REPORT ON PROCEEDINGS BEFORE

PORTFOLIO COMMITTEE NO. 1 – PREMIER AND FINANCE

MUTUAL RECOGNITION (NEW SOUTH WALES) AMENDMENT BILL 2021

UNCORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday, 27 April 2021

The Committee met at 9:30.

PRESENT

The Hon. Tara Moriarty (Chair)

The Hon. Mark Buttigieg
The Hon. Ben Franklin (Acting Deputy Chair)
The Hon. Taylor Martin
The Hon. Adam Searle
The Hon. Walt Secord
The Hon. Natalie Ward

PRESENT VIA VIDEOCONFERENCE

Ms Abigail Boyd
The Hon. Catherine Cusack

The CHAIR: Good morning. Welcome to the public hearing for the Portfolio Committee No. 1 inquiry into Mutual Recognition (New South Wales) Amendment Bill 2021. The inquiry has been established to consider the merits of the bill, examining issues surrounding the proposed referral of powers to the Commonwealth Parliament. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land. I would also like to pay respect to the Elders past and present of the Eora Nation and extend that respect to other Aboriginals present. Today we will hear evidence from a range of witnesses including the Productivity Commissioner, the New South Wales Cross-Border Commissioner, union representatives and industry association representatives.

Today's hearing is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. Media representatives are reminded that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, so I urge witnesses to be careful about any comments they make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. Due to the tight time frame for this inquiry, the Committee has resolved that there will be no questions on notice for this hearing. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties.

PETER ACHTERSTRAAT, NSW Productivity Commissioner, sworn and examined

The CHAIR: I welcome our first witness. Thank you for the submission that you have provided to the inquiry. It was very helpful. You are now welcome to make a brief opening statement if you wish.

Mr ACHTERSTRAAT: Thank you very much for the opportunity to say a few words in relation to the Mutual Recognition (New South Wales) Amendment Bill 2021. This is a very important piece of legislation. It is vital for the Commonwealth to then be able to pass legislation to establish uniform rules in relation to mutual recognition across the country. It is timely because not only does it improve productivity but it also helps reduce red tape for well over 100,000 people. A case study: If I was a roof tiler or a bricklayer in New South Wales and I wanted to take on a job in Queensland at the moment, the current rules under the existing mutual recognition rules would require me to contact the Queensland regulator of my trade and ask them if I could apply for a licence in Queensland. I would also have to pay a fee. I would then wait for a few weeks, up to four weeks, and then I would get the licence from the Queensland people. Once I get that licence and go on site as a bricklayer or a roof tiler or whatever, I still have to follow all of the Queensland rules.

Under the proposal here, the variation is moving from mutual recognition to automatic recognition. If I have a licence in New South Wales to be a bricklayer or a roof tiler or whatever, I could automatically go and do that work in Queensland without necessarily having to wait the 28 days et cetera to get a licence. And the reciprocal—of course the person from Queensland or Victoria who has a licence to undertake a particular trade could come to New South Wales, but that is just the start. They still have to follow all the rules that any licensed tradesperson in New South Wales has to follow. They may have to have trust accounts, they may have to have fidelity, they have to follow occupational health and safety et cetera. There are three benefits. One is that there is no fee payable by people, a bit like the driver licence—you do not have to pay for a driver licence if you go into Queensland or Victoria. The recognition of the driver licence is automatic. So the first advantage is there is no fee payable.

Secondly, there is more certainty. Unless you have disciplinary action against you et cetera, you know that you can go and do the work over there. You do not have to wait the 28 days. Thirdly, very importantly, under the bill there is the arrangement for the sharing of information between the regulators in relation to the appropriateness of people to hold the licence so there is a lot more data to be shared. Finally, the reason I am so pleased with this so far is because in my *Productivity Commission Green Paper* report that I did last year I recommended that we move from mutual recognition to automatic mutual recognition. In fact I had a fallback in there that said that if that is not accepted by all States and Territories, why doesn't New South Wales just do it by ourselves? Fortunately we do not have to do that. That would have been a clear second best because if it was only us recognising other people, that would be to the detriment of our tradespeople working elsewhere.

When this legislation is eventually national, everyone does it and it works well. One clarification is that under the new rules it may well be that a regulator of a trade may say to particular tradespeople, "Please let us know before you come into our State." The legislation does not say they have to do that but the regulators—and in fact I think it is not a bad idea for the regulator of a trade to say, "If you want to come and work in our State, just send us an email and let us know." That way the regulator can then send you information in relation to any other requirements in New South Wales for working with children et cetera. I am very pleased to take questions, Chair.

The CHAIR: We will open it up for questions.

The Hon. WALT SECORD: Mr Achterstraat, what do you say to people who have expressed concern that instead of a lifting of boats you may in fact have a dropping of standards? What do you do with a jurisdiction that has less stringent or lower standards than New South Wales?

Mr ACHTERSTRAAT: That is one of the core questions that people have been asking. I think it is a very good question. Under the existing mutual recognition, it is working. At the moment it works; there is just a bit of paperwork involved. This is not all that different. Under the mutual recognition if someone has a licence, say, in Queensland to be a plumber then they cannot come to New South Wales and be a plumber and gasfitter. They can only come and be a plumber. They have to have the same rules. Let us take the automatic recognition of electrical trades on the east coast. That is working well so you have a situation where there is already automatic recognition in Queensland, New South Wales, the Australian Capital Territory and Victoria for the electrical trade. That is working well.

Others have said, Mr Secord, people might shop around and their home State may be one with a much lower bar. There are a couple of answers to that. The first one is that your home State is your principal place of residence or principal place of work, a bit like a licence. You do not have people from Victoria thinking, "I have

to wait until I am 18 to get a licence. I might go and move up to New South Wales because you only have to be 17." It is very similar to the driver licence. The existing mutual recognition is working quite well except for the fact that tradespeople have to have all of these licences and all of this red tape and they have to pay all these fees, so there is not a great deal of difference on that in my view.

The Hon. WALT SECORD: What happens currently in border cities—Queanbeyan-Australian Capital Territory; Albury-Wodonga; Tweed-Gold Coast? Do people just accept that it is part of business having two sets of—

Mr ACHTERSTRAAT: Let us talk about what should happen and what happens in practice may be different. Unfortunately, what happens in practice may well be different. What happens is if someone is in Albury and there is a job comes up in Wodonga, at the moment those people probably generally, if it is a regular thing, would have applied to the Victorian regulator and would have a licence. But if it is an emergency—if there is a bushfire or a flood and they have quickly got to get over there and they have never done work in Victoria before, at the moment they have got to go to the regulator and apply and that could take some time. At the moment, those who are regular I would imagine they would be part of the 140,000, or whatever it is, who have dual licences in various States. Under the new arrangements they would not need to have that.

The Hon. WALT SECORD: There are calls for certain sectors to have what are called loosely carve-outs, just the general carve-out.

Mr ACHTERSTRAAT: Another topical question, a very good question that we have been asked in the past. We can say we have got data in relation to the existing mutual recognition for roof tilers or whatever—it is working well. There are some newer ones that are going to be added—teachers, for example. There may not be the data there, and I will be the first to admit it, to be able to say we are ready to move straight to automatic mutual recognition of teachers. If that is the case, one of the benefits of a committee meeting like this is we tease out those sorts of things, and we might say that under the draft legislation there can be a six-months' hiatus while there is more work done to see whether a particular occupational licence should follow, or in extreme cases if it is shown that there is a substantive risk, then there is a five-year carve-out exemption for it.

So that is one type of carve-out and I would encourage the departments and others to look at this, if the legislation is passed uniformly and it applies to 99 per cent or whatever of trades, if there are specific trades or occupations—teaching, and there may be others—we need to do a little bit more work to see if there are any unintended consequences. I think that is vital because most legislation can have unintended consequences. So that is the first part. The second part about carve-outs is if there is already a national administration on something, like lawyers or GPs or nurses or whatever, then that does not apply because they have got their own requirements. So I guess there are two types of carve-outs and I would encourage people to test the newer ones that are coming and to say, "Maybe we should wait the six months" on the teachers or something like that.

The Hon. WALT SECORD: Madam Chair, maybe we should ask Ms Boyd—

The Hon. BEN FRANKLIN: I actually have a couple of specific follow-ups on that issue if that is all right, Madam Chair. With regard to the carve-outs, the exemptions and so on, if there was an exemptions power in the bill do you think that that exemptions power would be enough to address the substantive risks which have been voiced in the public domain about automatic mutual recognition [AMR]?

Mr ACHTERSTRAAT: Yes.

The Hon. BEN FRANKLIN: Do you want to elaborate on that or are you just—

Mr ACHTERSTRAAT: And that is the beauty of these exemptions and the beauty of a committee meeting like this where we are reading through some of the submissions and we can see that this six-months' exemption—which can be rolled over into 12 months to actually look at it in a lot more detail—the five-year one is a little bit different; that is in relation to if it can be shown that there are risks it should be carved out for five years—but the six-month one where I think more data is needed, talk to more of the affected players et cetera, and the beauty of that, I think, is that New South Wales will not hold up the national legislation; it will go and we can get all this productivity gained by people who have got a myriad of licences, people paying all this, we get all the benefits, but if there are a couple of licences where we are not 100 per cent sure—working with children, which I do not profess to be an expert on, that could well be one with the teaching side, where we have got to drill drown a little bit further and review it.

The Hon. BEN FRANKLIN: Thank you. On the five-year one, the more serious concerns, do you think that those exemptions should be permanent or they should be temporary and potentially subject to review after the five-year period, and why would you argue one way or the other?

Mr ACHTERSTRAAT: I do not have a strong view on that. The legislation has got the five years in it; I think that is plenty of time to look at the risks—they may have evolved, the world may change, things like that. I do not have a strong view one way or the other.

The Hon. BEN FRANKLIN: But if, for example, those risks remained after five years you would obviously be supportive of then continuing that if those restrictions were temporary.

Mr ACHTERSTRAAT: That would be my view absolutely if those risks remain, clearly, and that is the beauty of the way it is drafted.

Ms ABIGAIL BOYD: Good morning. I have just got a few points picking up on some of your comments, Mr Achterstraat. As you know, there is this huge concern about the idea of forum shopping, going and getting a qualification from a lower-quality State, and you mentioned there the driver's licence example. I put it to you that that driver's licence example is not really the same thing when you are dealing with someone who is a 17-year-old thinking, "Do I go all the way to a different State to get my licence or just wait another year to get it in Queensland?" They are not the same sort of people as those who are trying to get a qualification to earn money. So I would say that the incentive to forum shop if you are a tradesperson or a professional is perhaps a little different to a 17-year-old getting a licence. Do you have any other examples to sort of allay those concerns?

Mr ACHTERSTRAAT: I agree with you in relation to your first point. The second point I will discuss in more detail—it does not mean I disagree, it just means I will discuss it in more detail. The first point I do agree that the driver's licence example is not an exact one—I just gave that as a bit of an example—but I accept the fact that it is very different. Other examples are basically every trade that has been operating under the existing mutual recognition scheme, there is a myriad of trades that have been operating under that. Under the existing mutual recognition scheme people apply to the second State—let us say the home State and the second State—and the vast majority are granted it. There does not seem to be evidence of forum shopping at the moment under that, so I do not see how it would be any different under the automatic mutual recognition.

Ms ABIGAIL BOYD: I do not profess to understand the rules of every single professional organisation, but would it not be the case that you would go through that mutual recognition process at the moment but there is still the potential for additional rules to be put on particular trades, for example? So if you do come from a jurisdiction that is seen not to have the same level of qualifications then you do not get that mutual recognition without going and doing an additional course or getting an additional qualification. Is that correct?

Mr ACHTERSTRAAT: My understanding is that under the existing arrangements the second State regulator cannot impose additional qualification requirements on the licensing. However, if a licence in one State says I can do plumbing only but the licence in New South Wales is a combined plumbing and gasfitting, then clearly the plumber coming into New South Wales can only do part of it—cannot do the whole lot. So to answer your question: Are there examples, apart from the driver's licence, in the occupational side where it works? The existing mutual recognition scheme I say works, and the only difference between the new automatic one is that you do not pay a fee, you do not necessarily have to wait the 28 days and there is more information shared between the jurisdictions. The business of forum shopping, I am not sure why people would do it.

Let us take the example that is quoted: In New South Wales I think you do not need to have a licence to build certain commercial buildings—you do not need that licence. In Queensland—this is hypothetical—you do need that licence. The person in New South Wales cannot apply for the licence in Queensland because the one in Queensland cannot mutually recognise what you have got in New South Wales, because you have got nothing. That example, I think, does not mean that you will shop around to one where there is no licence needed, because that will not be recognised. If you shop around to one that says the licence in that State only allows you to do a certain thing, that will apply to New South Wales. The licence is effectively the same licence.

Ms ABIGAIL BOYD: You say that the existing mutual recognition scheme is working. Is your position, then, that it is about timeliness and red tape and making it a quicker process and that is why we have moved to an automatic mutual recognition scheme?

Mr ACHTERSTRAAT: It is about making it cheaper and quicker and giving more information for the consumer. The States under the uniform legislation have more ability to more streamline the sharing of information. I will just clarify on the quickness. At the moment, if you apply for a licence in another State, they have got 28 days to give you that licence. You can actually start work straightaway. It is a sort of negative licence. But then you have got the risk of not getting that licence. So numbers of people may not take that up. They might see a job in Queensland at the moment and think, "I see that job. I know I can start tomorrow. I have told Queensland. But I may not get the licence. So I won't start." So there is that gap. Having said that, my understanding is most licences are granted.

Ms ABIGAIL BOYD: You were giving the example of there being bushfires and people wanting to go from New South Wales to Victoria to help out and an automatic mutual recognition allowing that to happen. But we did see, during both the bushfire crisis and the COVID pandemic, the ability of Governments to make a huge number of exemptions in a very short period of time. Presumably, that could be used again if we did not have automatic mutual recognition.

Mr ACHTERSTRAAT: I imagine it could be used with foresight and on a case-by-case basis. That could be done, whether it is bushfires or whether it is floods or whatever. They could make those. It would be handier. Sometimes a flood is so quick that they cannot wait for the rules to change. You want the people to get there within a few hours. That might be a little bit different with a flood or a bushfire. Other ones, maybe it can wait until the regulations change.

The Hon. MARK BUTTIGIEG: I might just take you up on that last point you made, which is one that is often made: "There is an emergency situation, bushfires, floods, whatever, so let's let people in. Let's lower the standards." It is counterintuitive, is it not? You have got a more dangerous situation, presumably, an uncontrolled environment, and yet the vetting process is actually lowered to allow labour to come over borders quickly. Does that sound logical to you?

Mr ACHTERSTRAAT: I am not sure if I agree with the premise that there is a lowering of standards. At the moment, licences are recognised. Under the new system, it is the same; only, it is automatic. So I do not—

The Hon. MARK BUTTIGIEG: Does the current system not require you to front the local authority and say, "Here's my licence and qualification. Are you okay with it?", whereas, under the proposal, it is automatic by virtue of your licence or qualification in your home State?

Mr ACHTERSTRAAT: Correct.

The Hon. MARK BUTTIGIEG: If I am an electrician or a plumber and I go to Queensland in an emergency situation, under that scenario, I would not have to front the local authority. I would just go and do my work. Then, presumably, if something went wrong, that is when the recourse would happen, after the fact. Is that right?

Mr ACHTERSTRAAT: I will just unpack that a little bit because it is a topic I want to cover. The electrician one is a bit unusual because the electricians already have automatic recognition into Queensland generally. That is my understanding.

The Hon. MARK BUTTIGIEG: They have it on the eastern seaboard. That is my understanding.

Mr ACHTERSTRAAT: On the eastern seaboard. With the example of Queensland and New South Wales my understanding is, if there was an emergency, a Queensland electrician could come straight into New South Wales straightaway under the eastern seaboard automatic recognition one. In relation to other trades, at the moment, the person, as you say, says, "Here's my licence from Queensland." Then a notice comes back from the New South Wales regulator of that trade, saying, "Yes, we accept that licence. You can operate under that licence in New South Wales." The suggestion that the licence in Queensland has lower standards than New South Wales, if there are specific examples of that—that is probably the benefit of the six-month period, to have a look at that. I do not think that—

The Hon. MARK BUTTIGIEG: I might just take you up on that, Commissioner, because it was an interesting conversation, I think, an interchange you had with my colleague Ben Franklin on this. There was the discussion regarding the carve-outs. We had an interchange about the six-month and the five-year periods. There seemed to be general acceptance for certain—you used the example, I think, of tilers and roofers and driving licence. As my colleague Ms Boyd pointed out, that is a very generic example because of the uniform driving laws, obviously.

Mr ACHTERSTRAAT: I accept that.

The Hon. MARK BUTTIGIEG: I think we would all accept that there are certain occupations where there are going to be variances across States' jurisdictions. I think there was a general acceptance of a carve-out being a good idea in that situation. Is not the problem with this legislation that, a priori, it makes the assumption that everything is harmonised and the Minister has actually got to intervene for that carve-out to happen, whereas the argument that was presented previously seemed to indicate that if we have got issues, let us sort them out now, prior, and identify them up-front. Otherwise, we are simply ceding power to the Commonwealth, to let anyone go across borders and relying on ministerial intervention. Is that not the case with this legislation?

Mr ACHTERSTRAAT: As to when you sort out the unintended consequences—we could go through every single occupation and trade between now and 1 July, when the kick-off date is, and determine whether there

is an anomaly or not. I think the benefit of the six-month rule, which can be extended to 12 months, is that in those specific cases the rest of the trades can get on with their role, the way they want to do it, have the automatic recognition. They can all get on with it. Those where there is an anomaly or there could be unintended consequences—we can delve deeper and look at those. I have already recognised that, Mr Buttigieg, the teachers' one is one where even I would think there is probably a little bit more work needing to be done before we can move into that.

The Hon. MARK BUTTIGIEG: But, Commissioner, under the current legislation, the way that the enabling State legislation and the parent legislation—we have not even seen the final version of the parent legislation yet because it has not even gone through the Senate. But the State's enabling legislation, if we were to pass that through the House in the next couple of weeks, essentially, what we are doing is ceding power to the Commonwealth for none of that process that you are talking about to happen. We have not seen the parent legislation yet. Do you accept that?

Mr ACHTERSTRAAT: I have a slight different view, I think, on that. My understanding is that the six-month rule is applicable to the host and the second State. I stand to be corrected on this. My understanding is that, just as the States can determine, "We're going to ask visitors to let us know before they come"—they can do that—

The Hon. MARK BUTTIGIEG: Yes, but that is by ministerial discretion, is it not?

Mr ACHTERSTRAAT: I am not sure of whether it is ministerial discretion or what. I am terribly sorry. I do not know under the Act what it is. In relation to the six-month rule my understanding, sir, is that the State would be looking at that—the State's Department of Education or the State's department of fair trading. My understanding is that then the State could say, "Hang on. This one is not applicable." I am terribly sorry. I do not know the precise answer to that one.

The Hon. MARK BUTTIGIEG: The other thing I want to take you to just briefly is the hypothecated gains. I think in your submission you said PricewaterhouseCoopers have estimated a $2.6 billion productivity kick. Over what period is that?

Mr ACHTERSTRAAT: It is over 10 years.

The Hon. MARK BUTTIGIEG: You were saying before that there are chunks of AMR in place now. You identified the electricians on the eastern seaboard; there are cross-border arrangements for border towns. There is, in fact, a mutual recognition system in place now, notwithstanding the inconvenience of having to be vetted for 28 days and pay the fee. Your Federal counterpart did a report in 2015, which says:

> 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.

Essentially, what we are saying there is that for a temporary shift a degree of AMR is desirable but if people are likely to make permanent changes, then the existing system is more than adequate because people are going to live there so they should apply for their home. So that $2.4 billion hypothecated gain, presumably the majority of that would be from that permanent relocation—surely we are not hypothecating $2.4 billion over 10 years for temporary shifts in emergency situations, are we? Or what is the science under that study?

Mr ACHTERSTRAAT: Thanks. My understanding is that—I agree with the Federal Productivity Commissioner when he says that a person who moves permanently from one State to another should get a licence in that State. Under the guidelines, the home State is the principal State of residence so they would get that. If you move to another State you have to get your driver's licence there but then you also have to get your occupational one. Where the $2.4 billion comes in—I would have to go through it in detail, but my understanding is that it is in relation to the temporary ones or the one-offs: the 124,000 people who have dual licenses, people with two licences. They may be permanently living in New South Wales but on a regular basis doing work in other States. I am not sure if we would call that temporary or permanent but they have not moved to Queensland or wherever; they are still here. I think they would be covered by the $2.4 billion because there is a savings of them on their renewals and things like that and the paperwork. The people who have moved permanently to another State, I do not think this should even apply to them—the automatic mutual recognition—because they live in another State.

The Hon. MARK BUTTIGIEG: Just to zero in on that, is the $2.4 billion solely attributable to the transient people that you refer to?

Mr ACHTERSTRAAT: That is my understanding. And it is in relation to the time taken to fill out the forms. I think there might also be an element of downtime if a project has to wait before it can start until

tradespeople can come—I think there is a number. My understanding is that it does not relate to people who permanently move to another State.

The Hon. ADAM SEARLE: Mr Buttigieg was asking about the PricewaterhouseCoopers economic assessment. You have not done any independent verification about whether that assessment is good, bad or indifferent, have you?

Mr ACHTERSTRAAT: Personally, I have not.

The Hon. ADAM SEARLE: Well, your body?

Mr ACHTERSTRAAT: I would have to check that, Mr Searle. I would imagine that we sort of would have looked through the parameters et cetera and things like that to understand it.

The Hon. ADAM SEARLE: Sure. Some $2.4 billion seems an awful lot of productivity to gain—

Mr ACHTERSTRAAT: Over 10 years.

The Hon. ADAM SEARLE: Yes, but just from not filling in forms. There would have to be a bit more to it.

Mr ACHTERSTRAAT: Well, not filling in forms but also the certainty—people have got more certainty to be able to do things. At the moment they might not take something on. They think, "I have to wait 28 days before I can do something." So there may be an element of that in the $2.4 billion.

The Hon. ADAM SEARLE: The national Productivity Commission said that the existing mutual recognition framework is working well and that is certainly the evidence from trades and occupational groups we have had evidence from. That is also the evidence you gave earlier this morning.

Mr ACHTERSTRAAT: It is working—

The Hon. ADAM SEARLE: It is working well but it could be improved, is what you were saying.

Mr ACHTERSTRAAT: Absolutely.

The Hon. ADAM SEARLE: My last question is this: In that report Mr Buttigieg referred to from the Australian Productivity Commission, that commission said:

> 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.

I guess what the Federal Productivity Commission was saying is that particularly around complicated trades—maybe electrical, maybe medical gas here in New South Wales that we have recently passed legislation on—before you can have successful AMR you need to have a high degree of harmonisation with skills and the qualifications. Would you agree with that?

Mr ACHTERSTRAAT: In relation to the very complicated trades, there may be a case for that. The electrician one is working already. The medical one is not covered by this because of those ones, but in relation to motor mechanics and that sort of thing—when we talk, Mr Searle, about harmonisation, at the moment the roof tiler's licences from other States are accepted in New South Wales. Under the automatic one, it is automatically recognised. I am not sure if the harmonisation is essential for all of them except for the more complicated.

The Hon. ADAM SEARLE: Particularly where public health and safety—just using the electrical trades as one, the evidence we have received is not so much in the formal technical qualification but it is in the local wiring rules. So if you are in South Australia you will not be across the local wiring rules that apply in New South Wales and, therefore, subject to taking various steps, not every tradesperson coming into New South Wales would be able to safely conduct wiring in New South Wales and, presumably, vice versa.

Mr ACHTERSTRAAT: On that complicated electrical one with South Australia, I do not know enough about that. I know that it seems to work on the eastern seaboard.

The Hon. ADAM SEARLE: Subject to certain steps being taken.

Mr ACHTERSTRAAT: Precisely.

The Hon. CATHERINE CUSACK: My question comes back to driver's licences. I live in a cross-border community, as you may be aware, so it is a really complicated issue for us. When my son was doing his L plates, where we had more hours and more restrictions in New South Wales, I took him up on the M1 to Queensland. As soon as we crossed the border he increased his speed from 80 kilometres per hour to 110 kilometres per hour. I said, "What are you doing?" He said, "I am in Queensland now, I am allowed to travel 110 kilometres per hour." I went off and did my research about this and apparently he is not allowed to travel at

110. The licence provisions in New South Wales apply equally to when he is utilising that licence in Queensland. So the issue is, are the Queensland police trained and will they start to pull over L platers from New South Wales who are exceeding the 80 kilometre speed limit? I guess my question relates to—how does that work in terms of the enforcement of New South Wales licence restrictions in Queensland?

The Hon. WALT SECORD: It is up to Mr Achterstraat if he would like to answer that but it does not relate to the inquiry we are undertaking. It is about occupations, it is about skills, it is about trades; it is not about mutual recognition of driver's licences. Sorry, Ms Cusack, this is actually—

The Hon. CATHERINE CUSACK: I do understand—

The Hon. WALT SECORD: It is up to Mr Achterstraat if he would like to answer.

The Hon. CATHERINE CUSACK: I do understand that but can I just say, the issue is not about driver's licences; it is about the compliance of the conditions that have been imposed in a different State. I used the licence example because it is not about having the licence as a right to drive. The issue with the licence is about the conditions that have been placed on it by a particular State government and how those conditions will be enforced in a different State. That is the question that is at the crux of my confusion about this issue.

Mr ACHTERSTRAAT: I will apply that to the occupational licensing regime. If a person has a licence to do a particular function—a roof tiler or something in Victoria comes to New South Wales, they get the licence, they are able to do the roof tiling but they still have to comply with all the rules in New South Wales in relation to work health and safety. It is effectively the same as if they had a New South Wales licence, it is just that they have a Victorian licence. They still have to comply with putting all the safety—the skirtings, the harnesses and all that sort of stuff.

The Hon. CATHERINE CUSACK: Do you accept that some things they can do in New South Wales will be legal but they would not be able to legally do in Victoria?

Mr ACHTERSTRAAT: I cannot think of any examples of that.

The Hon. CATHERINE CUSACK: Hypothetically, if that were the case, that is the only example that I am firsthand aware of. I just do not know how that works—compliance or conditions placed on a person's licence by another State.

Mr ACHTERSTRAAT: If they have got conditions for disciplinary action et cetera, clearly that information can now be shared and that person will not get the licence; this would not apply to them. If there are conditions of doing the job properly—a bricklayer has to do things a certain way in New South Wales that they do not have to do in Victoria—clearly the Victorian tradesperson visiting New South Wales has to comply with the New South Wales laws. In addition to having a licence, they have also got to provide all the other things which a tradesperson with a New South Wales licence would have to provide.

The CHAIR: Thank you, Commissioner. We are at time. We are happy to let you finish, Ms Cusack, if you want to just wrap up, but we are at time for this witness. Did you just want to wrap up?

The Hon. CATHERINE CUSACK: They do not need to comply with those States' requirements; only the requirements of the State that they are working in—is that actually the answer?

Mr ACHTERSTRAAT: My understanding is if New South Wales allows someone to work here under a licence, they have got to comply with all New South Wales' extra rules. I am not sure whether, when working in New South Wales, they still have to comply with the Victorian rules. I am not sure.

The CHAIR: Thank you, Commissioner. We appreciate your time today. You are now excused.

(The witness withdrew.)

JAMES McTAVISH, NSW Cross-Border Commissioner, sworn and examined

The CHAIR: Thank you for joining us today, Commissioner. I note—and I am very happy to acknowledge that this is a very tight time frame for this inquiry—that we did not receive a submission. You are welcome to make an opening statement if you wish, and then we will proceed to questions.

Mr McTAVISH: I have just got a couple of minutes for an opening statement. The Office of the NSW Cross-Border Commissioner was established in 2012. As commissioner, I advocate for the resolution of cross-border issues for communities, businesses organisations and individuals in New South Wales. Over 620,000, or 8 per cent, of the residents of New South Wales live in the 29 local government areas which are joined or have very strong daily linkages with one of our four neighbours. A further 1.5 million people live in communities just on the other side of our border. These communities are inextricably linked with social, economic and cultural ties, meaning that I effectively advocate on behalf of 12 per cent of the Australian population who live in a border community of New South Wales or neighbouring jurisdictions.

Cross-border issues are no longer on the fringe of people's consciousness. Nobody can deny knowledge of the impacts of domestic border closures in response to COVID-19 outbreaks, with well-documented issues for residents and border communities accessing essential goods and services, getting to work and fulfilling legal and family commitments. For some industries, the impact of border closures was enormous. For example, the lack of access to skilled workers and labour brought the construction industry on the North Coast to a halt. Rural workers were prevented from harvesting crops, shearing sheep and doing stock work. The tourism sector along the Murray lost 50 per cent of projected revenue in 2020.

Border communities are one community with one workforce and one economy. However, businesses in border regions contend with regulatory duplication, multiple reporting regimes and inequitable access to training, support and services. In 2015, I established and continue to chair cross-border business advisory committees in the Albury-Wodonga and Tweed-Coolangatta regions. While there is some nuance and variation, I receive consistent advice through these committees and from direct correspondence with businesses and licence holders that most current mutual recognition schemes and systems are too complex, cumbersome and unnecessarily increase costs for businesses.

Holders of occupational licences often choose to limit their work to one State to avoid having to go through a mutual recognition process and multiple reporting regimes. Improving mutual recognition arrangements through robust automatic mutual recognition legislation and associated policies is vital for border communities. Enhanced AMR will reduce the regulatory burden for small businesses and licence holders and increase the pool of available labour and services. It is a necessary and important aspect of better regulation and improving economic and social outcomes for residents, businesses, organisations and communities in border regions.

The Hon. MARK BUTTIGIEG: Commissioner, I take your point about the quantity of people in those cross-border situations and the importance of facilitating that free flow of labour and goods and services across borders. But are you comfortable with the way that this legislation is presented in the sense that there will be occupations—and we have already heard evidence today from the Productivity Commissioner, who readily accepted that there were issues and that certain trades require carve-outs. Are you comfortable that a piece of legislation which presupposes that everyone should be subject to this and then leaves it to ministerial discretion to carve out is the way to go? In other words, what I am saying is that isn't it possible to satisfy the concerns from someone like you, from your perspective, and facilitate that cross-border flow and also preserve those high-risk occupations where there are great variances and which could cause safety issues? Is that a reasonable statement to make?

