REVIEW OF THE MUTUAL RECOGNITION AGREEMENT

The Implications of Occupational Licensing for the Implementation of National Training Packages

A Submission to the Productivity Commission from the Australian National Training Authority

May 2003

AUSTRALIAN
NATIONAL TRAINING
AUTHORITY

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GLOSSARY OF ACRONYMS

ANTA	Australian National Training Authority
CBT	Competency-Based Training
COAG	Council of Australian Governments
ITAB	Industry Training Advisory Bodies (soon to be known as Industry Skills Councils)
MRA	Mutual Recognition Agreement
NCP	National Competition Policy
NTF	National Training Framework
TAFE	Technical and Further Education
TTMRA	Trans-Tasman Mutual Recognition Agreement
VET	Vocational Education and Training

1. INTRODUCTION

1.1 The Australian National Training Authority (ANTA) is pleased to make this submission to the Productivity Commission regarding its current review of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA) Arrangement.

ANTA makes this submission on the basis of some key commonalities between the objectives of the national Vocational Education and Training (VET) system and the objectives of the MRA.

Specifically, a key common underpinning aim of the national VET system and the MRA is to reduce the impediments to the mobility of labour between participating jurisdictions. In this respect, the VET system seeks to improve the mobility of labour through increased acceptance by licensing and regulatory authorities of nationally endorsed VET outcomes.

1.2 Importantly, ANTA clearly has a significant interest in the operations of the MRA as industry regulators commonly prescribe training qualifications as a pre-requisite to obtaining an occupational licence. Over the last eighteen months ANTA has undertaken a body of work to get a clearer picture of the dynamics between regulatory competency requirements for entry into an occupation and its compatibility with the implementation of national Training Packages as well as of the issues that impact across jurisdictions.

1.3 ANTA has recently prepared advice for its June Ministerial Council meeting indicating that the intersection between the VET system and occupational licensing is still an area of considerable concern because there is a cost to governments, individuals and to enterprises where the VET system and the regulatory system are not aligned. ANTA is advising the State and Territory Education and Training Ministers that a concerted effort is needed to not only gain greater synergies between the VET sector and industry licensing arrangements, but also to boost the confidence of the regulators in the VET system and its products.

The ideal outcome would be to have one system which trains, assesses and qualifies a person to have skills for an occupation; for the regulatory bodies to have confidence in the quality of this training and on that basis be willing to license people to work, following consideration of any other qualities required to operate in that occupation.

1.4 As part of its continuous improvement process, ANTA has updated its advice to Training Package developers to ensure that the training requirements of regulators are understood and reflected appropriately in the relevant Training Package. A mechanism is being constructed to enable any difficulties that do not reach resolution through consultation to be flagged and addressed via the ANTA Board's National Training Quality Council.

1.5 ANTA's goal in making this submission to the Productivity Commission is to emphasise the importance of the operation of the MRA to the mobility of labour between Australian jurisdictions and to propose a number of enhancements to the MRA, from the perspective of the VET sector, to further improve its operation. The link between the Mutual Recognition Agreement and the VET sector is the area of regulated entry into occupations where differing requirements exist across jurisdictions, and where a licence is required to work in certain occupations. There is a need to create better harmony between the VET system and regulatory requirements associated with competency.

1.6 This submission does not extend to the operation of the TTMRA, as that has been outside the scope of work undertaken by ANTA in relation to its industry licensing competency requirements.

2. BACKGROUND

The Development Of The VET System

2.1 ANTA, in co-operation with States and Territories, has developed a nationally consistent VET system. This followed a historic agreement in 1992 by the Heads of Australian Governments. The Agreement was renewed in 1997 and 2001, with the latter renewal involving the addition of the following commitment:

> *At the heart of the ANTA Agreement 2001-03 is a commitment by the States, Territories and the Commonwealth, in partnership with industry, to work together to increase the participation of Australians in an integrated national vocational education and training system that allows for local diversity. The partners recognise that an effective vocational education and training sector is needed to provide skills to maintain individuals' employability, increase their productivity and improve the competitiveness of enterprises and the nation. The partners give a commitment to national consistency so that individuals and enterprises do not face barriers in undertaking or enjoying the benefits of training when moving between jurisdictions.*[1]

2.2 As a consequence, a National Training Framework (NTF) was established to provide consistent and high quality outcomes from the provision, assessment and certification of VET programs in Australia. Mutual recognition principles have been a key plank of the NTF in providing the basis for portability of training outcomes and qualifications within and between jurisdictions and the mutual recognition of training providers.

