

23 June 2025

Productivity Commission
Locked Bag 2, Collins St East
MELBOURNE VIC 8003

Dear Commissioners,

National Competition Policy analysis 2025

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) appreciates the opportunity to provide input into the Productivity Commission's NCP analysis on occupational licencing and international standards.

As the ASBFEO has previously submitted, competition reforms are important to Australia's small and family businesses.¹ Small and family businesses account for 97% of all businesses in Australia, delivering over \$500 billion of economic value and employment for 5.9 million Australians.² Small business is also a powerhouse of skills development, employing 63% of Australia's apprentices and trainees.

The ASBFEO welcomes the commitment of the Australian, state and territory governments to revitalising National Competition Policy (NCP) and to strengthened national competition principles. In particular, commitments to neither creating nor entrenching barriers to operating businesses across state and international borders (Principle 5), and to parties harnessing the benefits of competition (Principle 1).³

NCP offers a generational opportunity to enhance the productivity and competitiveness of our economy and realise a more seamless national economy. It also presents a valuable and much needed opportunity to fundamentally improve the way policy and regulation is conducted.

Appropriate design and implementation of competition reforms can reduce barriers to business entry and expansion, reduce regulatory burden, foster new business opportunities, and enhance Australia's dynamic efficiency.

Many of the sectors that stand to benefit from the identified reforms in this consultation have a large proportion of small businesses. This includes construction, agriculture, accommodation and hospitality. Small and emerging businesses are important for competition.

The ASBFEO hopes that these and other reforms progressed under the NCP will be shaped by genuine consultation, an emphasis on considered and right-size regulation, and awareness of the risk that policy and regulatory design if done incorrectly can increase rather than decreasing the barriers and complexity for Australia's small businesses. The ASBFEO strongly advocates that the impact on small business, and consequentially on the millions of employees and consumers who

¹ Submission to the Productivity Commission's National Competition Policy analysis, ASBFEO, 29 May 2024

² Statistics from Australian Bureau of Statistics, Australian Industry 2020-21 and ASBFEO calculations

³ Intergovernmental Agreement on National Competition Policy, effective 29 November 2024

rely on small business, is specifically and carefully considered in the development of these and other NCP reforms.

The ASBFEO provides specific responses on the Productivity Commission's information requests below.

Information request 1: Occupational licencing

Each state and territory is responsible for deciding which occupations require a registration or licence, and the requirements such as training that are attached to receiving and maintaining a registration or licence. This arrangement creates duplicative costs and processes for businesses operating across jurisdictions and enforces legacy barriers to the movement of labour and resources between jurisdictions within Australia.

These arrangements affect small business in the construction industry including electricians, plumbers and gas fitters. Small businesses operating in border regions between states and territories are particularly affected, for example, contractors installing solar power equipment who require electrical licencing in each state they operate and national accreditation from an industry body.

Some progress has been made in bridging these barriers. Part 3 of the *Mutual Recognition Act 1992* established a national framework for the operation of the mutual recognition of occupations in Australia. Such a framework facilitates obtaining additional registrations and licences in other jurisdictions a business wishes to operate. The East Coast Electricians Scheme as an example facilitates this mutual recognition of licenced electricians between New South Wales, Queensland, Victoria and the ACT. Such frameworks do not overcome the time and duplicative costs involved in applying for recognition in each jurisdiction. And mutual recognition the ASBFEO understands is often subject to conditions being placed on work and licence holders reflecting a lack of harmonisation between jurisdictions.

In December 2020, the Intergovernmental Agreement (IGA) on the Automatic Mutual Recognition (AMR) of Occupational Registration was signed at National Cabinet to implement a uniform scheme across Australia from 1 July 2021. An automatic recognition framework would operate akin to how a drivers licence issued by one Australian state can be used in any Australian state, promising to remove duplicative cost and administration.

However, as the ASBFEO has previously submitted, the full benefits of automatic mutual recognition are not being realised.⁴ Some jurisdictions have delayed recognition for some professions while others have excluded professions entirely or chosen not to participate. Though a signatory to the above IGA, Queensland does not participate in AMR. The ACT, who though not a signatory to the IGA has implemented AMR, has chosen to exclude a variety of essential construction related trades and professions including electricians, plumbers and gas fitters.

The ASBFEO supports national occupational licencing where it is appropriate to enhancing the business conditions and labour mobility in a sector. National occupation licencing can improve competition and labour mobility, reduce the regulatory burden and cost to small business, and overcome the demonstrated limitations of mutual recognition frameworks. The ASBFEO further

⁴ Submission on Revitalising National Competition Policy, ASBFEO, 17 October 2024



welcomes the Australian Government's announcement of work to design a national licencing scheme for electrical trades people as an important first step.⁵

National occupational licencing is a long-term goal, and it may only be suited to certain trades and professions. The ASBFEO reiterates the need to still expand state and territory participation in the existing AMR process. Given the renewed commitment of all states and territories under the Intergovernmental Agreement on National Competition Policy to not entrench barriers to operating businesses across state and territory borders, continued exemptions or non-participation by parties must be reviewed and addressed.

