carried out construction work in the preceding 2 years.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

- (2) The person conducting the business or undertaking must ensure that:
 - (a) the worker holds a general construction induction training card; or
 - (b) if the worker has applied for but not yet been issued with a general construction induction training card, the worker holds a general construction induction training certification, issued within the preceding 60 days.

318 Recognition of general construction induction training cards issued in other jurisdictions

- (1) In this Part (other than Division 2), a reference to a general construction induction training card includes a reference to a similar card issued under a corresponding WHS law.
- (2) Subregulation (1) does not apply to a card that is cancelled in the corresponding jurisdiction.

28. The WHS Regulations for the licensing of asbestos removalists and asbestos assessors include:

Division 1 Asbestos removalists—requirement to be licensed

485 Requirement to hold Class A asbestos removal licence

- (1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class A asbestos removal licence:
 - (a) friable asbestos;
 - (b) except as provided in regulation 486, ACD.

Note See subsection 43 (1) of the Act.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out the removal of the following unless the person holds a Class A asbestos removal licence:
 - (a) friable asbestos;
 - (b) except as provided in regulation 486, ACD.

Note See subsection 43 (2) of the Act.

486 Exception to requirement to hold Class A asbestos removal licence

A Class A asbestos removal licence is not required for the removal of ACD that:

- (a) is associated with the removal of non friable asbestos; or
- (b) is not associated with the removal of friable or non friable asbestos and is only a minor contamination.

487 Requirement to hold Class B asbestos removal licence

- (1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class B asbestos removal licence or a Class A asbestos removal licence:
 - (a) more than 10 square metres of non friable asbestos or ACM;

(b) ACD associated with the removal of more than 10 square metres of non friable asbestos or ACM.

Note See subsection 43 (1) of the Act.

(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out the removal of the following unless the person holds a Class B asbestos removal licence or a Class A asbestos removal licence:

(a) more than 10 square metres of non friable asbestos or ACM;

(b) ACD associated with the removal of more than 10 square metres of non friable asbestos or ACM.

Note See subsection 43 (2) of the Act.

488 Recognition of asbestos removal licences in other jurisdictions

(1) In this Division:

asbestos removal licence means a licence that is:

(a) granted under a corresponding WHS law; and

(b) being used in accordance with the terms and conditions under which it was granted.

(2) Subregulation (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

Division 2 Asbestos assessors — requirement to be licensed

489 Requirement to hold asbestos assessor licence

A person must not carry out the following at a workplace unless the person holds an asbestos assessor licence:

(a) air monitoring during Class A asbestos removal work;

(b) clearance inspections for Class A asbestos removal work;

(c) issuing clearance certificates in relation to Class A asbestos removal work.

Note See subsection 43 (1) of the Act.

490 Recognition of asbestos assessor licences in other jurisdictions

(1) In this Division:

asbestos assessor licence means a licence that is:

(a) granted under a corresponding WHS law; and

(b) being used in accordance with the terms and conditions under which it was granted.

(2) Subregulation (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

29. Across Australia there is uniformity in the specification of the VET training required to obtain the general construction induction card and licences for asbestos work.

The Amendment Bill is Not Necessary

30. There is no evidence that the current system of mutual recognition is not working for the majority of building and construction registered occupations within the CFMEU's coverage. The 2015 Productivity Commission Research Report on Mutual Recognition Schemes²³ (2015 PC Report) found that:

“Mutual recognition is working well for most registered occupations. It operates particularly smoothly where jurisdictions have similar standards and approaches, and where occupation-registration bodies have established strong links and networks.”²⁴

31. As noted above it is the States and Territories that are responsible for registration and licensing and they have used the existing legislation to reach agreements on mutual recognition. The *Mutual Recognition (Equivalence of Gaming and Other Occupations) Declaration 2009*²⁵, as amended, contains schedules which set out the agreed position between the States and Territories covering the following work:

Schedule 4: Mutual recognition matrix – Pest and Weed Controllers

Schedule 5: Mutual recognition matrix – Asbestos Removal

Schedule 6: Mutual recognition matrix - Demolition

Schedule 7: Mutual recognition matrix - Earthworks/Excavations

Schedule 8: Mutual recognition matrix - Fencing

Schedule 9: Mutual recognition matrix – Flooring

Schedule 10: Mutual recognition matrix - Foundation Work

Schedule 11: Mutual recognition matrix - General Concreting

Schedule 12: Mutual recognition matrix - Glazing - Windows and Doors

Schedule 13: Mutual recognition matrix - Kitchens, Bathrooms and Laundries

Schedule 14: Mutual recognition matrix - Metal Fabrication

Schedule 15: Mutual recognition matrix - Painting and Decorating

Schedule 16: Mutual recognition matrix - Pools and Spas

Schedule 17: Mutual recognition matrix - Retaining Walls

Schedule 18: Mutual recognition matrix - Roof Tiling

Schedule 19: Mutual recognition matrix - Shopfitting

Schedule 20: Mutual recognition matrix - Sign and Shade Structures

²³ <https://www.pc.gov.au/inquiries/completed/mutual-recognition-schemes/report/mutual-recognition-schemes.pdf>