The NTF is designed to ensure that individuals and industry can be confident that the skills acquired through VET programs are aligned to industry needs and will be recognised throughout Australia. Importantly, the framework recognises the importance of skills and knowledge to Australia's economic development and, that in a globally competitive environment, costs and barriers to the application of skills in the workplace should be minimised.

2.3 It should be noted that, whilst the mutual recognition of training outcomes and qualifications and training providers have played an important role in the development of the NTF, a number of issues became apparent with this aspect of the NTF in recent times. To address these issues, the Australian Recognition Framework, which was underpinned by the concept of mutual recognition of providers and the training qualifications they issued, was replaced by a set of nationally agreed Standards under the Australian Quality Training Framework (AQTF). In addition to this, the ANTA Ministerial Council has agreed to model clauses, as the basis for amending VET legislation in each jurisdiction. As well as achieving other national consistency objectives, these amendments to the legislation will make the application of the Standards a legal requirement nationally.

[1] *Australian National Training Authority (ANTA) Agreement*, 2001.

2.4 In 2000, ANTA received legal advice that State and Territory VET legislation did not fully implement the national mutual recognition principles of the then Australian Recognition Framework in relation to the registration of training organisations, accreditation of courses and endorsement of qualifications. This advice also highlighted that the *Mutual Recognition Act 1992* (Commonwealth) did not make provision for the mutual recognition of qualifications and that it provided only for the mutual recognition of the registration of a person, where such registration is required by law for the practice of their occupation.

2.5 The model clauses agreed by the ANTA Ministerial Council are based on the principle of "national effect" and as such, go beyond the general principle of "mutual recognition"[2]. The clauses cover the registration of training organisations, the sanctioning and audit of registered training organisations, the accreditation of courses and the endorsement of qualifications. After July 2004, when the model clauses, or clauses achieving the same effect, are enacted in each jurisdiction's VET legislation, the decisions of one jurisdiction about registration of training organisations and the accreditation of courses will have effect nationally.

2.6 The endorsement of qualifications by the National Training Quality Council will also have national effect. This means that no separate process of "recognition", legal or administrative, will be required. The mechanism for achieving national effect of decisions will be a "national register" defined in each jurisdiction's legislation. Once matters are recorded on this register for the purposes of all VET legislation, these matters will be registered (in the case of training organisations), or accredited (in the case of courses) or endorsed (in the case of qualifications). This will achieve national consistency of regulation affecting key aspects of VET.

2.7 These legislative reforms, however, do not address concerns in the VET sector about the regulatory inconsistencies across the nation where a licence is required to work in certain occupations.

2.8 ANTA is keen to link up its efforts concerning mutual recognition within the National Training Framework with the specific purpose of the Mutual Recognition Agreement, particularly relating to occupations. The results of the review of the Mutual Recognition Agreement have the potential to improve ANTA's goal of a seamless transition from training to employment by assisting the dismantling of at least some of the barriers to labour mobility and entry into regulated occupations.

2.9 ANTA is committed to working in partnership with industry regulators to ensure that their training needs are properly integrated into Training Packages, as well as ensuring suitable delivery and assessment in accordance with the Australian Quality Training Framework.

The VET System and Occupational Licences

2.10 ANTA has been undertaking significant work with industry regulators and industry bodies to improve the interface between industry licensing and the national Training Packages that are being implemented under the national VET system.

Specifically, in 2001 ANTA commissioned a comprehensive analysis of the inter-relationship between occupational licensing and the national VET system, particularly the implementation of Training Packages.

[2] Under the principles of 'mutual recognition' as applied in the Australian Quality Training Framework, each State and Territory retains responsibility and discretion in relation to its own vocational education and training legislation, standard setting and administration, with purported recognition of administrative decisions made in other jurisdictions under 'equivalent' legislation.