Mr McTAVISH: I think everybody that lives in these border communities shares concerns around standards in occupational licensing generally. People are very concerned that when they get their house built or when they get work done in their home that the person who comes to do that work is appropriately qualified and is able to do the work effectively. I think as the legislation—or as the bill—is presented and as it is being proposed, a six-month period to allow agencies to get their ducks in a row, effectively, to make sure that they can ensure that their systems are in place to make sure that those people who are coming to do that work are able to do so effectively, efficiently and safely is important. The five-year carve-out where there are particular issues associated with public health and safety or other issues, I think, allows for those issues to be addressed appropriately.

Where I suppose the change in thinking in this is that rather than people and jurisdictions opting in, they have to give reasons to opt out. I think that reverse onus is something which allows for greater efficiency in the system. I note as well in relation to this that there are many people who we speak to who would be happy to work in neighbouring jurisdictions if we share information and data about business activity more effectively and efficiently. This is one piece of a broader piece of regulatory reform and red tape reduction. I speak with people

in Victoria, in the Australian Capital Territory, in Queensland and, to a much lesser extent, in South Australia. They want government to get out of the way so they can do their business more effectively, but good businesses—and bad businesses—should be held to account. That is why those safeguards around being only able to do the work that you can do in your home jurisdiction, being able to share information when people transgress or do wrong and being able to enforce compliance in that home State and in the State in which you are doing business is very important.

The Hon. MARK BUTTIGIEG: This is part of the problem, though, isn't it? The ability for regulators to enforce will be circumscribed to a retrospective regime rather than a proactive one. In other words, if I am a plumber in New South Wales and I want to go and work in Queensland, all I simply have to do is, by virtue of my plumbing licence in New South Wales, go and work. I do not have to notify anyone; I do not have to front up to a department. Then if I connect up a gas pipe to a water pipe and gas someone, that is when the prosecution occurs. Is that not the case?

Mr McTAVISH: Those arrangements exist now for the bulk of occupational licences anyway. The works that are undertaken under those specific occupational licences will still be subject to the same standards that exist now and people will have to comply with their home State licence requirements as well.

The Hon. MARK BUTTIGIEG: I do not think that is right, with all due respect, Commissioner. I think that under the current system, which is not automatic, you are required to front up to a State regulatory authority—in New South Wales, that would be the department of fair trade—and get your qualification vetted for the suitability of a like-for-like trade or occupation. Under the new proposal, that is not required. So there is no pre-vetting, which is the issue.

Mr McTAVISH: No, and I agree with that. The issue of the standard of work being performed is still subject to the same standards in each jurisdiction.

The Hon. MARK BUTTIGIEG: To your point about the productivity increases and the benefits to business and government getting out of the way, in practice is this not simply pushing the onus of responsibility onto the employee and the employers? Say, if you are a small business employing a team of 12 plumbers, you will now have to understand this legislation and understand the implications of it in the sense that if I employ someone from New South Wales, and I am a Queensland plumbing firm, and this bloke comes up and makes a mistake, I am going to have to wear it because I did not make sure that he complied with the same laws in Queensland. Now if I were an employer and I were not across those, again it is going to happen after the fact. But if I were diligent and I did take all those necessary steps, all that burden and compliance has now been pushed onto the small business. Is that a concern?

Mr McTAVISH: Under work, health and safety laws anyway the onus rests with the business owner and operator in the main. The person conducting the business or undertaking is required to ensure that his or her people are working to appropriate safety standards, wherever that may be. And that is common across all jurisdictions, and despite the fact that there is some misalignment in some of the workplace health and safety legislation, for example the Victorian work, health and safety legislation is not harmonised with New South Wales, the onus still sits with the person conducting the business or undertaking to make sure that that environment is safe. For the tradesman who is doing the work, there is still the requirement—and it exists now—for them to be conducting that work in accordance with the prescribed standards in that jurisdiction.

The Hon. MARK BUTTIGIEG: Sure, but I suppose my point is if I am an employer or employee and I go to the Fair Trading NSW and it says "Yes, Mr Buttigieg your electrical qualification is equivalent to the Queensland regime, you are good to go" then the degree of responsibility on the employer and the employee is obviously diminished because the department as vetted it. Do you see the issue?

Mr McTAVISH: I understand the concern in this. I think that the six months' window to allow agencies to get all of their policies, processes and practices in order should allow most of those issues to be addressed. Where there is a continued issue then agencies can apply for a five year carve out—as it has been previously described—where those public and safety or other serious issues do exist. I think that the previous attempts to push automatic mutual recognition before have been hamstrung to a very large extent by some State processes which enabled opt-out much too readily. What this will do is allow jurisdictions to opt out but with evidence. That evidentiary bank is what does need to be provided as part of this and included in the Commonwealth's bill. It is a particular provision of that intergovernmental agreement that every jurisdiction, with the exception of the Australian Capital Territory, has this in place by the end of this financial year. We know that there are substantial concerns that exist about that very compressed timeframe, and I expect that there will be a number of agencies who will apply for that six months, or longer carve out, to make sure that they can get their processes and procedures in place.

The Hon. WALT SECORD: Mr McTavish, you said in your answer to Mr Buttigieg that some of the opt-out would be taken up too readily. What is the balance between opting out and actually genuinely opting out? What do you think?

Mr McTAVISH: I am sorry I do not understand the premise of the question.

The Hon. WALT SECORD: You said the opt-out provisions could be taken up too readily by some—

Mr McTAVISH: That is under previous efforts under automatic mutual recognition. We saw the failure of the National Occupational Licensing Scheme and the National Occupational Licensing Authority where some jurisdictions opted out entirely meant that the system fell over. What this does is it allows New South Wales to align activity with the Commonwealth and with that intergovernmental agreement it commits all other jurisdictions, with the exception of the Australian Capital Territory, to do the same.

The Hon. BEN FRANKLIN: In your opening statement commissioner, you said the current mutual recognitions schemes are too complex and cumbersome in terms of how they work for particular border communities. Will you go into that a little bit more and talk to us about what specific issues you found amongst border communities in terms of the difficulties and the potential problems that exist with current arrangements?

Mr McTAVISH: Most of the businesses that we deal with within border communities are of the smaller to medium end. In some cases, sole operators, it might be a single trade person plying their trade in Albury-Wodonga. It might also be somebody who is working for a larger builder under subcontracting arrangements, or it might be a medium size or a larger size company which has more robust and substantial resources to do their compliance and reporting activity. What we find is that most people that operate in a trade environment or a licensed environment in border areas hold that dual registration through mutual recognition arrangements or other arrangements. They do find it enormously frustrating about the need to go through, in some cases, every 12 months to two years a process of reapplying for the licence that they have held for a period of time not only in their home State but also in their neighbouring State.

What we do see as well is that there is enormous frustration about the inability of different jurisdictions to share information appropriately about business activity, about what is going on in the economy, about the day-to-day activity that exists in these border communities. We see the principle that we try to embody—and it is Premier's priority—of tell government once, as not being the lived experience for people in these border communities. Our regulators do not talk well enough to each other across the border. Our compliance people do not talk well enough across the border. Our agencies do not talk well enough across the border. When it comes to licensing regimes, the systems are not automated. They are very process driven. They are reliant on individuals and not systems. While they do work they are very cumbersome. The lived experience of many licence holders that we talk to is that after a period of time, if there is not the work that would drive them to really hold those two licences, they will just stay at home in Victoria.

The Hon. BEN FRANKLIN: The Productivity Commissioner gave the Committee four fundamental reasons that he supported this scheme which were: it is less red tape and obviously no fees payable potentially; it provides more certainty; it allows for greater and automatic sharing of information between regulators which is the point you just made then; and they do not have to necessarily wait for the 28 days in order to actually start work because they know they are going to get it immediately. Do you agree with those potential advantages? Is there anything else that you would add in terms of a reason that this legislation should be proceeded with?

Mr McTAVISH: I agree with all of the four elements that Mr Achterstraat raised before. I would also add that it increases people's confidence about living and working in these border areas. We have high degrees of mobility of our general population. We have border communities—2.1 million people live in border communities and a substantial proportion of them go to work in their neighbouring State. Of those, a substantial proportion hold occupational licences. The other part in this is that if we do not make life simpler for people in these border communities we are missing out on opportunity in regional New South Wales and in our neighbours.

The fact is that we are so inextricably linked to our neighbours in our everyday life, in our economy and our regional development strategies in New South Wales across borders. So our functional economic region for Albury and Wodonga is Albury and Wodonga. Our functional economic region for Tweed Heads extends into Queensland. They are one economy; they are one workforce. We have an obligation, I think, as Government to be making it easier for people to do business, easier for people to get work, easier for people to access training and easier for people to get the services and goods that they need from a skilled workforce.

The Hon. BEN FRANKLIN: A year ago we went through appalling, devastating bushfires and I wonder if perhaps you could talk to the potential usefulness of AMR in times of disaster recovery, particularly when there needs to be extra labour flowing between States.

Mr McTAVISH: Yes, okay. I suppose I can give you a personal perspective on this. I have previously been an employee of the State Emergency Service. I have been a major incident controller through New South Wales. I have done inter-jurisdictional taskforces to Victoria and to Queensland, and I know firsthand the damage that natural disasters bring to communities. I also know how long it takes for some of these communities to get back on their feet. We still see, despite the herculean efforts of people in communities and in government agencies, that there are communities right across New South Wales and in Victoria and in Queensland and in the Australian Capital Territory who still need to get back to their homes. They still need to rebuild. They still need to rebuild their lives and they still need to get back to where they were as much as is possible. If we do not enable the provision of skilled labour, if we do not enable greater resilience within these communities, then we are perpetuating the problem that exists now, which is the inability of people to get back to normal.

That resilience piece within these communities cannot be understated. I note the line of questioning before: Should we just give a bulk exemption when we need to? I think that that is papering over the issue, which is this should be business as usual for all of these communities. We are a federated nation—I know that—and jurisdictions do make rules and laws in accordance with their own constitutions. But where it is sensible to acquiesce some of those powers, or to cede some of those powers or to acquiesce to the common good, we should actually look at options to do that. If that means that we share information more readily, which is really what we are talking about here, between jurisdictions to achieve an outcome which is for the betterment of these communities then I think we should.

The Hon. BEN FRANKLIN: So for you it is a fundamentally philosophical issue about why we should be going down this line?

Mr McTAVISH: Yes.

Ms ABIGAIL BOYD: I guess we have been hearing a lot about the concerns of a race to the bottom, the idea that if we have this scheme we will end up with people from lower-quality qualification States—that is not the way to say that, but I think you all know what I mean—coming into States with higher requirements without needing to meet those higher requirements. But then, on the other hand, we have what I think is a general acceptance that the current processes are too slow, they are cumbersome, they have some unintended results as a result of a lack of information sharing. Is there another route that we could take that would be a better compromise between those two positions? Are there other things we could do instead of automatic mutual recognition to improve the current system, to improve those information-sharing links for instance?

Mr McTAVISH: There is a substantial amount of work which is going on through National Cabinet and a couple of weeks ago it was announced that information and data sharing would be a principal piece of work going forward. Behind the scenes there is work going on between jurisdictions to enable that work to reach some decision pretty quickly, which is very encouraging. I note that there are some information-sharing arrangements between jurisdictions, particularly when it comes to noncompliance or people who are essentially poor tradespeople or do not comply with the regulations or requirements in their home State. But they are cumbersome and slow and they do, unfortunately, rely on individuals rather than systems. I see that where we automate processes as much as possible we are likely to achieve greater efficiency. I see as well that there are opportunities to do other lines of business reporting.

Why we, for example, make a small business in Albury which operates in both New South Wales and Victoria submit the same information to the Commonwealth, to New South Wales and to Victoria and sometimes also to local government in particular areas still—it eludes me as to why those businesses need to do that. So there are efficiencies that can be gained. But when it comes to mutual recognition of occupational licences, I think the bill as it is being proposed, or the legislation as proposed, provides a system which has suitable opportunity for arrangements to be put into place by agencies within six months—first of all by 1 July, then by 31 December and then within five years, by 2026. I think that there is quite a long way to go for some of those agencies and it will require some particular focus and effort. I think that mutual recognition schemes are working in Australia now but not efficiently. So this is, yes, quite often an efficiency thing.

Ms ABIGAIL BOYD: Just to sort of drill down into that then, I think what we are looking at with this scheme is two separate things. It is that streamlining and communication and information sharing automatically between States, which I agree with you is something that I think we could do a lot better or we could cut down with duplication of meeting requirements by having a central repository for information et cetera. But then there is this other element of this legislation, which is about, I guess, effectively overriding the autonomy of State occupation standard setters by allowing people to come into the State who have qualifications that would not meet that particular State's requirements.

The Hon. BEN FRANKLIN: But that is not right.

Ms ABIGAIL BOYD: Can we not have the first bit without also having the second bit?

Mr McTAVISH: Well I think, as it is presented, this bill does allow for the maintenance of standards in every jurisdiction. I would observe as well that every State and Territory is of the belief that their system is the best and every regulator has the view that their system is fit for purpose. We will always have that tension between jurisdictions and between regulators about the efficacy of their own system. What I know that this legislation is intended to do is to ensure that there is appropriate maintenance of standards in both the home State and the State in which the work is being conducted, and that the systems of government that sit behind this need to be developed to enable that efficiency in the market.

The other part that we should not undervalue here is the lived experience of people who are in these border communities that it is very difficult to deal with government on the best of days when there is regulatory duplication. If we can move out of the way with appropriate safeguards and increase the availability of labour in these communities that is, first of all, important for their daily life. Secondly, it gives confidence that the government in every jurisdiction is listening to their concerns. The third thing is that it will lead to greater opportunity. We have conversations with people who say, "I'd love to move to Tweed Heads, or I'd love to move to Albury or I'd love to move to Mildura, but I just don't think I could be bothered going through that re-registration process for my business".

Ms ABIGAIL BOYD: Sure, but can I just bring you up on that because no-one is disagreeing, I do not think—I am not disagreeing—that the current system is clunky and inefficient and it could be improved, and it would be great if we streamlined processes. But we are still dealing with two separate things. One is the processes, the automation and the information sharing between different governments and different levels of governments. The other—the issue that I think is at issue here—is the autonomy of State organisations to make Federal qualification requirements. I was questioning whether you need to be overriding or automatically recognising in one State the qualifications of another when the actual problem seems to be one of bureaucracy and processes that we could take other measures to improve. Do you agree that we could take other measures to improve those aspects?

Mr McTAVISH: There are measures that you can take to tweak the system. But the fundamental issue here is around how efficient those tweaks will make the system. There are national standards of training in most occupations, which jurisdictions apply differently. There are issues associated with the availability of training, which means that, in some cases, you can only get your licence in Victoria. If you live in Wentworth and you want to do an electrical trade, you have got to go to SuniTAFE.

Ms ABIGAIL BOYD: Would you say then that fundamentally this legislation is about overriding the additional requirements in jurisdictions? Is that what we are saying? It is not just about the process of getting that recognition but it is actually the fact that you have to get the recognition at all.

Mr McTAVISH: I do not necessarily agree that you are overriding the home State's requirements at all. The home State requirement for registration will remain for the occupational licence. If you move from Wentworth to Mildura, then you will need to change your licence to a Victorian licence and vice versa, because it is about the home State in which you reside and not the State in which you are doing the business in this case.

The Hon. BEN FRANKLIN: My understanding, Mr McTavish, is that under AMR you are only able to perform the activities that you are registered to be able to do or perform in your home State. That is right, is it not?

Mr McTAVISH: As is presented, yes.

The Hon. MARK BUTTIGIEG: Just on that point, Mr McTavish, do you accept though that the onus for that is on the employee and the small business because currently, as we said before, you have to present at a local authority to get your vetting. Under this legislation you will not because it is accepted that a plumber is a plumber is a plumber no matter which jurisdiction you are in.

Mr McTAVISH: That is not with the legislation says. The legislation, as is proposed, is that a plumber isn't a plumber isn't a plumber. There are different licence classes, restrictions and qualifications that exist in each jurisdiction. When you go to ply your trade in another jurisdiction, you are still bound by your home State licensing requirements.

The Hon. MARK BUTTIGIEG: Let me give you a practical example. If I am a plumber from South Australia and I am licensed for drainage water and I take that plumbing qualification, that licence, up to New South Wales and I just start work, there is no sanction on me, is there?

Mr McTAVISH: In terms of?

The Hon. MARK BUTTIGIEG: Well, the legislation says that by virtue of my drainage plumbing qualification in South Australia, I can go and work in New South Wales. I do not have to tell anyone. I can just go and work. Now, where the recourse comes in is if I make a mistake. That is when the prosecution comes in. So it is a passive system; it is not a proactive system. Would you agree with that?

Mr McTAVISH: There are still the requirements for standards to be adhered to in each jurisdiction.

The Hon. MARK BUTTIGIEG: No, I am talking now about when the recourse happens. Would you accept that that is the case?

Mr McTAVISH: It is not too dissimilar to the system that currently exists in that regard.

The Hon. MARK BUTTIGIEG: Well, no. Again, the relevant State authority needs to vet the qualification prior. So if that same situation were to happen now the secretary of the department of fair trade would have something to answer to, would he or she not, under that scenario?

Mr McTAVISH: The regulator?

The Hon. MARK BUTTIGIEG: If I tick off on a plumbing qualification to say, "Yes, you are good to go in New South Wales," and he or she goes and does something wrong, then the consumer has the right to go to the department of fair trade and say, "Well, why did you approve this licence?" Is that not the case under the current system?

Mr McTAVISH: I am not aware of instances where the department of fair trading has been held to account and there may well be legal proceedings—

The Hon. MARK BUTTIGIEG: Well, you cannot have—

The Hon. BEN FRANKLIN: Mark, let him finish the sentence.

Mr McTAVISH: But what I would say is that compliance is still an absolutely vital part of every industry and workplace health and safety is a vital part of every industry. That is why we have compliance officers from all of the licensing areas out on the ground very regularly making sure people are still compliant.

The Hon. MARK BUTTIGIEG: Sure. Could you tell me, Mr McTavish, how a compliance officer would go out and inspect a plumber when he has no idea about who he or she is or where they are working? Because there is no requirement to register, is there?

Mr McTAVISH: In a similar way now all of the work that is undertaken by different licence classes are tracked differently by different jurisdictions and by different regulators. If I get a plumber into my home now to do some drainage works, there is very little notification to fair trading of what he or she is doing.

The Hon. MARK BUTTIGIEG: So I am struggling to see then what the difference is, because on one hand you seem to be arguing for a deregulatory approach to free up goods and labour across borders because the current system is too cumbersome and burdensome and yet you are saying that there is no real—

Mr McTAVISH: No, I am not saying that at all. What I am saying though is that the same requirement for the standards to be maintained for compliance to occur exists now as will occur into the future. This is not a diminution of standards in any sector. It is just allowing people to work within their licence and within their qualifications as registered in another jurisdiction. If things do go wrong, if there is noncompliance, if there are standards issues, then the usual arrangements will apply regardless of where that person holds that licence.

The Hon. MARK BUTTIGIEG: Again, it would require a proactive approach then from the person who would presumably be a litigant—being the consumer or the person who suffered the malinstallation as a result of it. They may well have to then take action. It is not a government situation where the licence has been approved and therefore there is the responsibility on the government. We will move on because we do not seem to be getting very far there.

The Hon. BEN FRANKLIN: I was going to come back to the specific lived example of small business people. You gave evidence before that people do not move to border towns—or you have examples of people who do not move to border towns—because of the cumbersome nature of the need to then register in both States, noting the free-flowing economies of cross-border towns. Can you speak to that a little bit more? Because that to me was an extremely alarming suggestion.

Mr McTAVISH: The reality is that it is easier to operate a small business if your footprint is only in one jurisdiction. It is cheaper. If you can get the work in Coffs Harbour and you are only operating in Coffs Harbour, why would you give yourself additional complexity by moving to Tweed and doing work in Coolangatta where you have got a regulatory duplication and reporting requirements which are mirrored, and where you have

issues with differing approaches between jurisdictions around a whole host of issues. I speak to the Master Builders Association and the Housing Industry Association. They know that people on the North Coast, for example, because of their lived experience over the last 12 months are now only going to work in New South Wales. We had issues where we could not get—and I have got correspondence now from Murray River Council, where they cannot get an appropriate number of building surveyors to complete the work that they need to do to allow people to access the Federal Government assistance for home building.

Why would you go to there when you can go to Armidale or Orange or Queanbeyan and get a much more ready and simple lived experience? We have got work underway to address that now and the fact that the New South Wales Government is recognising the linkages between those economies formally with our economic development strategies and with changes to the Treasurer guidelines around assessment of cost benefit with the small fund that I administer with the cross-border infrastructure fund—we recognise that. We need to get other States and Territories to do more. We are doing as much as we can. My colleague in the Victorian Government Luke Wilson, the Victorian Cross Border Commissioner, is working not only with New South Wales but also with South Australia. If we do not address these issues, then our border communities will continue to get lower investment, they will continue to get less access to goods and services and they will continue to fall behind. The economic and social indicators, particularly in our western regions, are problematic and are made worse by the border.

The CHAIR: Thank you. We are at time now, Commissioner, so we are finished with your portion of questions this morning. Thank you for your time today. We appreciate it. You are excused.

(The witness withdrew.)

CHRISTOPHER WATTS, Senior Policy Adviser, Australian Council of Trade Unions, before the Committee via videoconference, affirmed and examined

The CHAIR: Thank you very much. The Committee has received the Australian Council of Trade Unions' submission to the inquiry, thank you very much. It is very comprehensive. You are welcome to make a brief opening statement if you wish.

Mr WATTS: Thank you, Chair. I will make a quick opening statement. I will not reiterate the points that are made in our submission to the inquiry. As I think is clear, we believe this is a premature reform that is being implemented prior to the hard work of standards harmonisation being done across many occupations and industries. We are not opposed to the concept of automatic mutual recognition if implemented correctly but we feel that this is an attempt to rush something into place that the system it is being applied to is not yet prepared for. We are concerned about the potential impacts it will have on worker safety as well as public confidence in the quality of work being done, as well as the loss of authority that this represents to the State training authorities and the potential burden that it places on small businesses and workers themselves to manage the recognition of licences and registrations across borders. I will leave that there.

The Hon. WALT SECORD: Mr Watts, what is your concern if New South Wales passes the legislation before it is finalised at the Federal level? What is the problem with that?

Mr WATTS: I think that there are a couple of problems with it. I think that the key problem is that it is not yet clear, until the Federal legislation passes the Senate, precisely what the state of the Federal legislation will be when it is enacted. I think there is a risk that the New South Wales House will be taking, in that case, that whatever the Senate ends up passing, or if indeed the Senate does end up passing something, New South Wales will be happy with that and happy to comply with it fully. I am not an expert in the New South Wales jurisdiction but I understand there would also be some consequential amendments that New South Wales would need to make to several other Acts as a result of this Act, which may or may not be desirable on the basis of what the final version of the Federal legislation looks like. It seems premature both in the context it is being applied to but also, as I say, to pass this legislation when the Federal legislation is not yet finalised and there is no indication it will pass unamended.

The Hon. WALT SECORD: Would you recommend that we, for a bit of abundant caution, at least wait until the Federal legislation passes the Senate so that we have a clear picture of what we are actually agreeing to and then assess at that point?

Mr WATTS: Yes, as our submission makes clear, we have much greater concerns than that but, yes, at the very least, if you do nothing else, it would be wise to wait for the Federal legislation to reach its final version before you pass any implementing legislation in your own jurisdiction. To leave it up to the Federal Parliament what the New South Wales jurisdiction does seems risky at best.

The Hon. MARK BUTTIGIEG: I might follow up on my colleague's line of questioning there and put it another way. Essentially what we are being asked to do by the Government is to pass this State-enabling legislation on the basis that the Federal legislation will look after everything. It has not even got to the Federal Senate yet. If we were to accept that and pass the State legislation unamended, and the current legislation at the Federal level did not change, what would be the consequences for your members?

Mr WATTS: As I say, we have a number of concerns about the legislation as it currently stands and primarily these arise out of the process through which the legislation has been developed, which was not a process where they consulted, either federally or in New South Wales, or where there was significant consultation with industry about the scheme, how it would function and how it might be applied. I think there was potentially one short meeting at the Federal level about how this scheme could progress and I do not think any of the changes that were recommended as part of that meeting were implemented.

In terms of impact on members, there is concern about safety in the workplace with the jurisdictional variations not being taken into account by the legislation, meaning that workers are undertaking work that they are not able to do safely in the jurisdiction in which they are operating. There are also concerns about, as I said earlier, the level of burden that this would place on individual small businesses and workers to be aware of the licensing regimes in other States. This creates a situation where, without State licensing oversight, a worker who comes over a border and assures an employee, an employer or a co-worker that they are licensed in their State under the qualifications they have is essentially asking that employer and all those other workers to take their word for it or do significant research of their own to ensure that that is the case. It is just not a feasible situation for a lot of workers or employers.

The Hon. MARK BUTTIGIEG: I get the feeling that part of the utility for the Government of this legislation stems from a degree of frustration on the lack harmonisation across State borders, which I think is something that industry, unions and stakeholders all agree has to happen. Is that your view? In other words, this has just gone on too long. Let's just mutually recognise everything automatically and that will force everyone to harmonise. Is that your sense of a lot of what this is about?

Mr WATTS: It is entirely possible that that is the motivating factor, yes. Business and unions, I think it is fair to say, share the frustration—the potential frustration—of government that harmonisation is taking as long as it is. But I do not think that is a good reason to move forward with a scheme that depends on harmonisation to make sense and to work. If that is the motivation that the Federal Government has to implementing this, it is a dummy spit of ridiculous proportions. We need to get down and do the hard work. That has occurred in some industries and occupations already. There are some harmonised occupations that I am aware of. We need to get down and do the hard work and to work with industry. The Government needs to have a part in that to harmonise the standards across the country, and manage and reduce the system that operates much like this one.

The Hon. MARK BUTTIGIEG: Just on that point, Mr Watts, because it is very relevant point, is it not the case that the vast majority of occupations subject to this legislation are actually harmonised and the occupations that we have raised concern about in the hearing to date are in the minority? In other words, if you are going to do this properly, would you not harmonise those outstanding minorities and let the others go through? Is that the way forward? From an Australian Council of Trade Unions [ACTU] perspective, you get oversight of a lot of occupations. Is that the case?

Mr WATTS: I do not have a specific numerical understanding of the number of harmonised occupations versus the number of non-harmonised occupations, so I cannot honestly say it is a majority or a plurality or anything like that. I would say if you are going to implement a scheme that depends on all occupations being harmonised, any percentage lower than 100 being harmonised is not a good situation to be in. If you are determined to implement this scheme while there are some outstanding occupations that require harmonisation, at the very least I would say you would need to exclude those occupations from this scheme. As I understand, the Electrical Trades Union has called in their submission for some of their qualifications to be excluded, and we support that. So, yes, if you absolutely had to go forward with it, I would say you should exclude any occupation that is not harmonised or where the industry, represented by employers and unions, does not support their occupation being included.

The Hon. MARK BUTTIGIEG: As currently presented, this legislation gives no autonomy whatsoever to the Parliament to determine that; it is purely ministerial discretion. Is that your understanding?

Mr WATTS: Yes, certainly that is my understanding of the Federal legislation. It seems to grant wide, unilateral powers to Ministers to make exemptions. But, yes, it is not clear that it provides any powers to anyone else to do so.

The Hon. NATALIE WARD: Thank you very much, Mr Watts. Thank you for your submission, your assistance to the Committee today and the work that you do. I am just trying to understand your submission and your position for the ACTU in relation to the risks that you talk about, in that, as I understand it—correct me if I am wrong—there are significant variations in occupational standards and that poses risks which you say are unacceptable risks. Do I understand your submission correctly?

Mr WATTS: Yes, that is correct. We believe that the jurisdictional variations of standards means that it becomes difficult to be sure whether workers are undertaking work in a jurisdiction that they are adequately trained in or able to operate in safely, and that the work that they produce—particularly for the trades, but in other areas, as well—is of a sufficient quality. That is a significant concern both for the workers, who might be put in a situation where they are required to do work that they are not comfortable doing, or they might be asked to work with people that they are not sure perhaps.

The Hon. NATALIE WARD: Sure, yes, and no-one wants that. I think we are all in furious agreement that we do not want that, but can I understand and perhaps just drill into that a little bit more closely to understand the risks posed? Have those risks been quantified or is this conjecture? I do not mean that disrespectfully; it is an important issue. But is there any quantification of this risk or any evidence that we can point to that AMR would pose an unacceptable risk to public health and safety?

Mr WATTS: I am not aware of any quantification of those risks that I can recommend to you. I would say that it is likely that the unions with specific coverage of areas would be able to give you a more detailed, conjecture-based understanding of the risks. They would be able to be more specific about precisely what the risks are and how they would arise in their particular industry. As you say, I think it is fair to say that there is nobody who thinks it is acceptable for workers—particularly in dangerous industries, but also teachers and the other

occupations we mention in the submission—to be working in an environment where they are not trained for the actual work they are doing.

The Hon. NATALIE WARD: Yes, I agree. My understanding is that New South Wales agencies are in the process of determining where the risks would arise from variations in standards or qualifications between jurisdictions—to determine exemptions, essentially; somebody is doing that work, quite rightly—and that regulators would be required to publish guidance about the operation of AMR in their State, which would include information about local laws. Does that not address that risk in the sense that somebody is quantifying and doing that work specifically, as opposed to us all saying, "There might be a risk, therefore we should not do it?" Should we not quantify it, see what they are and then try to address those risks specifically?

Mr WATTS: If that is the case and then exemptions are granted for all areas where risks are deemed to be unacceptable, it would address the problem, but it does not address the fact that the problem was created needlessly to begin with. Essentially we are looking at implementing a scheme which, as we say in the submission, is replacing a mechanism which currently we hear very few real complaints about from our members. Those people consider the current mutual recognition scheme to be effective and relatively quick to interact with.

The Hon. NATALIE WARD: Yes. You say in your submission that the current mutual recognition [MR] scheme is working fine.

Mr WATTS: Yes, as far as we are aware. So it becomes a question of—yes, you can ameliorate the risks you create by implementing this system, some might say recklessly and needlessly, but why would you wish to do so when you could simply not implement it at all?

The Hon. NATALIE WARD: But if they were ameliorated, would that, in a sense—I accept that is not your preferred position. But if they were ameliorated, would that not deal with that specific issue that you have raised?

Mr WATTS: It would deal with that specific issue, yes. There would still remain the other issues that we have raised around the burden on small businesses, employers, workers and those things.

The Hon. NATALIE WARD: Yes, I understand.

Mr WATTS: It would deal with the specific jurisdictional risks, but I think you would also be depending on every other jurisdiction to do the same analysis and make the same decision as you—

The Hon. NATALIE WARD: Yes, thank you. I do not want to take all the time because I know my colleagues want to ask you questions. I just have one more. Building on that, I understand there is an existing east coast electricians AMR scheme. Given my limited understanding of that—but I understand it exists—should we not be building on the success of that scheme that already exists? Is that not something that we should be building on, as it is already there, and making that more widespread?

