



NOLA
*National Occupational
Licensing Authority*

**Submission to the
Productivity Commission
in relation to Geographic Labour Mobility
Draft Report**

February 2014

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1 Introduction

1.1 Purpose of the document

In 2013 the National Occupational Licensing Authority provided a submission to the Productivity Commission's Inquiry into Geographic Labour Mobility Issues. The Productivity Commission released its draft report of the Inquiry on 3 December 2013. Among its findings are the following comments:

- *There are some impediments to geographic labour mobility that arise from other government policies in areas such as housing, welfare and occupational licensing. While not directly targeting geographic labour mobility, these policies can indirectly affect individuals' and businesses' mobility decisions.*¹
- *Jurisdiction-based licensing is an impediment to mobility and competition. The reform efforts in this area by the Council of Australian Governments have been slow, and need to be reinvigorated with streamlined governance and institutional arrangements.*²

DRAFT RECOMMENDATION 12.5

COAG should take remedial action now to ensure:

- *national occupational licensing reforms commence in 2014*
- *the reform's governance structure is streamlined, in order to facilitate timely decision making*
- *reform processes, such as licensing fees and systems, are simplified and consistent across all jurisdictions.*

The main section of the draft report dealing with national licensing is provided at Appendix A. This submission is provided in relation to those sections of the draft report.

1.2 Background to national licensing

In Australia, the majority of occupational licensing schemes operate at state and territory level, meaning there can be up to eight different schemes for each occupation (and sometimes multiple schemes within occupations). The differences between state and territory approaches include variations in categories and licence types, the range of regulated work, eligibility criteria, insurance requirements, licence fees, disciplinary schemes and conduct requirements.

The proportion of licence holders who hold a licence in another jurisdiction varies between the jurisdictions and occupations depending on factors such as geographical proximity to another jurisdiction, the general state of the economy in the jurisdiction and income prospects in another jurisdiction, the nature of the work (for example, with increased internet use, the property-related occupations increasingly operate across borders).

In 1992, agreement was reached by the states and territories to implement a scheme of mutual recognition of each jurisdictions licences through legislation. However, experience with implementing the *Mutual Recognition Act 1992* over the past 20 years has shown that it has had limited success in facilitating labour mobility across the states and territories. Impediments have included costs associated with obtaining multiple licences, difficulties in identifying licence equivalents, the need

¹ Productivity Commission, *Draft Report on the Inquiry into Labour Mobility*, December 2013, p207

² *Ib id* p221

for extensive use of conditions to achieve equivalence, duplicate testing of applicants, difficulties in access to information by regulators and lack of understanding of mutual recognition requirements by regulators.

In searching for a solution to a full and effective mutual recognition for vocationally trained licences, work was undertaken between 2006 and 2008 by the COAG Skills Recognition Steering Committee to develop a number of Ministerial declarations which clearly set out licence equivalents for a number of occupations. While this process led to certainty about licence equivalence, under the mutual recognition system, a licensed person still had to fill in an application and pay for a second or third licence to work in other jurisdictions.

In early 2008, an analysis was undertaken by the COAG Skills Recognition Steering Committee of the advantages and disadvantages of the following options for reform:

- 1: Enhanced mutual recognition
- 2: Single national legislation administered by a national body with state and territory branches
- 3: Single national legislation administered by states and territories under the umbrella of a national governing body
- 4: Drivers licence model without harmonisation of state and territory legislation
- 5: Drivers licence model with harmonisation of state and territory legislation
- 6: Bilateral agreements on licence recognition between jurisdictions for specified cross border areas (Regionalised driver's licence model)

Option 3 was considered to offer the greatest advantages to licensees and businesses, states and territories and consumers.

In 2008, the Council of Australian Governments (COAG) agreed to Option 3 and the introduction of a National Occupational Licensing System as part of a program of regulatory reform to increase Australia's productivity (known as the *Seamless National Economy Reforms*).

The introduction of national licensing aimed to:

- improve business efficiency and the competitiveness of the national economy;
- reduce red tape;
- remove overlapping and inconsistent regulation between states and territories for the licensing of a number of specific occupations
- improve labour mobility;
- enhance productivity; and
- enhance consumer confidence and protection without imposing unnecessary costs or lessening competition.

The National Occupational Licensing Authority was established as a statutory body to administer and develop the national licensing system. As detailed in the Authority's submission to the Productivity Commission's *Issues Paper on Geographic Labour Mobility*, the establishment of national licensing encountered a number of challenges including:

- a complex and burdensome governance framework, which generated stakeholder confusion about policy decisions and consultation;
- conduct requirements remaining outside the scope of the initiative, creating an inefficient system that is confusing for operators and consumers;
- legislative complexities resulting from different jurisdictional approaches to adopting the National Law
- policy development difficulties resulting from state regulators seeking to incorporate jurisdictional specific licensing approaches;
- additional technical complexities and burdens from state regulators seeking to integrate existing computer systems, rather than develop a new state-of-the-art register; and
- inconsistency in licensing fees as jurisdictions sought to retain their own arrangements.