The following extract from the resultant report, titled 'A Licence to Skill', outlines the context against which the analysis was undertaken[3]:

> *In the VET sector, the achievement of a qualification through a Training Package generally provides individuals with the necessary skills for employment in a particular industry. Ideally, a Training Package qualification also provides the skill requirements for the issue of an industry licence (if one is required).*
>
> *However, throughout Australian industry there are examples where:*
>
> - *Additional factors govern the issue of an industry licence, over and above the qualifications provided by industry Training Packages. These factors might include age, time served in the industry, demonstrated skills, personal references, physical attributes, compliance with the ethical standards set by industry bodies and associations, specific definitions of a "fit and proper person" that are contained in the legislation or regulations that govern an industry licence and so on;*
> - *Training Packages are not used, or are only partly used, by regulators as the basis for determining competency for licensing purposes;*
> - *Industry regulators use separate competency assessment techniques that are not consistent with those used by the VET system;*
> - *Industry regulators apply different requirements (both competency-based and otherwise) between jurisdictions; or*
> - *Training qualifications are not uniformly recognised by regulatory authorities in different jurisdictions.*

The analysis focused on occupational licensing, which was defined as[4]:

> *An occupational licence includes any form of regulation that restricts entry to an occupation or a profession to those who meet competency-related requirements stipulated by a regulatory authority.*

This definition includes those areas where mandated entry requirements impose an "implied" licence, but for which no physical "licence" is handed out by regulatory authorities.

2.11 The report identified a consistent pattern of issues affecting the interface between industry occupational licensing and the development and implementation of Training Packages generally. It provided recommendations aimed at:

- Assisting the removal of conflicting regulatory requirements;
- Establishing effective processes for the development of common sets of competency-based regulatory requirements and associated competency standards; and
- Building the confidence of the industry regulators in the quality, consistency and reliability of outcomes from the VET sector.

2.12 ANTA is seeking to address the issues raised by *A Licence to Skill* in partnership with the Commonwealth, State and Territory governments, industry regulators and industry. ANTA acknowledges that, for its part, it is keen to undertake enhancements and other actions to ensure the confidence of industry regulators in the national VET system. Note: Key findings from the report "A Licence to Skill" (as it relates to ANTA's purpose in contributing to the review of the MRA) are located at Appendix 1.

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[3] *A Licence to Skill*, prepared for ANTA by Stenning and Associates Pty Ltd in association with Peter Noonan Consulting

[4] op. cit., p 33.

In this respect, ANTA has consistently utilised a co-operative model to bring the industry, VET and regulator parties together. The aim has been to develop Training Packages that meet, wherever possible, both industry skills requirements and the licensing requirements of State and Territory regulators.

2.13 As part of the analysis methodology, a series of industry round-table discussions were conducted in late 2001 in the following industries:

- Aeroskills;
- Community services;
- Electrotechnology;
- Finance;
- General construction;
- Metal and engineering; and
- Security.

These round-table discussions captured critical peak industry and regulator views on issues associated with licensing in their industry sectors. Following the receipt of *A Licence to Skill*, ANTA commissioned a further series of industry roundtables involving the following industries:

- Fire Protection;
- Hairdressing;
- Hospitality – Responsible serving of alcohol;
- Real Estate;
- Seafood – Occupational diving;
- Transport – Maritime – Vessel operations; and
- Transport – Road – Fatigue management.

2.14 ANTA is currently seeking to adopt further strategies to build trust and relationships between regulators, VET bodies and industry peak bodies and, in particular, to build the confidence of industry regulators in the VET system. Significantly, the National Training Quality Council has established a National Industry Licensing Working Group to promote dialogue between the VET sector and industry regulators. The Council is responsible for the oversight of the Australian Quality Training Framework, endorses Training Packages and advises the ANTA Board on policies to ensure quality and national consistency of training outcomes and the relevance of training to industry and regional needs. The National Industry Licensing Working Group comprises a mix of industry regulators, peak industry body representatives and national Industry Training Advisory Bodies (ITABs) (soon to be known as Industry Skills Councils), as well as the Commonwealth, States/Territories, and ANTA.

3. THE MRA AND THE VET SYSTEM

3.1 ANTA considers that the intended operation of the MRA complements the VET system. There can be unnecessary costs imposed on the economy if the existing jurisdictional licensing systems allow different barriers to entry to the same occupations. Such a situation can impact adversely on the level of competition between holders of the licenses, increase the market power of incumbent licence holders and hence reduce the incentive of the licence holders to innovate. It is understood that these were some of the key reasons for establishing the MRA in the early 1990s.

3.2 The MRA enables those with occupational licences in one jurisdiction to operate in another jurisdiction without the need to requalify for that licence. This clearly has benefits for the economy generally and individuals in particular as it increases the mobility of labour by reducing the costs of moving between jurisdictions. This is supported by ANTA's observations during the industry consultations undertaken as part of the *A Licence to Skill* report and subsequently.