²⁴ Ibid at p.115

²⁵ <https://www.legislation.gov.au/Details/F2015C00987>

Schedule 21: Mutual recognition matrix - Solid (wet) Plastering and Dry Plastering

Schedule 22: Mutual recognition matrix – Stonemasonry

Schedule 23: Mutual recognition matrix - Wall and Floor Tiling

Schedule 24: Mutual recognition matrix - Waterproofing

Schedule 25: Mutual recognition matrix – Builders (update 2006 matrix)

32. These schedules have been drawn up recognizing the differences between the builder's, contractors and supervisory licences that apply in the different States and are an easy ready reckoner to determine how licences match up.
33. How these differences are dealt with in practice can be shown from the following example taken from the QBCC website:

“Builder licences issued by NSW Fair Trading only apply to “Domestic Building Construction Work”. There is no requirement for a builder to hold a builder licence in NSW if they are performing commercial work. As the NSW licence only applies to domestic construction work, QBCC will restrict your equivalent QLD builder licence class to BCA Class 1a, 2, 4 and 10.

If you hold a contractor or qualified supervisor licence in NSW, the equivalent QLD licence type would be either a contractor licence or nominee supervisor licence.

If you hold an unqualified supervisor licence in NSW, the equivalent QLD licence type may be a site supervisor licence or an occupational licence. This will depend on the licence class. A site supervisor licence would entitle you to supervise building work as an employee only. An occupational licence would entitle you to supervise and personally perform the work as an employee only.

If you are a builder and wish to perform commercial work in QLD or if you hold a NSW supervisor licence, you need to consider your options. It may be more appropriate and easier for you to apply for the full licence class under Queensland requirements.

Builder Licence – As an alternative, if your builder licence is not limited to any work other than being restricted to BCA Class 1a, 2, 4 and 10 and you wish to apply for an unrestricted licence when you submit your Mutual Recognition application, you must provide the appropriate technical qualification for the licence class and supply relevant details of your experience in the commercial sector. You must provide written references to verify your experience.

South Australian (SA) Applicants

If you hold a contractor and supervisor licence in SA, the equivalent QLD licence would be either a contractor licence or nominee supervisor licence. If you only hold a contractor licence in SA, you are not able to apply under Mutual Recognition as QLD does not have an equivalent licence.

For individuals who hold a current licence in another Australian state, territory or New Zealand. You are not able to apply for a licence if you are not a citizen, permanent resident or do not have a current Australian work visa.”²⁶

²⁶ <https://www.qbcc.qld.gov.au/sites/default/files/Mutual%20Recognition%20Licence%20Application.pdf>

37. The benefits of Ministerial declarations are well recognised. The Commonwealth User Guide To the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA),²⁷ revised in 2014, noted that:

“Ministerial declarations provide consistency through agreed equivalency and override uncertainties in the alignment of legislation between parties. Ministerial declarations remain in force unless rescinded or updated.”

38. The 2015 PC Report also noted that:

“Ministerial Declarations

Since 2006, Australian jurisdictions have developed detailed statutory instruments — termed Ministerial Declarations — which prescribe the equivalence of (mainly trade related) occupations across Australia (chapter 3). (Some Ministerial Declarations made prior to 2006 prescribe occupational equivalence between two states.)

Mutual recognition is greatly streamlined where a ministerial declaration of licence equivalency has been agreed for an occupation, which reduces the need for a regulator to make a case-by-case assessment of a licence. (Department of Education and Training, sub. 9, p. 3).”²⁸

What Benefits of AMR?

39. According to the consultation paper the benefits of AMR are based on a claim that:

“PwC estimated that AMR could lead to an additional \$2.4 billion in economic activity over ten years as a result of savings to workers and businesses, productivity improvements and extra surge capacity in response to natural disasters. Over 160,000 workers would benefit, including 44,000 people who will work interstate that would not otherwise have done so.”²⁹

40. The CFMEU, in the short time available to prepare this submission, has not been able to find any other document that contains this claim or that explains how it has been calculated. The CFMEU believes the claim is illusionary, not based on reality and inconsistent with other research on AMR.