Improving labour mobility was a key objective of the national licensing system through the removal of requirements for licence holders to hold and pay for more than one licence to work in multiple jurisdictions. At the end of 2013, the Authority was on track to implement NOLS by the end of 2014, subject to COAG agreement to the proposed model and the passage of legislation in all jurisdictions.

On 13 December 2013, COAG noted that the majority of jurisdictions had decided not to pursue the proposed National Occupational Licensing Scheme reform. Instead, the jurisdictions agreed to work together through the Council for the Australian Federation (CAF) to develop alternative approaches to minimising licensing impediments to improve labour mobility and to manage the orderly disestablishment of the National Occupation Licensing Authority from early 2014.

The Authority has developed this submission to provide the Productivity Commission with an update in relation to its section on national licensing, including alternative models for achieving greater workforce mobility and of the challenges of implementing such national models.

2 Alternate models to national licensing

2.1 General considerations

The development of any model for a national approach to providing freedom of movement for licensees across jurisdictions involves a number of general considerations including:

- minimising impacts on individual licensees and business in developing a new licensing system and the transition to that system;
- maximising protection to consumers and the public in the design and implementation of the system;
- negotiations required between jurisdictions for the design of a suitable model for national licensing;
- determining whether any licensing requirements should be harmonised between jurisdictions;
- consulting with industry, consumers and other stakeholders in relation to a new system;

- time and resources required to make legislative changes to accommodate the new system across eight jurisdictions;
- agreement on administrative arrangements to support the new licensing system and implementation of those arrangements;
- transitional arrangements required to introduce a new system; and
- agreement on how to fund implementation of a new system and of any support arrangements.

Various alternate models for national licensing have been considered in the past ten years and these are considered below. **Appendix 1** provides a summary table of these licensing models and includes the national occupational licensing system for the purposes of comparison.

2.2 Option 1 - Mutual recognition

Mutual recognition is the current status quo. Agreement was reached by the states and territories in 1992 to implement legislation for the mutual recognition of occupational licences across jurisdictions. This was achieved by jurisdictions either referring their power to enact mutual recognition legislation to the Commonwealth Government, or adopting the Commonwealth legislation.

Mutual recognition facilitates the movement of skilled workers across Australia by reducing barriers to practising across jurisdictions. The scheme allows each jurisdiction to maintain separate licensing regimes but requires a person who is licensed or registered in one jurisdiction to apply and be granted a licence in a second jurisdiction before they can operate. Under mutual recognition, a person registered or licensed to practise an occupation in one jurisdiction is entitled to a licence for an equivalent occupation in any other jurisdiction, without the need to undergo further testing or examination.

Mutual recognition does not require that all practitioners' qualifications be the same, rather it focuses on the activities authorised to be carried out under each registration and whether or not these are substantially the same, or 'equivalent'. Equivalence can be achieved through the imposition of conditions on registration or licensing by a licensing authority (for example, restricting the licensee to certain activities).

Successive reviews of the Mutual Recognition Agreement by the Productivity Commission have revealed problems with its operation in relation to occupational licensing. For example, in 2003, the Evaluation of the Mutual Recognition Schemes³ conducted by the Productivity Commission concluded that:

"While mutual recognition has, in general, reduced impediments to occupational mobility, several problems in the day-to-day operation of the schemes could be dealt with by:

- enhancing the information exchange systems and procedures among registration boards (for example, in relation to incomplete disciplinary actions) by greater use of electronic database registration systems with capacity for access by counter-part registration boards;
- improving the capacity of registration systems to accommodate short notice applications for registration to allow short term service provision across jurisdictions;

³ Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Research Report, October 2003 p xviii

- encouraging Australian occupational registration authorities to develop national registration systems where the benefits justify the costs; and
- encouraging jurisdictions to continue to work on reducing differences in registration requirements to address concerns that the entry of professionals through the 'easiest jurisdiction' might lower overall competencies."

Following the 2003 evaluation of the operation of mutual recognition, work was commenced by COAG to address some of the issues identified above.

Advantages of mutual recognition

- Facilitates the movement of skilled workers across Australia by reducing barriers to practising across jurisdictions.
- Cost of existing mutual recognition administration is relatively low for jurisdictions as it is based on retaining existing licensing schemes.
- Individual jurisdictions can recover the costs associated with mutual recognition by applying a licence fee to interstate applicants.

Disadvantages of mutual recognition

- Lack of clarity around licence equivalence across jurisdictions.
- Delays experienced by applicants in obtaining a licence in another jurisdiction.
- Costs are incurred by the applicant in applying for a licence and paying duplicate licence fees.
- Impediments to information sharing between regulators, particularly in relation to disciplinary action.
- In practice, additional testing is imposed by some regulators prior to the granting of the licensing.
- Costs to the jurisdictional agency in assessing the application and verifying the information (costs may not be fully recoverable through the licence fee).
- Jurisdiction shopping by potential licensees to lodge their licence application in the jurisdiction with the least onerous entry requirements.
- Mutual recognition only applies to an individual but does not apply to business licences or to contractor licences held by a company or partnership. Contractor licences allow a person or entity to contract to carry out or advertise the work of an occupation.
- Licensees need to be aware of the scope of work and other requirements applying in each jurisdiction in which they work.
- Mutual recognition does not provide any incentive for jurisdictions to work towards a more standardised national approach to licensing.
- Poor knowledge and understanding of the Mutual Recognition Act among co-ordinating central agencies, regulators and licensees.
- Limited consumer access to licensee information as jurisdictions take different approaches to providing public information about licensees.
- No organisation to monitor compliance with mutual recognition requirements.