3.3 Indeed, without the MRA in operation, ANTA believes that its efforts to improve the interface between industry licensing and the VET system's Training Packages would be significantly more difficult, if not impossible. With the MRA in place, there is some pressure on industry regulators to adopt consistent regulatory requirements. Licence holders in one jurisdiction can qualify for an equivalent licence in another without having to undergo "re-tests" of their eligibility – this clearly has significant benefits for those who wish to move across jurisdictional borders. ANTA observes that this benefit has been supported by a previous review of the MRA in 1997.

In the absence of the MRA, this pressure would not exist and the task of gaining agreement between eight or more individual industry regulators would be magnified in instances where occupational licences exist at State and Territory level.

3.4 *A Licence to Skill* outlined the operations of the MRA and highlighted the industry sectors where the operation of the MRA was raised during industry consultations[5].

During our consultations, mutual recognition of industry licences was not raised as a major issue except in relation to the security industry and the conveyancing industry (part of the finance industry).

3.4.1 The major issue for the security industry was the paperwork involved in obtaining mutual recognition, not that mutual recognition between jurisdictions did not exist. Interestingly, for regulators in that industry, mutual recognition was seen as an impediment to achieving regulator desired outcomes, stemming from the significant variability in the level of regulatory standards between some jurisdictions.

3.4.2 This is consistent with a finding of the 1997 NCP review of the MRA, which highlighted claims that the scheme tended to encourage "jurisdiction shopping". This involves individuals seeking registration in the jurisdiction with the most lenient registration requirements and then using mutual recognition to obtain registration in other jurisdictions. The issue for industry regulators is that this is seen to encourage a reduction in standards to that of the "lowest common denominator" jurisdiction. The review concluded that this issue highlighted the potential benefits from national consistency in registration standards and recommended that registration authorities make greater use of the referral mechanism under the scheme to require Ministerial Councils to determine appropriate competency-based requirements across jurisdictions.

3.4.3 In relation to conveyancing, the issue is that conveyancing is not uniformly regulated in all States, with only NSW, South Australia and Western Australia currently allowing conveyancing to be undertaken by anyone other than legal practitioners.[6] This situation limits the mobility of conveyancers between jurisdictions that permit non-legal conveyancers and those that don't. Compounding the problem is the fact that those jurisdictions that do permit non-legal conveyancers have differing scopes of work specified in their legislation, causing further mutual recognition problems between those jurisdictions. This is a situation that can only be rectified by legislative reform in the relevant jurisdictions. Fundamentally, it is not one that can be solved

[5] op.cit. p 45-46

[6] Interestingly, although non-legal conveyancing firms are not permitted to be established in Victoria, SA conveyancers are permitted to undertake conveyancing in Victoria.

by the VET sector seeking uniform competency-based requirements between jurisdictions for conveyancers.

3.4.4 Mutual recognition of occupational licences could be improved by the development of national approaches to occupational regulation (eg, national practising certificates) that would reduce the need for individual jurisdictions to continue to require registration of practitioners. This move would require the resolution of the responsibility and funding of regulatory enforcement regarding the regulated occupations and the establishment of common regulatory requirements, particularly relating to competency-based requirements. In general, only limited progress has been made towards truly national practicing certificates for occupations currently regulated by State and Territory jurisdictions. Given the varied interests and the number of jurisdictions from which agreement is required, it is not surprising that progress in this area has been slow.

3.5 Based on the experience gained during the development of *A Licence to Skill* and in further work undertaken since then, ANTA makes the following observations regarding the interrelationship between the operation of the MRA and the VET system. These observations illustrate the high degree of commonality of interest that ANTA has in the retention and improvement of the operation of the MRA.