Mr WATTS: I am not familiar with the scheme that you are referring to. As I say, I am not a subject matter expert in specific industries. I would say that if there are existing schemes that employers and unions in the area think are working effectively, then they should be the focus, rather than a scheme with significant issues. I could not be more specific than that.

The Hon. NATALIE WARD: Yes, I understand. So if that AMR scheme exists and regulators under this proposed bill are required or would be required to publish guidance about the operation of AMR in their State, which would include information about those local laws, that surely would specifically address that issue that is your concern, would it not?

Mr WATTS: As I say, once again, the availability of information about these risks does not necessarily ameliorate them entirely and once again puts the burden on employers and workers to familiarise themselves with that information.

The Hon. NATALIE WARD: Which they have to do ordinarily in the course of what they are doing anyway. Anyway, I will move on.

Mr WATTS: Which they may or may not, yes.

The Hon. NATALIE WARD: Yes, thank you.

Ms ABIGAIL BOYD: Thank you and good morning to Mr Watts. Coming off that conversation with my colleague Ms Ward, at the moment, as I understand it, we have a proposed scheme where it gets put in place and then the Minister is the one who decides whether or not to exempt a particular occupation on the basis of these risks. When I have questioned the Government about this previously, my recollection is that the process is that

there is an application made to the Minister, they assess the risks and then that determination is made. Do you believe that that discretion should be left with the Minister? Is that the best person to assess those risks?

Mr WATTS: I think that is a complicated question. I think you would want the State regulators to have input into that decision-making process. You would want a more formalised role for unions, as well as employer groups, in that decision-making process. I am sure that a responsible Minister would take the input of those groups into account—you would hope so—but I think a formalised role for those groups would make more sense. In terms of who makes that final decision, because of the structure of the Federal legislation it is hard to say it should be anyone other than the Minister. In an ideal world I am sure there would be other views, but I am not an expert on the New South Wales context so I probably could not speak to those.

Ms ABIGAIL BOYD: I am just trying to imagine a future scenario. Say we have this scheme in place and then a problem occurs within New South Wales, and as a Parliament we decide that there needs to be greater regulation [audio malfunction] or different qualifications. Are we then reliant on the Minister to exempt that occupation because now we have higher standards than what is expected in other States? Is that your understanding of how it would work?

Mr WATTS: Yes, that would be my understanding—that, yes, the Parliament, essentially, would be subordinate to the Minister's judgement on that matter. I am not sure what ability the Parliament would have to make those judgements at all.

Ms ABIGAIL BOYD: So then if the Minister did not like the result of that particular bit of legislation, the Minister could conceivably decide not to exempt and to keep the mutual recognitions across the board.

Mr WATTS: Yes. Not being a lawyer, I am not sure what the actual interactions would be between, say, legislation passed to that effect and this legislation. But I certainly do not see anything in the current draft of this legislation that would require the Minister to take that into account.

Ms ABIGAIL BOYD: Sorry, I am putting you on the spot, but are you able to think of a better way then of those exemptions—is it something we should be looking to put into the original enabling legislation or should it be in the form of a disallowable instrument? Do you have any views on that?

Mr WATTS: Certainly anything that would allow Parliament to have some oversight of the Minister's decisions or input into those decisions would be a good mechanism. That ensures that it is not being left to the judgement of a single person, who I am not casting aspersions on, but I think that any single individual is probably more flawed than a group. So I think we would support any measure that gave more input into that by the people's elected representatives, certainly.

The Hon. ADAM SEARLE: Are you familiar with the New South Wales bill that we are looking into?

Mr WATTS: Sorry, I missed that.

The Hon. ADAM SEARLE: Have you had a chance to look at the New South Wales bill that we are inquiring into?

Mr WATTS: I have looked at the bill briefly. As I say, I am not a lawyer, so the text of the actual legislation is not very clear to me.

The Hon. ADAM SEARLE: I am looking at the bill now, and the bill seems to just refer all of the New South Wales Parliament's powers over mutual recognition to the Commonwealth Parliament. I do not see in the New South Wales bill anything giving New South Wales Ministers the power to exempt people or occupations. That must be in the Federal legislation, is it?

Mr WATTS: That is correct. The Federal legislation, yes, gives Ministers the power to make a determination. I do not believe it is referenced in the New South Wales legislation.

The Hon. ADAM SEARLE: No. The Commonwealth legislation is currently before the Commonwealth Parliament, and it is not in its final form, correct?

Mr WATTS: Correct, yes.

The Hon. ADAM SEARLE: So all of those safeguards and mechanisms that we may be relying upon as providing safeguards to look after consumer protection and public safety—they could be changed by the Commonwealth Parliament in a way that we cannot presently foresee. That is possible, is it not?

Mr WATTS: Yes, and that is one of the risks that New South Wales is taking by trying to pass this legislation even before the final version of the first version has passed the Federal Parliament. As you say, there

is an ongoing risk of change at the Federal level, which might be slightly lower than the immediate risk of change, but it is still there nonetheless.

The Hon. ADAM SEARLE: The New South Wales bill expressly permits the Commonwealth Parliament to change Commonwealth legislation in this area, so that would seem to countenance the possibility that all of these safeguards that various people submitting to us in this inquiry have hung their hat on may not actually be there in either the final form of this legislation or in some future iteration. That is a risk, is it not?

Mr WATTS: That is certainly my understanding, yes.

The Hon. ADAM SEARLE: Okay. Moving subjects, your submission essentially says that this is a solution in search of a problem. From most of the evidence we have received, the existing AMR scheme appears to be working quite well. Is that your understanding?

Mr WATTS: Yes, we certainly have not received feedback from our members or our affiliated unions that the current scheme is in any way a significant roadblock.

The Hon. ADAM SEARLE: For example, the specific east coast electrical trades arrangements, which I think my colleague the Hon. Natalie Ward mentioned, were specifically developed by those jurisdictions after a degree of harmonisation in Victoria, Queensland and New South Wales. That is the case, is it not?

Mr WATTS: As I say, I am not an expert.

The Hon. NATALIE WARD: Me neither.

Mr WATTS: That is my understanding of that, yes, but I have no specific expertise in electrical trades.

The Hon. ADAM SEARLE: But if we were to, say, use that as an example of how mutual recognition could be grown, that would suggest that the hard work of making sure that we are really talking about like for like when you are having the gateway to mutual recognition opened is very important, is it not—to make sure that there is a real equivalence?

Mr WATTS: Yes, that is certainly the case. And a process that involved government lawyers and unions working together to do that hard work of harmonisation—to ensure that, yes, when you cross a border and you are called an electrician or a plumber you are talking about the same thing—is absolutely necessary before this kind of scheme is implemented.

The Hon. ADAM SEARLE: Sure. And in relation to the cross-border issues—because we have heard from the Cross-Border Commissioner—the cross-border electrical trades issues are governed by a specific piece of legislation anyway, so at least in relation to that set of trades that might provide a template for ironing out border issues in other licensed occupations, might it not? Again, a collaborative approach working through the issues?

Mr WATTS: It may very well do so, yes.

The Hon. MARK BUTTIGIEG: I have a few follow-up questions. The east coast arrangement, which my colleagues the Hon. Natalie Ward and the Hon. Adam Searle referred to, was in fact a by-product of extensive harmonisation. So is it your view that that would be the model; that you actually put the horse before the cart—you harmonise, then AMR, is the model—whereas essentially what they are suggesting here is that you AMR first and then, hopefully, harmonisation follows. Would that be an accurate characterisation?

Mr WATTS: It certainly seems, yes—that the Government's attempts here are to introduce AMR and then use the chaos that that creates for some occupations to build impetus for harmonisation, which I guess might work but will also significantly impact people in the meantime.

The Hon. MARK BUTTIGIEG: There are a couple of professions that have already been touched on. I understand there is an exemption for the law across jurisdictions. My understanding from reading the submissions is that Minister Mitchell has already put in writing that she intends to exempt the teaching profession. Is there any good reason why the law and teaching should be exempt and yet high-risk occupations such as electrical, plumbing, building trades should not?

Mr WATTS: There is no reason that I can think of that those particular high-risk trades should not be exempted on the same basis that teaching and the legal profession have been exempted: that there are significant variations within jurisdictions that would render it difficult to do the job properly without the requisite training.

The Hon. MARK BUTTIGIEG: Does the ACTU have any particular examples of trades or occupations that are chronic in that respect, that would take a bit of work?

Mr WATTS: I would not be able to speak to specific occupations. As I say, I would encourage you to talk to—I know the Committee is hearing from some of our affiliated unions. I think the ones that you named are top of our list. And, as I say, I think the exemption for teachers is a good move because there are significant issues there, but I would not be able to, off the top of my head, name any other occupations. But I know there are several building trades—once again not being able to name the specific occupation—where the same level of difference between jurisdictions exists and significant safety risks are involved.

The Hon. MARK BUTTIGIEG: I will wind up after this last question. Part of the problem here seems to be that you have got a productivity view of the world—"Let's just deregulate, and that will increase productivity and people will be able to go over borders and work until their heart's content"—but when you actually drill down into industry and occupation-specific anomalies between jurisdictions that is when the problems arise. As my colleague has pointed out, the fact that this legislation simply cedes all power to the Government to make it automatic and then it is up to you, as an individual occupation, to scramble to try to claw back—a lot of this has obviously been born out of a lack of consultation; otherwise, presumably, these issues would have been highlighted. To what degree has the ACTU been consulted in this legislation?

Mr WATTS: At the Federal level we were invited to a single meeting with the relevant department to discuss our issues as well as to place a submission into the early review. I think that meeting was an hour with a few other stakeholders and obviously he has not provided the version of this submission to a departmental review. As far as I am aware, none of the issues that we raised at that meeting or as part of the submission were accepted by the department or the Government as reasonable—

The Hon. MARK BUTTIGIEG: Sorry, Mr Watts, was there no follow-up on that? Did you not get a response to your concerns?

Mr WATTS: No, we received no response and many of our concerns were also purely about drafting issues in the legislation, which our legal area had looked at, which were also not addressed and which were not ideological beliefs but simple drafting issues.

The Hon. NATALIE WARD: Was that a federal meeting?

Mr WATTS: That is correct, yes.

The Hon. NATALIE WARD: Okay, thank you. As I understand it, your submission does not support AMR unless changes are made or it should not proceed at this stage unless there is no risk of interstate tradespeople avoiding enforcement. You are basically saying, "We will be left with this, ceding the powers to the Commonwealth and we will not be able to enforce work that is potentially below New South Wales standards and that we need a national standards test." Is that correct?

Mr WATTS: Yes, that is correct. We are not in principle opposed to the concept of automatic mutual recognition once harmonisation is achieved. I think most people would say that at that point it is a sensible step. We are opposed at this point, yes.

The Hon. NATALIE WARD: I accept the Federal sphere is what it is, but the State bill before us that this Committee is looking at would enable State regulators to take compliance action against interstate licensees. If something happens here in New South Wales with an interstate licensee, the bill specifically provides for regulators to be able to take compliance action. Are you aware of that?

Mr WATTS: Yes, I am aware that it creates some interstate jurisdictions for regulators in some cases—yes.

The Hon. NATALIE WARD: It goes further and also mandates information sharing between jurisdictions and between regulators and disciplinary enforcement between States as well. Are you aware of that aspect? That is built in automatically to the bill as it stands.

Mr WATTS: Yes, I am aware that the current bill allows regulators to share information about infringements and compliance actions across borders.

The Hon. NATALIE WARD: I guess my question to you is: Knowing that those local laws would still apply in the circumstances, can you point to any specific risks from variations?

Mr WATTS: As I say, I think the risks stand regardless of the level of amelioration. I do not think they can be reduced to zero by the measures that you have mentioned. There is also the fact that the automatic nature of the recognition here with no requirement for notification of the regulator means that it is difficult for the regulator to have proper oversight of workers crossing borders to undertake work. While regulators, yes, are able to apply their own local laws and share information across borders, it does not mean that they are aware that a

worker is in their jurisdiction working a licensed trade or a regulated occupation, which makes it very difficult to oversee the work of that worker.

The Hon. NATALIE WARD: Despite the information sharing between the regulators. You say that is not enough.

Mr WATTS: Yes, I mean, information sharing cannot include the movements of the individual workers. If a worker lives in Tweed Heads and crosses the border into Queensland or New South Wales, that jurisdiction is not aware that that has occurred.

The Hon. NATALIE WARD: Does that exist in any other sphere?

Mr WATTS: Not that I am aware of. As I say, it is not something that we would call for. We are not saying that workers should be geotagged. The problem is that the standards are different between the two jurisdictions. If the standards are the same, the regulator does not need to know that the worker has crossed the border.

The Hon. NATALIE WARD: We will have to agree to disagree. Thank you very much.

The Hon. BEN FRANKLIN: I just wanted to go back to the electrical issue and the east coast's current structure whereby Queensland, New South Wales, the ACT and Victoria obviously have that AMR program in place. Are you saying you do not support that?

Mr WATTS: As I say, I cannot speak with any expertise as to the current arrangements within the electricals of the east coast agreement. I am not aware of the specifics or how it is viewed by the industry. In principle we support automatic mutual recognition where like for like is being recognised and where harmonisation is already occurring. If that is the case with that scheme, I would say, without being familiar with its specifics, that that is a good model.

The Hon. BEN FRANKLIN: Great.

Mr WATTS: But I cannot speak specifically to it.

The Hon. BEN FRANKLIN: I just wanted to also raise an issue that was raised by the Cross-Border Commissioner. Evidence that he provided us is that there is a significant disincentive to a number of businesses and individuals relocating to border communities because of the regulatory impost and financial impost on needing to register in two States and that is then impacting those cross-border economies in obviously a deleterious way. I was wondering if you had any comments to make about that.

Mr WATTS: I cannot speak to the specific motivations of individual businesses and whether they view a particular thing as an issue or not. As I say, it is not our understanding that the current scheme of mutual recognition, which allows workers to work across borders and have their licences recognised across those borders, is particularly onerous. It is not our view that it is a significant roadblock to people undertaking that work. If businesses view that they individually cannot afford to do it, that is a matter for them and their financial choices.

The Hon. BEN FRANKLIN: Well I find that extraordinary, but, okay, thank you.

The CHAIR: Thank you, Mr Watts. We appreciate your contribution and your time this morning. We are now finished with your evidence.

(The witness withdrew.)

PETER McCABE, Director Policy and Government Relations, National Electrical and Communications Association, sworn and examined

TREVOR GAULD, National Policy Officer, Electrical Trades Union, affirmed and examined

TONY PALLADINO, Executive Officer, NSW Utilities and Electrotechnology Industry Training Advisory Body, affirmed and examined

The CHAIR: I welcome our next panel. You are each entitled to make a short opening statement if you wish.

Mr PALLADINO: I will just read it out, in terms of the transcript. It might just reflect the three of us as a group, in the first instance, and then we might put separate points. The parties support, in principle, the Government's aims to advance mutual recognition of occupational registrations and licences in order to facilitate economic benefits for the country. However, automatic mutual recognition of high-risk occupations such as electrical licensed work without safeguards, such as harmonising technical differences that exist across what licence holders are permitted to do, will have the opposite effect and cause unintended consequences—and, in some instances, fatal accidents. Differing electrical licensing regulations and licence classes govern permitted work activities across jurisdictions across Australia. Arrangements to harmonise differences have not been completed. Automatic mutual recognition without attending to these matters presents a significant risk to the public and New South Wales constituents. There are unique structural and State-based regulatory functions that require additional work by State governments in partnership with the Commonwealth to align standards and enable AMR across the electrotechnology industry.

Industry and State regulators need clarity around the implementation process and future mechanisms for engagement to ensure continued broad support for the reforms. We would ask why the New South Wales Government would amend its legislation to cede power to the Commonwealth when the Commonwealth legislation has not been finalised and enacted. Why not wait to learn the outcomes and the impact it might have or not have on New South Wales constituents that you represent before amending the New South Wales legislation? The New South Wales Government has a direct duty of care to its constituents. Ceding powers yet unknown to a third party is a high-risk strategy. It might expose New South Wales constituents to potential risks.

Decisions to amend the New South Wales legislation and cede it to others need careful consideration and clarity. What is being proposed for New South Wales to agree to? We recommend a wait-and-see approach. Once there is clarity, New South Wales has an opportunity to proceed to enact processes that ensure New South Wales constituents are protected. In relation to the Commonwealth's proposed AMR exposure legislation, if progressed in its current form we submit that the Committee recommend to the Minister to exempt electrical licence work because of the high-risk potential to the public, and that the New South Wales Government propose a time-bound and stakeholder-engaged mechanism to bring about harmonisation across jurisdictions that leads to AMR.

Mr GAULD: Thanks, Mr Palladino. I think it is quite unique that we are in a situation here where the representative of workers, the representative of employers and the peak body for training skills and skills delivery are all presenting with the shared view that there is a concern around electrical occupations and this bill. You may hear some differences around approach but we share a common goal, in that we need to harmonise the legislation to the greatest extent possible for consumer protections, for consumer and public safety and for worker safety before we move ahead with an automatic mutual recognition process. We share that objective whilst sharing a concern that the automatic mutual recognition bill that is proposed will undermine the work that needs to occur towards harmonisation.

In saying that, getting as many occupations as possible in Australia to that same position is good policy, and there are many occupations that we recognise are good to go and should be allowed to move to an automatic mutual recognition process. Regrettably, it has not been achieved for some occupations, despite the best efforts of many participants, and electrical occupations are one of those. If you want to standardise occupational outcomes in this country, the first thing that needs to happen is to lift the standards, get it consistent and then make sure that that standard is recognised and endorsed by industry. That is all of industry: the employer representatives, the worker representatives, the registered training organisation [RTO] and training representatives and, indeed, the regulators.

The fact is, electrical occupations already have a mutual recognition system in place, which includes an east coast automatic mutual recognition system. It is a system that maximises portability of skills and that balances that portability against the risks that come from not having consistent standards across States and Territories. The proposed bill removes the existing system of balancing those risks for electrical occupations and replaces it with a scheme that completely ignores those risks. In fact, it seeks to prevent and in some cases legislatively restrict

licensing bodies and regulators from putting anything in place to mitigate the risks that are associated with this. I will pause there.

The CHAIR: Thank you. Mr McCabe?

Mr McCABE: Thank you, and thanks for allowing us to appear jointly. As I said, we might propose some different solutions to the problem but effectively, you know, we can say that we are all in favour of achieving a national mutual recognition. But it is a little bit like we are going to sort of scratch beneath the surface and the devil is in the detail, so to speak. I will be sort of presenting a consistent submission that we put in with the Feds only about six weeks ago. We have been caught a little bit by surprise that New South Wales is pushing ahead and also disappointed that the Commonwealth did not really address or make reference to the recommendations that we made. We just got notification that the second reading speech was happening and I do not think there were any amendments to the legislation from what was put out in the draft exposure last December.

We would like to see from an employer's point of view that this legislation is used as a mechanism to more or less force us together so that we can achieve harmonisation and mutual recognition. I think that the legislation as it stands will probably suffice for what I am going to call your garden variety fully licensed registered electrician who has completed a Certificate III, which has a largely nationally recognised standing. But beyond that, all the subcategories of licenses—restricted licenses, different interpretations of licenses by different regulators—I think we will leave this thing to just a massive risk of veto for the whole electro-technology industries. So, we are advocating taking a step back and do it more slowly, more thoroughly and more properly so that the true aims of the legislation are achieved for our sector.

The CHAIR: Thank you, and thank you for the submissions that you and your organisations have submitted to us. We will now open up for questions.

The Hon. WALT SECORD: I would just start off with the general question. So are you seeking the carve out for electricity or do you suggest that we take the approach that we wait until the Federal legislation is finalised, and then we deal with the whole package? Or are you seeking just to carve out for electricity? What is the way forward?

Mr GAULD: It is a little bit of all of those things, I think. You may hear this theme raised a bit today. There was no real consultation at the Federal level. There has been no consultation at the New South Wales State level whatsoever with stakeholders and so a lot of these concerns have not been able to be ventilated adequately. The consultation at the Federal level was invitations to 30-minute Zoom meetings with a whole range of different occupational constituency, making it very difficult to ventilate the technical issues that we are trying to discuss. An opportunity for submissions was made through explanatory memoranda. In that we raised technical issues about our occupation and technical drafting issues with the bill.

The effect of the bill and the way it operates is quite confusing and I think will lead to significant regulatory uncertainty. No amendments and no feedback were given to any of the submissions that were made to that Federal process and there was no amendment in the final bill that was put through the lower House. There is interest in the Senate to amend that bill so the bill as it currently stands through the lower House in the Federal Parliament may not be the version that ultimately gets passed. It is quite unusual that New South Wales is seeking to pass a bill of model national legislation when that national legislation does not exist yet. It is quite uncertain as to what its final format will be. It is the only State that seems to be pressing ahead with this.

The Hon. WALT SECORD: So no other jurisdictions have pass this legislation yet?

Mr GAULD: Or indeed introduced it for debate.

The Hon. WALT SECORD: Thank you. I was unaware of that.

The Hon. MARK BUTTIGIEG: So we are absolutely clear on what we are considering here, we are considering a State piece of legislation which, if implemented, would at the very best allow parent legislation where the much talked about this morning five year six month exemption provisions would kick in if—that is, if—they were not taken out in the Senate at—

The Hon. BEN FRANKLIN: Why would they be taken out? It is Government legislation.

The Hon. MARK BUTTIGIEG: Well, I am sorry, Mr Franklin. I am asking the question.

The Hon. BEN FRANKLIN: No, no. I am just asking the question too.

The CHAIR: One member at a time. We were going so well.

The Hon. MARK BUTTIGIEG: The question is that that would be solely due to ministerial discretion. So, the best that we could possibly hope for if we were to pass this legislation at the State level un-amended would

be ceding to the Commonwealth the ability to allow automatic mutual recognition across every single occupation, with reliance only on the Minister's discretion to reverse that. Is that correct?

Mr GAULD: Yes. It is quite uncertain, yes.

The Hon. MARK BUTTIGIEG: There was discussion earlier about information sharing. I did not quite pick up the nuance. There seemed to be a bit of vagueness between whether it was mandatory reporting or information sharing, or whether it was voluntary. Are you able to throw any light on that?

Mr GAULD: Yes, absolutely. Each State and Territory has, for want of a term, a licensing body. That varies greatly from tripartite technical licensing bodies through to administrative consumer affairs focused licensing bodies, if you will, and varying levels of that. They already speak to each other and already share information. The legislation probably assists a little in allowing a freer flow of information but it does not really fix any issues, if you know what I mean, around what is going on in the jurisdiction around trades. I mean, if a worker moves from one State to another, there is no obligation for them to tell the regulator they are doing that and the legislation actually puts restrictions on the regulator asking if someone is moving around.

The Hon. MARK BUTTIGIEG: Sorry to interrupt, but just on that point an electrician in Queensland can come to New South Wales and not even tell anyone that he or she is working. There is no register to keep track of them.

Mr GAULD: Yes. I think it is important. Quite a bit of work has been done for the electrician occupation and on the east coast AMR, that currently occurs. But there is a safeguard in that the electrician would be working for a contractor, who would be required to put in some form of certificate of compliance. That changes names depending on which State you are in. That way there are some checks and balance and oversight. But for an unusual licence that might exist in one jurisdiction but not another, or for a licence that has a scope in one jurisdiction that is not permitted in another, yes, under this model, by virtue of arriving in the second State and commencing work, they are deemed licensed. They do not have to notify the regulator. No-one is required by law to check.

The Hon. MARK BUTTIGIEG: Feel free that any of you can answer this question. This is important because that there are analogous nuances across different trades, but the electrician one is a kind of exemplar, I guess. Can you give us a practical example of where, because of the different qualitative nature of a qualification—say, for example, from South Australia coming up to New South Wales—that like-for-like assumption inherent in the legislation just does not work in a practical sense? At a superficial level, people think red to red, black to black and green to green, good to go, but can you tell us why it does not quite work like that in practice?

Mr PALLADINO: I might be able to mention an issue around the refrigeration and air conditioning mechanics. I am not sure you are familiar. New South Wales has a particular piece of licensing around a refrigeration and air conditioning person. It is very different to any other State. It is very unique. If I am a New South Wales person and I go to Western Australia [WA], I may not be in breach in New South Wales for doing that particular part of work, but under the AMR I may be in breach in WA if, for example, I go to WA. How do we get prosecuted when you go back to the originator, the licensor, and they are not in breach? Do you understand what I am saying? So a person moving to Queensland—

The Hon. MARK BUTTIGIEG: In other words, you travel to WA, do the work, do something wrong, go back to New South Wales—

Mr PALLADINO: The legislation is going to go back, is it not? The regulator is going to go back to New South Wales and say, "Please prosecute." They say, "What are we going to prosecute?", because primarily they are not in breach in New South Wales.

The Hon. ADAM SEARLE: Just so that I have understood you, the AMR deals with that what is lawful in the State that gives you your primary licence. If you do something that is unlawful there, you could be regulated or prosecuted or somehow sanctioned. But if it is lawful in the home State, but not lawful where you are actually performing the work there is no regulatory sanction and there is actually no consumer protection there.

Mr PALLADINO: Correct.

The Hon. ADAM SEARLE: So the test is not whether the work was up to standard where it is performed; it is where it is licensed.

Mr PALLADINO: It is the scope.

The Hon. ADAM SEARLE: So if you come from New South Wales, for example, where arguably we have greater retraining requirements and generally higher standards in trades and occupations, that would usually

protect consumers and public safety pretty much wherever you are performing the work because we tend to have higher standards. But if you are dealing with trades that are licensed in some of the other jurisdictions but they are performing work in New South Wales, because the test is how the work should have been performed in the home State, New South Wales consumers and the New South Wales public are not necessarily getting the requisite level of protection that they should. Is that correct?

Mr PALLADINO: I think that is correct.

The Hon. NATALIE WARD: Thank you, Mr Palladino. This question is for anyone. I am a politician; I am not familiar with the AMR so forgive me if I am getting the terminology wrong. My understanding is under the AMR you can only perform activities that you are registered to perform in another State. So if you go to another State, go to Queensland, you are only able to, under this AMR arrangement, perform what you are licensed to do in your own State.

Mr PALLADINO: That is not my reading of it because it is occupationally focused as well. It is not just around the licence. It is the performance of an occupation. I am a refrigeration and air conditioning mechanic with the same qualifications as the person in WA, but the licensing regime over the top varies on the scope of work that you are permitted to do. That person who moves from New South Wales to WA will quite rightly think, "Nothing's new. I have got the same qualification. Do I have to go knock on the regulator and say, 'Can I do that work? Can I not do that work?'" I suspect they won't. The AMR forces that these people are equal at a licence level.

The Hon. NATALIE WARD: My understanding is that is the case, but can I ask you to take that on notice and maybe we can clarify that. Because I think it is an important question.

Mr PALLADINO: Yeah.

The Hon. ADAM SEARLE: We cannot do that. There is no notice.

The Hon. NATALIE WARD: You cannot take it. Okay. We should try and clarify that during the course of today. I am informed that you are only licensed under this scheme to perform what you are licensed to do, no matter where you are. That is my understanding and what I have been apprised of. And that in the event that something happens, the State regulator can take action in the other State for noncompliance. That is already built into that scheme.

Mr GAULD: There is significant regulatory uncertainty because—there are so many layers to this. The example that has just been given by my colleague of what they are licensed and lawfully permitted to do in New South Wales—they might have the same occupation as the person in Western Australia but the Western Australian legislative regime, the regulations are different. They do not have the same scope, even though at face value they appear to have the same occupation. So then that regulator comes back home after performing that work inadvertently in an unlawful manner. That regulator notifies New South Wales. New South Wales says, "Well, they are lawfully allowed to do that in New South Wales, so how can we prosecute?"

The Hon. NATALIE WARD: Yes. But our bill builds into the bill that very scenario to say that the regulator can prosecute.

The Hon. MARK BUTTIGIEG: I do not think so.

Mr GAULD: No, it is not in the bill anywhere.

Mr PALLADINO: Which regulator? Because WA is the—

The Hon. NATALIE WARD: It says that regulators can take compliance action against interstate licensees. So they can take that action. You can only do what you are licensed to do. It does not matter where you do it. And if you do the wrong thing you can be prosecuted. That is in the bill. That is a fact.

Mr GAULD: This is based on a framework that assumes occupations are the same as driving licences and that all that regulations are the same.

The Hon. NATALIE WARD: With respect, it does not. It says there are different licences in different States. You can only do what you are licensed to do in the State where you hold that licence. That is exactly the scenario and for that very reason. It contemplates that disciplinary action can be taken by the regulator from your home State if you go beyond that.

Mr GAULD: I think the Queensland Law Society made a submission to the bill. They talk about the significant regulatory—

The Hon. NATALIE WARD: The State bill? Our State bill that we are considering here?

The Hon. ADAM SEARLE: No, the Commonwealth bill.

The Hon. NATALIE WARD: I do not mean to be disrespectful. We are not talking about the Federal bill; I am talking about this State bill that this Committee is being asked to consider. That is where my question is coming from.

Mr GAULD: The bill the Committee is considering is adopting the Federal legislation.

The Hon. NATALIE WARD: Understood. However, my question was framed in terms of this specific bill providing for the regulator being able to prosecute interstate. That is where I was framing it from.

Mr PALLADINO: If I was in New South Wales, went to WA and came back and the WA regulator writes to the New South Wales regulator and says, "Prosecute this person for breaching our regulations in WA," I am just wondering how the office of fair trading [OFT] would prosecute that individual, having no jurisdiction outside of their jurisdiction.

The Hon. NATALIE WARD: Because this bill specifically provides for that.

The Hon. ADAM SEARLE: The State bill does not.

Mr PALLADINO: I would not have thought so.

The Hon. MARK BUTTIGIEG: So State legislation in New South Wales dictates State legislation in WA, does it?

The Hon. NATALIE WARD: I will have to disagree.

Mr PALLADINO: It could not do that. The Electricity Act would say what the penalties are for breaching a scope of work.

The Hon. NATALIE WARD: On that basis, should it just be exempted? Shouldn't we exempt that? Should we hold up the entire bill—and I am just kicking around with you. For those reasons, if we cannot get agreement on that, shouldn't we carve it out and say, "Okay, we will deal with that separately?" Isn't that the point?

Mr PALLADINO: That is only one example. There is a range of examples. That whole electrical class. I was around when we started this campaign in 2005 under the National Uniform Electrical Licensing Advisory Council, or NUELAC, as it was called then. I wrote the first qualification for electricians and I wrote the training package. I was running an Industry Skills Council at a national level before. I know what is in those qualifications. People will argue they are the same. They might be the same but they are not equivalent.

