

**Submission
No 10**

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

Organisation: Plumbing Trades Employee's Union (PTEU) NSW Branch

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Re: Mutual Recognition (New South Wales) Amendment Bill 2021

Thank you for the opportunity to contribute to the Upper House Committee inquiry by the Parliament of NSW into the proposed Mutual Recognition (New South Wales) Amendment Bill 2021 and its implications.

This submission the NSW Branch of the Plumbing Trades Employee's Union (PTEU).

The NSW PTEU has significant concerns about the Commonwealth Government's proposed legislation to give effect to Automatic Mutual Recognition (AMR) principles as outlined in the Commonwealth's Exposure Draft legislation.

Given the proposed law before the NSW Parliament is designed to give direct effect to the Commonwealth's proposal and given that the effect of the NSW Bill would be to effectively cede power to the Commonwealth and potentially reduce NSW's capacity to control its own industry and therefore the associated risks, we do not support the Mutual Recognition (New South Wales) Amendment Bill 2021.

Generally, we support initiatives which improve worker mobility, improve worker opportunity, and enable economic growth. We also support initiatives to the extent that they have the potential to impact positively on NSW's many border towns (Qld and Vic border); and to the plumbing and fire protection practitioners who service those communities.

However, for reasons outlined further in this submission, we believe the application of the AMR principles to plumbing and fire protection work (which is what our members do) needs to be **considered more carefully and comes with some significant challenges and risks.**

Where there is like for like comparability between both the scope of registered work and the composition of competencies which comprise the prerequisites for registration, our view is that a system for a more streamlined recognition of registrations is both **sensible and achievable** (albeit with relatively minor administrative/regulator support and collaboration).



We estimate that more than 50 percent and as much as 80 per cent of work in the plumbing side of the industry could potentially fit within the category of “like for like” - and therefore potentially suitable for the application of the AMR principles. This is because there are elements of what could be termed “general plumbing” (water, sanitary and drainage plumbing) where there exists **broad alignment between the nature of that work in all jurisdictions**, and the skills and experience necessary for registration in that class across Australian States and Territories are sufficiently consistent.

However, it is in applying AMR to do with the balance of the work, be it 20 or 50 percent (where there is not currently “like for like” arrangements) that the challenges lie.

As our submission outlines, **plumbing registration does not mean exactly the same thing in each jurisdiction**, like a driver’s license does for example. Recognition cannot be “automatic” as the same way as driver’s licenses can. Responsible jurisdictional regulators will appropriately want to be informed about the new entrants and be confident that in recognising their skills and qualifications. This will require a process step or steps to be developed and agreed.

We submit **that something else which needs to be developed and used to support any mutual recognition scheme for workers in our industry, is a current and comprehensive mapping analysis is required.** The purpose, significance, scope and utility of this foundational piece of work is outlined in more detail in our submission.

It will be important to the success of the scheme, no matter how broadly it is ultimately applied, that **a process is designed and agreed between participating jurisdictions, to support and facilitate mutual recognition of registrations.**

To our knowledge none of the mapping or process work described above, which is key to the success of any mutual recognition scheme, has been undertaken. Unless or until that work is undertaken, in consultation with stakeholders, **we cannot support the proposed Bill.**

Our concerns with the scope and operation of the proposed Commonwealth Automatic Mutual Recognition (AMR) scheme – and therefore our reasons for not supporting the NSW enabling legislation at this time - are set out in the following submission.

Yours sincerely

Theo Samartzopoulos
NSW State Secretary

SUBMISISON

1. Community safety is the paramount consideration

Plumbing and fire protection work is, by its nature, **extremely high risk**. Well-functioning and effective plumbing and fire protection systems are the community's first, and often only, line of defence against a range of hazards and risks. Professionally installed and maintained systems keep the public safe from a range of diseases, such as legionella, and toxic and volatile substances like gas and carbon monoxide. The health of the community, the amenity of the built environment, and our collective ability to manage water and use energy efficiently, are all inextricably linked to, and dependent upon, high quality, safe and reliable plumbing and related systems.