41. The CFMEU points out that not all employees working in a trade require a licence. For example in Queensland if you are an employee, you don’t need a licence unless you become responsible for:

- Overseeing and directing the building work
- Ensuring the work is of a competent standard, i.e. free of defects
- Ensuring the work complies with the plans and specifications

(however, if you are overseeing work that involves plumbing and drainage, gas fitting, pest control or fire protection, you need a QBCC licence regardless of the value of the work).³⁰

42. According to the 2015 PC Report:

²⁷ <https://docs.employment.gov.au/system/files/doc/other/users-guide.pdf>

²⁸ 2015 PC Report, p.145-6

²⁹ Consultation paper, p.1

³⁰ <https://www.qbcc.qld.gov.au/when-you-need-licence/do-you-need-licence>

“the AMR model is suitable for individuals who work beyond their home jurisdiction on a temporary or occasional basis. **The economic rationale for adopting AMR is less evident for people moving permanently to a new jurisdiction, particularly if they intend to practise solely in their new jurisdiction.** In these circumstances, as with a drivers licence, it is reasonable to expect people to transfer their registration to their new place of residence. The existing mutual recognition legislation makes this a straightforward process.

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Potential benefits from automatic mutual recognition

The cost saving from AMR could be material for individual licensees. For example, a Queensland-registered electrician would otherwise have to pay a registration fee of almost \$400 to temporarily work in Victoria. **However, the aggregate benefits would be relatively small, at least initially.**” (at p.13)

Labour mobility

By reducing some costs associated with relocation, mutual recognition may increase labour mobility, as registered workers are effectively freed up to seek employment opportunities in other jurisdictions without further training or registration requirements. **However, it was not possible in this study to isolate the impact of mutual recognition because of the many other factors that can affect labour mobility. These include:**

- **expected wages and the probability of finding employment in the new location**
- **the relative costs of living in various locations, in particular housing costs**
- **regional differences that affect quality of life (PC 2014b).” (p.56)**

Jurisdiction Shopping

43. A significant concern with AMR is that it will lead to jurisdiction shopping for registration or licensing, and a race to the bottom (i.e. seeking out the jurisdiction with the minimum requirements and lowest fees). The provision in the proposed s.42A of the Amendment Bill that allows a person to choose their home state for licensing (being either their principal place of residence or their principal place of work in relation to the activity) will clearly open the door for unscrupulous operators to engage in jurisdiction shopping.
44. The impacts of such jurisdiction shopping can be potentially severe if it allows for less skilled and experienced workers to attempt work they are not really qualified to perform. This would likely lead to defects on building projects, costly delays in rectifying work, and increased claims on home warranty insurance in the second State.
45. Although the proposed scheme allows States to require a person with automatic deemed registration to comply with one or more public protection requirements (including insurance) it will be little comfort to consumers and the users of buildings if the work performed does not meet the required standard and they subsequently incur costly delays pursuing insurance claims. If the number of insurance claims increase then it could have an adverse effect on the

home warranty schemes, which are mainly State based, leading to higher premiums, lower benefits and potentially the viability of the scheme itself. In this scenario the costs of AMR would be clearly greater than the benefits.

AMR Requires Consistency and Consensus

46. For an AMR system to work properly it requires consistency between the licence requirements across the jurisdictions. The model *Work Health and Safety Act 2011 (WHS Act)* provides an example of how this can be done. Under the WHS Act, which applies in all States and Territories except WA and Victoria, there are specific provisions dealing with authorised work (which is perhaps a better term than “registered”) :

40 Meaning of *authorised*

In this Part, ***authorised*** means authorised by a licence, permit, registration or other authority (however described) as required by the regulations.

41 Requirements for authorisation of workplaces

A person must not conduct a business or undertaking at a workplace or direct or allow a worker to carry out work at a workplace if:

- (a) the regulations require the workplace or workplaces in that class of workplace to be authorised; and
- (b) the workplace is not authorised in accordance with the regulations.

Penalty:

- (a) In the case of an individual—\$50 000.
- (b) In the case of a body corporate—\$250 000.

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43 Requirements for authorisation of work

- (1) A person must not carry out work at a workplace if:
 - (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and
 - (b) the person, or the person on whose behalf the work is carried out, is not authorised in accordance with the regulations.

Penalty:

- (a) In the case of an individual—\$20 000.
- (b) In the case of a body corporate—\$100 000.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:
 - (a) the regulations require the work, or class of work, to be carried out by, or on behalf of, a person who is authorised; and

- (b) the person, or the person on whose behalf the work is to be carried out, is not authorised in accordance with the regulations.