The Hon. NATALIE WARD: I agree. I think we are in furious agreement on that point. No-one is saying they are the same across the States.

Mr PALLADINO: There was a great deal of work done there leading up to COAG work in 2012 trying to map these differences. That work never concluded and that stopped in mid-air. I think that work needs to continue to get harmonisation to satisfy. If I was a New South Wales politician, I would be very concerned ceding power to somebody when my constituent knocks on the door and says, "What have you done? I had an accident. What are you going to do about it?" "It is not my fault. It's up to them to go to the feds." That would not be appropriate, would it, from a New South Wales point.

The Hon. NATALIE WARD: So wouldn't we just carve those out under these exemptions that are proposed and to say, "Deal with that later."

Mr PALLADINO: I think that is what we are suggesting. We are suggesting to carve it out. And at the same time get a working group together to actually move harmonisation. If we look at road rules, the road rules are harmonised through a model legislation. We do not have that for electrical. In a high-risk occupational area and we are saying, "Well, you know, we are going to give them automatic recognition." I am an electrician by background. I have worked in different jurisdictions. I know the consequences for poor, little employers who are now—if you start to unpack the weakest State in terms of legislation, you are actually imposing on employers more work of due diligence to look at the individual and say, "Do you know these laws, the wiring rules in New South Wales?" The regulators are good checks and balances. If they start opting out, you are putting a lot of onus on small business.

The Hon. NATALIE WARD: We have that. And forgive me, I am not familiar with it, but we have that east coast AMR scheme. That is in place.

Mr GAULD: It is for electricians because the work has been done across the licensing bodies in each jurisdiction for a single common occupation to allow, in particular, focus on the border towns.

The Hon. NATALIE WARD: So it can be done, potentially.

Mr PALLADINO: It can be done with good work, yes, absolutely.

Mr GAULD: This bill does not do it though. That is the problem.

The Hon. NATALIE WARD: We will have to disagree on that.

The Hon. ADAM SEARLE: I have got three questions to put to the panel. I am happy for whoever feels best placed to answer it. Firstly, the bill that we are dealing with—the New South Wales bill—does not have any of these things in it. There is no mechanism for carve outs, there is no consumer safety, there is no consumer protection, there are no public safety mechanisms. The bill does one thing only, and that refers all of New South Wales' power on this matter to the Commonwealth Parliament. Should any New South Wales legislation make sure that there are those consumer and public safety protections in a New South Wales piece of legislation?

Mr PALLADINO: Legislators have a responsibility to their constituents. In New South Wales, they have power over the mechanism of making legislation. Why would you cede full power to another body without having some safeguards in the legislation?

The Hon. ADAM SEARLE: My second question is this issue of mutual recognition of occupations versus specific licences. In WA, you are an electrician or a plumber and you get a licence that allows you to do certain things. In New South Wales, you get a different licence that might allow you to do substantially the same things but maybe there are some differences. The State and Federal legislation that we are discussing, as I understand it, would simply allow you to be an electrician or a plumber in any jurisdiction. Is there any restriction then on the scope of work that you could lawfully perform interstate? Are you restricted by your home licence?

Mr McCABE: Again, yes. There is a bunch of licences that other States have that we do not and vice versa. It is also probably pertinent to point out that you need a contracting licence as well as an occupational licence to perform works in New South Wales. As an individual you do not need both. You might be working under your boss's or your company's contracting licence. But you need both. So AMR does not tackle the contracting licence at all. It excludes it—the Federal legislation, I should say. From our point of view, we are going through quite a process to not really reach the ultimate policy objective—which is, we would like to get harmonisation and we would like to have national contracting licences, national occupational licences and an agreed set of occupational licences. For instance, in Queensland there are—Mr Gauld was a linesman and there is a registered linesman licence that does not exist in New South Wales. If that person comes across the border with their licence, what work can they do and whose responsibility is that to tell that individual what work they can do? They hold a valid licence in their home State, but from what we can see there is no mechanism in the bill to knock out licences that do not exist in other States, if that make sense.

The Hon. ADAM SEARLE: So rather than to simply say—I think you said with earlier witnesses—"Oh, well, he simply wouldn't be able to perform that work", the reverse might be the case. You can do that work in New South Wales but there is simply no oversight or no ability to restrict what you do.

Mr GAULD: I think New South Wales carries the highest burden of risk when you look at the jurisdictions. We have talked about before that there are much lower-standard jurisdictions and higher-standard jurisdictions and a mix. New South Wales sits right about in the middle. They face the risk that the higher-standard jurisdictions—Victoria and Queensland—most likely will simply exempt the AMR process for electrical occupations and New South Wales loses that flexibility to come over the border. The higher-standard States will put the doors down. Then, on the other end of the spectrum, New South Wales faces the risk of the lower-standard jurisdictions of having to mitigate the risk of lower-quality occupations coming from South Australia in particular—and other States—into New South Wales. So you are getting the worst of both worlds and not much benefit for this particular occupation. Plenty of other occupations—I am sure it is fantastic, but not for this particular group of occupations. There is too much work that still needs to be done.

The Hon. ADAM SEARLE: My third question goes to this issue. I know we have talked about people being prosecuted for doing unlawful things, but let us suppose we are dealing with a situation where the work is not of sufficient standard—it is not up to snuff—and there needs to be rectification work. We are not talking about someone in Melbourne hiring a Sydney plumber. We are talking about, presumably, reasonably large-scale projects where you would need workers from interstate. If you have a situation where you find that plumbing work or electrical wiring work on a site in New South Wales, for example, was not done properly or perhaps was unsafe and there needs to be rectification work, how does the regulatory mechanism created by this legislation actually then require the licensed person who may have gone back to their home State—is there any mechanism to actually force them to rectify the work or is that just not practical?

Mr McCABE: I think that would be captured because you need this dual contracting or individual or occupational licence. So the regulator and New South Wales, for instance, could threaten the holder of the contracting licence as opposed to the individual. So that probably picks that up. But again, in a perfect world, if we want to go through this process and achieve the overall objectives of the legislation, which is to cut red tape and reduce costs for business, then there should be a framework that is capable of including contracting licences as well as occupational licences and a harmonisation of all the subsets.

That is maybe a hard carve-out where we differ slightly because we would maybe see the opportunity for this legislation to kind of shoehorn all the stakeholders into a room and give you a five-year clock and say, "Let's work it out". Nationally we have been through this process before and it fell over in 2012-13. Bearing in mind we have got a few key stakeholders here that are all at the same table, that is multiplied by the regulator and then times that by seven. Wherever there is a legislative instrument that can bang our heads together to get a good end result, I think maybe that is where the three of us might differ slightly.

The Hon. ADAM SEARLE: This is my final point. I guess AMR is a fairly blunt instrument to simply say, "We will just automatically recognise everything as long as you hold a licence in your home State." What you are really saying is it is about the standards and it is about the outcomes and you need to do the hard work at the front end to make sure that you are really recognising like-for-like work.

Mr McCABE: Reading the Commonwealth legislation, I presumed there was going to be some sort of template regulation or something that then went to all the States that dealt with all these occupational-specific things to make sure that it was inclusive and dealt with the minutiae and the grey areas. But we just seemed to have moved forward at the very high-level blunt instrument.

The Hon. ADAM SEARLE: We have not said the details.

Mr PALLADINO: The distinguishing features in some areas is in New South Wales an electrician is entitled to certify a compliant installation and then generally the tester is the one that issues the certificate of compliance. That is not the case in other jurisdictions. So if I am an electrician who comes from Western Australia, typically the contractor holds that responsibility with the licensed electrician. The contractor holds the certification of that compliant installation. In New South Wales it is the electrician—the tester—who certifies it. There is a difference in that legislation alone between the two jurisdictions. There are a lot of perceptions out there from people in other States who think they can come into New South Wales and just leave it to the contractor. Under the current law the electrician is the tester who certifies compliance of an installation.

As you say, if that person then moves, how do we catch that individual? How do we get any solace for an incident that occurs? One of the things that people keep talking about is driver licences: It is easy, we have got model legislation et cetera. Electrical licences are a bit different. When you actually have an installation in place, you could be there 30 years latent. It could be a latent potential disaster for somebody to get killed that we do not know about. All those protection measures need to be in place to prosecute. I have got cases here. In Queensland for five years they knocked off a person for doing installation practices badly. My concern is they will jump the border and go into New South Wales. How do we get them in time? There was another one for 10 years that was prosecuted.

When those mechanisms are not clear and there is some regulatory impediments moving forward that do not harmonise, then we have instances like that where they will cross-border jump and they will work in here. We know that there are bad practices in New South Wales that need some attention. We are meeting this afternoon with the office of fair trading to discuss these issues. Mr McCabe and I are going there this afternoon with the Electrical Trades Union of Australia [ETU] and we are going to have a conversation about how we actually improve the standard of performance. Compliance is a big issue. If anybody read the Public Accounts Committee report, a big issue around electrical licensing and electrical work was identified in the building commission review. I would try and clear up those things first, get some harmonisation in place and move forward. I think we all agree that mutual recognition is a great thing. But you do not throw out the baby with the bathwater to go where we want to go.

The Hon. MARK BUTTIGIEG: Just on that point, with the east coast example that has been brought up a number of times today where obviously the legwork has been done on that eastern seaboard for harmonisation, which is why we have got the mutual recognition system, Mr Gauld, could you throw any light on how that happened and how long it took? Is that simply a function of the fact that those east coast jurisdictions were largely aligned and therefore it was easier? If so, what impetus is needed to bring the other States on board?

Mr GAULD: There are a few competing inputs into how that came about, but first and foremost there was the national occupational licensing process that was embarked on and disbanded in 2012-13. In fact, employer representatives, union representatives and RTOs all agreed on the framework and all agreed on what needed to be

done. We had an issue that New South Wales Treasury at the time vetoed it, which is why it kind of fell over. It was principally around harmonising the electrical contractors occupation qualification. Out of the back end of that work, when that process was ultimately disbanded, you have got significant border town populations. The mapping had already been done for the electrician's qualification. The risks and differences were known and there was an understanding of information sharing between the licensing bodies on that east coast. So to salvage the work that had been done through that national harmonisation process that fell over, the outcome was the AMR that sits for electricians only on the east coast.

The Hon. MARK BUTTIGIEG: The Government would say that that was too painful, it took too long and this is a way of forcing it. But I think your evidence and the evidence of all of you here today is that it is not going to force it at all because once you have automatic recognition, there is no impetus for people to harmonise. Correct?

Mr GAULD: Yes, that is exactly right. The incentive is removed. If the concept of this bill is that I just show up in another State and by virtue of showing up I get to work then where is any impetus to harmonise? What it creates is the opposite. It starts what we see as a race to the bottom and I will give you a classic example of that. A number of jurisdictions have continuing professional development for our occupation. Quite a few do not and New South Wales does not. New South Wales is wanting to introduce continuing professional development. People will go to the jurisdiction to get an occupational licence that is the easiest one to get and the easiest one to keep. So they will register their brother's address in South Australia, let us say, and then be working in New South Wales. The current system allows for the licensing bodies, absent harmonisation, to act as a sort of peer-to-peer review and check mechanism.

The bill seeks to limit the licensing bodies' capacity to ask questions, to review people's qualifications and to validate people's qualifications. They are not allowed to ask those questions or do those things anymore. In the current system it is a shared responsibility. The individual worker has obligations and the employer has obligations, but the licensing body has an obligation and does the work of mapping skills and occupations so that the employer in the next jurisdiction knows what they are getting. That comes through and the worker says, "I have a qualification in another State." They show up in that State, which does not know what that qualification means. The employer is then somehow supposed to do a mapping exercise to understand what that person's actual skills are. All of the burden is being placed back on the individual worker and the employer. It is back-to-front; it is upside down.

The Hon. MARK BUTTIGIEG: For a pointy-end, practical example, I suppose this continuing development is a good one. We do not have it here in New South Wales, but what is a jurisdiction that has it?

Mr GAULD: They have varying levels. Queensland has. Victoria is about to implement probably the most stringent version, which is sort of best practice. Tasmania has a version that has been in place for a number of years, which they are currently looking to upgrade.

The Hon. MARK BUTTIGIEG: Okay, so I am a garden-variety sparky wiring up houses. I have not done it for 30 years but I still have my licence from New South Wales. I can go down to Victoria or Queensland and wire up a house without any vetting whatsoever.

Mr GAULD: If you came from this jurisdiction to that jurisdiction, which is why I think those higher standard jurisdictions will just shut the doors and say there is no portability because there is too much risk. But Western Australia is probably one of the worst for lack of checking of currency of skills, knowledge and qualification. You could maintain your licence for 30 years in Western Australia and never demonstrate that you have plied your trade, been to any training or done anything for that 30 years. Under this proposal, by virtue of arriving in New South Wales they are entitled to start doing electrical work.

Mr PALLADINO: I can attest to that because I am one of them—an electrical licence from WA and I have not practised for many, many years. It is a great example, and WA is actually considering implementation of continuing professional development.

The Hon. ADAM SEARLE: Are there ongoing requirements in New South Wales for people with those licences to keep demonstrating competency?

Mr PALLADINO: No.

Mr GAULD: No, but New South Wales is looking to introduce it—to lift the standard.

Mr PALLADINO: Yes, we are having discussions about it.

Ms ABIGAIL BOYD: We are hearing about the higher standard restrictions, New South Wales being middle-of-the-road and then the lower standard jurisdictions. What are your counterparts saying in those States?

Are there bodies within WA, for example, that are pushing mutual recognition as being something favourable for them or is it something that nobody wants?

Mr PALLADINO: A bit of both, isn't it?

Mr McCABE: It is a bit of both. Speaking from a national perspective, it was quite difficult for our organisation to reach a consolidated view. Some of our other States would be very quick to have a shot at New South Wales' contracting licence regime and a number of States would be pretty quick to have a shot at South Australia's occupational individual licence. Because you need both and they are not exclusive, it is a real mixed bag. There is a fair bit of finger-pointing going on, to be honest. Western Australia would probably lay claim to having one of the higher benchmarks for a contracting licence and then there would probably be a few other States that would arm-wrestle over who has the highest standard of occupational licence.

Mr GAULD: But you would find the ETU, the National Electrical and Communications Association [NECA] and the relevant industry training advisory body [ITAB] in each State share concerns about the AMR and share the objective to achieve harmonisation in a proper way so that we can have genuine portability of skills whilst maintaining community public confidence and worker safety.

Mr PALLADINO: I can provide another case example, where the AMR is working on the east coast except for Canberra. The ACT is not part of that mechanism, as I understand. I have had two phone calls in the past week for an RTO that has issued a qualification certificate III in Electrotechnology—an electrician—in New South Wales for a fee. The person goes to the ACT regulator—I will be writing to the regulator this week—and they get the licence and then retrofit back into New South Wales. That is automatic recognition. I have had the same case last week out of Queensland where we had an international supposed electrician who is going through what is called an Offshore Technical Skills Record—an overseas trade recognition. I do not know if you are familiar with this. A person goes overseas, is assessed as an electrician overseas, comes into the country, has to do on-the-job and a gap training process. We recognise it as a high-risk occupational area. That person went to another RTO in Queensland, paid a sum of money, got qualification and ran down to ACT. Because they had landed with a qualification, ACT gave them a licence and they are now working in Queensland.

We know that process is occurring and that is why I will write to the ACT regulator and our State ITAB equivalent over there. There are some issues about people leaving at the moment. Some RTOs are quite legitimate—many are. It is the good registered training organisations being undermined by poor performance. In ACT they are reliant on a piece of paper called a qualification. In New South Wales, a regulator says that if you have not done an apprenticeship model then you have to get a certificate of proficiency from the State training authority on top of your qualification. You then run to the Office of Fair Trading and the OFT says, "Okay, there is your qualification—tick. There is your certificate of proficiency—tick."

That puts the checks and balances into the system, so the person going to Victoria or Queensland under that AMR works really well because you have checks and balances in the process. At the moment the lower jurisdiction—and that is not to say it is a lower jurisdiction, but where the problems are arising is if people jurisdiction-shop. They go and buy a qual and they go into a jurisdiction. Those people, I know from the RTOs that have spoken to me, are dangerous people and yet they have picked up a qualification. We need to regulate. The employer cannot carry that responsibility. That is what we are asking now under these new rules of AMR, because automatic recognition of an occupation and a licence is being proposed.

Mr GAULD: And those peer-to-peer checks and balances that are occurring through those licensing bodies—those powers and functions are removed by this bill. There are actually provisions in this bill that say that State-based licensing bodies cannot ask for you to show those qualifications. As long as you have the licence in the other State, we have to accept that you are ready to go. But it is well known that there are people who shop jurisdictions until they achieve a licence and slip through the cracks. It is the peer jurisdiction doing that assessment—often the bigger States that do the work and find it. They then go back to the place where the person got the licence and say, "Hey, you gave a licence here where you should not have." It gets followed up and fixed that way.

The Hon. MARK BUTTIGIEG: So notwithstanding the uncertainty we have discussed around the ability to prosecute inter-jurisdictionally, on top of that you have a situation where when you do, the safety net will be that the house burns down or someone gets electrocuted and then the prosecution occurs.

Mr GAULD: Yes. Whilst it is good that the prosecution and information-sharing provisions are in there, they are reactive. They are so that after something goes wrong—after a worker is electrocuted, after a member of the public is injured, after a house burns down—we share information. That is important, but what we are doing is enhancing the reactive powers and removing the prevention powers. It is back-to-front.

The Hon. BEN FRANKLIN: Thank you to the three of you for being here today. I have found this an excellent session. I also want to state from the beginning I recognise that your industry is different to a lot of others that we are doing and I appreciate the tone and the tenor that you have contributed to this today, but I do want to go back to first premises on a couple of things—and please any of you jump in—and I am saying all of my questions are genuine; I am not pushing a political barrow. First, you talk about your desire to harmonise. I think across every industry people understand that it would be better, particularly after COVID and shutting borders and blah, blah, blah—we want to harmonise. Under the legislation, assuming the Government does not pull out their own provision, but let us say that under the legislation the electrical industry had the five years to be carved out, would that provide enough time for the harmonisation? Is that sufficient for the sort of outcomes that you want to achieve or, if not, why not?

Mr GAULD: We will have some slightly differing views here, I think, but from the ETU's perspective we would like to see a hard exclusion—

The Hon. BEN FRANKLIN: A permanent exclusion?

Mr GAULD: A permanent exclusion, and then when the work is done amend the legislation and introduce it. Without that hard exclusion we are concerned that there will not be that impetus on the States to do the hard work that needs to be done. So we are concerned about that. In saying that, though, a lot of work has already been done and it is generally not the industry participants that are holding this up; it has often been Treasury departments and sometimes individual licensing bodies' self-interests that have tended to hold this up. The electrician qualification is pretty close—the eastern seaboard has been mapped out; there are deficiencies in a number of other States that are operating to a lower standard. So I think you could get the electrician resolved well within five years; the others might take a little bit longer.

Mr McCABE: Probably this is where we do differ, that I think leaving it in the bill and then that would provide more impetus for State departments and regulators to get on with the job, because if it is completely excluded then I am not sure what brings State regulators to the table if it is not bound by legislation.

Mr PALLADINO: I think we probably support the same thing. There has got to be an incentive model to move forward. I have been in this game for 20 years trying to get mutual recognition.

The Hon. MARK BUTTIGIEG: But on that point, just to follow up on that direct point, if you have got a five-year carve-out—and remember this is in the parent legislation, assuming that stays in—if you have got a five-year carve-out what is to stop the Government just sitting on its hands anyway and waiting until the five years elapse?

Mr GAULD: That is probably why the ETU sits on the exclusion side; we think it is the stronger incentive. We would not be opposed if it was done via the five-year mechanism, subject to some consequential amendment that forces the process. I note there are no consequential amendments with this, which is another area of uncertainty: how this bill will interact with other laws which give powers to your licensing body but this law says that they are switched off. But if there were some consequential amendments that gave that momentum we would be comfortable with the five years but, absent that, we would prefer the exclusion.

The Hon. NATALIE WARD: I was going to ask a similar thing the reverse way and say does not the five years give a kind of impetus to say that you cannot sit on your hands, we have got to deal with this and kind of keep everyone moving? Is that my understanding of your point?

Mr GAULD: I would like to have some faith in the COAG process potentially to resolve that.

The Hon. NATALIE WARD: And I am sure you guys would be pretty vocal. We would not be able to just kind of ignore it and do nothing.

Mr GAULD: But the five-year period lapsing and then just automatically applying too is a risk.

The Hon. BEN FRANKLIN: And that is a perfectly valid position. Can I go now to the east coast AMR? I have got a few questions on this. The first is if you can unpack a little bit broadly what that currently enacts that is different to or that is going to be different to what the new legislation would be? I will go back a step. I presume that if the Federal legislation comes in that means the east coast AMR becomes redundant.

Mr GAULD: No, it does not.

The Hon. BEN FRANKLIN: So it would still operate.

Mr GAULD: They will operate concurrently and you can opt to use either pathway.

The Hon. BEN FRANKLIN: You made the point before—or one of you, I cannot remember—that you were concerned that potentially because of concerns about either South Australia or Western Australia, either

Queensland or Victoria could determine to exclude their industry and so not be part of the Federal agreement, which I think one of you referred to was the worst of all worlds. Could the east coast then just stay under the east coast one and what would be the problem with that, if there is any?

Mr GAULD: The challenge here is that it is harmonised legislation in the same way that New South Wales chose to adopt the model occupational health and safety legislation but they do not adopt it verbatim, you put your own bits and pieces into it, there is the risk that Queensland or Victoria, particularly with the work that they are doing at the moment to modernise their electrical safety Acts and electrical licensing laws, could use this as an impetus to adopt this model that carves out the east coast AMR, because Queensland and Victoria in particular are going full steam ahead with some really comprehensive world-leading continuing professional development programs for electricians and contemporary language around electrical work definitions to incorporate the work in renewables where currently in nearly all jurisdictions electrical safety laws are a little deficient, a little bit behind. So it could create that trigger.

The Hon. BEN FRANKLIN: It is such an industry that it is taking time to catch up.

Mr McCABE: And I think the concept of AMR does present a huge opportunity; it is not all doom and gloom. If it is done right then we can look at harmonising contractor licences. In a practical sense, at the moment the only way this may work is if you are quite a large business that holds contracting licences in all the multiple States where you perform work, you have then got individuals who are licensees for your people and you can sort of port them around. Because of all the grey area that we have all touched on, the intricacies and the differences between licence categories, one of those States is going to exercise a veto and then we have all kind of gone through this quite exhaustive process for nought.

So there is an opportunity there, if done right. But, again, for the man in the van, who is probably one of the key concerns from a cross-border point of view, they still need to hold those multiple contracting licences; there are still quite onerous obligations for them to understand the nuances between different regulators and to ensure that they are really only saving on that one individual occupation licensing fee through this, which, if it is east coast, it would be already exempt through the current AMR anyway. So they just pay the fee in their home State and they can send them across and do a couple of days work in Wodonga and come back to Albury the next day. But again, to achieve the true objectives of this thing we would like to engage in a more detailed process.

The Hon. BEN FRANKLIN: Which is to incentivise a harmonisation of the entire industry across the country, right?

Mr McCABE: Yes, absolutely.

The Hon. BEN FRANKLIN: Is there anything else you would like to add about how you think those incentives can be achieved in order to achieve that harmonisation? Any of the three of you?

Mr GAULD: There is a role the New South Wales Government can play in the Australian Federation council processes, so I would hope that this inquiry would make a recommendation to the New South Wales Government to that effect. I think simply just at a State level there are some opportunities to put resources into lifting New South Wales' standards. As you have heard, industry in New South Wales—employers, unions and registered training organisations—are pursuing right now trying to lift continuing professional development standards and looking at States like Queensland and Victoria and what they are doing. So support from the Government to resource those processes will make it a lot easier in the future and speed up harmonisation.

I suppose the only other thing is—this is probably less my area, but I think from a legislative perspective, passing a bill that has not passed the Federal yet is something you need to turn your mind to, and the significant technical drafting overlaps and the absence of consequential amendments and how those things will interact. There are some technical issues there that need to be dealt with.

The Hon. NATALIE WARD: I have just got one thing, if I may. It is my understanding—I have not done constitutional law for some time—that a State has to kick it off, a State has to refer to the Feds. The Feds cannot complete their legislation, they cannot finalise it until a State has referred that power. So someone has to start. New South Wales has to refer or a State has to refer.

Mr GAULD: This legislation already exists. What you are moving is an amendment to existing legislation.

The Hon. NATALIE WARD: But you are saying they should complete it. My understanding is that there has to be a referral for the other States to enact it, for them to finalise their legislation. It is sort of chicken and egg, is it not?

Mr GAULD: Yes, but I think I would like to know what it said before I passed it.

The Hon. ADAM SEARLE: That is not quite correct. Can I just ask this question? There is already a scheme in place. We have already got New South Wales legislation. There is already existing Federal legislation. What the States are being asked to do here is to extend the reference of State powers to the Commonwealth to make consequential amendments. Is that your understanding?

Mr GAULD: I am not sure. There probably will be, but they have not tabled that. I think my colleague was talking about that we anticipated through this process, through a normal regulatory process, that that information would be forthcoming. We have not seen it. It appears that that might occur. But again it is that thing. You are ceding a power to—

The Hon. ADAM SEARLE: Without seeing what it is.

Mr GAULD: Without seeing what it is.

The Hon. MARK BUTTIGIEG: I think a good example in New South Wales is the peculiarities surrounding accredited service providers [ASPs] and the consequences for that particular qualification not being present in other jurisdictions. Do you want to just outline what would happen under this scheme with that ASP-type work, particularly live work to the network?

Mr PALLADINO: It is the only scheme. It is a unique scheme. The accredited service provider scheme is the only scheme in Australia where electricians can actually work on the network. They have to be accredited as a service provider, a contractor. Then they recruit electricians to do work on there—

The Hon. MARK BUTTIGIEG: Just for the benefit of the committee, Mr Palladino, you mean the electricity supply network, the high-voltage network.

Mr PALLADINO: Yes, sorry, the electricity supply network. Somebody wants to put up a house and connect it to the network. Historically, the distributors did all that work. That has been contracted out. ASP scheme providers provide that service. They train the electricians to do that work. That is not in a certificate III electrician's job role, typically. So they need to do extra work. If somebody brings in an electrician from interstate into New South Wales, without the proper training, without proper accreditation, they expose the individual and they expose the public as well, because there are great dangers in the differences. These service rules that each State has provide the mechanism about how you connect that house or that dwelling or that commercial building to the electricity network. There is a major issue. They can do live work. Under the specific conditions, that is not permitted by any electrician, to do live work. In almost all regulations it is safe-practice recommendations. So there are some issues around that particular scheme.

If we go down the path of what we recommended earlier and we discussed, about putting some caveats in and putting some harmonisation rules in place, we can overcome these. But there is a huge danger there because very few people understand the network and how it works. I am a technical person. Reversed polarity is a major issue of people who connect to the network. Reversed polarity is a dangerous thing because you can touch a fridge and get electrocuted. Fortunately, we have safe practices and self-protection systems in place at the moment. We and the New South Wales Government are working to try and get safety switches in houses. It is part of the encouragement to get people in. We actually recommend that it should be done faster, but that is another issue. That whole area is a grey area. New South Wales is unique.

The Hon. MARK BUTTIGIEG: Maybe, Mr Palladino, just describe to us what would happen under the current regime, where you have got to go to the department of fair trade, coming in from another jurisdiction.

Mr PALLADINO: You do not go to the fair trading department. You go to Planning. Department of planning and industry, I think it is called. They run the accreditation scheme. You have got two regulators in a sense: office of fair trading, electrical. Then you have got the accreditation scheme, which is run by them.

The Hon. MARK BUTTIGIEG: But someone, somewhere along the line under the current regime would pick up that you are not qualified to do that work. Right?

Mr PALLADINO: One would think so.

Mr McCABE: Your electrical occupation licence would not automatically give you ASP privilege anyway. We are only talking about transferability of what you are allowed to do under your licence. This is a bit of a separate add-on. It does not matter where you have come from. You would still have to go through an ASP accreditation scheme because it is separate to a licence, if that makes sense.

The Hon. MARK BUTTIGIEG: There seems to be a level of agreement around, assuming that there are analogous occupations which are high-risk—electrical is obviously one. Let us say there are 10 others, for argument's sake.

The Hon. NATALIE WARD: Teaching.

The Hon. MARK BUTTIGIEG: Teaching, law, building trades. The mechanism for forcing harmonisation, I think, is the key sticking point here. Given that the parent legislation is not finalised, would it be your preference that we wait or we put pre-emptive mechanism in place in the State legislation to force the harmonisation along the lines you were detailing before, Trevor?

Mr GAULD: I think either outcome is good. To be honest, if New South Wales was prepared to lead the way as far as putting those resource commitments in place, whether it is through some sort of consequential amendment, that would be welcome and something we would advocate other States to mirror to make sure that we got that process going and concluded.

The Hon. MARK BUTTIGIEG: I am just thinking that through. How would you do that? One State cannot dictate that the other States get on board. That is the issue, is it not?

Mr GAULD: This is the strange thing that baffles us about this process. Generally speaking, States and Territories are not opposed to this. There was lots of work done, and then it was abandoned by the Federal Government when there was a change of government in 2013 and there is no appetite to revisit.

The Hon. MARK BUTTIGIEG: Clearly, someone is getting in the road. You are saying it not NECA, it is not the ETU, it is not the ITAB, and it is not industry. It is politicians. So there has to be a mechanism to force everyone together. Our putting something in at State-based legislation is not necessarily going to solve that, because we are only one State. Does that make sense?

Mr GAULD: Yes. I understand what you are saying. But if you put a mechanism in place that lifts New South Wales' standards when it comes to electrical safety and electrical licencing, then it guarantees that free flow to Queensland and Victoria, which are at the higher standard, and it lowers the risk of the lower-standard jurisdictions' opposing your people from going and working with them, because they know that you are at the higher standard. Whilst it does not guarantee the perfect outcome, I think, it goes a long way to assisting it.

The Hon. MARK BUTTIGIEG: In terms of the cross-border arguments we heard from the commissioner this morning—I know you are only representing one trade here—did you want to just give us your view on how those border towns are working at the moment?

Mr GAULD: My colleague from NECA will raise this because it is his members. But from the ETU's perspective, electrical workers, there is already AMR. They can already cross the borders. They do not have to go and get dual licences. They are free to flow. The productivity gain is in fixing the electrical contractors' licence, and this bill does nothing for that whatsoever. In regards to lots of other occupations, there are hundreds of occupations that are likely to be captured by this. For many of them, their licencing and registration is administrative. It is not for technical and safety purposes. It is completely appropriate that those barriers be removed and that mobility fixed for those border towns. But I think the consumers' safety, the public's safety, the workers' safety aspect of this is significant and needs to be addressed.