The primary way to ensure the safety of plumbing systems is to ensure the competence of those who install and maintain, service and test these systems. This is the key reason occupational licencing/registration exists in NSW and right across the Industry.

Occupational licence/registration is supported in each State or Territory by additional compliance measures including inspection, audit or other means to ensure that the plumbing system is both fit for purpose and of a standard that protects the health and welfare of the broader community.

Australia maintains the highest levels of sanitary drainage and water supply requirements in the world and is recognised internationally for its work in water efficiency and re-use and work in onsite treatment of sanitary waste and stormwater to achieve environmentally sound disposal. As these systems become **increasingly more complex**, we as an industry are aware than ever of having suitably trained and qualified individuals carrying out this work. We additionally recognise that on-going professional development is required by our industry as the rate of change in terms of plumbing products, systems and installation requirements increases.

2. The scope of application of Commonwealth's proposed AMR scheme

The focus of the Commonwealth's proposal, which the NSW Bill is intended to enable, is the inter-jurisdictional mobility of workers (as opposed to contractors). The proposed AMR system suggests that an individual who is "registered" (or licensed in some States) to carry out work in a specific occupation in their home jurisdiction, can carry out that same defined work in another jurisdiction without the need to inform or report to that jurisdictional regulator.

The proposed Commonwealth Scheme, as we understand it, does not specifically include or exclude licenced persons or contractors, and we have interpreted that this is because the terms registration and licensing have different meanings in different jurisdictions.

When applied to our Industry, the distinction between registered and licenced persons is significant. Registered persons (workers) and licensed persons (contractors/employers) contractors have significantly different levels of responsibility. In our Industry context registered persons are workers employed by a licenced person, and it the licensed person who takes **technical and compliance responsibility** for the for the work undertaken. However we also note that the language of registration and what the terminology means in practice and in terms of the regulatory accountability and responsibility, does vary across jurisdictions.

Also, each jurisdictional regulator has a different mode of ensuring compliance of a plumbing system/installation with the requirements of the National Construction Code (NCC). Some inspect all completed works, some undertake random auditing of completed works whilst others will inspect all stages of a plumbing installation.

The cross jurisdictional differences are significant. Victoria, for example, operates as a self-certification model, placing significant responsibility on the individual licenced person to certify to the quality and safety of their work. Other states are at different points along a regulatory continuum, where full self-certification is at one end and full, staged inspection by third party Inspectors is at the other.

These cross jurisdictional variations in regulatory approach requires that the individuals who work within that jurisdiction have knowledge of what their responsibilities are in relation to reporting completion or in some cases commencement of that work. And, given that in some jurisdictions there is significant regulatory and legal onus on licensed persons, **it would be impractical and unsafe to allow the relevant regulator to be effectively by-passed in the manner envisaged in the proposed changes.**

However, these complexities are significantly reduced if we **limit discussion and application of the AMR arrangements to registered persons (workers) only.** If the AMR model was contained such that it applied only to individuals performing plumbing work for which they are entitled to under the supervision of a plumber who is suitably Licensed/Registered in that jurisdiction to supervise plumbing work, then the responsibility of understanding the unique compliance regime for that jurisdiction, and the associated health risks, can be significantly reduced.

This would **achieve the worker mobility objectives of the proposed scheme, without compromising safety.** If a person wished to carry out plumbing work in any other capacity, for example contracting directly with the public, carrying out plumbing work on their own property, etc they would be required to make application with that jurisdictional regulator for the relevant license.

Further, clarity is required about the extent to which the proposed AMR scheme applies to sole traders/contractors, and whether the scheme could be used by contractors to avoid applicable jurisdictional business registration charges. The AMR scheme as proposed could also act to **encourage the use of independent contractors over full-time employees which we do not support.**

3. Scopes of work for plumbing are not always directly comparable

Even when limited to registered persons only, like for like comparison across borders is not straightforward. Despite having a nationally recognised training package delivering qualifications that are largely the same in every State or Territory, **differences exist between the defined scopes of work across jurisdictions.**

Some work, such as roofing and stormwater, which are licenced/registered works in some States, are not within the scope of regulated work in other jurisdictions. An occupational licence may be required to do that work in other jurisdictions, but not necessarily a plumbing license/registration.