2.3 Option 2 – Enhanced mutual recognition

In 2006 the Council of Australian Governments (COAG) agreed to additional measures to enhance the operation of mutual recognition. In particular, COAG requested the implementation of full and effective mutual recognition of occupational licences for six priority occupations (electricians, plumbers, carpenters and joiners, bricklayers, refrigeration and air-conditioning mechanics, and motor mechanics) by 30 June 2007, and for all other vocationally trained occupations by 31 December 2008.

This was achieved by use of section 32 of the *Mutual Recognition Act 1992* which enables ministers from two or more states or territories to declare jointly that specified occupations are equivalent, and also to declare any conditions necessary to achieve equivalence. Jurisdictions worked together to agree on equivalent occupational licences across Australia and in February 2007, August 2007, August 2008 and March 2009 ministers from all Australian states and territories made declarations under section 32 of the *Mutual Recognition Act 1992*. These declarations are published on the Federal Register of Legislative Instruments, which is the authoritative source for the declarations.

The Ministerial declarations are underpinned by a mutual recognition schedule for each occupation or group of occupational licences that shows the equivalence between the licences and any necessary conditions. From February 2007, information has been made available about agreed licence equivalents at <http://www.licencerecognition.gov.au>. This website allows the user to look up a licence entitlement in another state or territory, based on the currently-held licence. The website also has information on who to contact to apply for a licence.

In 2008, in a review of mutual recognition, the Allen Consulting Group⁴ found evidence that mutual recognition had reduced the regulatory burden on licensees and some evidence that mutual recognition had reduced barriers to mobility from licence differences. A significant issue identified, however, was the high cost of holding multiple licences arising from application and renewal fees. It was also identified that the efficiencies achieved by use of the ministerial declarations are dependent upon regular up-dating.

To address the issue of currency of the Ministerial declarations, in late 2007 the COAG Senior Officials Meeting agreed to a protocol for updating the declarations. "The protocol was to ensure that declarations remain current and to ensure that any future amendment or development of occupational regulation maximises national consistency. Under this proposal, Ministerial declarations were to be kept up to date through an annual update process to be managed cooperatively by the states and territories, and the Australian Government. The Cross-Jurisdictional Review Forum would be responsible for facilitating this process."⁵ However, it does not appear that this protocol has been implemented. The Ministerial Declarations have not been updated since they were made in 2007 to 2009, and the jurisdictions have made amendments to their licensing legislation since that time.

In addition, COAG also agreed to a protocol for managing mutual recognition in new areas of licensing and major revisions to existing licensing. This protocol requires jurisdictions to consider the implications for equivalence under mutual recognition when making major revisions to regulation, such as significant amendments to

⁴ The Allen Consulting Group, *Evaluation of COAG Initiatives for full and effective Mutual Recognition*, 2008.

⁵ *Evaluation of COAG Initiatives for full and effective Mutual Recognition* p 46

existing licences or new licences.⁶ There is no evidence to suggest that this protocol has been implemented.

In a review of mutual recognition in 2009, the Productivity Commission⁷ found that, on the whole, mutual recognition had reduced impediments to labour mobility but identified some problems with regulators not properly applying mutual recognition requirements and complications arising from conditions and restrictions placed on licensees when they moved across jurisdictions.

In order to achieve a seamless national economy, the enhanced mutual recognition was determined jointly by jurisdictions not to be a suitable long term solution for an efficient national licensing system.

Advantages of enhanced mutual recognition

- Facilitates the movement of skilled workers across Australia by reducing barriers to practising across jurisdictions.
- Cost of existing mutual recognition administration is relatively low for jurisdictions as it is based on retaining existing licensing schemes.
- Individual jurisdictions can recover the costs associated with mutual recognition by applying a licence fee to interstate applicants.
- Clarity around licence equivalence and easy access to information about licence equivalence.

Disadvantages of enhanced mutual recognition

- Lack of clarity for licensees in relation to licence equivalence in other jurisdictions.
- Delays experienced by applicants in obtaining a licence in another jurisdiction.
- Costs are incurred by the applicant in applying for a licence and paying duplicate licence fees.
- Impediments to information sharing between regulators, particularly in relation to disciplinary action.
- Additional testing imposed by some regulators prior to the granting of the licensing.
- Costs to the jurisdictional agency in assessing the application and verifying the information.
- Jurisdiction shopping by potential licensees to lodge their licence application in the jurisdiction with the least onerous entry requirements.
- Mutual recognition only applies to an individual but does not apply to business licences or to contractor licences held by a company or partnership. Contractor licences allow a person or entity to contract to carry out or advertise the work of an occupation.
- Licensees need to be aware of the scope of work and other requirements applying in each jurisdiction in which they work.
- Mutual recognition does not provide any incentive for jurisdictions to work towards a more standardised national approach to licensing.
- Poor knowledge and understanding of the Mutual Recognition Act among co-ordinating central agencies, regulators and licensees.