The Hon. MARK BUTTIGIEG: Can I just ask you one more thing? In terms of the Productivity Commission's claims—hypothecated productivity improvements of $2.4 billion over 10 years—do you have any views on the veracity of that?

Mr GAULD: It was an economic report prepared at the request of the Government. The entity that did it, Productivity Commission, did not consult with any stakeholders about it. Let us say that it is real, that their figures are real. We do not see it. Like I said, we actually see it creating more regulatory burden for electrical occupations, not less. But if there are those benefits, they will flow for a lot of those administrative occupations that can reasonably go through at this point in time. Putting a carve-out in for the electrical occupations, to get the health and safety aspects right and the technical aspects right, does not put all of those economic benefits in the bin. We are one small grouping of trades in a much bigger pie.

Mr McCABE: I think the potential is there to cut hard-dollar expenditure by businesses to get the necessary licences they need to do their work. But under the current format, it is not going to achieve that.

The Hon. MARK BUTTIGIEG: Presumably, Mr McCabe, for some of your members, small employers, some of those savings would be diminished by the fact that the employer, if they do the right thing, has got to say, "Well, mate, your qual's not up to speed. We've got to go and do this, this and this."

Mr McCABE: It is hard to comment accurately across the board on that but, I mean, if they are a certificate III qualified unrestricted electrical licence holder, there is an AMR on the east coast that is working. As long as you have your contracting licence in both States that you want to port that worker in between—but, yes, in order to achieve the hard dollar savings there is more of a process we need to go through.

The Hon. MARK BUTTIGIEG: Particularly for those other regimes—South Australia, Western Australia.

Mr PALLADINO: The converse might be the loss of money from a commercial fire or a whole bunch of other things have occurred. You have to weigh that against economic benefits versus a loss of life—in terms of how much that is worth. There is a whole bunch of other stuff to think about. That is why the harmonisation issue becomes the whole mechanism to try to improve that whole safety issue and the benefits you can get from it when everybody knows what the game is. It is open, it is transparent and they can proceed accordingly.

The Hon. MARK BUTTIGIEG: Can I ask you, are any of you aware of overseas comparisons where you have federated systems and this has been done successfully?

Mr PALLADINO: The US is pretty much a federated system like us. They are still working their way through this concept of mutual recognition between states. They have a very similar model—a national electrical law like our standard wiring rules and then their local laws and they have mechanisms to move forward on. I think Texas is probably one of the biggest ones that I know of. It is like all jurisdictions: they have to protect their constituents. Legislators protect their constituents first and then walk through the processes to harmonise the differences between states.

The CHAIR: Thank you very much for your time today, we really do appreciate it—all of your submissions and the quite lengthy time you have taken questions. It is very helpful.

Mr GAULD: Chair, may I make a closing remark?

The CHAIR: Sure.

Mr GAULD: A lot of this has been progressed through this economic lens and I cannot emphasise enough the technical and safety aspect of this, both for workers and for the public. I mentioned earlier that New South Wales is the middle of the pack when it comes to the standard of the Electrical Safety Act and licensing. Through the period 2011 to 2016 New South Wales had twice the number of electrical incidents of workers and members of the public coming in contact with electricity, compared to Queensland and Victoria, and made up of 36 per cent of all incidences in the country. In that same period, 11 fatalities—which was 40 per cent more than those two other large jurisdictions—made up 32 per cent of all of the nation's. We are really concerned that if this is not done right it will actually reduce the oversight and increase the negative outcomes around electrical safety. I urge the Committee to tread really carefully when it comes to electrical occupations. This is not about ideology, it is about getting genuine productivity benefits through harmonisation.

The CHAIR: Thank you. Mr Palladino, you referred to some documents earlier. You are allowed to—

Mr PALLADINO: They are public documents.

The CHAIR: Great, thank you. Thank you everybody.

(The witnesses withdrew.)

(Luncheon adjournment)

JASON O'DWYER, Manager Advocacy and Policy, Master Electricians Australia, sworn and examined

The CHAIR: Welcome back. Thank you for joining us, Mr O'Dwyer. We have your submission that you submitted to the inquiry but you are welcome to make a brief opening statement if you wish.

Mr O'DWYER: If I could, thanks, Chair. First of all I would like to start by saying that Master Electricians Australia [MEA] is the only autonomous national association that offers a single national view about this issue. Electrical safety of consumers, workers and employers is paramount. Our belief is that AMR will not disturb the national wiring rules or any of the other 80 Australian standards that dictate electrical quality of work in this country. I think Mr Gauld from the ETU said it best in the last session when he said we already have mutual recognition. That is true—we already have it. MEA understands that there are anomalies in licensing but this legislation does not disturb the safety or technical standards that apply to the industry in each State. That is very important from a Federal point of view and from a State point of view.

Mr McCabe from the National Electrical and Communications Association also stated that 90 per cent of electricians are ready to go: they are aligned, they have a national qualification, they have a national licence that is automatically mutually recognised across the country. There is no argument about that from any of the parties that I have heard of today. I have also listened to many examples of what may happen about automatic mutual recognition. Many of those examples happen now and I do not believe that we were discussing too much about what actually happens in those circumstances now. It is important to understand that, again, automatic mutual recognition in its current form will not really change those areas. They should in terms of improving it for quality of safety and quality of outcome for consumers, but it was not.

We also support AMR on the basis that the health industry achieved this some 10 years ago. The health industry of doctors, nurses, allied health professionals and Chinese medicine practitioners achieved this across the country 10 years ago. So there are certainly industries that are not ready for it—we understand that—but my comments will really focus in on the electrical industry. One of the things that does come up with me very often with this sort of topic is, I have listened today and in many forums around the country, and I am reminded of the saying from *Animal Farm*: We are all equal, but some are more equal than others. The State parochialism that goes on across unions, employer associations—and I think Mr McCabe from NECA said it best, that his association could not get agreement internally within their own federation model.

Again, there is a lot of disagreement about that sort of stuff that goes on. You have to question the reason for those. Are they protecting their patch or are they looking at what is in the national interest? From our point of view, we are looking across the country. We see a national system of wiring rules that goes across AS/NZS 3000:2018. That is the national wiring rules and every State in the country recognises that as the national wiring rules. Every regulator holds every electrician accountable to those rules. In our view, it is somewhat dangerous to say that AMR will disturb any of that because it will not. So it is important that we are looking at the right topics here about what AMR will do.

Some have talked today specifically about the East Coast model: Every State in Australia recognises every other State in Australia. So there is automatic mutual recognition between Queensland and every other State, and other States—New South Wales and Victoria—pick and choose. That is okay. My understanding is that that can continue with their AMR—sorry; with their mutual recognition at the moment. Again, those abilities for individual States under the Federal legislation that will come in, if it passes as it is now, will continue that and the States will be able to dictate their rules. There are specific things that need to be addressed: restricted licences in their various forms in each State. We realise that—and, yes, I agree with the other parties in the previous session—they need to be looked at, they need to be agreed to, they need to be worked on. It is not an easy discussion to have, but it needs to be had. But, going back to what Mr Gauld from the ETU said, 90 per cent of electricians are ready to go, and I think we cannot lose that fact.

The CHAIR: Thank you, and thanks again for your submission. It is quite detailed and helpful. We will now open it up to the Committee for questions.

The Hon. WALT SECORD: Mr O'Dwyer, in your opening statement you said that the health industry achieved this 10 years ago. How long do you reckon the electrical sector has been seeking or wanting to work towards uniformity? Would you say decades?

Mr O'DWYER: I would have to say yes.

The Hon. WALT SECORD: Decades, yes. If it has been decades, then what is your response to the suggestion that maybe we should wait until the Federal Senate finalises the legislation and then New South Wales moves? What do you say to that?

Mr O'DWYER: It is interesting from a legislation point of view. My understanding of the Federal legislation is that it would be adopted the same way as the workplace health and safety legislation, and that it would be enabling legislation in each State that would be reflective like workplace health and safety. My understanding is that I do not believe the Commonwealth was actually asked for a referral of power like they did with the Workplace Relations Act back in 2007 with Kevin Rudd. I have not gone back to look at which one it is, but my understanding was it was going to be reciprocal legislation in each State.

The Hon. WALT SECORD: But you do understand that the Senate is either amending it or considering tinkering with it and changing it. Don't you think it would be a bit hasty for New South Wales to be the first State to pass this legislation before the Federal Government has even finalised it?

Mr O'DWYER: I think that is a matter for the New South Wales Parliament. I think that resolves around the issue of whether it is a referral of power or whether it comes back to being a reciprocal legislation that is written, like the Australian national market energy rules are.

The Hon. ADAM SEARLE: The bill before our Parliament is an extension of the referral of powers and the way the bill is currently drafted is that it is essentially a blank cheque. It just refers the mutual recognition issue extensively to the Commonwealth Parliament with no restrictions.

Mr O'DWYER: I would probably want to seek some instructions from our membership, but I would suggest that if that was the case, we would want some safeguards in terms of having a national licensing body and some oversight—basically, pretty much like the Australian Health Practitioner Regulation Agency [AHPRA] does now at the moment. The Fair Work Commission is the same in Federal jurisdiction cases. So if you are going to refer those powers, I think it is appropriate that you actually do it the appropriate way with the referral of power.

The Hon. ADAM SEARLE: I think the scheme that is envisaged is that the State regulators would continue as the regulator. The way I have looked at it is if you are licensed in Victoria, then it is the Victorian regulator that is in charge of you. If you are registered in Tasmania, irrespective of where you perform the work, it is the Tasmanian regulator that is in charge. There is no proposal for a national regulator. So I guess I would be interested—if it was just a blank cheque referral, what are the safeguards you would see as being necessary?

Mr O'DWYER: Certainly, from my point of view, we would go towards the driver licence model in that if you commit the crime in New South Wales, then the New South Wales regulator actually prosecutes you for that, even if you are a Victorian. So my understanding at the moment is that if you are doing work in another State and you get a conviction in absentia, you may not even be present at the hearing that the New South Wales licensing board may hold; however, they then pass the information across to Victoria. You then fail the test, being the "fit and proper person" test. Now, that is a very administrative and a long process to go through. So automatic mutual recognition—and, again, without seeing all the details et cetera—I think would actually improve that process to allow the New South Wales regulator to actually prosecute interstate people for doing work in that State. So that is where we probably go a little bit further than what the legislation currently is set at.

The Hon. WALT SECORD: Mr O'Dwyer, to summarise your evidence, you want the New South Wales Parliament to pass this legislation.

Mr O'DWYER: Yes.

The Hon. MARK BUTTIGIEG: Could I just follow up on my colleague's line of questioning there? If you accept Mr Searle's assessment that it is a referral power, your evidence was that you would want some sort of AHPRA-style apparatus in place to fix up the anomalies and go towards harmonisation. Was that what you were saying?

Mr O'DWYER: Not necessarily harmonisation, because there will be technical issues and technical things that will happen inside each State. If I can use a brief example, there is a particular technical requirement in Victoria not to use a certain safety switch. The Victorians have—it is an equipment standard, for example. Now, that will not be disturbed by automatic mutual recognition. But the electrical contractor, when he gets an interstate electrician to come in, he has to make sure that that person is deemed competent on those tasks and he has been made aware of all the rules that are local to that electrician and to that business. So those sort of technical things will not be disturbed.

What we would like is the ability for that licence holder—the employee—the contractor to be held accountable in that State. Now, whether it is through a Federal registration—the legislation needs to be changed at the moment because my understanding is that each State, by agreement, shares information with each other and that each State in their licence renewal processes said, "You allow us to share your information with another State." The legislation could be altered, and I think needs to be altered, in terms of referral power to say it is mandatory for that information to be handed on between the regulators across the country.

The Hon. MARK BUTTIGIEG: But this legislation does not do that, does it? It is not mandatory.

Mr O'DWYER: No, it is not mandatory. But that is where we would say—nationally, that is where some of the improvements could be coming from a national perspective.

The Hon. MARK BUTTIGIEG: Mr O'Dwyer, you represent largely contractors, do you? Is that right?

Mr O'DWYER: Three thousand contractors across the country, yes.

The Hon. MARK BUTTIGIEG: What about in New South Wales?

Mr O'DWYER: I could not tell you off the top of my head—300, I think, in New South Wales.

The Hon. MARK BUTTIGIEG: They are what you would refer to, I suppose generically, as small business people, by and large?

Mr O'DWYER: Yes, absolutely.

The Hon. MARK BUTTIGIEG: Are you concerned that some of the burden of this legislation—in other words, shifting away from a departmental-based vetting process to, well, "I'm going to employ old mate from Queensland. I better make sure he's up to speed"—is that not a concern for you as a representative of those 300 contractors?

Mr O'DWYER: No, it is not.

The Hon. MARK BUTTIGIEG: Why is that?

Mr O'DWYER: Because that is the requirement they have now. They cannot rely just on the department to do their checks and balances. They actually have to do their own checks, and they actually have to do it under the Workplace Health and Safety Act. They have to make sure that that person is deemed competent for the jobs that they are doing.

The Hon. MARK BUTTIGIEG: So there is no utility in the department of fair trade vetting qualifications now?

Mr O'DWYER: They would be vetting the licence that is coming from Queensland, and the employer would be doing the same thing. When he engages them, they will be sitting at interviews saying, "Show me your Queensland licence," and they can do a check online. Across the country, you can do a check online of licences, and it will demonstrate if there have been any prosecutions or if there are any embargoes or what the conditions are of those licences, and that is nationwide. Now, it would be really nice for consumers if that was one database, but at the moment it is seven. Again, this is why I am going back to this process of saying the Federal legislation could actually be improved by actually making it a bit more national on the basis that the information is in one central point. Again, I go back to the health professionals registration authority. That is what they do. It does not matter where you go; you know what the person is, whether it is physio, allied health, nuclear medicine, whatever it happens to be. There is a central database that a consumer can go to to see if they are registered, and that does not happen now.

The Hon. MARK BUTTIGIEG: Sure. But a database, insofar as allowing consumers and contractors to check on whether or not there have been breaches, will fix that sort of thing, but I think the evidence that we heard this morning was that there are problems with gaps in quals of licensing in terms—and the sort of occupations people can do. For example, in New South Wales you have an accredited service provider system, or you might have a system where someone comes up from South Australia. They have got an electro-technology qualification which allows them to wire up houses but it does not necessarily mean they are qualified to do work associated with the network, for example, or refrigeration work or whatever whereas that gap analysis would have been picked up by the Department of Fair Trading. It would not have? You do not think that happens?

Mr O'DWYER: I do not believe that would happen. Let me go back a couple of steps. If they got the licence, mutual recognition happens—

The Hon. MARK BUTTIGIEG: Under the legislation?

Mr O'DWYER: Now, or as proposed. If you have got the licence, automatic mutual recognition happens.

The Hon. MARK BUTTIGIEG: Can I just hold you up there? So what you are saying is that leaving aside the eastern seaboard arrangement which we discussed at length this morning, are you suggesting that someone from South Australia can come to New South Wales without having to contact anyone?

Mr O'DWYER: No, because what I was going back saying is that to do electrical work in any State in the country, if you are talking about contracting to a consumer to do work, they cannot do that in any State in the country unless they have a contractor's licence. And that is not covered by AMR.

The Hon. MARK BUTTIGIEG: No. It is the actual work, is it not, that is covered?

Mr O'DWYER: It is the actual work. If the electrician, the employee, is coming to work for a contractor, the contractor has the obligation to check the licence and has the obligation to make sure that they are competent in the work that they are going to get to provide. He has a contractual obligation with, if I take ASP as an example, the ASP authorising company to say that they have done the training, the additional training that is required over and above the certificate III, and that they are authorised under his contract with the network provided to actually do that work. It is that whole process of just because you have an electrician's licence does not mean you can go out and go supply my mum's house. You cannot. You have to have a contractor's ticket to do that.

The Cross-Border Commissioner said it this morning—or it might have been the Productivity Commissioner—when they were talking about making sure that people were contracting licences and that they hold the accountability. Comments were also said this morning about there is a reduction in consumer protection but that is just not the case because the consumer protection actually comes from the contractor who does the work. It does not come from the electrician. The protection is actually from the contracting—whether it is an ABN holder, a Pty Ltd et cetera—that is the company that has the consumer guarantee required of it. The electrician does not.

The Hon. MARK BUTTIGIEG: The electrician though is still licensed.

Mr O'DWYER: He is still licensed, that is correct.

The Hon. MARK BUTTIGIEG: What is the utility of the licence then if there is no recourse?

Mr O'DWYER: The recourse comes if he does poor work, the licensing authority can actually take his licence and it will stop him doing electrical work completely. So in Queensland, Victoria and New South Wales there are licensing committees. They prosecute contractors and electricians individually.

The Hon. MARK BUTTIGIEG: Do I always have to be employed by a contractor to do electrical work?

Mr O'DWYER: Yes, you do.

The Hon. MARK BUTTIGIEG: If I put in a power point in Mrs Jones' house I have to be employed by a contractor?

Mr O'DWYER: If you do not have a contractor's ticket, correct. That is exactly right.

The Hon. MARK BUTTIGIEG: I am struggling to see what utility the Department of Fair Trading offers now. When you front a State jurisdiction now, say you are coming into New South Wales, it is an obligation for you to go to them and say "This is the qualification I have got in South Australia. Can you tell me whether or not I am up to speed and what I can do? That happens now?

Mr O'DWYER: Does it?

The Hon. MARK BUTTIGIEG: Yes, it does.

Mr O'DWYER: They send in the paperwork and they will look at—

The Hon. MARK BUTTIGIEG: No, is your evidence that it does not happen?

Mr O'DWYER: My evidence is if you have got an electrician's licence from South Australia, and you do your automatic mutual recognition process with New South Wales, my understanding is that if you have done a four-year apprenticeship, you have done UE38011007, I think it is—

The Hon. NATALIE WARD: Give or take.

Mr O'DWYER: Give or take, yes. Do not quote me on the package number. If you have done those two things and your Capstone in that qualification they will look at the licence and say "Yes, we will automatically mutually recognised that." I had a discussion with the Victorian Regulator—

The Hon. MARK BUTTIGIEG: But your evidence is that that is not necessary now because the contractor has to do it anyway?

Mr O'DWYER: What we are talking about is someone presents—my understanding is—to an employer with a South Australian licence, and that is mutually recognised already—

The Hon. MARK BUTTIGIEG: But mutually recognised by virtue of what?

Mr O'DWYER: By the process that we have got.

The Hon. MARK BUTTIGIEG: But you just said it did not happen.

Mr O'DWYER: But that is what I am saying. No, no, I am saying it does happen but what I am trying to get through—

The Hon. MARK BUTTIGIEG: So now it does happen, yes.

Mr O'DWYER: It does happen now in that they go to the department and they have got to wait 28 days, pay the fee, and they get their licence, et cetera. Under automatic mutual recognition if you had a situation where there was a short-term labour supply and you have got someone coming in that the employer can actually look at the licence, see that it is a South Australian licence, understand that that is mutually recognised because that is what it is now, then what we are saying automatically there should be no impediment there for the employer to take that person on and to start work under their contractor's ticket.

The Hon. NATALIE WARD: Can I pick up on the health and safety issue?

The Hon. MARK BUTTIGIEG: Go ahead.

The Hon. NATALIE WARD: Thank you, if you do not mind. I am just conscious of the time. I want to pick up on the health and safety issue because I think it is a career issue for us in terms of the risk posed. My understanding is, and your evidence is quite clearly, that contractors and employers are covered by work, health and safety obligations anyway—I know when we worked with the harmonised legislation here some time ago, which was not quite so straightforward it was difficult. Sometimes difficult things take time but they can be done, as you rightly said. So that is covered to ensure that workers, that is, contractors are competent in their duties and they are covered to ameliorate or deal with that risk quite directly head-on. We have heard evidence about differences in qualification requirements across jurisdictions posing an unacceptable risk. I want to ask what is your view of that? Is it covered? If not, why not? What consumer safeguards exist already to address this issue?

Mr O'DWYER: It was a bit hard to work out from this morning's evidence about what particular qualifications they were referring to. In the back of our submission there are 40 listed and they are recognised—they are the Australian Skills Quality Authority-approved electrical qualifications. In terms of restricted licences, and that is the 10 per cent that I am probably referring to, and that everybody else is referring to across the country, there are varying requirements in each State and there will varying requirements in terms of qualifications. That does need work—there is no doubt about that. The panel was talking this morning about a carve out, et cetera. I go back to what Mr Gauld said that 90 per cent of electricians are ready to go. From my point of view, we do need to work on the 10 per cent to get right. It would be great to get that consistency across the country.

The Hon. MARK BUTTIGIEG: I am not quite sure that he said 90 per cent of electricians are ready to go. I think he said that the east coast was all harmonised. I am not sure if the east coast equates to 90 per cent of electricians. The record will show that.

Mr O'DWYER: Yes. So from my point of view there is work to be done. There is no doubt that there is work to be done.

The Hon. NATALIE WARD: Yes, and you have listed those.

Mr O'DWYER: Yes, absolutely. The restricted licences et cetera do need work, there is no doubt about that. There will be circumstances where you do not want people with no qualifications or poor qualifications coming into your jurisdiction without the proper qualifications, et cetera. And that is where we should be taking a high-water mark on those sorts of things.

The Hon. NATALIE WARD: Yes, but there are consumer safety—

Mr O'DWYER: I agree.

The Hon. NATALIE WARD: Yes, you agree with that. We recognised the risk that there are consumer safety safeguards in place already?

Mr O'DWYER: Yes. Again, going back to the fact of whether it is a full licence or a restricted licence, they still have to work for a contractor, across the country. The contractor has to make sure that they are appropriately qualified and appropriately skilled to do the work that they are doing. I am probably not qualified to talk too much about fire protection law for air conditioning and refrigeration-type stuff because that—

The Hon. NATALIE WARD: I am not qualified to understand it.

Mr O'DWYER: Yes. Their licensing is not consistent across the country; their qualifications are not consistent across the country. So there is a lot of work to do in that industry. But in terms of ours, I think it is only probably 10 per cent that we need to do.

The Hon. NATALIE WARD: Getting back to those employer obligations, can you just speak to the benefits of AMR for those employers and then ultimately for the end consumer?

Mr O'DWYER: Yes. I think the benefit of it for the employers, particularly for small companies, when you are quoting on jobs—and, look, the average size of most electrical companies is somewhere between five and seven employees. They like to stay small, nimble et cetera. So if they get a rather large—we are about 10 per cent of any building project, so if you get a $1 million project, the electrical value will be about $100,000. If you need to scale up you need to scale up quickly, and usually with builders there is no time to waste about doing tenders and things like that, so you are on a timeline. I have had many members turn around and say, "I have had to let jobs go because it'll take me a month to get the guys up to speed and then get their licences and get across the border and actually do it", and so on.

The Hon. NATALIE WARD: Is that right?

Mr O'DWYER: Yes. That happens, they just lose those opportunities.

The Hon. NATALIE WARD: And yet we hear of shortages in some projects where you cannot get skilled people in to finish them in time.

Mr O'DWYER: Electrical, refrigeration et cetera are as rare as hen's teeth at the moment. COVID has not helped. We have got issues about lockdowns. There are 600 houses in Queensland that had roofs blown off that we cannot get fixed because we are having the same issues with roofers. We cannot get them across the border to actually finish jobs.

The Hon. MARK BUTTIGIEG: Can I just follow up quickly on that? It is a bit counterintuitive because if the obligations are still there by virtue of the contracting arrangement, which is essentially the employer, then how is the burden going to be reduced if—

Mr O'DWYER: It is not reduced, that is what I am saying. In terms of—

The Hon. MARK BUTTIGIEG: But you said that people do not tender on things because there is too much compliance at the moment.

Mr O'DWYER: My interpretation of the burden is actually physically doing the checks, because they are still doing the checks. Where it is more efficient for the employer is that they then do not have to wait the 28 days for the department to come back and say, yes, they can work.

The Hon. MARK BUTTIGIEG: But they still have to do the same checks.

The Hon. NATALIE WARD: Can I get back to the—sorry.

The Hon. MARK BUTTIGIEG: Sorry, go ahead. That was my point.

The Hon. NATALIE WARD: Yes, I understand that and it is not a bad point. But I just want to get to the end point for consumers and customers and the people that want these things built and dealt with otherwise. You were getting to that.

Mr O'DWYER: Yes. It is always with the contractor. The contractor is licensed in the State. Most regulators, from my experience, have a higher propensity to examine contractors much more thoroughly than they probably do electricians when they are coming in because they do have to go through that step of working for a contractor. But, again, if it was a situation of a new contractor coming into New South Wales, we are not talking about automatic mutual recognition for that. We would like to, but we are nowhere near ready for that. That was what your national occupational licensing fell over about five or six years ago, because we could not get to an agreed position on the high-water mark of the skills required for all of—it was not even skills, it is the required business operational methods and things like that—

The Hon. NATALIE WARD: Yes, everything else that goes with it.

Mr O'DWYER: —and everything else that goes with it to give consumers and employees that safety perspective.

The Hon. ADAM SEARLE: Your submission at page 4 likens electrical licences to driver's licences. We have had some evidence here to say that is not a complete example because Australia has a national or uniform set of road rules and, although you might have the same or similar accreditation or qualifications, each jurisdiction

has a slightly different regulatory environment. There are specific local conditions. For example, the electrical wiring rules, we are told, are different between the States. You say they are not?

Mr O'DWYER: They are not. AS/NZS 3000 is the national wiring rules for Australia. They are set by a committee set by Standards Australia. One of my staff sits on EL01, which is the committee of 40 people that actually review that document; amendment two is due out in the next couple of months. They are national rules that are set by Standards Australia. My understanding is that they called up in the legislation in most States and they are enforceable.

The Hon. MARK BUTTIGIEG: But that does not encompass the full suite of an electrician's duties, does it?

Mr O'DWYER: No, it does not, but there are 80 other standards that are required to be adhered to when they are doing their work.

The Hon. MARK BUTTIGIEG: But some of those 80 other standards are State jurisdictional-specific standards, are they not?

Mr O'DWYER: No, the 80 standards I am referring to are the Australian standards. So they are Australian standards.

The Hon. MARK BUTTIGIEG: Okay, so what if I am an electrician that wants to connect up one of those installations to a network, for example?

Mr O'DWYER: We go back to the ASP situation here. If it is a network in most States—and I want to also say that Western Australia has a similar process of ASP. They have the licence split a little bit, but they also have contractors who do network work for them as well in Western Australia. So New South Wales is not on its Pat Malone there. But if it is working on networks, you cannot work on a network unless you are either in an ASP service and you have been deemed competent and done the training et cetera to do that, okay? But in other jurisdictions you are not allowed to do it; you have actually got to get the network provider in to do it. We have an issue at the moment with a process called power of choice about hanging meters. In some States it takes eight truck visits to actually put on a meter. Now that has got nothing to do with automatic mutual recognition or anything, but it is very specific and they are the national electricity grid rules that actually have to happen. So, from that point of view, no, they cannot just walk in and start doing network stuff.

The CHAIR: We are at time, so if you can just finish your thought. Otherwise it is time to wrap up.

Mr O'DWYER: Yes. I think basically, from our perspective, it really is a situation that there are some errors that do need attention. There is no doubt about that. Restricted licences and things like that need to be looked at, they need to be harmonised. But ultimately every electrician is either a contractor in his own right or is employed by a contractor and this legislation does not disturb that in any way, shape or form.

The CHAIR: Okay, thank you very much for your time. We appreciate it.

Mr O'DWYER: Thanks very much.

(The witness withdrew.)

CON TSIAKOULAS, Compliance Officer, Plumbing Trades Employees Union, affirmed and examined

SAM CLAY, Deputy Secretary (Research/Industrial and Professional Support), Australian Education Union NSW Teachers Federation Branch, affirmed and examined

AMBER FLOHM, Senior Vice President, Australian Education Union NSW Teachers Federation Branch, affirmed and examined

The CHAIR: Welcome to all of you. Thank you for your detailed submissions to the inquiry, a helpful place for us to start. You are each entitled to make a brief opening statement if you wish.

Ms FLOHM: Thank you, I will. Thank you to the Committee for the opportunity to contribute to this inquiry—it is very important to the public education profession—to appear as a witness and of course for taking the time to read our submission. The Mutual Recognition (New South Wales) Amendment Bill 2021 will have a profound effect on not only the teaching profession but on our students in public education. The deleterious nature of such provisions not only risks our students' safety but provides the context of a race to the bottom on teaching standards, curriculum and pedagogy, and ultimately educational and psychosocial outcomes for our students. It does nothing for the advancement of public education in New South Wales. In New South Wales and nationally the profession has deemed automatic mutual recognition to fail to be fit for purpose for education. There are no benefits of such a scheme that we have been able to identify. The risks to our students and children conversely are too great to leave to chance. The profession across all of the sectors has been unanimous in this view and for this reason the education Minister, Ms Sarah Mitchell, has provided the Federation with correspondence which seeks an exemption.

Current arrangements provide for the required mobility necessary for teachers who travel across borders for their work—as they do on a day-to-day basis. Now, noting that mutual recognition is aimed at facilitating such movements across borders in a temporary fashion, that is not relevant for our teachers. What is undoubtedly the most significant issue of these proposed amendments for teachers are the matters of child protection. The potential for future teachers to jurisdiction-shop poses an unacceptable risk to our children. We urge this parliamentary Committee to give serious consideration to the dangers and risks to our public education community if this bill is passed as it is. The exemption for education must be in perpetuity given that these significant factors will not be resolved in five years through any exemption.

The CHAIR: Mr Tsiakoulas?

Mr TSIAKOULAS: Thank you very much for the opportunity to contribute today to the upper House Committee inquiry into the Mutual Recognition (New South Wales) Amendment Bill 2021. Given the proposed law before the New South Wales Parliament is designed to give the direct effect of the Commonwealth's proposal and the bill, we do not support the Mutual Recognition (New South Wales) Amendment Bill. The Plumbing Trades Employees Union in part supports the intent behind the mutual recognition but at this stage the proposal as it applies to industry—the detail for the consumers and the community safety is not there at the moment. We need more technical compliance and oversight between all the States to enable the jurisdictional—between regulators to be applied correctly before any mutual recognition is done. Plumbing and fire protection are very important aspects in all buildings in New South Wales. For consumers it is their first line of defence and it is a defence that they do not even understand the importance of in some cases—fire protection more so than plumbing. With these in mind and because of the different regulatory requirements in different States, we believe that mutual recognition—we agree with the intent of it but at the moment there is a lot more work to be done.