Fire protection work is another example. It is registered work in some jurisdictions (Vic and Qld), but not in others (WA). In this example, should a practitioner from WA seek registration in Victoria, there is no WA registration for the Victorian regulators to recognise. In other examples, the nature of the work undertaken under what is prima facie a like for like registration can differ significantly. In gasfitting for example, a registered person from a non-Victorian jurisdiction may be registered in gas but be experienced only in natural gas work. In Victoria, a gas registration requires that a practitioner has the competency to work safely with natural gas as LPG (the use of which is more widespread in Victoria than elsewhere).

There is also a **lack of regulatory comparability with respect to mechanical services and air conditioning** work across the jurisdictions. Medical gas work is regulated work (and so in scope of registrations) in some jurisdictions and not others, as are other specialised aspects of plumbing, like backflow prevention.

There are a range of **historical and practical reasons for these differences.** They include climatic and geographical differences between northern states and southern states in terms of temperature, rainfall patterns, leading to different stormwater and water management approaches in different jurisdictions. Historical access to natural gas means that Victoria has a larger gas industry than most other jurisdictions, requiring broader /more advanced skills than would be required in other jurisdictions.

Gasfitting in some jurisdictions is limited to Liquefied petroleum gas (LPG) whilst others with access to natural gas includes both. Underpinning knowledge about installation requirements are essential for consumer safety. In the Victorian gas example, the volume and type of gas heating units alone require a focus on skills that extend above installation of these appliances into routine servicing and maintenance, resulting in an endorsed/ specialised class of gasfitting work specifically for the servicing and maintenance of Type A Appliances.

It is therefore understandable where those jurisdictions have a greater emphasis on ensuring competence in specific areas by including a broader scope of defined work or in some cases requiring that an **individual maintains or establishes a greater level of competence** to carry out that work.

4. Opportunities to apply the principles of AMR to the benefit of the community and the economy

There are parts of the national Industry where cross jurisdictional variances are less pronounced, and where the **principles of AMR could be applied without adding significantly to the risk profile of the relevant work.**

The existing plumbing training package reflects that commonalities do exist with water supply, sanitary plumbing, drainage (above and below ground) and parts of gasfitting work, which are delivered as a core requirement for the plumbing qualification.

Assuming the AMR scheme's application is limited to registered persons (point 2 above), we estimate that up to 80 per cent of the work of registered plumbers (workers) is within these classes of plumbing work and could potentially be undertaken across jurisdictions without creating additional community health related risks.

5. To be confident, jurisdictional regulators need clarity about what/who jurisdictions are being asked to mutually recognise

The extent to which the estimate (80 per cent) is valid, can only be determined with the aid of a detailed breakdown and analysis of the various relevant registrations across jurisdictions. This would need to include an **analysis of the scopes of work** within each of the registration categories and how they compare/translate across jurisdictions. This document would provide a **current and detailed breakdown** of the training / competencies / scopes / experience required for registration in a particular class, in each jurisdiction, to establish and demonstrate competency within that jurisdiction.

This exercise would build on and update previous similar work undertaken when national licensing was being progressed (2011) and to support the current Mutual Recognition arrangements. As envisaged in the "Core Elements of the Agreement", this work should be led by the State/Territory regulatory authorities:

- *identify the specific Industry related registrations* in every jurisdiction;
- *establish clear parameters around the scope(s)* of that registered work in each participating jurisdiction;
- and include a *breakdown of the units of competency required* for an individual to gain registration in a particular class of plumbing work.

This work is key in terms of operationalising the AMR principles. Jurisdictions need to be confident about exactly what and who they are being asked to mutually recognise, and to have that each jurisdiction needs to be able to refer to a definitive "one source of truth".