The ASBFEO recognises industry groups and participants are best equipped to address specific elements of a national licencing scheme relevant to their sector's needs. At a high level applicable across different sectors, the ASBFEO emphasises the following as essential to successfully delivering a national occupational licencing scheme.

Prioritise the construction sector

National occupational licencing should prioritise those sectors where labour mobility and availability is impeding business activity and growth. This is most apparent in the construction sector. National licencing should be pursued where such a scheme would decrease the current regulatory costs incurred by businesses and improve business efficiency.

Ensure stakeholder consultations embrace a principles driven framework

National programs including past attempts at national occupational licencing too easily get bogged down in complexity and negotiations. Relatively small differences can disrupt progress and distract from the larger goals. A successful approach to a national occupational licencing scheme should emphasise early building of agreed principles, and early identification of goals and shared outcomes that parties desire. There will still be disagreements, there will still be complexity. But a principles driven approach that builds consensus of shared goals early is an effective way to maintain progress, prioritise issues, and focus compromise on points of contention back to what is necessary to meet those principles and goals.

A national occupational licencing scheme should be co-designed with industry

Development of national occupational licencing must be informed by genuine consultation and co-design with stakeholders. This includes the states and territories, participants and industry representatives.

The system has to be right sized and suited to the needs of each industry. The systems and processes must be user friendly and minimise the burden on business. The system must have clarity and uniformity, and not succumb to the diverging conditions and interpretations jurisdictions have imposed elsewhere.

Previous attempts to introduce national licencing have failed due to a range of factors including, stakeholder agreement. In 2014, the National Occupational Licencing Authority provided a submission to the Productivity Commission regarding alternatives for achieving greater workforce mobility, after COAG had agreed not to pursue the national occupational licencing system. Their

⁵ Announcement on National licensing for electrical trades, The Treasurer, 23 March 2025



submission also outlined the challenges that impeded the success of the proposed national licencing system which included:

- the significant length of time required to seek agreement between stakeholders and move changes through state and territory governments
- a complex and burdensome governance framework leading to stakeholder confusion about policy decision and outcomes
- state regulators and governments seeking jurisdiction specific alterations
- legislative challenges from different state and territory approaches to incorporating national laws.⁶

Effective stakeholder consultation (including co-design with industry, clear communications, opportunities for industry input and closing the loop on reasoning for decided outcomes) will be essential to maintaining stakeholder buy in and achieving a unified path forward capable of overcoming technical complexity and jurisdictional divergence, all necessary to effectively implement national licencing.

Make provision for a review of the national occupational licencing scheme

The experience with automatic mutual recognition has demonstrated that even when an agreement is seemingly reached, it might not be reflected in implementation. Jurisdictions diverge, jurisdictions apply conditions, or simply don't engage. The Productivity Commission's modelling of occupational licencing reforms calculates the potential and quite substantial economic benefit from implementing reforms, in the order of \$5-10 billion.⁷

States and territories should be incentivised under the NCP framework and the funds available through the National Productivity Fund to implement these reforms. Incentives aside, there will still be a need to review compliance with a national occupational licencing scheme to ensure jurisdictions are implementing it appropriately. There should also be a scheduled review approximately 3 years after implementation of a national licence being implemented to assess its operation, gather stakeholder feedback, and use review findings to enhance existing licencing and shape future expansion of national licencing.

Ensure the national occupational licencing framework is clear and unambiguous for restricted licencing

The ASBFEO understands that ambiguity and restrictions around restricted licencing risks increasing costs and complexity for small businesses. Restricted licencing allows a tradesperson to undertake certain essential tasks related to their primary licence, for example, connecting and disconnecting an air-conditioning unit from power, without needing to train for and obtain a full licence or engage a third party.

Ambiguity or restrictions that force businesses to engage fully licenced persons to undertake minor regular tasks essential to their primary work adds to the costs for business and consumers, adds to time, and minimises the availability of scarce labour. National occupational licencing is an

⁶ Submission to the Productivity Commission in relation to Geographic Labour Mobility Draft Report, National Occupational Licencing Authority, February 2014

⁷ National Competition Policy: modelling proposed reforms, Productivity Commission, 1 November 2024



opportunity to provide a clear and unambiguous framework for restricted licencing within new classes of national licences, reducing business cost and enhancing efficiency.