The Hon. WALT SECORD: My first question is to the Teachers Federation. If you are concerned about a race to the bottom and no benefits to this, then inherent in that claim is that other State and Territory educational systems are inferior to New South Wales

Ms FLOHM: Certainly not.

The Hon. WALT SECORD: I am trying to get to the basis of what you are saying. If all the education systems and all the training of the teachers are equal, then you would not have a problem with mutual recognition.

Ms FLOHM: Okay. I will just go to that—of course, I am speaking on behalf of the public education community. I do not seek to speak for the independent and non-government sector. What I would say is that the Working With Children Check, for example, is mandatory across all States and Territories. But the extent and nature of that is different across jurisdictions. To give a really concrete example, outside of the Working With Children Check in some jurisdictions there are suitability assessments. In other jurisdictions that is not part of the registration process. So the matter is not one is superior or inferior, although I would not mind putting on the record that in terms of the curriculum New South Wales does have the superior curriculum of Australia.

But outside of the curriculum those practices are distinct across various jurisdictions. What might be one criminal checking record in one particular jurisdiction may be different in another. When I talk about a race to the bottom, I am not just talking about child protection matters. I am also talking about matters of public education, that is, curriculum, pedagogy and delivery. They are different. A teacher in Tasmania is not the same necessarily in terms of the curriculum taught and the pedagogy as a teacher in New South Wales. That is what I mean: that some may seek to go to jurisdictions that have different requirements that are not as rigorous as New South Wales. How about I put it that way.

The Hon. WALT SECORD: At the moment is there a jurisdiction in Australia where New South Wales gives automatic recognition?

Ms FLOHM: Okay. So currently—

The Hon. WALT SECORD: Earlier Mark explained to us about an eastern seaboard electrical trades.

Ms FLOHM: Sure.

The Hon. WALT SECORD: Is there something similar? Can a New South Wales teacher go to Victoria?

Ms FLOHM: To give you a really concrete example, again—for example, there are 256 teachers who live on the Victorian side and teach in New South Wales. They became part of that border bubble during the COVID lockdown. Those teachers live in Victoria but work in New South Wales. Our current arrangements already provide for that. My understanding is that automatic mutual recognition is more about the temporary movement of the workers rather than the permanent. The situation in New South Wales is that teachers who work permanently in New South Wales tend to reside in New South Wales and move from other States. So if you take 256 teachers out of a workforce of nearly 80,000, you can see how minimal it is. For those there is no dual registration. They work in New South Wales.

The Hon. WALT SECORD: Other than child protection—and the varying levels of child protection requirements—are there other areas that make you concerned about going down this path?

Ms FLOHM: Definitely. As I referred to previously, one, for example, is curriculum. The New South Wales Government is telling us all through the media that this is the most significant curriculum reform in 30 years—that is, other jurisdictions work with the Australian national curriculum. For example, your curriculum and the way in which teachers teach can be quite distinct. That has an impact on the children's outcomes. That is really what this is all about. This is about the provision of public education and the impact of automatic mutual recognition on them. And it is very difficult for us in the teaching profession to put the child protection matters aside because for us as a profession that is the most significant matter that has yet to be resolved.

The Hon. WALT SECORD: Has Minister Mitchell communicated that she is going to seek an exemption?

Ms FLOHM: Sure.

The Hon. WALT SECORD: Has she written correspondence?

Ms FLOHM: She has. I have brought a copy, which I am happy to table.

The Hon. WALT SECORD: Can we have a copy of that please?

Ms FLOHM: But I am happy also to read:

> Prior to the Christmas break—

and I will not read the whole thing—

> I wrote to the NSW Treasurer to express the concerns raised by the teaching profession in relation to AMR. These include significant issues for child safety and the potential to adversely impact quality standards for teachers working in NSW schools. Given these concerns, I have sought the Treasurer's support for a five-year exemption from AMR for the teaching profession.

The Hon. WALT SECORD: And what is the date on that letter?

Ms FLOHM: The date on that letter is 1 March 2021.

The Hon. MARK BUTTIGIEG: Just to follow up on that, Ms Flohm, this exemption by virtue of Minister Mitchell being proactive and writing to you and giving you an undertaking—and we heard this on evidence this morning. The way that this State-enabling legislation is structured is we are effectively ceding power to the Commonwealth without even seeing the legislation, but as it currently stands the State Minister has the discretion to do just what she has done in the situation of the teaching profession. What would have happened had

that Minister not given you the undertaking? I mean, essentially we would be in a situation where we are relying on a Minister to do the right thing and acknowledge the anomalies that you have raised, are we not?

Ms FLOHM: Sure. It is an interesting position to put the Federation in and ask what would we do if we did not have a Minister that represented the interests of the public education community. That is a pretty difficult question to answer.

The Hon. BEN FRANKLIN: It is terrific that you do though, is it not?

Ms FLOHM: But I guess what Minister Mitchell is responding to is the entire public education community and also the other sectors. So when we have met with Minister Mitchell, there have been teachers from other systems also there. It is resolute and unanimous across all of those that this is not—we should be carved out. The federation's position is that it should not be an exemption. It should be a total carve-out for the teaching profession because we do not see how these such significant matters can be resolved in a five-year period. They are very significant. I know I have not gone exactly to answer your question but I cannot answer on the jurisdictional matter, which I think is what you are going to. That is not my expertise.

The Hon. WALT SECORD: Do we know of any other carve-outs other than education?

Ms FLOHM: I am sorry. I can only comment on education.

The Hon. MARK BUTTIGIEG: Just on that line of questioning, other than that proactive reaching out when you wrote the letter before Christmas, I think you said, to what degree were you informed of this legislation in terms of consultation?

Ms FLOHM: Certainly I can refer to a report, which I am happy to do and table also. That is the automatic mutual recognition report—the engagement outcomes, NSW Treasury, December 2020. This commenced for the Teachers Federation through its national body, the Australian Education Union, in November last year in response to the Commonwealth legislation. We were asked to provide some feedback on what was then the draft legislation. We started at the Commonwealth and it is some surprise to us also that we are having the discussion in New South Wales around the legislation before the Commonwealth has officially enacted its automatic mutual recognition—

The Hon. TAYLOR MARTIN: Ms Flohm, would you be supportive of the work to harmonise teacher accreditation standards across the jurisdictions here in Australia?

Ms FLOHM: No, I would not—not in the current context. As I said, the Australian curriculum is already something that is available to all the jurisdictions. It is taken up by some and not by others. It is impossible to harmonise a curriculum in that way, given the different statutes and authorities that exist in each State and Territory. Just to take the curriculum example—no, we would not. We believe our curriculum in New South Wales is superior to the Australian national curriculum.

The Hon. TAYLOR MARTIN: I take your point in your opening statement about a race to the bottom. Why don't we have a race to the top? Why don't we engage in that harmonisation process?

Ms FLOHM: I think that is a matter that you would have to put to other States and Territories, if they were to come to the New South Wales curriculum, for example. But I note that we are currently in the process of developing 200 new syllabuses in New South Wales. So, good luck with that.

The Hon. TAYLOR MARTIN: Basically, if there were a temporary exemption granted for five years, you do not think that is sufficient to do the work.

Ms FLOHM: To be honest, the matters of child protection, which I note we have not gone to and perhaps others have during this inquiry, and the matters of curriculum pedagogy, standards, accreditation, registration, suitability and the like are critical. Of course, that is the core work of teachers. But the matters of child protection are not something that we can take risks on from our perspective. One child that is harmed as a result of a future teacher potentially registering in another jurisdiction is not something that the profession can ever accept. It is not possible, we do not believe, to provide a system that nationally provides the current checks.

Just to explain how it works in New South Wales, if you are a principal of a public school in New South Wales, every day you can log on to your computer and it will come up with a "not to be employed" list. That is responsive immediately to teachers who have been deemed to be not registered for a range of reasons, including child protection, of course, but for accreditation matters, for example. There is no such national scheme. Some could say we could create that. I guess that is possible but given the differing requirements across the jurisdictions around police and criminal checks, which are quite different, I do not see how you could harmonise, to use your words, that in a way that is safe and protects our children.

The Hon. ADAM SEARLE: Minister Mitchell has indicated in correspondence that she seeks a five-year exemption, which I think is the maximum permitted under the current Federal proposed legislation. What happens at the end of five years?

Ms FLOHM: That is a very good question.

The Hon. ADAM SEARLE: If this legislation is passed, the New South Wales legislation just gives a blank cheque to the Commonwealth Parliament. If the Commonwealth Parliament passes the bill that it currently has, at the end of five years the public teaching profession will be shanghaied into AMR whether it is ready and willing or not.

Ms FLOHM: As I said, I am not a jurisdictional expert. I have to put that down for the record. But from our perspective, we would want to see a carve-out, which we understand is possible under the current—

The Hon. ADAM SEARLE: A permanent carve-out.

Ms FLOHM: A permanent carve-out, which we understand is possible under the current Commonwealth legislation.

The Hon. ADAM SEARLE: But it is not what the Minister has indicated she is prepared to do presently.

Ms FLOHM: That is correct.

The Hon. ADAM SEARLE: Mr Tsiakoulas, in terms of the workforce that you represent, can you tell us what is wrong with the current proposed AMR proposals? What are the practical and public safety issues that your organisation sees arising from the current bill?

Mr TSIAKOULAS: It goes back to the harmonisation of the licence. Different jurisdictions have different rules. For example, in Western Australia there is no licence required at all. If a practitioner working in the fire protection space comes from Western Australia and wants to work in New South Wales, there is nowhere to see what he has done previously, but he could still apply because he has got recognised prior learning, even though he has got no previous experience. Come back to New South Wales, where you automatically recognise, say, a Victorian or a Queenslander that wants to work in New South Wales. The problem is that it is not like for like. We have registered trades and we have licensed trades.

The registered tradesmen are tradesmen who have got a level of payment that has enabled them to work on systems, yet in New South Wales we also have a licensed tradesman. A licensed tradesman actually goes back and does an extra two years on top of their trade to learn the important stuff: the regulatory stuff and the compliance stuff that a contractor needs. When we have mutual recognition, if you are working in another State and then you come to New South Wales and you do not have that same level of attainment, what that means is that we are actually allowing people that have not got the same level of expertise to work on our systems.

The Hon. ADAM SEARLE: So they look like they have got the same qualifications—

Mr TSIAKOULAS: But they do not.

The Hon. ADAM SEARLE: —but they do not have the same skills.

Mr TSIAKOULAS: Yes.

The Hon. MARK BUTTIGIEG: Mr Tsiakoulas, just on that point, because I think it is important: Under the current regime—

Mr TSIAKOULAS: In New South Wales.

The Hon. MARK BUTTIGIEG: Yes, in New South Wales—obviously, pre-automatic mutual recognition. What happens to that example you used of a fire protection person, who generically falls under the umbrella of plumber, coming from Western Australia? They are not required to have a ticket in Western Australia and they come to New South Wales. What are they currently required to do in terms of checking whether they can do that work here?

Mr TSIAKOULAS: They can actually come and work for a contractor in New South Wales and not actually supply anything—just go on their recognition of prior learning and their experience. If they come from another State—for example, Western Australia—they do not have to say anything to the regulator in New South Wales that they are working in New South Wales.

The Hon. MARK BUTTIGIEG: No, I am talking about currently. Do they not have to go to the department of fair trade under the current system?

Mr TSIAKOULAS: No, not from Western Australia. No, they do not. They can actually go and work as a tradesman. They cannot contract, which is the next level up. They cannot actually contract with consumers but they could work for someone else and Fair Trading would allow that. They cannot actually contract. They cannot come to your house and say, "I am going to install or do the fire protection in this building," but they can work. That is the difference and the problem that we have—

The Hon. MARK BUTTIGIEG: But Fair Trading vets it, right?

Mr TSIAKOULAS: Yes.

The Hon. MARK BUTTIGIEG: My point is this: Fair Trading vets that but, under the proposal, there is no pre-vetting. You can just go and do fire protection.

Mr TSIAKOULAS: That is right, because Fair Trading sees the fire protection licence in New South Wales, for example. The problem we have in New South Wales with that system now if the person from Western Australia comes to New South Wales, in New South Wales Fair Trading believes the plumber can do all that work. So fire protection installations that you see in New South Wales—Fair Trading believes a plumber, even though he has not done no competencies in fire protection, can do fire protection in New South Wales. In other States like Victoria and Queensland—we will get to WA thirdly. If they come from Victoria and Queensland as a plumber, even though they have not done those competencies, New South Wales allows you to work on it. But in those States, you have to be licensed in fire protection. The problem that we have in New South Wales is currently that because the licence is seen as an all-encompassing licence—and I hope I am answering it correctly for you, Mr Buttigieg. Even though you have not got a competency in something, they allow you to do that work, where in other States—

The Hon. MARK BUTTIGIEG: This is a good example because this is actually—hitherto we have been using New South Wales as the exemplar State of the higher standard, but you are talking about a situation now where we are actually lower. We would be sending substandard people to Western Australia, for example—

Mr TSIAKOULAS: And Victoria.

The Hon. MARK BUTTIGIEG: —but under the current system, they would be vetted in Western Australia.

Mr TSIAKOULAS: Yes.

The Hon. MARK BUTTIGIEG: Under the proposed system, they could just go and do it because their qualification here is acceptable, therefore it is acceptable in WA.

Mr TSIAKOULAS: Yes.

The Hon. MARK BUTTIGIEG: So when a mistake is made and the fire sprinklers go off—some of those systems are high pressure and someone gets hurt. That is when the prosecution occurs.

Mr TSIAKOULAS: Correct.

The Hon. MARK BUTTIGIEG: It is not pre-vetted.

Mr TSIAKOULAS: No. That is the problem we have. Because NSW Fair Trading allows that in New South Wales, even though you have not got a competency, you can work on those systems because they see the plumber's licence as an all-encompassing license, we have that problem where when we do go to other States, they say, "Fair Trading allows me to do that work in New South Wales. Why can't I do it here?" So, we have guys without the correct training and proficiency in fire protection systems working potentially on life-saving devices.

The Hon. MARK BUTTIGIEG: Does it strike you—and this is in no way to diminish the importance of those professions, which are obviously critical for our children's education and future. Many of my colleagues are lawyers; I am not diminishing the importance of having uniformity for the law, either. But does it strike you as a bit strange that we have carve-outs for the legal profession? Minister Mitchell has now proactively carved out, for will carve out, the teaching profession. And yet, for hands-on trades which could end up killing people, there is no consideration of a carve-out.

The Hon. BEN FRANKLIN: Well, that is not true.

The Hon. WALT SECORD: Shame.

The Hon. BEN FRANKLIN: It is not that there is no consideration. It is just that we are not at that stage of the process yet. Sorry to interrupt.

The CHAIR: Let us hear from the witnesses.

Mr TSIAKOULAS: Part of the problem is that to get to the carve-out—there is an industry accreditation scheme in New South Wales that is not actually a licence or registration. So, we have got schemes in New South Wales that need to be moved to enable us to get that harmonisation. Five years, in our opinion—with all the work that is going on in the background nationally with national training packages and all these things—would be sufficient time for us to get it right.

The Hon. MARK BUTTIGIEG: It would?

The Hon. BEN FRANKLIN: It would be?

Mr TSIAKOULAS: I think five years would be the time.

The Hon. BEN FRANKLIN: That was actually going to be my exact question.

The Hon. ADAM SEARLE: Mr Tsiakoulas, just to be very clear about this: You have got the issue of licensing, which is one issue. But the issue of competencies and skills, which is not quite the same—

Mr TSIAKOULAS: That is right.

The Hon. ADAM SEARLE: The problem with the current arrangement, as I understand you are saying, is that while it might reflect people having a similar technical qualification, it does not properly capture their skills or competencies.

Mr TSIAKOULAS: No.

The Hon. ADAM SEARLE: And so, before you move to automatic mutual recognition, you would like to see more work done on the harmonisation of the skills and competencies.

Mr TSIAKOULAS: Yes. In that five-year process—the thing is, you hear the word "plumber"—

The Hon. MARK BUTTIGIEG: But just on that point, Mr Tsiakoulas—

The Hon. BEN FRANKLIN: Could you just let him finish his sentence? Come on!

The Hon. MARK BUTTIGIEG: Well, it is a follow-up point.

The Hon. BEN FRANKLIN: Let him finish the sentence.

Mr TSIAKOULAS: The five years is national. That is nationally; it is not New South Wales. We have work to do in New South Wales to get to a level, but at least we know where that level has to be. But to agree with it how it is now—we cannot agree with it because we know we can see what we have to do. Getting back to the question, can you repeat where I was up to?

The Hon. MARK BUTTIGIEG: Sorry. I rudely interrupted, as Mr Franklin pointed out. My question was: Even if you get the five year—it is a similar question that was asked of Ms Flohm. What guarantees are there that within the five years the harmonisation process occurs? What is the impetus or incentive for harmonisation to occur? If the jurisdictions do not agree, everyone folds their hands, and then after five years we are back to square one, are we not?

The Hon. TAYLOR MARTIN: You can continue another five-year review after the five. That is my understanding.

The Hon. BEN FRANKLIN: That is right.

The Hon. MARK BUTTIGIEG: By ministerial discretion.

The Hon. TAYLOR MARTIN: So be it.

The Hon. BEN FRANKLIN: Yes, but you can continue to do that.

Mr CLAY: One of the differences—it goes to what you are suggesting, Mr Buttigieg—is that under the current mutual recognition processes a State where someone is seeking mutual recognition is able to put in place conditions. That does not exist under the automatic mutual recognition. The conditions that exist in the first State—the State where that person lives and works predominantly—apply to their work in the second State. However, under the current arrangements there is an ability to put conditions in place, and I think that is really acknowledging the fact that things are not perfectly harmonised. I think that is one of the flaws that perhaps has not been considered too much. Admittedly, we are talking about the Federal bill here, but I think that plays into these matters, as well, more broadly.

Ms ABIGAIL BOYD: Listening to the witnesses today, there seems to be an acceptance that there are certain occupations where automatic mutual recognition makes pretty good sense, and they tend to be the ones

that already harmonised to a certain degree. And then, there are a bunch of professions where we are just not at the point where automatic mutual recognition really makes sense. Have either of you, or either of your organisations, been consulted at any point by the Federal Government in relation to an opt-in scheme instead of this opt-out scheme?

Ms FLOHM: Look, I am happy to answer that. No, that has never been put to us—whether that was a possibility. Obviously we would have opted out at the beginning, when we started the discussions at the Commonwealth level. As I said today for the teaching profession, we do not believe we can resolve these things in the best interest of students, not just in New South Wales but across Australia. At this point, we cannot see how a national scheme or harmonisation will work for the teaching profession, given the sheer—not only just the operational requirements, but also the standards of teaching and the suitability. In some States you have psychometric testing to enter; in other States, you do not. In some, you have police and criminal checks every six months; in other jurisdictions, it is once. The variations are enormous. We just cannot see those resolving in the best interests of kids. Obviously, from our perspective, an opt-out would have been an excellent option.

Ms ABIGAIL BOYD: I am a lawyer and so I can speak to my profession, but obviously I cannot speak to yours. But from a lawyer's perspective, when I think about national recognition, obviously that cannot work because we have State-based laws and we become experts trained in our own jurisdictions. Having said that, I do have recognition in other jurisdictions that I have gone out of my way to get the qualifications in, not through a mutual recognition. It strikes me that the school curriculum is similar in terms of—it is very State-specific. From your earlier comments, are you saying that really you do not envisage us ever getting to a point where we have a national curriculum applied in Australia?

Ms FLOHM: I see it as difficult, not impossible. Obviously the position of the Federal Government is that we have an Australian curriculum. In practice, the New South Wales syllabuses are aligned to the outcomes of the Australian curriculum, but they also have many more which go exactly to context, as they should. For example, we have a much larger number of students who learn English as an additional language in New South Wales—121,000 this year—in comparison to Tasmania and Western Australia. It is appropriate that our syllabus and our teachers have the qualifications that meet the needs of their particular jurisdiction. I am not sure how you would ever resolve that except to do what we have done, which is align as much as possible.

Mr CLAY: I just wish to add to that. In relation to the different curriculums that exist in States, it is our belief that their current mutual recognition processes are effective and that in practice there will be some teachers who may have originally, as an example, been accredited, registered in Victoria, and then working in New South Wales, and therefore go through the existing processes. And they do work, and there are checks and balances that exist there. But also it is possible currently for there to be dual accreditation in States and a fee waived in New South Wales, as an example, if a teacher is registered in another State but working in New South Wales under the process of mutual recognition.

Ms ABIGAIL BOYD: If we are only looking at teachers, is there a problem at the moment with the way the current scheme is working? What would you improve if you could improve something, other than it moving towards this?

Ms FLOHM: That is actually a really good question because we cannot see the problem we are trying to solve here. The consultation report that is referred to, actually, in Minister Mitchell's correspondence says on page 24 that "concerns were centred around child safety and consistency and qualifications. AMR would not address the key challenges for recruiting teachers in New South Wales, which is filling a teaching shortage in regional areas." We cannot actually see the problem we are trying to solve. People already move as required. They come to New South Wales from Victoria or South Australia or other jurisdictions, and they move here permanently with their families to take a permanent teaching job. So we are just really unsure of any benefits. We are scratching our heads to find any for the provision of public education in New South Wales. We only see risks at this point. Sorry not to answer the question, but we just cannot think of any benefits for the kids and the system.

Ms ABIGAIL BOYD: To your knowledge, would it benefit other States more so than New South Wales when it comes to teaching?

Ms FLOHM: I guess that is a different question—a difficult question for me to answer. Someone referred earlier to: Are we saying that New South Wales has the highest standards? In some areas it does; in others it does not. I am not going to go to those, particularly on the record, but the reality is that it varies.

The Hon. WALT SECORD: You have privilege; go ahead.

Ms FLOHM: But there are, for example, other jurisdictions that have more rigorous checks in terms of child protection. In New South Wales there are suitability checks, which we believe are very rigorous. We have professional teaching standards that are concreted in our industrial agreements. That is not the case in other

jurisdictions. I really think, to be fair to my colleagues, it is a quid pro quo—some things, it just depends where the teachers want to move and live, and if that is in New South Wales then the processes are already there for them to do that. And my colleague, Mr Clay, already referenced the fee waiver in the second jurisdiction. That is already there.

The Hon. WALT SECORD: Ms Flohm, could I take you to the letter? Was it hard to secure this commitment from Minister Mitchell? How did it actually occur?

Ms FLOHM: Certainly not. We had engaged in a number of consultations over a period of time. As I mentioned, we started at the Commonwealth level. Minister Mitchell was amenable to the arguments, not just of the public education system but, as I mentioned previously, the other sectors and a broad range of education stakeholders who were expressing the same views. There is also NESA, the New South Wales education statutory authority. They are very critical to mutual recognition. They undertake the processes on behalf of New South Wales teachers. They were also involved, so there were a number of people. I do not think it is fair to characterise it as difficult to secure, no.

The Hon. BEN FRANKLIN: I have a couple of questions if I may. I pick up on a comment that you made earlier, Ms Flohm, about teachers transferring interstate. In your submission you say that it is not common. I am interested as to why you think that is.

Ms FLOHM: I guess I am referencing the 256 teachers across the entire profession. What I mean is there are only 256 teachers—

The Hon. BEN FRANKLIN: I get that it is because of the numbers, but why are there only 256? Are there impediments that are stopping people moving or is it that, once they are in a State, they love being there for a whole range of reasons and they do not want to move? In your experience, why is that number so low?

Ms FLOHM: I think the reality is, as I mentioned previously, if you want to work in the New South Wales system people just move here. They relocate their families, they get other employment—perhaps for partners et cetera. They actually relocate; they do not do it on a temporary basis, which, in my understanding, is what this legislation is attempting to address—the temporary movement. It is just not a thing for teaching. And many of those 256 are actually temporary and casual teachers.

The Hon. BEN FRANKLIN: Why would they not want to move here? I move to Mr Tsiakoulas. This morning we had some evidence about the impact of some of the economic challenges in cross-border communities where some businesses and some industries are finding it onerous to move to those areas because of the challenges of working in two States, particularly in terms of financial impost, different charges, licensing fees et cetera. And so, therefore, the evidence that we heard was that people are not actually doing it; people are not moving to border community sometimes because of that in some industries. My question is: Is that an issue for the plumbing industry, and is that something you have come across? Do you have any comments on that broadly?

Mr TSIAKOULAS: We can only speak from the three experiences that we have with our cross-border situations. You would find that the companies there—Victoria and the border town of Albury-Wodonga, and also the border town of Coolangatta and Tweed, and to an extent Queanbeyan and ACT.

The Hon. BEN FRANKLIN: Canberra.

Mr TSIAKOULAS: You would find that the contractor would have his workforce to the highest level. So you would find that the border towns' contractors would employ and engage employees with the higher qual to enable them to have the highest possible qualification to work. Those border town examples, for us, still stem back to that. You would find that the people living in those border towns would be getting the qualifications for the higher one. For example, in Albury-Wodonga you find even our Albury plumbers have also got the quals for Victoria.

The Hon. BEN FRANKLIN: And they do that deliberately because they know they are going to be working in two States?

Mr TSIAKOULAS: That is right. They always upskill themselves even higher because that enables them to work across in Victoria. Where you say people move to those regions, we have not seen that too much because you find that the bigger companies, the nationally based companies, would be set up and they require you to have that higher qual. You find especially in that Albury-Wodonga area, even in Albury, that the level of skill—because there are a lot more tradies doing that cross border, actually they go to Wodonga to be trained as well. They do not actually do the TAFE in Albury; they go to Wodonga to get the higher qualifications. And then that way—that is how they work. We do not have an issue with Broken Hill, Pinnaroo and all those other places, but mainly in Albury and Queensland they get the higher qual. They will go from that higher jurisdiction.

The Hon. BEN FRANKLIN: Which is a good outcome for your industry?

Mr TSIAKOULAS: Of course it is because we are striving for New South Wales to get to that qual.

The Hon. BEN FRANKLIN: We talk about a race to the bottom, to potentially pick up on my colleague's point. What it is actually doing is pushing standards higher.

Mr TSIAKOULAS: No, what it is doing is—

The Hon. BEN FRANKLIN: That was the evidence you just gave.

Mr TSIAKOULAS: No, what it is actually doing is that people—you do not need to work so that the Victorian person at the Albury-Wodonga companies, for example—it is relevant for us because it is only a kilometre difference with different jurisdictions, but it still goes back to the qualification required to do that work. So when you are saying it is higher, yes, it is true but that is a requirement. In New South Wales across the border for example, the requirement is there in different ways but it is not as high to attain that qual—if that makes any sense.

The Hon. BEN FRANKLIN: I understand. I just think that it is good that the standards are going up. Because of the different costs of fees and licences and so on, have you had any experience with plumbers not wanting to move to those areas because of those? If you have not, that is fine.

Mr TSIAKOULAS: The fees and the regulatory requirements that we say—you have got to understand how across those three States it is very different. In Victoria it is a self-regulating system where you do the work and you sign off on the work and you submit the paperwork. In Queensland every bit of work you do is inspected by the Queensland Building and Construction Commission [QBCC]. In New South Wales there is bits and pieces of the work that you do that gets inspected. If you are doing a house, they will inspect for example the drains before they get covered so that they got done correctly and stuff like that. When it comes to fees, again it is not apples and apples because in Queensland you have got more fees because the inspector is coming out more to your jobs.

The Hon. BEN FRANKLIN: I guess this is exactly the point that I am making.

Mr TSIAKOULAS: But—

The Hon. BEN FRANKLIN: Because of the difference between the—sorry we just do not have too much time left.

Mr TSIAKOULAS: But it is not a monetary thing.

The Hon. BEN FRANKLIN: That is my point. As you said, there are different rules and different regulations, a whole lot of different things. Because of that difference, is that stopping people moving there and actually doing the job in your understanding or has that not been raised with you? Is that not an issue as far as you are concerned?

Mr TSIAKOULAS: No, because you find people are moving for lifestyles. People relocate for various different reasons. If you go to South Australia, you have got to pay $1,000 or whatever the case may be just to go work there first and then they ask you what licence you have. No, I think it is more the bureaucracy and the process is more so that you have got to understand.

The Hon. BEN FRANKLIN: Understood, thank you.

The Hon. MARK BUTTIGIEG: Mr Tsiakoulas, my question relates to the evidence that was given by Mr O'Dwyer earlier. Basically his argument was that this is all covered by the safety net of the contractor system. If I go and do work for Mrs Jones in New South Wales I have got to contract to her or I have got to be employed by a contractor. Therefore, the contractor by law is required to make sure that I am licensed and qualified to do the work. If I am a drainage plumber from South Australia and I come up to New South Wales and I want to do gas work, normally the Department of Fair Trading would have gone, "Hang on, mate, you are not qualified to do gas." But now, under this system I can go and contract to Mrs Jones, but Mrs Jones does not know that I am not qualified to fit gas.

Mr TSIAKOULAS: No, because of that automatic—

The Hon. MARK BUTTIGIEG: How does that all work?

Mr TSIAKOULAS: The contractor has to be licensed in New South Wales. You have got to have a licence, which is one step above a tradesman. Different trades, like in the building game, do not have that. A plumber, drainer, gasfitter will do his cert III, do his four years and become a tradesman. You cannot contract;

you cannot go to a consumer with a card and say, "I want to fix your work." You actually have to go do additional training as part of your cert IV to then get your contractors—

The Hon. MARK BUTTIGIEG: Contractor licence.

Mr TSIAKOULAS: Contractor licence, yes, and then be a supervisor. The problem that we have here—the delineation—is, are we recognising contractors or are we recognising tradesmen? The problem is that when you are recognising the person from South Australia, you are automatically potentially recognising someone that is not actually entitled to contract with the rules in New South Wales. You are actually just saying, "He has got that in South Australia. You are automatically recognised." Then he can do that work, yet he has not even met the quals for New South Wales to do that in New South Wales because he is just a tradesman. To go into someone's house and do work for someone, there is a few more things that you have to be taught, learn and see. You cannot just expect someone that has not had that experience and knows all the rules to come into your house and contract with you. The problem is now with this system you are allowing everyone to come into your house. They might not even actually be a contractor that we recognise; they are actually just a tradesman just out of their time.

The Hon. MARK BUTTIGIEG: The point is that Mrs Jones would not have a clue.

Mr TSIAKOULAS: She would not know what is going on—poor thing.

The Hon. MARK BUTTIGIEG: This question might be to all of you and it seems to be an emerging theme from today's hearing. If there was some sort of coercion or incentive for harmonisation of these high-risk areas, education, law, plumbing, electrical, that was put in as an impetus to the legislation—in other words, we are not just going to get a five-year carve out because everyone will sit on their hands and then we are back to square one. If there was some mechanism to force people to harmonise, would that be the ideal outcome if it could be done in legislation?