⁶ Ibid

⁷ Productivity Commission, *Review of Mutual Recognition Schemes*, Research Report, January 2009.

- Limited consumer access to licensee information as jurisdictions take different approaches to providing public information about licensees.
- No organisation to monitor compliance with mutual recognition requirements.

2.4 Option 3 - Automatic recognition (non-harmonised)

The automatic recognition model is based on permitting a licensee to perform licensed work across all jurisdictions without the need to apply for a licence in the second jurisdiction or to pay additional fees for licences if they hold a licence in one jurisdiction. It allows jurisdictions to retain current licensing models as they stand. The model is similar to the arrangements that apply to driver licences where a licence in one jurisdiction entitles the holder to drive anywhere in Australia (for a limited period of time).

Automatic recognition would remove the need for licensees to hold multiple licences and would therefore improve labour mobility and reduce the regulatory burden for licensees operating across jurisdictions.

There would be cost savings for licensees who would no longer need to hold multiple licences to move across jurisdictions. The *Decision Regulation Impact Statement: Proposal for national licensing of property occupations* released in 2013, estimated that for property occupations nationally the total cost of holding multiple licences is about \$2.27 million per annum or \$14.76 million net present value (NPV) over ten years as at 1 July 2012. Similarly, it was estimated that the total cost of holding multiple licences for electrical occupations is about \$2.71 million per annum or \$17.70 million NPV over ten years, and for plumbing and gasfitting occupations is about \$1.35 million per annum or \$8.78 million NPV over ten years as at 1 July 2012.

Automatic recognition will require less legislative change than that required by the national licensing system and could be expected to be implemented more quickly. It will likely require amendment to the *Mutual Recognition Act 1992* which provides a specific process to be followed in relation to entitlement to registration in a second jurisdiction. For example, the Act requires the licensee to lodge a notice seeking registration in the second jurisdiction and specifies the details to be contained in the notice. It also sets out the action that must be followed by the regulator in the second jurisdiction in relation to granting or refusing the registration, interim arrangements, equivalent occupations and the making of declaration by Ministers. It appears that to implement the automatic recognition model, these provisions would need to be disapplied for the relevant occupations or licence categories. Alternatively, an amendment could be made to provide for permanent exemptions for identified occupations. Any such amendments to the Commonwealth Act will require the agreement of the states and territories.

Amendments will also need to be made to jurisdictional occupational legislation to enable those licensed in other jurisdictions to operate without obtaining a local licence or committing an offence for unlicensed work. A central liaison mechanism will need to be established to coordinate jurisdictional legislative changes.

Under a non-harmonised approach, a licence holder would automatically be permitted to perform the scope of licensed work authorised across all jurisdictions that regulate that work. However, it would be the responsibility of the licensee and employers in the second jurisdiction to understand the work authorised by the licence in the original jurisdiction, and to keep up to date with any changes in those authorisations.

This approach could present considerable challenges for licensees and employers as licence categories and scopes of regulated work vary from one jurisdiction to another. There would be a risk of licensees working outside their scope of work in the second jurisdiction, potentially affecting consumer protection and health and safety. Licensees with conditions or restrictions imposed for disciplinary reasons could move between jurisdictions and these variations may not be apparent from the licensee's licence card.

Compliance for regulators would be difficult under this option for a range of reasons. Regulators currently have no authority to take disciplinary action against a licensee from another jurisdiction unless they are authorised to do regulated work under that jurisdiction's licensing laws, or the action is taken for unlicensed work. Regulators would have no record of licensees from other jurisdictions who are working locally nor would there be any way of communicating with them about changes to licensing legislation or conduct requirements. Nor would they be able to keep track of licensees from other jurisdictions with a history of disciplinary action.

Under the non-harmonised approach, consumers would have difficulties identifying whether a licensee is authorised to operate in the jurisdiction and check on the status of a licence. Not all jurisdictions issue photo licences, have on-line licence registers or easily accessible information about the scope of regulated work of its licence categories

The non-harmonised approach has the potential to increase consumer confusion, undermine the integrity of jurisdictional regulatory regimes and increase the potential for jurisdiction shopping.

It is understood that it is a version of this option that the Council for the Australian Federation is planning to implement as an alternative to national licensing.

Advantages of non-harmonised automatic recognition

- Facilitates the movement of skilled workers across Australia by reducing barriers to practising across jurisdictions.
- Cost of existing mutual recognition administration is relatively low for jurisdictions as it is based on retaining existing licensing schemes.
- No additional costs to licensees who are entitled to practise in other jurisdictions if they are licensed to do regulated work in their originating jurisdiction.
- No additional administrative costs to regulators who automatically accept licensees if they are licensed in another jurisdiction.