The development of a document of this kind should be progressed immediately, because in its absence jurisdictions have no way of knowing exactly what they are being asked to recognise. This **mapping document not only needs to be developed, it needs to be regularly reviewed and updated** to ensure that, for example, a Victorian employer hiring plumbers from interstate has a clear understanding of exactly what training/competencies/experience sits behind a plumbing registration certificate from another jurisdiction.

We would contend that on-going work to align existing scopes of work that define these activities specifically should be undertaken by the individual jurisdictional regulators. **Responsible regulatory authorities in each jurisdiction are responsible on the community's behalf for knowing who is doing what regulated work within their jurisdiction.** It therefore makes sense that as the responsible bodies, the regulators should work together to develop, maintain, update and ensure the accuracy and currency of this resource so that each can be confident about who is entering their sphere of regulatory responsibility.

Knowledge by the relevant regulator of, and the ability to communicate with, all registered persons working in a particular jurisdiction at a given time is also important for the purposes of industry wide **notifications**. From time to time, and to address new or emerging risks or consumer/community protection issues (regarding products, systems, disease control, hazard alerts) the regulator will be required to notify all practitioners working in

Industry or part of the Industry. Under AMR, and in the absence of a national register of registered practitioners, responsibility for notifying practitioners as required falls to the State/Territory regulators.

6. AMR application could be variable and potentially agreed on a bilateral basis (and then expanded upon)

If the detailed analysis work as described in point 5 above was undertaken, we anticipate that it would show that in many aspects of the Industry, **AMR could occur between one or more jurisdictions, but not necessarily all jurisdictions.** In Fire Protection for example, only Queensland and Victoria have an applicable, government/regulator backed registration scheme for those workers who instal and maintain lifesaving fire protection systems. There would be no risks to the community in a mutual recognition system for fire protection professionals between those two States. * It should be noted that the Queensland and Victoria comparison applies to sprinkler fitting only. Other types of fire protection systems (e.g. special hazards non-wet, light electrical, passive etc) are different between the two jurisdictions.

7. AMR should apply only to registrations provided by recognised by government regulatory authorities

In some jurisdictions, skills are recognised by **industry accreditation schemes** (as opposed to state regulators). Accreditation schemes have their place as part of the overall consumer protection and quality assurance process, but they are not recognised in the Australian Skills Framework and are not a like for like comparison with registrations or licenses provided by jurisdictional regulators.

A relevant example is fire protection in NSW, where fire protection workers are accredited by an industry association, but not registered or licensed by government. In Victoria, fire protection professionals must have completed a Certificate III level (three-year apprentice level) qualification before they are eligible for registration or licensing. Someone from NSW who works on sprinkler systems and is accredited by an industry association or similar, should not be mutually recognised as registered fire protection professional in Victoria which is three-year qualification. In this example, the Victorian regulator, or a Victorian employer, could have no confidence that the skills accredited by a non-government body equate to those of the qualified Victorian worker who is registered as competence to work safely by the State regulator.

Summary

The PTEU, in part, supports the intent behind the principles of AMR. **However, we do not agree that at this stage, the proposal (as it applies to the Industry) has sufficient detail to ensure that consumer and community safety would be maintained; and the technical, compliance and oversight requirements of each existing jurisdictional plumbing regulator can be met.**

We submit that the challenges and risks associated with AMR in the plumbing context are significantly reduced if the application of the scheme is contained to registrations (as opposed to licenses). Limiting the scope so it applies only to practitioners who undertake regulated plumbing work under the supervision of suitably licenced contractor in the State/Territory in which the work is undertaken.

If the necessary preparatory work was done (community safety was guaranteed, all stakeholders had a clear understanding of how mutual recognition would work in NSW, what the implications for industry are, and what aspects of the trades will be subject to AMR), then the PTEU would be able to reconsider its support for the proposed Bill.

However, unless or until the necessary work is done – and the risks accurately assessed, and the requisite level of industry understanding achieved - we cannot support the proposal.