- Different jurisdictions currently allow an assortment of competency requirements and competency assessment mechanisms for the same work function. This contributes to difficulties in Training Package implementation and acts to limit labour mobility between jurisdictions – particularly in instances where the MRA does not have effect such as occupations that are partially regulated or those areas where implied (negative) licences exist.
- The referral mechanism available under the MRA could be utilised by the VET sector to request relevant Ministerial Councils to determine appropriate and consistent competency-based requirements across jurisdictions for certain regulated occupations. Such a process would be lengthy and resource consuming, without any guarantee that a consistent national approach will be achieved. At this stage ANTA is not inclined to this approach, particularly given the broad range of occupational licences involved. It is for this reason that *A Licence to Skill* recommended a reform approach based on COAG accepting the principles set out in Recommendation 1.1, rather than a bilateral approach with the various Ministerial Councils responsible for the variety of occupational regulation. As indicated earlier, this issue will be revisited later this year following the findings of the Productivity Commission's review.
- If regulators achieve national consistency in their assessment system for the training components of occupational licences by moving to use the VET system and Training Packages, this can significantly complement the ability of the MRA to improve the mobility of labour between jurisdictions.
  - This will facilitate workers gaining an occupational qualification in one jurisdiction and then being able to apply for an occupational licence in another jurisdiction. In many cases this is not possible at present, with workers either having to gain a licence in their home State and then using the MRA to enable practice in another jurisdiction or, alternatively, having to complete their qualification in the jurisdiction in which they wish to work and then applying for an occupational licence in that jurisdiction. Examples include:
    - Hairdressers are not licensed in Victoria, but are licensed in NSW. A Victorian wanting to work in NSW as a hairdresser must gain a Hairdressing Training Package qualification from NSW TAFE in order to gain a NSW licence. Conversely, a NSW hairdresser who wants to operate in Victoria faces no such barriers to their mobility.

        - The adverse impact on individuals of differing regulatory requirements is concerning, as illustrated by recent Ministerial correspondence from a nurse with over twenty years experience. The nurse had been working as an immunisation provider in the Northern Territory and wanted to continue her work in Victoria. However, because of local licensing requirements, the nurse was informed she could not practice in Victoria without undertaking a further VET course. Disillusioned by 'the system', the nurse is considering a change of career.
    - Achieving such national consistency does not require regulators to agree to uniformity in regulatory requirements relating to competency, but can be achieved by regulators using the same competency assessment system – ie. Training Packages.

- Despite the pressures that MRA places on regulators to improve the consistency of regulatory systems, some regulators saw the National Competition Policy (NCP) legislative review requirements as an impediment to the implementation of more uniform national regulatory systems.
    - For example, the Security industry faces the problem that there are significant differences in the eligibility criteria for security licences in various jurisdictions – with the ACT and Tasmania in particular having very basic entry requirements. Many jurisdictions viewed NSW as having the most robust and best practice regulatory system, however they were reluctant to put proposals to improve their system to match NSW due to hurdles posed by NCP and jurisdictional regulatory review processes.
    - It is considered that the largely jurisdictional based approach to legislative reviews under NCP has contributed to this perception by regulators, as it has limited the ability to recognise that nationally consistent approaches could improve regulatory efficiency from a national perspective.
- The MRA does not have effect in cases of occupational regulation by jurisdictions where a licence is not actively issued, but persons are still required to attain certain levels of competency or qualifications – that is, where implied licences operate instead of physical licences. The impact is that labour mobility is restricted between jurisdictions with implied licences versus those that issue physical licences. ANTA would like to see the MRA principle extended so that it applies whether or not a physical license is issued.
    - For example, South Australia has implied licences for hairdressers, whereas NSW and WA have physical licences.
- Similarly, the MRA does not have effect where occupations are partially regulated between jurisdictions. It is understood that this issue was documented in previous reviews of the MRA. ANTA believes that achieving national consistency in the competency assessment system used by industry regulators through the use of the VET system and Training Packages will significantly alleviate the problems experienced by workers in this area.
- While many industry regulators have an understanding of the VET system and have actively used that system in the past, there is no common "driver" in place that will lead to industry regulators generally embracing the VET sector and its Training Packages as a means of setting and assessing their competency based regulatory requirements – that is, in many cases industry regulators lack an incentive to reform their systems and processes. This is an issue both for the VET system and the regulators, as well as for governments and individuals who have to bear the extra costs.

- Industry and the VET sector would significantly benefit from a "circuit breaker" type reform that ensured that all industry regulators that administered occupational regulation utilised a common standard for the assessment of the competencies required by that occupation. In this respect, initiatives to extend the scope and operation of the MRA and speed the arrival of greater consistency in the competency based requirements of regulators will provide industry, workers and the VET sector with significant benefits.
  - Fundamentally, there are two main reasons why it has been difficult for the VET system to devise Training Packages that regulators are willing to use as the basis for the assessment of those requirements:
  - The large number of differing requirements of industry regulators has made it difficult for the VET system to devise Training Packages to satisfy these requirements; and
  - Many industry regulators have concerns regarding the quality of training outcomes from Training Packages, not the content of the competency standards within the Training Packages. Such concerns have been shared by industry and the VET sector generally and ANTA has recently implemented a range of reforms to the Australian Quality Training Framework to resolve these issues. ANTA is conscious that it must continue to work co-operatively with industry regulators to find ways in which it can improve their confidence in the outcomes produced through the VET system and, as a result, provide a stronger basis for achieving agreement across States and Territories.