Disadvantages of non-harmonised automatic recognition

- No champion (such as COAG) to keep reform on track and ensure jurisdictional compliance with any agreement.
- Possible confusion among licensees and employers in relation to equivalence of licence categories and scopes of regulated work.
- Jurisdiction shopping by potential licensees to lodge their licence application in the jurisdiction with the least onerous entry requirements.
- Potential for licensees with a history of disciplinary action against them to move into other jurisdictions where there would be no mechanism to warn consumers about the risk.

- Mutual recognition only applies to an individual but does not apply to business licences or to contractor licences held by a company or partnership. Contractor licences allow a person or entity to contract to carry out or advertise the work of an occupation.
- Eligibility requirements including skills, disciplinary models and conduct rules vary across jurisdictions. Some regulators may opt out if they consider other jurisdictions have lower eligibility requirements.
- No incentive for jurisdictions to work towards a more standardised national approach to licensing.
- Limited consumer access to licensee information as jurisdictions take different approaches to providing public information about licensees and consumers may not have access to information about interstate licensees.

2.5 Option 4 – automatic recognition (harmonised)

The automatic recognition harmonised approach is similar to the non-harmonised approach in that it is likely to require amendments to the *Mutual Recognition Act 1992* and jurisdictional licensing legislation. It would face similar difficulties in relation to compliance and but would remove consumer confusion about what work a licensee is authorised to undertake in the second jurisdiction.

This approach is based on jurisdictions agreeing to harmonised licensing requirements across the relevant occupations. Harmonisation could include licence categories, regulated work, exemptions and eligibility requirements. Agreement could also be struck in relation to any occupations that do not need to be licensed.

Harmonisation may seem relatively straight forward as licence categories are often the same or similar across jurisdictions. For example, most jurisdictions have a licence category of “electrician”. However, it is not necessarily the case that categories with the same title or very similar titles encompass the same activities in each jurisdiction. Similarly, terminology used to describe the regulated work varies across jurisdictions as do the definitions of the core concepts.

Significant progress was made under the national licensing project in relation to a range of licensing issues and this could be used as the foundation for commencing work on a harmonised model. However, based on the national licensing experience is anticipated there would be resistance by regulators to attempts to change the status quo and few opportunities to streamline and rationalise licensing frameworks. Some advocates for harmonised licences have suggested that only those licences with clear equivalence could be harmonised, with others left non-harmonised.

A harmonised approach would need a mechanism to facilitate agreed licensing requirements across jurisdictions, such as through dedicated resources (for example a funded body) or by a committee of officials representing jurisdictions. In the absence of a funded national coordinating mechanism, harmonisation would be difficult to achieve, and hard to maintain over time as there would be no process to resolve differing jurisdictional views.

A harmonised approach will not require new administrative arrangements but will incur ongoing implementation costs. Work will need to be undertaken overtime to maintain harmonised categories and scopes of work. Automatic mutual recognition, however, provides little opportunity for streamlining and rationalising differences in jurisdictional approaches and improving efficiencies in processes.

The costs of a harmonised automatic recognition system were not determined during costing of the national licensing system in preparation for the release of the Decision Regulation Impact Statements in 2012-2013. The costs were difficult to fully estimate as it was unclear which elements of the licensing system would be subject to harmonisation, which elements would actually be harmonised by jurisdictions, and how the harmonisation process would be managed.

However, it would provide greater certainty to licensees and employers in relation to equivalent licence categories and scopes of work

Overall, it is expected that the benefits from a harmonised arrangement would be greater than for a non-harmonised system to the extent that jurisdictions are able to agree on harmonisation.

A harmonised system has the potential to increase labour mobility from that which is likely to be achieved under a non-harmonised system, reduce risks of a non-harmonised system and increase certainty for licensees, regulators and consumers.

Advantages of harmonised automatic mutual recognition

- Facilitates the movement of skilled workers across Australia by reducing barriers to practising across jurisdictions.
- Cost of existing mutual recognition administration is relatively low for jurisdictions as it is based on retaining existing licensing schemes.
- No additional costs to licensees who are entitled to practise in other jurisdictions if they are licensed to do regulated work in their originating jurisdiction.
- No additional administrative costs to regulators in relation to processing applications from interstate licensees.
- Clarity around licence equivalence and scope of regulated work.

Disadvantages of harmonised mutual recognition

- No champion (such as COAG) to keep reform on track and ensure jurisdictional compliance with any agreement.
- Potential for regulators to reach an impasse in attempting to determine licence equivalence.
- Possible confusion among licensees and employers in relation to equivalence of licence categories and scopes of regulated work.
- Jurisdiction shopping by potential licensees to lodge their licence application in the jurisdiction with the least onerous entry requirements.
- Potential for licensees with a history of disciplinary action against them to move into other jurisdictions where there would be no mechanism to warn consumers about the risk.
- Costs associated with developing and maintaining equivalence matrices which would not be covered by licence revenue from interstate applicants.
- Loss of revenue by regulators as interstate licensees would not be required to hold multiple licences.
- Mutual recognition only applies to an individual but does not apply to business licences or to contractor licences held by a company or partnership. Contractor licences allow a person or entity to contract to carry out or advertise the work of an occupation.