Penalty:

- (a) In the case of an individual—\$20 000.
- (b) In the case of a body corporate—\$100 000.

44 Requirements for prescribed qualifications or experience

- (1) A person must not carry out work at a workplace if:

- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
- (b) the person does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Penalty:

- (a) In the case of an individual—\$20 000.
- (b) In the case of a body corporate—\$100 000.

- (2) A person who conducts a business or undertaking must not direct or allow a worker to carry out work at a workplace if:

- (a) the regulations require the work, or class of work, to be carried out by, or under the supervision of, a person who has prescribed qualifications or experience; and
- (b) the worker does not have the prescribed qualifications or experience or the work is not carried out under the supervision of a person who has the prescribed qualifications or experience.

Penalty:

- (a) In the case of an individual—\$20 000.
- (b) In the case of a body corporate—\$100 000.

47. As mentioned previously in this submission, the WHS Regulations set out what licences or training is required to perform certain work in the building and construction industry. To achieve the individual licences workers must be assessed by an RTO authorised by the WHS regulators to conduct the assessment, using National Assessment Instruments developed by industry and the regulators. This method of regulating the work and licences required to perform the work provides national consistency and allows for a more streamlined and efficient form of AMR. It is not perfect, as there have still been unscrupulous people who have attempted to fast track the training and assessment of individuals, but it is far better than the AMR system being proposed.

48. The 2015 PC Report was supportive of an approach based on consistent standards,

“The Commission thus proposes **that any expansion of AMR to new professions and jurisdictions be phased in, starting with professions where standards are similar across jurisdictions** and the profession is large and mobile.

.....

The Commission recognises that the risk of undesirable outcomes from visiting service providers means a reasonable degree of harmonisation is important to successfully implement AMR”. (p.184)

“For some professions, particularly where health and safety considerations are significant and qualifications vary significantly between jurisdictions, barriers to acceptance of AMR by regulators and the broader community are likely to be high and there might be requirements for additional safeguards to achieve acceptance. **In some cases where the scope of work varies widely across jurisdictions, the benefits of AMR might never be likely to exceed the costs and it would not be appropriate to implement it.** “(p.190)

49. It is also consistent with the approach recommended by the Shergold and Weir report “*Building Confidence - Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*”³¹ prepared for the Building Ministers’ Forum (BMF). As the consultation page³² for the National Registration Framework for Building Practitioners noted,

“The predominant goal of the BCR recommendations is to enhance public trust and confidence in the building industry, **achieved through a national best practice model of building and construction standards** that will strengthen the effective implementation of the NCC and protect the interests of those who own, work, live, or conduct their business in Australian buildings.

Recommendations 1 and 2 of the BCR propose the registration of building practitioners involved in the design, construction and maintenance of buildings, **and that each jurisdiction prescribes consistent registration requirements** covering knowledge of the NCC, competency and experience, insurance and financial viability, and integrity.” (Emphasis added)

50. Not only does an AMR require consistency of the requirements for the registration of occupations it also requires the support of industry. Best practice for implementing AMR is on an industry by industry basis and reaching a consensus within an industry (including the regulators), not a top down approach by those far removed from the work of the occupations it is to be applied to.

Conclusion

51. The *Intergovernmental Agreement on Mutual Recognition* and the proposed Amendment Bill for the introduction of Automatic Mutual Recognition (AMR) represents a top down approach decided by members of the National Cabinet. It is unfortunate that this approach has been adopted as the alleged benefits are unproven and the costs are potentially far greater for the workers involved, consumers of their services and the wider community, especially where there are large differences in the registration requirements for occupations.
52. The move by the National Cabinet is premature and ignores the advice of many that what is required, for AMR to work, is firstly achieving industry and jurisdictional consensus on the

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[https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_a
ssessment_-_building_confidence.pdf?acsf_files_redirect](https://www.industry.gov.au/sites/default/files/July%202018/document/pdf/building_ministers_forum_expert_assessment_-_building_confidence.pdf?acsf_files_redirect)

³² <https://consultation.abcb.gov.au/engagement/dp-national-registration-framework/>

requirements for registered occupations (particularly in regard to training, industry experience and competence). That consensus has not been reached for many occupations in the building and construction industry.

53. For the majority of building and construction occupations the current system of mutual recognition, based on Ministerial Declarations, is working well. Introducing AMR will only create confusion and uncertainty. The CFMEU therefore submits that the Amendment Bill should be abandoned and National Cabinet revoke the recently signed *Intergovernmental Agreement on Mutual Recognition*.
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