4. RECOMMENDATIONS FOR POLICY IMPROVEMENTS

4.1 Based on above observations, ANTA recommends that the Commission consider the merits of the following potential improvements to the operation of the MRA. ANTA notes that the Commission can consider these recommendations under clauses 2(b) and 2(c) of its terms of reference.

4.2 A key feature of occupational regulation is that it effectively enshrines in legislation the training required for an occupation. ANTA considers that the operation of the MRA will be improved when industry regulators recognise compliance with equivalent national standards (where they exist) for the competency of an occupation as sufficient for meeting their regulatory competency requirements. That is, achieving a national competency standard under a Training Package would satisfy jurisdictional regulator competency requirements. This is analogous to industry regulators adopting an Australian Standard or, more particularly, all building regulators utilising the Building Code of Australia as the technical standard for building control regulation. On its part, ANTA wishes to highlight the fact that the "quality bar" has been raised in the VET sector through the implementation of the Australian Quality Training Framework, and while these effects may not have fully flowed through to raising the confidence of the regulators, the VET system is committed to continuous improvement, in partnership with stakeholders and clients.

- While not stopping industry regulators from setting their own requirements, this extension of the MRA would provide incentives for industry regulators to utilise the national competency standards set for occupations through national Training Packages as the basis for their competency requirements.
- It would also encourage industry regulators to participate in the development and review of Training Packages to ensure that their requirements are adequately met by the resulting national competency standards. ANTA is willing to work with industry regulators to ensure that Training Packages and the operation of the VET system properly meet their requirements and concerns relating to outcomes.

- This would not mean that regulators must use all the competency standards in a Training Package that relate to a regulated occupation – they may specify a set of regulatory competency requirements that can be met by a subset of the competency standards applying to an occupation via a Training Package. In such cases, a person may only need a Statement of Attainment of certain national competency standards to comply with a regulator's requirement, rather than a full qualification.
- The effect of this reform would be to ensure that all industry regulators utilised the same national competency standards, as set by the VET system through Training Packages. While it would not stop governments from implementing differing regulatory models for different occupations, it could be expected to rapidly result in national practicing certificates for a range of regulated occupations.
- This initiative will assist in resolving the problems faced by persons operating in a partially regulated occupation or where implied occupational licences exist.

4.3 ANTA considers that the MRA should be extended so that it applies in all cases where jurisdictions impose competency-based requirements through regulation, whether or not a physical licence is issued. That is, the test for the application of the MRA principle should be that there is an occupational requirement imposed by legislation, not that there is a physical licence issued.

- This reform would overcome some labour mobility problems between jurisdictions where the only real difference is that a licence is implied in one jurisdiction but physically issued in another.
- This reform is likely to become increasingly important as regulatory regimes change over time, as the use of implied licences appears to be increasing due to the impact of regulation reform initiatives and principles.
- This reform will not solve the problems that exist where an occupation is only partly regulated – ie. in some jurisdictions, but not others.

4.4 ANTA welcomes the Productivity Commission's consideration of these recommendations and recognises that the acceptance of these recommendations could potentially require a significant extension of the current MRA principles. In addition, it is recognised that further work would be required to more clearly identify the costs of not achieving the benefits outlined. This would need to include, for example:

- The number of occupations where there is a perceived problem.
- The number of people in these occupations.
- Data on the inter-jurisdictional mobility in these occupations over the last, say, five years, compared with the inter-jurisdictional mobility of the general workforce.
- Comparisons of the incomes of people in identical occupations in different jurisdictions would give some indication of the extent of the impediments to mobility and the costs of these impediments.

In this respect, ANTA is happy to work with the Commission to validate the benefits of such extensions for the efficiency and effectiveness of the MRA.