- Licensees need to be aware of the scope of work and other requirements applying in each jurisdiction in which they work.
- Limited consumer access to licensee information as jurisdictions take different approaches to providing public information about licensees.

3 Implementing automatic mutual recognition

Either model of automatic recognition has the potential to provide for enhanced labour mobility, with lower immediate transition costs. Implementation would, however, be complex and would require close and ongoing co-operation and co-ordination at all levels of policy development, regulation setting and compliance.

3.1 Schedules of equivalence

It is understood that the model to be considered by CAF is to be based around schedules of equivalence. These would be based on the existing ministerial declarations made under section 32 of the Mutual Recognition Act.

It is unclear how these would be used as there would be no mechanism for the licensee to be assessed against these schedules (as is the current case) or for the consumer using the licensee to understand the scope of work the licensee is entitled to carry out in the second jurisdiction.

3.2 Harmonisation

Worker mobility would be enhanced by a system which includes harmonised licence categories across jurisdictions. Harmonisation would be achieved by all jurisdictions agreeing on a single set of licence categories and scopes of work for each occupation and then mirroring these in their individual jurisdictional legislation.

Work on the national occupational licensing system was close to producing a nationally agreed set of licence categories and scopes of work for those occupations that were to be included in the system, in particular those that had been worked through with stakeholders by NOLA (rather than those provided in the Decision RIS). These categories and scopes of work could be finalised and used as a basis for harmonised automatic recognition arrangements for relevant occupations.

For licences where a single licence category cannot be agreed or which were not to be included in the national licensing system, however, current mutual recognition arrangements would need to continue. Such a multi-tiered approach would increase regulatory complexity. In addition, jurisdictions would retain legislative power to vary licensing requirements over time, which would impact on any agreed harmonisation or equivalency and result in uncertainty for other jurisdictions and individual licensees.

3.3 Legislation

Implementation of automatic recognition (harmonised or non-harmonised) would require amendments to the Mutual Recognition Act and may also require amendment to the jurisdictional licensing legislation.

In a *harmonised* model the Mutual Recognition Act would require amendment to enable a licensee to work across jurisdictions in an equivalent licence category without having to undergo an application process. Amendments to the jurisdictional occupational legislation will be required to incorporate the agreed licence categories and scopes of work.

In a *non-harmonised* model the Mutual Recognition Act would require amendment to enable a licensee to work across jurisdictions in an equivalent licence category without having to undergo an application process.

3.4 Contractors

Licensing arrangements for contractors varies greatly across both jurisdictions and occupations. There was strong stakeholder support during the national licensing policy development and consultation processes for the consistent licensing for consistent licensing of contractors.

A significant issue for the automatic mutual recognition approach is that the existing legislation applies only to worker licences and does not include contractors in any occupation. This will need to be addressed in any new approach and is likely to add to the complexity of the system to be introduced.

3.5 Timeframe

Another difficulty in implementing automatic recognition is the time taken to agree on an approach to recognising interstate licences and the passing of those changes through the respective parliaments. This was a significant challenge experienced in developing the national occupational licensing system.

3.6 Transition costs

Automatic recognition would retain individual jurisdictions' licensing frameworks and therefore involve a lower transition cost to that expected under national licensing. Governments would, however, incur costs associated with amending legislation, developing harmonised categories and scopes of work or equivalence matrices and communicating the new arrangements to licence holders across the country.

3.7 Compliance

Under an automatic mutual recognition model the regulator in the second jurisdiction would only become aware of the licensee once they have been notified of a problem with the work or they are identified during a routine compliance operation.

If the licensee has not complied with the legislation of the second jurisdiction in relation to the work they have carried out, the regulator will have limited capacity to undertake enforcement action. If the work is outside the scope of their original licence they could possibly take action for unlicensed work. The success of such action would depend upon the understanding of the court of the differences between the scopes of work of the two relevant jurisdictions.

If the problem is something within the scope of the licence, even if legislation is drafted to 'deem' the person to hold a licence in the second jurisdiction it is unclear how the second jurisdiction could impose anything stronger than a financial penalty. That jurisdiction doesn't hold the licence record to impose, for example, a condition on the licence.

Automatic mutual recognition would seem to impose an increase compliance workload, however, reduced licence fees will mean reduced revenue for compliance work.

3.8 Jurisdiction shopping

Under automatic recognition, the jurisdictions would continue to set licence fees, which may promote jurisdictional shopping as licensees apply for their single licence in the cheapest state or territory or the jurisdiction with the lowest entry requirements. This may require specific legislative provision to determine which jurisdiction would issue the licence, eg where the principal place of business is located. Similarly, jurisdiction-shopping for the easiest pathway to a licence may need to be managed through legislative provisions.

One concern expressed in relation to jurisdiction shopping is that it is considered to lower standards. As far back as 2003, the Productivity Commission identified the solution as “minimising the differences in requirements across jurisdictions, by reaching agreement on the appropriate competency threshold”⁸.