Mr TSIAKOULAS: From our perspective, you can only harmonise apples for apples. Unless the licence is harmonised, what are we mutually recognising? Already around Australia it is not like for like; it is just not like for like yet. With that contractor, supervisor, Queensland has called it occupational, all of these things, until these are harmonised at that level, it will enable an easier—that is where you are saying, yes we need the five years but we have to have something there in place to enable us to move forward to do it.

Ms FLOHM: For teachers, we do not see harmonisation as the resolution to this because of the nature of children and the jurisdictional and statutory authorities. Harmonisation across our profession will not benefit, we do not believe, the provision of public education across Australia.

The Hon. MARK BUTTIGIEG: That example you used before I think regarding the higher density multicultural element in New South Wales requiring English as a second language would not necessarily be required in South Australia. In that sense, you are never going to get complete harmonisation.

Ms FLOHM: Correct. The point is that we do not see that as the solution and the pathway. We are just very strongly of the view that each jurisdiction in education needs to operate as it does now where people can move across jurisdictions now under current arrangements and that ensures, under current arrangements, we know exactly who it is where the misconduct of a teacher for example is raised. It is all very clear and it protects our children and young people. We believe currently there is no problem to solve. We cannot see the benefits for any aspects of the community, not just families and young people but financially there are no benefits. There is no solution to teaching shortages. There is no financial benefit. There is just no benefit.

The Hon. MARK BUTTIGIEG: In the teaching profession there might not be a benefit. But let's say, for example, that in the plumbing and electrical space there might be some marginal benefit along flow of labour. My question to Mr Tsiakoulas is: Is the benefit that the Government is saying will flow from this worth the risk of giving carte blanche—to use my colleague's phraseology, a blank cheque—to the Commonwealth Government to simply mandate that everyone is automatically recognised?

Mr TSIAKOULAS: It is so dangerous where we have not got it right in New South Wales yet. If we have not got it right in New South Wales, how are we even going to think about going to the national model that you are saying? We have problems in New South Wales where we have legislation and Acts yet NSW Fair Trading uses the Home Building Act 1989 to go around it. A classic example: plumbing, drainage and gasfitting is exactly that. Fair Trading, through the Home Building Act, believe that someone with the basic general plumber licence can do fire protection work. Yet fire protection work, if you are working in that, is a standalone trade. How Fair Trading sees that as—because you have got that generic plumber licence we allow you, even though you have never done any competencies in sprinkler fitting installation, to do that work. What happens is if we have not got that right here we are actually then going to allow other people who have not got that qualification to come into New South Wales to do that work, also, through the automatic mutual recognition, which is dangerous. You are

going to allow plumbers from other States to then have the qualification recognised in New South Wales to come do work, even though in other States it requires a separate licence. That is the dangerous thing, for us.

The Hon. MARK BUTTIGIEG: We heard evidence this morning that there have been previous attempts at harmonisation over the years.

Mr TSIAKOULAS: Yes.

The Hon. MARK BUTTIGIEG: Was your union involved in that in the past?

Mr TSIAKOULAS: Nationally they were, yes. From our Federal office they were involved in those moves. First and foremost it is with the training packages, making sure they harmonise the national training packages to get that right. They have got that right now. The training packages—but then it is how then you interpret each part of your jurisdiction and your trade within that State. Examples are that there is more emphasis in Victoria on gasfitting because it is colder—there is a lot more gas. In Queensland, there is not as high a use. Different States have the training package slightly different. But moving forward, yes.

The Hon. MARK BUTTIGIEG: If there was some way to revive that and put a time limit on getting your act together that would be the way forward?

Mr TSIAKOULAS: One hundred per cent.

The CHAIR: Thank you very much for your attendance today and the evidence you have given. It was very helpful. We have now finished with this portion of the afternoon, so you are excused.

(The witnesses withdrew.)

ADRIAN SHACKLETON, Executive Director, Air Conditioning and Mechanical Contractors Association of NSW, sworn and examined

GLEN CHATTERTON, Chief Executive Officer, National Fire Industry Association, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next panel. Thank you both for your submissions. They have been very useful for the Committee's preparation. You are each entitled to make a brief opening statement if you would like to.

Mr SHACKLETON: I have not prepared anything, Madam Chair, other than to say that the facts are in our submission. We have put a fair bit of effort into it. From my perspective, I am a plumber by trade. I started my apprenticeship in 1984, so it was a fair while ago. I have been in and out of training of plumbers. My last job before the Air Conditioning and Mechanical Contractors Association of NSW [AMCA] was actually running a training college for the last nearly six years. We trained sprinkler fitters, apprentice plumbers, mechanical services and gas fitters. I have been involved heavily with the defence forces in training their tradesmen, as well, for deployments overseas. I would say that I know a lot about apprentices, I know a lot about plumbers and I know a lot about training. AMCA is very pleased to be able to be present today and assist the valuable work that the team is doing.

Mr CHATTERTON: Thanks, Chair, and thanks also for the opportunity to present. From our point of view Grenfell was a painful reminder to all of us of the importance of fire protection for saving lives. In a building it is the fire protection system that automatically responds to the source of the fire and helps members of our community exit a building as safely as possible and enables the brave first responders to get into a building and do their terrific work. The fire protection system is the sprinklers over your head; it is the alarm systems that we hear being tested so regularly; it is the extinguisher within reach; and the automatically closing door that stops a fire raging down a stairwell as people enter the skyscraper.

Grenfell plus some other factors led to an Australia-wide review and the commissioning of the building contents report which was accepted by all building Ministers in Australia, including the New South Wales Government. Its recommendation No. 1 was the registration or licensing of building practitioners. It also covered inspection certification of fire safety installations and in fact there are only two subsectors of building construction singled out for their own recommendations: They were building surveyors and the fire protection industry. The New South Wales Government is currently considering this review and through the Building Commissioner is undertaking some measures to run consultation and reviews on our licences held and this is happening across Australia.

The Australian Building Codes Board is also undertaking a national registration of building practitioners review, which is considering the skills and qualifications for the work on the job and how they align with the training framework for fire protection. The National Fire Industry Association position is let us finish this work; let us get it right; it is important and it is life-critical. In Western Australia you need a licence to paint the pipe but you do not need a licence to install the pipe. In Victoria, certain types of special hazards systems that are wet require a licence, but a chemical-based system does not. These are the types of systems that protect our national defence security service. In Queensland there are over 55 special licences. In New South Wales plumbers, sanitary plumbers who are not trained and who do not have the skills to undertake fire protection work still can.

Plumbers started with the Romans. Sparkies started with Tesla and the invention of the light bulb. We have not been building complex, modern fire protection systems for that long compared to this, and the State by State regulation of fire protection shows it. State governments were able to offer a five-year exemption for certain trades and given all the work that is currently ongoing to get this right we are requesting a five-year extension and if the legislation passes, we will be formally engaging with the Government when we request this. Just as Mr Shackleton has, we have outlined the details in our submission and stand ready to answer any of your questions. Thanks again.

The Hon. WALT SECORD: Mr Chatterton, you are seeking the five-year extension. Is that because New South Wales involving, as you referred to, the Building Commissioner, lags behind other States and Territories, in fact, so we will actually be pulling them down to our level?

Mr CHATTERTON: It is different case by case across the board. Fire protection is very complex. It has five streams. Within those five streams there are multiple licences that fall under that in different jurisdictions. Our concern is mainly around the fact that the scopes of work are so different in each area that you would have in each jurisdiction a scenario where people would be able to do work that they have not been trained for. We are

really happy that the New South Wales framework is being reviewed. We think that that is terrific and we have been heavily involved with that review.

Our other concern outlined in our submission was that sole traders are being treated as occupationally licensed people. We do not think that that is appropriate. We think that State-based regulations around a contractor, considering the importance of particularly liability frameworks and mismanagement frameworks, those regulations should exist still. Fire protection is a bit unique to the other trades when it comes to certification as well and that is different State by State. That is really what we are focusing on. I hope that answers your question.

The Hon. WALT SECORD: Can I take you back to the question again? How does New South Wales compare to other jurisdictions? Are we at the bottom of the pack or at the top of the pack when it comes to—

Mr CHATTERTON: Yes, sure. I mean, that simplifies the matter. It would depend on which particular stream. In some areas the New South Wales framework is quite good. In other areas we are pretty happy that it is being reviewed and we are getting a chance to have our say on those reviews.

The Hon. NATALIE WARD: Thank you both for coming along, for your assistance to the Committee and for providing your recent submissions, which are very helpful.

Mr SHACKLETON: You are very welcome.

The Hon. NATALIE WARD: And thank you for the work that you do in your industries. Can I ask both of you to answer this, perhaps starting with you, Mr Shackleton, but it is the same question to you both. You have both raised issues about competency and qualification requirements being different in different States. We have heard that throughout the day. So that difference is prohibitive in your view, if I am correct in reading your submissions, and that the different standards will put people's safety at risk because they do differ. Can I ask you to comment on that, knowing that we have read your submissions? Can I ask you to comment under this bill the requirement that an AMR worker can only carry out the work they are qualified to do in the other State? I think, if I heard you correctly, Mr Chatterton, you said that you could do work in another State that you are not qualified to do, but I am not sure I really understood that correctly because, under this regime, you can only carry out work that you are licensed to do in the State that you are licensed. That is correct, is it not? Is that not the answer? Mr Shackleton?

Mr CHATTERTON: Yes, so—

The Hon. NATALIE WARD: Sorry, I will start with Mr Shackleton just because he is here—

Mr CHATTERTON: Sorry for jumping in there. No, the premise of your question is correct.

The Hon. NATALIE WARD: —or not.

Mr CHATTERTON: Sorry?

The Hon. NATALIE WARD: Go ahead, Mr Chatterton.

Mr CHATTERTON: Can you hear me okay?

The Hon. NATALIE WARD: Yes, thank you.

Mr CHATTERTON: Terrific. Absolutely. So there are differences in each particular State jurisdiction's approval and assessment process. There are elements of fire protection and building assessment and approvals that vary State by State, particularly, for example, the certifications—what you have got to do in each State—because that is regulated by a local council or a State Government level varies. People that have not had training in that area and that specific State's requirements would not be skilled to do that so we would have a concern around that. We also have a concern around the scopes of licences in some States and we would rather that we work, as I was saying in my opening statement, that we work with those particular jurisdictions to improve their State-based regulation rather than expand that scope of work across other jurisdictions.

The Hon. NATALIE WARD: Okay.

Mr SHACKLETON: I will try to answer.

The Hon. NATALIE WARD: Yes. I am not sure it is any clearer.

Mr SHACKLETON: That is okay. Apart from the fact that has probably been raised many times today that there are differences across the requirements of the regulators across each State, I think there is also, if you think about it from a framework point of view, no consistency either from the scope of work. So, when a regulator talks about talks about licensing, not only are they looking at things that are important like, is the person appropriately skilled? Do they have a qualification or have they done a course to train themselves? Do they also

have the experience? All of that stuff that you would have heard about today. In fact, in Queensland they also look at are they financially able to conduct or run a business? Do they have the business acumen as well is the financials behind them to be able to run a business properly and not leave an economic problem for the person they are doing the work for?

But apart from all that stuff, there is also a lack of alignment between the granting of scopes of work. So, it is very important for a regulator to look at, for example when considering plumbing, what does that mean? When they issue a licence for plumbing they will also specify what can and cannot be done, so almost the inclusions and exclusions to do with that scope of work. If you picture this, it is not actually aligned. The problem you can actually have is that you could have someone who is, let us say, a plumber in WA and the regulator or the authority there has said, "Here's a licence. You will now be able to do water supply. You are now able to do gasfitting"—whatever, whatever. They take that and come to the other State because there is no clear alignment between, "Wait a minute. When they said that you can do plumbing, you can do gas fitting and you can do whatever the scope of work is, have we actually aligned our scope of work in the other State with what is happening there?" So, I suppose what I am saying in a lot of words is—

The Hon. NATALIE WARD: So gas fitting is not gas fitting is not gas fitting. It is not the same in each State.

Mr SHACKLETON: Yes, that is right. And it is the same with plumbing. There are a lot of things that are very across the board. It might say water supply up to a certain size. That is probably an example. Some regulators will say you can do water supply piping up to a certain size. After that, you need to go off and do more advanced skills. The problem is this: If the person has just got a licence in WA that says "plumbing water supply" and they come to Queensland, how do you know where there is that differentiation around the scope of work. Where does the inclusion start? Where does the exclusion start? If that makes sense—

The Hon. NATALIE WARD: That is a much bigger question, isn't it? Scope of work then becomes a monumental building standards question. That is back to my old litigation days in building but, I mean, isn't that a whole bigger question?

Mr SHACKLETON: Scope of work should be taken into consideration when you are saying that here is a licence to do something. It is probably very similar to the transport authority saying, "Here is a licence to drive a motor vehicle or operate." They will specify in there what you can and cannot do. It is very similar with the trade from that perspective, as opposed to just a, "Here's a plumber's licence. Off you go. Go and do plumbing."

The Hon. NATALIE WARD: I get that. We have heard that consistently. But we also heard today, interestingly—which I was not aware of—that in the health professions they have managed to do that across the board. You would have thought that would be one of the more complex areas as well. Do you see scope for this to be able to be reconciled?

Mr SHACKLETON: Hundred per cent. I believe there can be. I heard earlier, just sitting back, the question raised about previous work over the years. I have been involved in the construction industry for over 20 years and, as I said, with training. A long time ago we were involved with COAG when they were trying to align licensing. We went down this path of national training packages, which is terrific. We all said, "Let's get training aligned." Then what we did was we created a national training package with all these different units. We said, "Here's your core and here's your electives." Then everyone went off and said, "Well, we don't want those core, we want this", so all of a sudden we had people cherrypicking. I am making it very simplistic here, I know, because it depends on—if you go to Melbourne, what a plumber in Melbourne needs to do most of the time around heating and gas is different to what they need to do in Queensland. So we ended up with a situation where the different States—because of environment, because of traditionally what people expected from a trade point of view around, you know, "I like a heater. I want this, I want that."

We then had a national training package which was bringing us together. Then we cherrypicked and picked different units. The regulator in Queensland will say, when an apprentice comes out of his training—as you probably know all this—he needs to have so many core and so many elective. We say in Queensland they are the mandatory electives. So really, they are an elective but it is an elective you are going to do because if you do not do it, you will not get a plumber's licence. Then you have got the same thing happening in the other States. That is where we have had continual discrepancy or differences. A guy that has trained in Victoria then wants to jump in his car and come to Queensland and get a licence, and the issue is that he has done the units that are acceptable to that particular State.

The Hon. NATALIE WARD: Thank you. That is helpful. We heard evidence—and I do not profess to be an expert in this at all, so forgive me if I get the terminology wrong—but on the eastern seaboard, electrical trades are able to have this mutual recognition arrangement which seems to be working, if I can put it that simply.

Is there a possibility of doing the same in your profession? I ask that because I am wondering if we let the perfect be the enemy of the good. I say that because, for example, where we have a shortage of tradies in a particular thing, where we are trying to rebuild after bushfires or we are trying to rebuild in Queensland after floods or—I remember we had economic stimulus and there was a shortage on brickies at one stage and the price of bricklayers went up monumentally. So to be able to respond as a nation to that or to be able to bring people into New South Wales after floods, bushfires, et cetera, do you see that there is a way forward for that? It will not be perfect, and I understand States are States, but that in the short term that could be done similar to the eastern seaboard agreement.

Mr SHACKLETON: Yes, I do. There are mutual recognitions provisions with regulators already in place. They might not be perfect. The concern we have is that this seems to be a complete about-face from what is in place and what should be worked on and what should be fixed. Our concern, what you probably heard already, is the definition of the workers. There seems to be an attempt to be able to mobilise people more easily. But the problem we see is that the way that the bill is written and the definitions in the bill are going to open up a can of worms for people who are contractors to be able to move. The problem here is that they will be able to move without then having any overview of a regulator within that State. So because they have got a licence in one State, they can go and do work in another State.

There is a whole range of things. As an example, Queensland has got the QBCC. The moment you have licensed with the QBCC, there is a whole range of hoops you have to jump through. But once you have the licence, it shows that you are fit and a proper person to be able to run a business. Communications continually go out. There is the ability for the regulator to work with people because they are licensed with them and they know that they are operating. There is a whole range of things. Our concern is that what is being proposed is really—a lot of the control mechanisms that have been built up over many years to protect not just the community but also to protect the worker. There are regulatory things that people will not be aware of moving from jurisdiction to jurisdiction, and it will leave the worker—the people that we are trying to actually help here—exposed.

The Hon. NATALIE WARD: Can I go to the regulator, and note that the bill deals with exactly that: to say that regulators can prosecute where there has been crossover. That is provided for in a sense. That is my understanding of what the bill contains.

Mr SHACKLETON: I am not a lawyer, but what I would say is—

The Hon. NATALIE WARD: I am and I still do not understand it.

Mr SHACKLETON: I think the issue is that the regulator—and Mr Chatterton has worked extensively with QBCC over the years—is only able to act within the powers of what is given to them through bills and amendments and laws, basically. If it is not covered off adequately in there, that is going to leave the regulator basically toothless. They are powerless. The other thing is—just using the Queensland example—not only is there the regulator that is involved, it is also the local councils and jurisdictions. In the research we did in looking to put it in our submission, under the way the bill is currently proposed, it will leave the local councils that are in the different jurisdictions also powerless to act against people who are doing the wrong thing, if you like.

The Hon. NATALIE WARD: But the regulator could take that up.

Mr SHACKLETON: If they have got the powers through the State laws, I suppose.

Mr CHATTERTON: Our advice from the Queensland regulator is that they would not have the power to undertake enforcement action against sole traders that do not hold a licence in that jurisdiction. We have not had the opportunity to get formal advice from other State-based regulators as yet. There does seem to be a little bit of a potential gap for the sole traders. We are more hopeful that there will be able to be enforcement action for people who are employed by businesses. But as I said earlier, the sole traders would be treated the same as workers under that proposed legislation.

The Hon. NATALIE WARD: But if you were assured that the bill contains safeguards to ensure that the standards are upheld in New South Wales and that local laws will apply to interstate registration to maintain protections for those businesses, those employees and consumers, most relevantly—which is what I think we have all agreed on—is that something that would give you comfort?

Mr SHACKLETON: No.

The Hon. NATALIE WARD: Why?

Mr SHACKLETON: Because there is a range of issues with what is being put forward. It comes back to, again, the misalignment—if that is a word—or the difference between the qualification requirements of people across the different States. We are going to potentially end up with a situation where you have got someone in

Queensland, before they can become a licensed plumber—as an example—before they can go off and get a licence they have got to go off and do an apprenticeship. In Queensland, we have had apprenticeships for the mechanical services trades forever and a day—around 15 years. We have only just last year brought in occupational licensing for mechanical services, which is a huge win for our industry. Before that, any cowboy could drive in and do whatever they wanted and then jump in the car and drive home again. We have now got mechanical services licensing—

The Hon. NATALIE WARD: Sorry, I do not mean to interrupt you but I just want to pick up on that point. You can only do what you are licensed to do. You can drive across the border but you can only do, across that border, what you are licensed to do in the State where you are licensed.

Mr SHACKLETON: Yes, but the issue is we do not know what the person's qualifications, experience or training is from another jurisdiction. So it is not like for like. That is the problem: It is not like for like at the moment. We are saying to someone who has done a four-year apprenticeship, "Here is a licence." Someone who drives over the border and says, "I have got a licence from Western Australia," we say, "Here is a licence." We are recognising them as being appropriately trained and skilled and experienced, without knowing. One of the things we said in our submission—by all means, we are not against occupational people cutting the red tape so that people can transition. But we think that there needs to be work done to start with to actually—if we are going to be serious about this we really need to do an audit. I do not know why in this day and age we cannot, but we need to do an audit across all the different States of what regulators are mandating for their licensing. Let us have the conversation around what is the standard, what does everyone accept and then do that moving forward. That has been discussed for many years.

The Hon. NATALIE WARD: That would be the higher standard, which would be perfect. Just one last question, if I may, Chair. Under the AMR—

Mr SHACKLETON: Sorry. That would not be the highest standard. That would be an acceptable standard.

The Hon. NATALIE WARD: Sure. Under AMR, New South Wales regulators can ask interstate workers to provide notice of their intent to work in New South Wales. So they can say, "You are going to come here? Can you give us notice of that." The New South Wales regulator can then confirm the worker's licence and their permitted work activities with the Queensland regulator. So they can check what they are licensed to do and what they are proposing to do and provide that worker with the relevant information about what they are permitted to do here and the local laws requirement for working in New South Wales. So that exists. How is that different to the current MR system?

Mr SHACKLETON: Sorry, can you repeat the question again?

The Hon. NATALIE WARD: Under the AMR it is proposed that New South Wales can ask the interstate worker to provide us with information about their intent to work in New South Wales. The New South Wales regulator can then confirm that information with the Queensland regulator.

The Hon. MARK BUTTIGIEG: I am sorry but that is not quite correct. My understanding is that they cannot ask.

The Hon. NATALIE WARD: They can confirm their licence. They can certainly confirm their licence.

The Hon. MARK BUTTIGIEG: They are expressly forbidden to ask the worker for their qualification and licence.

The Hon. NATALIE WARD: They can ask the regulator. New South Wales can ask Queensland, "Is this person licensed and what are they licensed for?" I can ring Queensland and say, "Is this person licensed? What are they licensed for?" Anyone can do that.

The Hon. MARK BUTTIGIEG: Sure. That is a voluntary process, though.

The Hon. NATALIE WARD: But they can do it. It does exist, and it presently—it exists.

Mr SHACKLETON: I would be surprised if the QBCC gave someone else information on a person, through privacy laws.

The Hon. NATALIE WARD: I can ring and check if a tradie is licensed if they are coming to my home or my construction site or anything else and say, "Give me your licence number." I can do that. I can do that now. So that is a given. You can check that information and the regulators can do that with each other.

Mr SHACKLETON: Is that the same with all the States?

The Hon. NATALIE WARD: I do not know. I am asking the questions, not you. No, I do not know the answer. But that information can be provided. So there is the possibility for that to occur—for that information to currently be exchanged. If you are bringing 20 plumbers or roofies over to fix up a Queensland flood site, that could be a way to overcome that issue. Is it not?

Mr SHACKLETON: To answer that, I think that we are talking very loosely about one example of where the QBCC has a licensing register, and you are 100 per cent correct. In fact, we encourage everyone in Queensland—before you engage a tradesman, you need to ask them if they have a QBCC licence. It is a very active campaign that goes on often. If the person does not have a QBCC licence then they are told, "Don't do the work."

The Hon. NATALIE WARD: For their own protection as well.

Mr SHACKLETON: That is right. It is a great thing. We are talking about administrative controls here. I am unaware that all the other States do the same thing. In the scenario that you have given—I am just trying to give a respectful answer on it—it would really need a lot of administrative process to be put in place for that to be able to occur.

The Hon. MARK BUTTIGIEG: I just want to take you to some of the points that have been raised. With what has come out today there seems to be a lot of ambiguity about the ability to prosecute in another jurisdiction. This is after the fact, of course, when something has happened. Whether or not New South Wales is able to prosecute someone from Western Australia when they are back in their resident State seems to be—no-one seems to have come up with a clear-cut answer on that. What I am interested in, if either of you can come up with concrete examples, is that we have got a system now where there is a vetting process in place. In other words, there is some sort of vetting process you are obliged to go through prior to performing work.

Those anomalies you pointed out, Mr Shackleton, would presumably be picked up by the State regulator—the department of fair trading in the case of New South Wales—and it would say, "No, Mr Buttigieg, you can't do this because you have not done X, Y or Z competency," or "You have not got A, B or C licence. Go off and get that and come back to us." That is the process now. What I want to know is, under the proposed system, what would happen in those anomalous situations. Give us a concrete example of where someone with a certain qual or licence from interstate could come and do a certain type of work in the New South Wales regime and what could be the potential consequences. That is what I am interested in.

Mr SHACKLETON: I will go first. The HVAC industry—the heating, ventilation and air conditioning industry—that I am involved with is a little recognised for some of the lifesaving work that the air conditioning guys actually do. People just think air conditioning is just about making the place comfortable, which is it; that is part of it. Air conditioning technicians also test and inspect the air conditioning system. Air conditioning systems are actually designed so that if there is a fire in a building—over a certain size, of course—once the smoke or heat alarms are tripped, the air conditioning system is then triggered to go into a different running mode. So instead of just blowing air into everything and putting oxygen into the building, what it will actually do is pressurise.

Let's say there was a fire to break out in this building. What the air conditioning system would do is reduce the pressure that is coming into the building—so starving it of oxygen—and it would increase the pressure of the air conditioning in the rooms adjacent to it. What that does is it actually creates a pressure curtain. What that does is slow down the spread of the fire through the building, which then allows for the firefighters to come and put it out and all that sort of stuff. It stops the spread of the fire. Obviously, if you are in buildings that actually have people working in them—30- or 40-storey buildings or office blocks—you want to give the people as much time as possible because they are not getting in the lifts to go down; they are getting in the stairs. You want to give them as much time as possible for that fire to be contained for them to go down the stairs. So the key thing here is fire technicians are trained in how to set up the coding for all of this sort of stuff. They are trained to make sure the fire dampers—there are motors in the air conditioning system. All this sort of stuff is set up so that when it is needed, it kicks in. That is all inspected periodically by the fire technicians. That is very complex work.

The Hon. NATALIE WARD: Can I interrupt you? That is a separate licence to plumbers. That installation is quite a separate—

Mr SHACKLETON: Separate to plumbing. That is the air conditioning and refrigeration licence, which will also be impacted.

The Hon. NATALIE WARD: But the fire installation that you were talking about is a separate thing. There is the installation that plumbers can do but then there is the sprinklers and the other stuff, which is the complex—

Mr SHACKLETON: Sorry, yes. That is correct.

The Hon. NATALIE WARD: That is a separate licence.

Mr SHACKLETON: Yes, that is correct. There is a fire protection licence, which is about the wet and the dry side of things, and then there is the mechanical services licence. Yes, sorry.

The Hon. NATALIE WARD: Thank you.

Mr SHACKLETON: So our technicians go out often in both States and they will find buildings where someone has come along and they have decided that they know better than the person before them and they have reset things. Thankfully we do not have fires every day, but in some buildings if we had a fire it could have been disastrous. It could have been the other way round. Air could have been getting pumped into the building. You can imagine. Our technicians go out often. They find this. Amazingly, some of the cases are actually hospitals that are the worst. I have heard horror stories where the hospital's system has been completely redone by the maintenance guy or someone else. They have come along through the inspection and testing procedure and identified it and then they have had to spend days there rectifying it.

If our technicians do apprenticeships, we are comfortable that they are actually appropriately trained. We know that their skills—before they can get a licence they need to demonstrate time on the job. So there is an experience level there that they have got to pick up. It is not just about "Give me a CV with some experience." It is also about demonstrating that you have been working in the industry and you have been working for someone reputable that does that work. They are all the things that a regulator looks at when an application comes across their desk to give someone a licence.

I have not done an audit of all the other States; I am busy enough with Queensland and New South Wales. But the other States are not as advanced in the areas we have just spoken about. The concern is that you can open the floodgates to people that will have a licence to come and test and inspect your fire system. But how do we actually know that they have the knowledge, the skills and the training to be able to make sure that the system in a hospital has been done properly when it needs to kick in and do its job—which it might only have to do once in 30 years, and hopefully never?

The Hon. MARK BUTTIGIEG: That is a really good example; thank you for that. So under this proposed regime, what would happen in that scenario? You get someone up from, say, poor old South Australia—we keep using them—or Western Australia or whatever come in. They install the aircon without the right settings because a contractor has said, "You've got an air conditioning licence; you must be good to go." There is a fire. The Coroner's report says that the settings were not done properly and that is why you have killed 10 people, then the prosecution occurs to the contractor and the person who did it—whereas under the current system that gap could have been vetted at the departmental level.

Mr SHACKLETON: That is correct, yes.

The Hon. MARK BUTTIGIEG: Is that in essence the difference between—

Mr SHACKLETON: Yes, and I think there is a flow-on effect as well. It just jumped into my head as you were talking. If you have the framework set up that we are proposing with this then you also have the complexities. Not only would there be a case of, "Let us prosecute the guy that we have let come over the border"—because we actually let him come over the border and did not really make sure that he was qualified, although he had a licence—we then have a whole question mark over a State's licensing system. That is the bigger picture, because it will not just end with that one case. Straightaway it calls into question the licensing, the strength, the rigidity—for want of a better word—and the thoroughness of the licensing system for that State, because it will not end there.

The Hon. MARK BUTTIGIEG: I think Mr Chatterton raised the point about five years—that there has been a bit of talk about this five-year silver bullet. Let us colloquially call it that. One of the concerns that has been raised today is that if we fall back on that five-year provision—and let us remember this is by ministerial discretion—if the Minister chooses to engage or enliven that option then there is no incentive or at least no guarantee that the prior harmonisation we are talking about to fix those things up will happen, is there? You are reaching out as an industry saying, "Please let us do this." But unless there is agreement interstate and you have a whole-of-government approach it is just unlikely to happen, is it not?

Mr CHATTERTON: You are right that it will require motivation from all parties. I cannot speak to what everybody's motivation is. We are motivated to work with jurisdictions across the country to get there. I outlined at the start all of the reports and reviews that are happening at the moment, which is the first time for our sector that has been going on so we find that really encouraging. There is always the backstop that if the scopes do not align then there is the capacity to automatically recognise someone in five years' time, but that would obviously be up to ministerial discretion at the time. It will require a fair bit of work.

Mr SHACKLETON: Yes, I think what you said is right. Harmonisation and alignment across the quals and experience, all the stuff we are talking about so that people can move between the States, have been talked about for a while. Yes, it needs some sort of time frames and it needs motivation to happen.

The Hon. MARK BUTTIGIEG: Can I ask you both—some of those things are quite complex. Once you get down into the weeds, you start to get an appreciation for what could go wrong. Superficially it makes sense. We automatically recognise that everyone wants that. We are one country—what is the problem? But obviously once you start to get into the detail, that is when—how much dialogue have you had with Government on those things? Have they reached out and said, "Does your industry have any issues with this?" What has been the process? What has been the experience?

Mr CHATTERTON: The process for AMR was pretty quick and was happening during the pandemic. We understand that First Ministers and Treasurers were operating at a pretty quick pace during that time. In terms of the dialogue we have been having on the underpinning reviews building confidence that Australians indicate support for all of those, it has been really encouraging from my point of view. I think we will see improvements across the board, which will be good.