APPENDIX 1 – FINDINGS OF *A LICENCE TO SKILL*

A major finding of *A Licence to Skill* was that there are essentially conflicting signals from Australian Governments on the issue of the competencies required to undertake an occupation. This is illustrated in the following extract[7]:

> *A key element in regulating occupations is the setting and assessment of the standards for the knowledge and skills required for the occupation. This can involve not only specifying the required occupational knowledge and skills standards, but also the assessment and related standards required for organisations to deliver training programs relating to those occupational standards.*
>
> *We have observed that industry regulators do not use a consistent standard or system for assessing skill and knowledge requirements for regulated occupations. Further, the diverse nature of the occupational regulatory environment and its associated processes can make it difficult for national ITABs to reach agreement with industry regulators as to the use of Training Packages as a means of satisfying their skill- and knowledge-based regulatory requirements[8].*
>
> *Specifically, Australia's federal structure and the differential levels of constitutional responsibility mean that the regulatory environment confronting industry is often fragmented, with multiple regulators across jurisdictions. For those industry areas where States and Territories have jurisdiction, the VET sector must deal with a complex regulatory environment where cooperation between the different industry regulators is critical. This can be difficult to achieve, particularly where there are significant differences between the licensing models or regulatory skill and knowledge requirements used by the different jurisdictions. Furthermore, gaining the agreement of industry regulators may need to be followed by changes to jurisdictional legislation, which can often take a considerable period of time and is not without risk (i.e., industry regulators cannot guarantee that jurisdictional legislatures will honour any agreements that industry regulators make).*

The report indicated that regulators are not unfamiliar with the VET system and are prepared in most cases to enter into dialogue with VET sector bodies (principally ITABs) in an effort to find ways in which to reduce impediments to their use of Training Packages as an assessment mechanism for their regulatory competency requirements. The report noted[9]:

> *….we have been encouraged during our consultations by the significant and promising progress has been made in a number of industry sectors towards ensuring a seamless pathway through training to a fully-qualified work environment in regulated industries……Whilst different cooperative models and strategies have been used, it appears that a much better understanding is emerging by both VET participants and industry regulators of how to resolve existing non-alignments between Training Package outcomes and occupational licensing requirements.*

Despite this, it was also noted that at the time of reporting in 2001, there had been limited advances in resolving the issues posed by the interface between the VET sector and occupational licensing regimes.

Since then, progress has been made in integrating regulatory and Training Package requirements in for example, the electrotechnology, plumbing, gas fitting, aviation, surveying and finance industries. This work highlighted the benefits to be gained by all stakeholders in supporting the mutual recognition arrangements as well as the costs of not doing so.

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7 op cit, p 57

8 It is recognised that Training Packages are not appropriate for the assessment of regulatory requirements that are not skill- and knowledge-based.

9 Ibid p 52

The report concluded that (emphasis added)[10]:

Nevertheless, in general progress in convincing industry regulators to "buy" the Training Package "product" has been slow and has not been uniform across industry sectors or between jurisdictions.

Essentially, ***the problem is that there are two parallel systems in operation dealing with the assessment of the knowledge and skill of employees in various industries****:*

- *Diverse approaches by industry regulators to the assessment of the skill and knowledge requirements of regulated occupations; and*
- *A nationally consistent VET system for the assessment of skill and knowledge and the issue of qualifications that is centred on competency based training (CBT).*

The basic issue is that few State and Territory industry regulators have fully consistent nationally agreed regulatory systems for industry licences. In this environment, industry regulators do not use a consistent standard or system for assessing skill and knowledge requirements for regulated occupations. ***This is despite the introduction of the MRA arrangements by legislation in the early 1990s and a variety of attempts at regulatory reform, both at a national and State and Territory level.***

Consequently, different arms of government are specifying or may specify, different skill and knowledge requirements and require different learning and assessment processes for the same occupation*. This creates confusion and complexity as governments are sending mixed signals to industry parties as to their regulatory requirements.* ***It leads to additional regulatory compliance and training costs and to continuing restrictions on the portability of skills and labour, despite the clear intentions of the Heads of Australian Government through the ANTA Agreement and related decisions on the MRA between the States and Territories.***

In effect, the current situation is analogous to the "differing rail gauge" problem that bedevilled Australian States until recently, with the VET system and Training Packages representing one gauge and the various industry regulator assessment systems representing competing gauges.