Information request 2: International standards

Standards should not only serve a protective purpose, but be designed to enable opportunities for our economy and for small business. The development and updating of standards should be responsive, driven by evidence and data, and designed with users, those that must interpret and apply standards, foremost in mind. Australia operates in an international marketplace, and Australian consumers and small businesses should not be disadvantaged from harnessing this, from enjoying the greater product choice and estimated \$500m a year in compliance savings.⁸

Standards should be readily accessible and understandable, offering clarity and applied equally. These are basic principles of law, and so should be true of standards, particularly those that have the weight of law like those relating to construction and workplace health and safety. In reality standards remain locked behind expensive paywalls, restricting access to information vital for ensuring the quality of work and safety of employees. National standards are introduced, yet ambiguity and diverging interpretations emerge between Australian jurisdictions. And a duplicative or prescriptive approach to drafting and enforcing standards can hinder the adoption of technologies or impede competition.

As with occupational licencing, the ASBFEO recognises that industry groups and participants are best placed to raise issues and propose changes relating to specific sets of standards. The ASBFEO emphasises the following broader issues that should be addressed around the design and implementation of standards that creates unnecessary barriers to competition, increases the cost of doing business, and increases complexity and regulatory burden.

Make access to standards that are enforceable under federal, state and territory laws free

For many small business, standards are not optional, they are an integral and mandatory part of doing business and complying with legal obligations. Yet accessing standards can cost a small business thousands of dollars per year. Standards remain locked behind paywalls on the basis of cost recovery and intellectual property.

The ASBFEO recognises some progress on making standards more accessible. For example, Standards Australia offering discounted access for some standards to small business users in exchange for only accessing the standards on a smartphone. And in 2023 restoring some public access once available through libraries via an online reading room for non-business users on a time limited basis. However, there is more that must be done. There is a fundamental principle that laws should be readily accessible, and this principle should extend to standards that are legally enforceable. There is a significant and overriding public interest now being recognised in providing open access to legally enforceable standards.

In the 2024 decision of the European Court of Justice in Case C-588/21 P, the court recognised an overwhelming public interest in the free disclosure of harmonised and legally enforceable standards relating to product safety. This public interest outweighs arguments around commercial interest and intellectual property. Though a decision under European Union (EU) law, the principles and reasoning that form its basis are not distinct to the EU. The principles and

⁸ National Competition Policy: modelling proposed reforms, Productivity Commission, 1 November 2024



reasoning are equally valid in the Australian context. The ASBFEO recommends that free access is provided to standards that are enforceable under federal, state and territory laws.

Australian Government and States and Territories should harmonise standards

The ASBFEO has heard from stakeholders about issues arising from diverging application of national standards at a state and territory level, for example in energy efficiency standards under the National Construction Code. This increases complexity and cost for small business and increases barriers to operating across jurisdictions. Though some differences can be expected from genuinely unique circumstances arising specific to a jurisdiction, these should be avoided wherever possible. There is a greater need for co-ordination between jurisdictions to ensure harmonised implementation and use of standards in practice. The ASBFEO suggests that any effort to harmonise standards under National Competition Policy should include oversight on practical implementation between jurisdictions, whether by the National Competition Council or another body appointed with an oversight role within the NCP framework.

Information request 3: Other competition reform options

Undertake rigorous policy impact assessments that evaluate the regulatory costs for small business

Right size regulation is essential to fostering rather than impeding competition. Regulation can too easily entrench market power, favouring incumbents with substantial resources and raising the cost of entry for emerging businesses and small businesses looking to grow. The ASBFEO suggests that rigorous impact assessment should specifically consider competitive effects of policy and regulations including the effects on small and emerging businesses, and there should be an emphasis on minimum effective interventions. This is consistent with the principles, particularly Principle 1, agreed by all governments under the Intergovernmental Agreement on National Competition Policy.

A Small Business and Codes List should be introduced into the Federal Circuit and Family Court of Australia

Addressing unfair business practices and entrenched power imbalances that harm competition is crucial to supporting competition across a large number of business sectors. So to, enhancing affordable and realistic avenues for dispute resolution and access to justice for small business, who often face the risk of crushing costs and reprisal if they speak up or go to court. The ASBFEO reiterates that a Small Business and Codes List should be introduced into the Federal Circuit and Family Court of Australia (FCFCA), to provide small businesses with more feasible and timely means of resolving disputes, enforcing legal rights, and facilitating enforcement action by regulators. A Federal Small Business and Codes List would allow for timely, affordable and restorative outcomes and potentially enhance the ability of jurisdictions to monitor existing and emerging competition concerns.

If you require any further information, please do not hesitate to contact the Advocacy team via email at advocacy@asbfeo.gov.au.



Australian Government



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**Small Business and
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Ombudsman

Yours sincerely

The Hon Bruce Billson

Australian Small Business and Family Enterprise Ombudsman