3.9 Public register

A national register of licensees and disciplinary action would improve transparency for consumers and regulators but a process for providing, maintaining and servicing such a register would need to be developed and agreed. Under the national occupational licensing system, a national public register was being established to facilitate consumers’ access to relevant information about a licensee. Regulators would also have been able to check a regulators’ portal for more information on a licensee.

Significant work had been undertaken to develop the register, based on the proposed national licence categories, and to integrate the separate licensing systems across the jurisdictions for several occupations. NSW GLS, the contractor developing the register, had delivered the first stage, the public search component, as a high quality state of the art public register with google like search functionality and voice activation when using an iPhone. External testing had supported the high quality of the product delivered.

The register does have the flexibility to be reconfigured to the licence categories of a harmonised mutual recognition model, ie a single national category for each scope of work. As it sits on the NSW GLS platform, GLS would need to be contracted to provide the register. It would not, however, have the capacity to be reconfigured to eight different sets of licence categories, as would be the case in a non-harmonised mutual recognition model.

3.10 Disciplinary provisions

Consistent disciplinary provisions had already been agreed and legislated in six jurisdictions through the National Law. Consideration should be given to having these adopted within each jurisdiction’s legislation once the National Law is repealed.

3.11 National co-ordination

To ensure appropriate monitoring and compliance takes place, responsibility for these tasks needs to be made clear. While each jurisdiction may have a department

⁸ Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Research Report, October 2003 p 93

or central agency that is nominally ‘responsible’ for mutual recognition, it appears that, in some cases, their role is not widely known. The division of responsibilities between each State, Territory and Commonwealth government needs to be clarified and restated.

4 Conclusion

In the absence of introducing a national licensing system for appropriate occupations, the next most appropriate option that will result in improved labour mobility is considered to be introducing harmonised automatic mutual recognition, based on the categories and scopes of work developed for the national licensing system. This option should also include development and implementation of a national public register of licences and disciplinary action information to assist consumers.

Automatic mutual recognition should also be applied to contractor licences to further enhance mobility of labour.

Whichever option is finally put in place, governments should monitor its implementation over time and evaluate its effectiveness. This could include an analysis of case studies which will assist in identifying impacts on labour mobility.

Appendix A Extract from Productivity Commission's Draft Report

4.1.1 Licensing and skills recognition⁹

A potential impediment to workers considering interstate migration is the recognition of their skills and qualifications in other jurisdictions (chapter 8). The Australian Qualifications Framework was first introduced in 1995, and updated in 2011, to provide a national system of qualifications in higher education and vocational education and training. Qualifications under the framework are recognised across Australia, thereby facilitating geographic labour mobility (DIICSRTE, sub. 23).

Beyond formal qualifications, a large number of occupations in some sectors of the Australian economy require specific licensing. In some cases, such as the medical profession, there is a national licensing system that certifies individuals to work anywhere within Australia. However, the majority of occupations are governed by jurisdictional occupational licensing, which may impose a barrier on individuals who are considering working interstate.

The *Mutual Recognition Act 1992* provides licenced workers with opportunities to work in different jurisdictions. In its most recent review of mutual recognition schemes, the Commission found that the Mutual Recognition Agreement (which is governed by the Act) has increased the mobility of labour in Australia. However, concerns remained in regards to differences in occupational standards between jurisdictions. The Commission acknowledged that national licensing is preferable to mutual recognition in terms of labour mobility, but noted that mutual recognition will continue to have an important role in parts of the economy (PC 2009c).

In 2009, COAG decided to introduce national occupational licensing, beginning with real estate and construction related occupations. The task of implementing this reform was given to the National Occupational Licensing Authority (NOLA), established in 2012. However, the authority has come across numerous challenges and reform progress has been slow (box 12.2). These challenges were also recognised by the Commission in 2012:

Given continued delays in implementing the first tranche of [the National Occupational Licensing System] and the limited number of occupations included, effective and transparent mutual recognition mechanisms will continue to be necessary into the foreseeable future. (PC 2012b, p. 60)

Box 12.2 National occupational licensing reform

National occupational licensing is part of the seamless national economy reforms (COAG 2009b), and was motivated in part by recommendations made by the Productivity Commission (for example, Australian Government 2006; PC 2003).

The Intergovernmental Agreement for a National Licensing System for Specified Occupations was signed in April 2009, aiming to establish a national licensing body by January 2011 and commence national licensing by July 2012 (COAG 2009a). However, the implementation of reform has encountered numerous problems.

The National Occupational Licensing Authority (NOLA) was established in May 2012. Its governance structure is complex — it is overseen by COAG's Standing Council on Federal Financial Relations, the National Licensing Steering Committee, the National Licensing Taskforce (which is being wound down) and a Deputy Senior Officials Meeting. As a result, 'there is no single advocate for, or

⁹ Productivity Commission, *Draft Report on the Inquiry into Labour Mobility*, December 2013, p238

champion of, the project' (sub. 17, p. 10), which has affected policy development and implementation.

The reform needs to bring together 24 different regulatory schemes across different industries. Coupled with the complex governance structure, this has resulted in significant delays and difficulties.