It is clear that, ***to eliminate the "rail gauge" problem, industry regulators administering regulated occupations should adopt a nationally consistent approach to the determination of knowledge and skill regulatory requirements that can be expressed in competency terms****.*

…. a clear signal needs to be provided from a whole-of-government perspective that, wherever the VET system has, or can, develop qualifications and competencies for regulated occupations, industry regulators must utilise the VET system and, specifically, Training Package outcomes, as a means by which they can determine that their competency-based regulatory requirements are met.[11] *Furthermore, this signal also needs to require regulatory authorities to convert their existing knowledge and skill requirements into competency-based terms.*

[10] op.cit. pp 52 - 54

[11] This does not mean that the use of the VET system and Training Packages must be the only way in which regulatory requirements can be met, but rather that must be one way that requirements can be met. However, where there are different jurisdictional regulators competency requirements should be expressed in consistent terms.

In identifying this initiative we recognise that some standards applied by industry regulators are not relevant to CBT though the VET system, for example "fit and proper" person requirements and business entity-related requirements such as financial capability requirements, insurance requirements and so on. It is not our intention that the initiative should be extended to those matters, as they are clearly outside the ambit of the VET system.

Such a signal cannot come from the ANTA Ministerial Council alone, given the diverse nature of the parties involved and the institutional structures within which they operate. Accordingly, the ANTA Ministerial Council will need to enlist the support of COAG and the cooperation of other Ministerial Councils through the auspices of COAG to implement a coordinated national response that ensures the alignment of occupational licensing requirements and industry Training Package outcomes.

Inter alia, the report made the following recommendations[12]:

R1.1	It is recommended that the ANTA Ministerial Council recommends to COAG that it: • Agree to the overarching principle that: - Australian governments should: Establish consistent nationally-agreed competency-based requirements[13] for the regulation of the same occupational activity or function between and within jurisdictions; Use the nationally-consistent VET system to assess the achievement of those competency-based requirements; to: Achieve, consistent with the objectives of the ANTA Agreement between jurisdictions, a seamless transition path through training and assessment to a fully-qualified work environment in industries subject to occupational regulation, and Minimise the cost and complexity of regulatory compliance.
R1.2	It is recommended that the ANTA Ministerial Council recommends to COAG that it give effect to this principle by agreeing that: • All industry regulators that administer occupational licensing regimes must use the nationally consistent VET system as the basis on which to assess their competency-based regulatory requirements; • Where jurisdictional regulatory authorities have knowledge and skill requirements that can be measured in competency terms, they must translate their existing requirements into competency-based requirements; • All jurisdictional regulatory authorities must use nationally-endorsed competency standards as the basis of specification and assessment of their competency-based requirements for occupational licensing; • Where industry regulator competency-based requirements are appropriately dealt with by the VET sector and relevant VET sector qualifications and competencies are not available, industry regulators must request ANTA to arrange for their development; and • Where industry regulators propose changes to their competency-based regulatory requirements, they must consult with the VET sector (either as part of a RIA process or otherwise).

[12] op.cit. pp 54-55.

[13] For the purposes of this report, a competency-related requirement is a knowledge and skill requirement that can be expressed in competency terms. Industry regulator competency requirements then become the base intent from which the VET sector can develop competency standards for incorporation in various Training Packages.

R1.3	It is recommended that the ANTA Ministerial Council recommends to COAG that it requires other Ministerial Councils to report to COAG …. on: • Which industry regulators reporting to them administer occupational licensing regimes; • The nature of the regulatory requirements administered by those industry regulators, specifying: - Those that are competency-based and those that are not; - The extent to which they currently utilise the VET system and Training Packages as a means of satisfying their competency-based regulatory requirements; and - Where jurisdictional regulators are involved, the relevant inter-jurisdictional regulator forum to be utilised for agreements on common competency-based requirements and, where none exists, the steps that will be taken to establish such a forum.
R1.4	It is recommended that the ANTA Ministerial Council recommends to COAG that it: • Give industry regulators a two-year transition period ….. to achieve these requirements; and • Require any divergence from the overarching principle or requests for an extension of the transition period to be approved by COAG.

At its November 2002 meeting, the ANTA Ministerial Council noted the recommendations of the report *A Licence to Skill* and requested that further cooperative work be undertaken with industry and regulators prior to any decision to take matters to COAG. ANTA is currently working through responses to the report and a suite of other proposed changes resulting from the additional industry round tables. Instead of taking these recommendations directly to COAG, ANTA is reporting to Ministers that it is more appropriate to make this submission to the Productivity Commission. Depending on the outcome of the Commission's Review, ANTA will explore with all jurisdictions the possibility of a high level submission to COAG.