Mr SHACKLETON: I would echo the same. It did come about very quickly, understandably. Responses have been put in. Again I respectfully wear two hats but from a Queensland perspective, we have been probably fairly engaged. But again, Queensland's industry does tend to work a lot with the regulator. The regulator does ask us a bit more. From an AMCA perspective, I am working very hard with Commissioner Chandler's office and others to have more dialogue with the Government. There is not a lacking on Government's part; it is really just enough hours in the day. We would welcome continuing to work with Government on this because it is pretty important.

The Hon. MARK BUTTIGIEG: Mr Chatterton, I might just take you to your submission. It notes the Queensland Treasurer, Cameron Dick, stating:

> Queensland supports common sense mutual recognition, but under no circumstances will we compromise our world leading standards for fire safety, electrical and plumbing trades that are based on formal qualifications.

We have heard that from many of the stakeholders today. In fact there is a view and word coming back from States like Victoria that they may very well opt out, which will leave New South Wales locked out of all the benefits if the bill is rushed through Parliament. What is your view on whether or not there should be some sort of desire or mandate that we get this harmonisation right first before passing it? Keep in mind that this Federal legislation has not even passed through the Senate yet, so we do not even know the final form of the legislation that we are ceding power to.

Mr CHATTERTON: Your comments are what motivate our call for the five-year exemption and our engagement with governments across Australia. As I said at the start, I can see from an electrical point of view where the eastern seaboard is very aligned. Some States are highly aligned in plumbing and there would be other examples as well. I think health practitioners were used before as a sector of our economy that is highly aligned. You could see why an automatic mutual recognition would work. We are motivated by the fact that they do not align. The scopes of work in some States are very broad and adopting an automatic process would ensure the proliferation of the lowest common denominator rather than a continual improvement.

At the moment we are seeing in governments right across Australia, including the New South Wales Government, that improvement in fire protection come through—those reviews, the pinning of scopes of work with formal qualifications and the types of reforms that we all need to keep ourselves safe in the built environment. That is really what motivated where we are coming from, with the understanding that for some sections of the economy this will not work. It has been welcomed almost unanimously in some places. There is no segment of the fire protection industry that has welcomed this straight off the bat. All parliaments with fire protection have said this needs a fair bit of work in order for our sector to be able to function.

Mr SHACKLETON: There is more work that needs to be done and we think there needs to be more time to be able to get it right. I hear these comments from time to time—yes, but if you are aiming for something perfect it will never get there. We are not sitting here saying what we want is perfect. What we are sitting here saying is there are a lot of risks in what is being proposed. In my time I have seen a lot of progressive changes being made from a licensing point of view and a training point of view and this has the potential to undo a lot of the good work that has been done over many years. All we could respectfully say is there needs to be some more work done on it, understand the desire of why it is trying to be done and the aims, and we fully support that. My business is made up of membership, so my members need to be able to work. I do not want red tape. Part of my job is to get up every day and go and remove red tape, and when I can remove red tape, guess what? That puts me in a good light with my members. So we are not sitting here trying to convolute things or break things up but we have got some real, serious, genuine concerns from a health and safety point of view, as we have articulated.

The Hon. MARK BUTTIGIEG: Just on that point—and it is a good one in terms of the red tape on employers, particularly small business people—is there a danger that this could be counterproductive in the sense that if the State-based regulators are no longer vetting quolls and being sort of the gatekeeper, if you like, a good employer—and I say "good" because having worked in the electrical trade, in the real world this is just not how it rolls; you do not get employers proactively going, "Oh yes, legislation clause 56B says we must do this, this and this. I am going to check all this", but let us say a model employer does that, that extra level of burden is that not capable of actually attenuating any productivity gains that have been hypothecated?

Mr SHACKLETON: Yes, definitely. It can cause problems. From an AMCA point of view, our members are very proud of the fact that they train apprentices. There is a whole range of things that our members actually do that helps the economy but, on top of that, helps our industry. People typically join associations because they want to contribute to something and a lot of our members do that. It costs them money to be part of it, it costs them money to do the right thing, but they do it because—I know it sounds corny but I listen to them—they want to see their industry grow, they want to see the industry that they have contributed to and that has given them jobs and helped them pay their houses off, helped them put their kids through school, that sort of stuff, they want to see it improve. There is a risk that those people that are running businesses, doing the right thing—at an extra cost, but they accept that—can be undercut by this.

As an example, in Queensland, as we have said before, minimum financial reporting is a requirement as a regulator for a contractor; they need to demonstrate that they have got financial viability and assets to be able to do a certain level of work. If you have got contractors coming in from other States that are not bound by those same minimum financial reportings requirements, the people that are in the current State they are doing the right thing but they are at a disadvantage to other businesses that can come in and will have less costs in operating—that is another scenario as well. But our concern is around the things that we mainly highlighted.

The Hon. MARK BUTTIGIEG: Just one more thing. The Productivity Commission this morning gave evidence and in their submission—this is the New South Wales Productivity Commission—that we are going to get $2.4 billion out of this in productivity gains over the next 10 years, but if there is a minority of occupations, which we have heard from you guys—the fireys, the fire people, plumbing trades, air con, electrical, those sorts of things, teaching, law—if there are carve-outs for a relatively limited number of occupations and harmonisation exists in the overwhelming majority of the rest, then in the cost-benefit analysis perspective what you are saying is this is not worth it—throwing out the baby with the bathwater; in other words, trying to do 100 per cent and then claw it back later. Would that be a fair statement?

Mr SHACKLETON: Yes, I would say that is a fair statement. The other thing too is in my experience the majority of people—tradies I am talking about; I am a tradie, I know tradies—they move from a lifestyle point of view and when they move they accept what they need to do when they go to the new locality: they need to change their licence over, they need to change their registration to whatever State they have moved to, they need to go into the regulator and get a new qualification, and most of them in advance will find out what they need to do to do that. At the moment they can do that through the mutual recognition process. So there is a process in place already.

The Hon. MARK BUTTIGIEG: What do you say to the argument that 28 days and a $400 fee is too restrictive, particularly in times where there are labour shortages like bushfires and things, because that seems to have been the motivation for this legislation?

Mr SHACKLETON: I can answer that. What I would say is, first of all, as we have said in our submission, we are not opposed to the mobility of workers. We do have concerns about people not being appropriately qualified moving across borders and that sort of stuff. This bill also allows contractors to be able to move. That is where part of the concern is. I would have thought that in this day and age—and again I have not put a lot of thought into this; you have just asked me the question—with a bushfire we have things that happen and I would have thought that there would be another way that could actually be enacted to allow for a state-of-emergency-type situation for people—under appropriate control. I do not know why you could not harness 30 plumbers, put them on a plane, fly them up to Queensland because you have had a cyclone, and you have got someone on the ground that actually knows the local area and is responsible for them from a supervision of work point of view. By all means, it is the same as flying troops around the countryside doing things. To me, if the real aim is to be able to respond to emergencies there are other ways to be able to do that other than just opening the borders up and letting people just randomly go around.

The CHAIR: If there are no other questions, thank you so much for your time today, both of you, and for the very detailed evidence. You have obviously put a lot of work and thought into this and we do appreciate it; it helps with our work today.

(The witnesses withdrew.)

(Short adjournment)

RITA MALLIA, President, Construction and General Division, Construction, Forestry, Maritime, Mining, and Energy Union, New South Wales Branch, before the Committee via videoconference, affirmed and examined

STUART MAXWELL, Senior National Industrial Officer, Construction, Forestry, Maritime, Mining, and Energy Union, New South Wales Branch, before the Committee via videoconference, affirmed and examined

The CHAIR: Welcome back. We have got our final panel for this afternoon. Welcome to our witnesses from the Construction, Forestry, Maritime, Mining, and Energy Union [CFMEU]. Thank you for your very detailed submission. We do appreciate it. It has been helpful for us to get that in advance and get our heads around your perspective on this. But you are invited to make a brief opening statement if you wish.

Ms MALLIA: I will be brief. Thank you for the opportunity, obviously, to speak to this Mutual Recognition (New South Wales) Amendment Bill. We have, obviously, got a keen interest in this because we have many members who will be affected one way or the other over a series of jurisdictions within New South Wales by what will be this bill if it goes through. As we have said in our submissions when we lodged the hard copy of the submissions that we lodged on behalf of the national union—Stuart Maxwell, who is with me, is the national industrial officer with the carriage of that plus the knowledge—we are not opposed to mutual recognition. It already occurs across a number of licensed occupations and around high risk, particularly that governed by SafeWork.

But our concern really is about the race to the bottom and having mutual recognition where there is a consistency between jurisdictions about how people's skills and arrangements are being assessed. So we do not support the automatic mutual recognition of registered occupations, as there are too many differences between the licensing requirements of the States and Territories and automatic recognition can only work properly when the occupations are equivalent and there is parity between the States. The push for mutual recognition now is premature, and the projected cost savings that have been alluded to are illusory.

They are basically our opening statements. We would say, in light of what has happened in New South Wales in the construction industry—we have had very high-profile failures in the quality of workmanship and some of the issues that have arisen in other areas around licensing et cetera—that to add this to that mix without solving some of the problems that already exist with building infrastructure is going to compound rather than improve the situation. I will leave it there. We are happy to take your questions.

The Hon. MARK BUTTIGIEG: Ms Mallia and Mr Maxwell, there was, obviously, some degree of notification on the Federal legislation, the parent legislation. I understand there was some sort of tacit consultation. Could you just outline the degree to which you were consulted for the Federal legislation?

Mr MAXWELL: In terms of the Federal legislation—the Deregulation Taskforce, which operates out of the Prime Minister's office, released an exposure draft of the legislation, I believe, in November or December last year. They invited submissions to be made on the exposure draft. The union put in a submission, but there were no public hearings. There was no formal inquiry. But the submissions went in, and the next thing we knew is that the legislation was being introduced to Parliament. My understanding is that the bill has passed the Lower House, and it got to the Senate, I think, in the budget session.

The Hon. MARK BUTTIGIEG: So you put a submission in and next thing you know there is a second reading speech—that was it?

Mr MAXWELL: Virtually, yes.

The Hon. MARK BUTTIGIEG: And what about the State legislation we are being asked to examine here? Was there any reaching out or consultation on that?

Ms MALLIA: None but I am aware of. Personally, no emails were sent to me.

The Hon. MARK BUTTIGIEG: Okay. We have heard from a number of specific occupations here this morning and during the day within which there were various nuances across State jurisdictions—anomalies, if you like. Could you give us a flavour for the breath of those situations that the CFMEU have coverage over—in other words, building trades that would be affected by this proposal to automatically recognise qualifications across State jurisdictions?

Mr MAXWELL: In the submission that we made to the Deregulation Taskforce, a copy of which I understand was provided to the Committee, we outlined the range of different licensing arrangements by the various States. Perhaps to give you one example in a nutshell, if you look at a licence for a builder, in New South Wales there is only one building licence and that really relates to domestic/residential construction. There is not a separate builder's licence for commercial construction. But if you go to the other States, for example, in Victoria,

they have different licences for a commercial builder, a domestic builder and a demolisher. They then have a whole series of different licences underneath those categories.

Then if you turn to the type of trade licences, in New South Wales you have two types of licences: a contractor licence and a supervisory licence. In New South Wales the trade worker types of licences include bricklaying, carpentry, decorating, dry plastering, excavating, general concreting, painting, glazing, roof slating, stonemasonry, wall and floor tiling, waterproofing and wet plastering. You have similar types of arrangements in Queensland but, again, the licences are slightly different. They have one for concreting but [inaudible] for instance, the general concreting one in New South Wales. They have one for roof and wall cladding, they have one for plastering drywall and plastering solid so, clearly, there are differences between the States and that is just a brief example.

The Hon. MARK BUTTIGIEG: With that building licence example you used where New South Wales only has one licence for residential, what is the process now if a New South Wales-based person wants to go and do building work in Victoria? What is the vetting process currently?

Mr MAXWELL: My understanding is that—and I know it is definitely the case in Queensland because we put the Queensland example in our submission—a builder from New South Wales will only be given a restricted builder's licence in Victoria so that they can only perform domestic housing work; they cannot do commercial building work.

The Hon. MARK BUTTIGIEG: That process—that mechanism—comes out of the State regulator, does it?

Mr MAXWELL: That comes out of the—there is currently a ministerial declaration for occupations that requires an agreement between States and Territories. That is how the mutual recognition is currently arranged. In that there are schedules which set out how the mutual recognition is done between the States.

The Hon. MARK BUTTIGIEG: Under the proposed automatic mutual recognition, would you have a situation where that person in New South Wales who has a residential building licence could go to Victoria and start doing commercial work without any vetting?

The Hon. TAYLOR MARTIN: No.

Mr MAXWELL: My understanding is that the States still retain some control, but potentially it could occur.

The Hon. MARK BUTTIGIEG: So under that scenario you could have a situation where a builder in New South Wales with no commercial experience—like nothing over a single-storey dwelling—goes down to Victoria and constructs a 20-storey building?

The Hon. TAYLOR MARTIN: No, that is not the case. Sorry, Mark—

The Hon. MARK BUTTIGIEG: Well, I am asking a question.

The Hon. TAYLOR MARTIN: Well, I am giving you the answer. It is just not true.

The Hon. NATALIE WARD: You cannot do that.

The Hon. MARK BUTTIGIEG: Are you answering my question?

The CHAIR: Order!

The Hon. ADAM SEARLE: Point of order—

The Hon. NATALIE WARD: That is absolute bollocks.

The Hon. ADAM SEARLE: He asked a question. Let the witness answer.

The CHAIR: Yes, let's just hear from the witnesses. Members can clarify with their own questions afterwards.

The Hon. MARK BUTTIGIEG: The question is: Under the current system that scenario does not happen, does it, because the regular stops it?

Mr MAXWELL: I would have to take that on notice.

The Hon. NATALIE WARD: You can't.

The Hon. MARK BUTTIGIEG: There is nothing on notice.

The CHAIR: We actually do not have provision for that in this hearing.

The Hon. NATALIE WARD: It is a ridiculous proposition.

The Hon. ADAM SEARLE: Can I just ask this question—

The Hon. NATALIE WARD: Don't bother, it is ridiculous.

Mr MAXWELL: My understanding is that it is possible and I would refer the Committee to the National Registration Framework for Building Practitioners, released in 2020 by the Australian Building Codes Board, which has recommended that there be three levels of registration for builder's licences. Number one is open style commercial, level two is restricted style commercial and level three is limited style residential. My understanding is that three level of builder's licensing is now being introduced in each State and Territory. My understanding is that that is something New South Wales is currently—well, under the national registration framework and supported by the building Ministers is something to be looked at to introduce consistency across the board.

The Hon. TAYLOR MARTIN: Can I just ask quickly on this exact topic and line of questioning—my understanding is that you can only perform the activities that you are registered to perform in your home State. So a New South Wales builder, as described by the Hon. Mark Buttigieg, could not go into another State and start operating over and above their qualifications—basically.

The Hon. MARK BUTTIGIEG: Is this a debate, Chair?

The Hon. NATALIE WARD: Let him ask his question.

The CHAIR: We have done so well today. The questions need to be put to the witnesses and we will hear the answers from the witnesses.

The Hon. TAYLOR MARTIN: Okay, I will finish my question.

The CHAIR: You do not have to like the answers.

The Hon. NATALIE WARD: Is that really necessary?

The CHAIR: Excuse me, absolutely do not speak to me like that. I am chairing this hearing and trying to get us to the end of it. Mr Martin has the call and I want him to finish the question. I am asking everyone else to allow that to happen, if you had bothered to listen.

The Hon. TAYLOR MARTIN: Does what I have just put forward sound incorrect at all? Because that is my understanding.

Mr MAXWELL: My understanding is that in New South Wales there is only one building licence and under that building licence you can perform any level of building work. So under the proposed automatic mutual recognition, because the person is licensed to perform any type of building work in New South Wales, that would then apply in the other States where the automatic mutual recognition applies.

The Hon. ADAM SEARLE: Just by way of a follow-up question on that exact point, does that mean a licensed builder in New South Wales could then go into Victoria or Western Australia and perform the full range of building work that is licensed under different licences in those jurisdictions, or would they be limited because there is only one building licence in New South Wales and it gives them scope to do everything? It means they would be licensed to do everything interstate—if they could do the work in New South Wales they could do it here in Victoria.

Mr MAXWELL: That is my understanding of how the automatic mutual recognition will work.

The Hon. ADAM SEARLE: Do you know how many different kinds of building licences there are in Victoria?

Mr MAXWELL: There are three builder's licences—commercial builder, domestic builder and demolisher. But then within each of those classes there are subclasses. So with a commercial builder we have commercial builder unlimited, commercial builder limited to the construction of low-rise building works—

The Hon. ADAM SEARLE: Okay, just pause there. So if someone was licensed as a restricted commercial builder to, I think you said one storey, under mutual recognition that licence holder could come to New South Wales but only perform that limited range of work. But someone with a New South Wales licence could go to Victoria and do the full range of building work irrespective of their competency, skills or background.

Mr MAXWELL: That is my understanding of how it would operate.

The Hon. TAYLOR MARTIN: If I am able to pick up on this line and go back—given that basically there is the ability to have the exemption power and a five-year period to review these sorts of issues that we are going through here, would you agree that five years is possibly long enough to work through these sorts of issues?

Mr MAXWELL: We would hope five years is long enough, but I think if you look back through the history of mutual recognition, the States and Territories were looking at harmonising the licensed occupations back in—I think we started in 2008, and it was 2014 that they gave up the attempt to harmonise. So whilst I would be hopeful that they are finishing in five years [inaudible].

The Hon. NATALIE WARD: Persistence beats resistance.

The Hon. TAYLOR MARTIN: But surely there is certain motivation with this form of legislation coming through rather than just trying to do it for the sake of doing it?

The Hon. MARK BUTTIGIEG: That is a very good point, actually. There seems to be a view which the Government is proffering that this will be an impetus for harmonisation across jurisdictions. What is the incentive to harmonise once this is introduced? What is the mechanism that drives States together?

Mr MAXWELL: My understanding is that there is nothing to, I don't know, get the States to move on harmonisation potentially as a regional race to the bottom, because what you will see is jurisdictional shopping and those States or Territories that have the least requirements and the lowest costs will see people racing to those jurisdictions because under the Commonwealth legislation, the practitioner can choose which is their home State in which they obtained their licence.

The Hon. TAYLOR MARTIN: Can I just pick up on that, if you do not mind.

The Hon. MARK BUTTIGIEG: Yes, of course.

The Hon. TAYLOR MARTIN: This is not the first time today we have heard the term "race to the bottom" used. Why is it not the case there would be the pressures to create a form of race to the top where States actually do impose the five-year working period and other States need to actually pick up their act, if your contention there is true that people jurisdiction-shop?

Ms MALLIA: The history of all these things around licensing and regulation—I think we have been talking about the licensing of engineers for I do not know how long now. Much has been done, really, to regulate or to improve the quality of buildings and construction, quite frankly, when we think about things like Opal Tower [inaudible]. So we do not really hold up much confidence at all. The legislation would pass and the jurisdictions and public servants would be left trying to build up the nest and move on to the next topic.

The Hon. NATALIE WARD: Can I pick up on that—

Ms MALLIA: So from our perspective, it is "Well, here is the way these things happen in licensing and registration." It is very slow and not very confident at all. There is a system that works in construction where there is mutual recognition, where there are common classes and common standards that have been established, and that is working very well. [inaudible] should not tamper with that. There is too much at risk from a work health and safety and from a construction quality perspective. The system is working well. We would like to see more standards being common, but we do not want those standards to be falling to a lesser standard. We want to improve [inaudible].

The Hon. NATALIE WARD: Do I understand—sorry, Ms Mallia. Do I understand you are saying—I think we are all in agreement we would love standards to be lifted, wouldn't we?

The Hon. MARK BUTTIGIEG: Yes, that is what she just said.

Ms MALLIA: Sorry. I missed that.

The Hon. NATALIE WARD: I am asking the witness, Mr Buttigieg, not you.

The Hon. TAYLOR MARTIN: We are almost there.

The Hon. NATALIE WARD: Sorry. I did not hear your answer because a colleague interrupted.

Ms MALLIA: We cannot hear you. Sorry.

The CHAIR: You might as well repeat the question.

The Hon. NATALIE WARD: Do you agree with the statement we would all like standards to be lifted? Do you agree with that statement?

Ms MALLIA: Sorry, I cannot hear the question. You are facing the wrong way. I am not quite sure who is speaking to me and I cannot hear the question.

The Hon. NATALIE WARD: I am sorry. It is a feature of the way this is set up. I apologise you cannot see me, but I am trying to speak into the microphone and I cannot do that at the same time as looking at the screen.

But if you will forgive me, my name is Natalie Ward. I am a member of the Committee. My question is—can you hear me now?

Ms MALLIA: Yes.

The Hon. NATALIE WARD: My question is: We all agree that we want to raise standards. Is that correct and would you agree with that statement?

Ms MALLIA: That is certainly what we would like to see.

The Hon. NATALIE WARD: So is this not an opportunity for us to do that very thing?

Ms MALLIA: If you read our submission—

The Hon. NATALIE WARD: I have.

Ms MALLIA: —our concern is that this the cart that pulled the horse. So we have not raised the standards. We are going to potentially have this automatic mutual recognition which is not really frameworked at all or planned at all to bring the standards up, and that is the concern. And we do not see how that is going to be achieved.

The Hon. NATALIE WARD: In doing so, that is to say it has not worked in the past. I agree with you, and I think that is not contentious. But just because it has not worked in the past is not a reason to not do it or to attempt to do it and to raise standards in the future. Would you agree with that?

Mr MAXWELL: The issue there, certainly, is not just alter the same list. This was in the national registration framework discussion paper. It said:

> … it is essential to have consistent qualifications across jurisdictions to avoid a "race to the bottom" where individuals seek registration in the jurisdiction with the most easily met requirements and then use mutual recognition to work in other jurisdictions.

The Hon. NATALIE WARD: Yes, and I have heard that, but what I am asking you is: Do you agree that it is potentially an opportunity to raise standards and it is potentially an opportunity for us to standardise across the nation to lift standards as a potential opportunity? There is, for example, the National Cabinet potential proposition to create a working group to standardise the legislation to the highest possible standard.

Ms MALLIA: Well, like I say, there is always lots of opportunity and potential, but at the end of the day we are not seeing anything that is hard and fast in that regard. So our concern around that remains.

The Hon. NATALIE WARD: Can you point to any specific evidence, then, or examples showing how the variations between the jurisdictions will lead to significant risks?

Mr MAXWELL: I think if you look at the evidence from the work health and safety legislation and look at the licensing applied to this work, there is national consistency with regard to the licensing and training requirements for people who perform high-risk work. By that, we mean people who do scaffolding work, people who do crane operations, people who do rigging [inaudible] mobile phones et cetera. So all the national regulators have got together and reached agreement on what the training requirements are for those high-risk occupations. So they do that first, and then have the mutual recognition that comes after they have that agreement.

The Hon. NATALIE WARD: I am not sure I follow that, but in any event—I do not know that that really answered my question.

Mr MAXWELL: Well, in terms of your question—which I understand is, "Will introducing automatic mutual recognition lead to more standardisation of qualifications across the jurisdictions?"—unfortunately, we do not believe so.

The Hon. NATALIE WARD: But my question was: Can you point to specific evidence or examples showing how the variations would lead to increased risks, knowing that we have an overarching work health and safety framework enshrined in legislation?

Mr MAXWELL: Sorry, I do not understand the question.

The Hon. NATALIE WARD: Can you point to specific evidence or examples showing that the variations between jurisdictions of licences—specific examples of how it will lead, as you assert, to significant risks?

Mr MAXWELL: I think if you take the situation of waterproofing, there are different requirements of what the waterproofing is across the jurisdictions. Unfortunately, if you look at most high-rise construction in terms of apartments, one of the biggest failings is in the waterproofing of units, which leads to problems throughout the building.

The Hon. MARK BUTTIGIEG: Just on that point can I ask, are you aware that the legislation specifically carves out the legal profession and that the State education Minister has written to the NSW Teachers Federation saying that the teaching profession will also be exempt? Do you think that the building trade is somehow of less risk or import compared to those professions which have been carved out, or will be carved out?

Ms MALLIA: One of our suggestions is that they carve out the building and construction industry because of all of the differences that exist between trades and the various activities. I cannot speak for the teachers or legal profession—I do not know what those particular issues are that should justify a carve out. But from our perspective quality of work, the skills of people in these important trades, the impact on work, health and safety—you know, we still see people get killed in the construction industry, give us some cause to think that it would be much better to do the work in a different way, get as much of this work in terms of getting some commonality of high standards across the State and then mutually recognise those as we develop it. That is now cooperated in construction and cooperated quite well, to my understanding because jurisdictions that have recognised those businesses.

The Hon. ADAM SEARLE: That is point. Ms Mallia, a number of the submissions the Committee has received from particular trades have suggested that this process the wrong way around; that we should put more work into establishing commonality between jurisdictions and then move to automatic mutual recognition rather than mandating automatic mutual recognition before those commonalities have been properly developed across the jurisdictions. Does that sound like a better way to proceed?

Ms MALLIA: That is the industry suggestion, yes.

The Hon. MARK BUTTIGIEG: I want to take you some of the alleged benefits and problem fixing that this legislation purports to solve. The Government talks about labour shortages. Has the CFMEU got a position on that or experience on how chronic or otherwise that is across State jurisdictions?

Mr MAXWELL: I appeared before the Joint Standing Committee on skilled migration last week where the issues of skills shortages was raised. As I said there, there is not a skills shortage, there are plenty of people out there with the qualifications. There is really a problem of there being insufficient people to work for the price or the wage being offered. A question was asked by one of the senators about the lack of skill trades in Geelong because she has been told by the Housing Industry Association that there were acute skills shortages for the builder. I looked on the Seek website that they told me about for jobs. I have looked on the Federal Government's jobactive board. Clearly the number of jobs that the Government does show is that there is a skills shortage in the building trades in Geelong. It would appear that the senator has received false information.

The Hon. MARK BUTTIGIEG: What about the argument that—

Ms MALLIA: I was just going to say we have also had largely a building and construction boom in New South Wales. I would have liked to have seen more investment in our apprentices and skilled trades in the future whether there was a massive shortage or event a shortage of labour to carry out the multitude of construction, and construction that still continues. No, I do not hold out there is a skills shortage argument. I do not know that the evidence really bears that out.

The Hon. MARK BUTTIGIEG: In the context of an emergency situation—bushfires, floods requiring transient peaks in labour supply—is it a concern that in a situation where you may have increased dangers as a result of those incidents that you would further de-regulate the industry?

Ms MALLIA: I have not done—and may be Stuart has a more in-depth knowledge—a comparison of all of the asbestos requirements for standards across the State but, yes, there would be a concern that the bill is likely create another issue, for example, a supplier having to deal with materials that are highly toxic. We did have several examples of issues with asbestos on the south coast involved in the last lot of fires. These are serious things. And, yes, you have got to react to the emergency of the day and give people relief but that does not need to necessarily be done by diluting the standards that would otherwise apply where you might have, say, less high standards around those sorts of issues.

The Hon. MARK BUTTIGIEG: If there were an over-arching mechanism that obliged industry stakeholders to get their heads together and harmonise across jurisdictions, would the CFMEU be opposed to that?

Ms MALLIA: No, I think we have been quite vocal in supporting as much of that as possible while lifting standards up, not pushing standards down where high standards exist.

The Hon. MARK BUTTIGIEG: What about the argument that border towns suffer because they are required to do cross-border work more frequently and, therefore, it discourages people locating there and there are issues with trades people and people in those professions working across borders? Do you have a view on that argument?

Mr MAXWELL: I think you would have to be clear about what you are actually talking about because if you have done an apprenticeship in carpentry in New South Wales, you could still do carpentry in another State but you cannot do work over a certain value. It is not that is a restriction on people going across the border to do work, it is the question who has the licence to perform the work.

The Hon. MARK BUTTIGIEG: The Government seems to have hung its hat on a PWC report which hypothecates $2.4 billion in productivity savings, or increasing productivity over the next 10 years. What is the position of the union on that analysis?

Mr MAXWELL: First of all I have made the point that that figure was mentioned in the discussion paper that was released in regard to the exposure draft of the Federal legislation. In that discussion paper it did not say where that figure came from or which source it came from. I did try to search on the Internet to there to find the report it came from and there is nothing that I can find that supports that conclusion.

The Hon. MARK BUTTIGIEG: In your submission you use the Work, Health and Safety Act 2011 as a better example of how to approach this. Can you provide an articulation on that position on why they are superior?

Mr MAXWELL: It is superior in that the regulations set out what are the specific training requirements for the different class of licences. Unfortunately, there are not those arrangements that apply for either the builder's licence, the contractor's licence or the supervisor's licence that currently exist in the various States. There is no national consistency across the board. What we are saying is there needs to be a national consistency first, get agreement on that, implement it and then once you have them in place then you can have automatic mutual recognition.

The Hon. MARK BUTTIGIEG: Just one last question from me. The Committee is being asked to consider is State enabling legislation which effectively cedes power to the Commonwealth to enact automatic mutual recognition across the board. We have not even seen the final form of the legislation as it has not yet passed through the Federal Senate. What is the union's view? As State legislators should we be waiting 'til we see that final version or are there things we can put in place at the State level which would serve as a level of protection, I guess, in the event that it goes through unamended?

Ms MALLIA: Our view would be to see what happens federally so that you react appropriately. At the end of the day the State legislatures have very important obligations to consumers and workers and contractors and business people in this State, and this stuff is really important. Given some of the problems we have seen in New South Wales, particularly in building and construction, we would think that the State Government would be approaching this stuff with a little bit of caution because it may be compounding problems that already exist and which, from our perspective, have not been properly solved as we speak, especially around the issue of quality of construction. Stuart has talked about waterproofing. We are having arguments and discussions around cladding. There are a lot of things that have gone wrong in some respects in the quality of construction in New South Wales and to add this on top of it, I think, would compound the issue rather than take a more cautious approach and deal with this issue bit by bit and make sure we are solving the actual problems that exist so that consumers, like those out in western Sydney and other places, are not duped by unscrupulous builders and others.

The Hon. MARK BUTTIGIEG: Did it come as a surprise to the union that in the wake of the Building Commission report, the inquiry and all the controversy that followed that, that there would be this level of appetite for a de-regulatory approach across the board?

Ms MALLIA: Definitely a surprise.

The CHAIR: Thank you both for your attendance and participation today. We do appreciate it. Thanks for the work that you put into the submission. We are finished with this portion of the afternoon. You are excused.

(The witnesses withdrew.)

The Committee adjourned at 17:00.