According to the NOLA:

Current governance arrangements hamper the policy development for national licensing and timing for its introduction. There has been confusion about final approval of policy decisions. Jurisdictional and industry interests have competed on different levels: some policy issues that have been negotiated and resolved on one level have subsequently been elevated to another level or revisited through another forum and at times reversed. (sub. 17, p. 10)

Implementing the national licensing system has also hit significant hurdles:

- Conduct requirements, which are separate to licensing, remain outside the scope of reform, creating an inefficient system that is confusing for operators and consumers. This issue was also recognised by the Commission in a review of COAG's Regulatory and Competition Reform Agenda (PC 2012b):
- The National Law requires amendments to account for additional complexities that were uncovered as the policy was developed. Western Australia and the ACT have not yet passed the required legislation.
- The state regulators, which will administer the national licensing regime, will integrate their 18 existing computer systems, rather than create a new one.
- Licence fees will continue to vary by jurisdiction. Applicants will be required to apply only in their state of residence (NOLA, sub. 17).

The concept of national licensing is supported by some in the business community (Ai Group, sub. 19; AMMA, sub. 29; BCA, sub. 31), while others believe it may have negative effects on the professional standards in some of the occupations involved (Real Estate Institute of Australia 2013). COAG is expected to make a final decision on this reform by the end of 2013. If agreed by COAG, national licensing for four occupations will commence in 2014 (DIICCSRTE, sub. 23). The NOLA believes implementation is unlikely to occur prior to December 2014 (sub. 17).

While the costs of implementing the reform, in terms of time and effort, have been significant, the benefits of national licensing are difficult to estimate. In 2012, the Commission expected only minor prospective gains from this reform, assuming it is well implemented (PC 2012b). The NOLA has submitted that:

Various policy decisions have steadily eroded the maximum benefits that could have been achieved. Decisions to permit jurisdiction-based licence fees, integrate existing register systems, and allow jurisdiction-based conduct requirements have increased the complexity and cost of the reforms, while reducing the potential economic and efficiency benefits. These key policy examples outline some of the problems in achieving the maximum economic benefit of the reform.

Governance arrangements have also impacted on the implementation timeframes, as new levels of approvals have been added ... and key policy decisions must compete with other priorities for attention from senior decision-makers. (sub. 17, p. 19)

The NOLA has called for changes to the governance structure and the reform implementation, in order to ensure timely implementation of national licensing that will maximise potential benefits. Among others, these changes include:

- identifying the most appropriate ministerial council responsible for this reform, and ensuring decisions are given priority
- introducing a national licensing fee, which will be consistent across jurisdictions, and creating a single national licensing database (sub. 17).

The Commission believes that the benefits of the national licensing reform will not be realised without a strong commitment to implementation, and a streamlined approach to governance and institutional arrangements. Unless changes are made, this reform is unlikely to be implemented in a timely manner and to deliver its full potential benefits.

DRAFT RECOMMENDATION 12.5

COAG should take remedial action now to ensure:

- *national occupational licensing reforms commence in 2014*
- *the reform's governance structure is streamlined, in order to facilitate timely decision making*
- *reform processes, such as licensing fees and systems, are simplified and consistent across all jurisdictions.*

10

Appendix B Summary of Alternative Licensing Models

	1. Mutual recognition (status quo)	2. Automatic mutual recognition (un-harmonised) with no national register	3. Automatic mutual recognition (un-harmonised) with a national register	4. Automatic mutual recognition (harmonised) with no national register	5. Automatic mutual recognition (harmonised) with a national register	6. National licensing with a national register
Description	<p>Separate licensing regimes in each jurisdiction with varying licence categories</p> <p>A licensed person is entitled to a licence in any other jurisdiction but must apply and pay a separate licensing fee to that jurisdiction.</p> <p>Second jurisdiction assesses original licence and grants a licence for the equivalent work.</p> <p>No national licensing register.</p>	<p>As for Option 1 but with no application or assessment process in the second jurisdiction</p> <p>A licensed person is entitled to work in the second jurisdiction.</p>	<p>As for Option 2 but with a national register of licences</p>	<p>As for option 2 but each jurisdiction adopts the work to date for NOLS categories in its legislation.</p>	<p>As for option 4 but with a national register</p>	<p>Each jurisdiction operates under a single National Law</p> <p>Single national categories for all licensed work.</p> <p>National licence entitles person to work in any jurisdiction</p> <p>A national licensing register lists details of licences issued in all jurisdictions.</p> <p>National agency to manage the process</p>
Consumer protection impacts	Limited by lack of access to public register across all occupations and jurisdictions	Reduced relative to status quo	Slightly improved relative to status quo	Slightly improved relative to status quo	Improved relative to status quo	High relative to status quo
Economic impacts	<p>Duplicate licence fees</p> <p>Delays in commencing work (while assessment is undertaken)</p> <p>Regulators of assessment costs</p> <p>Multiple qualification and training requirements in place</p> <p>No mechanism for achieving rationalisation benefits.</p> <p>Loss of approx. \$25m in direct sunk investment (inc Taskforce costs \$16.4m, NOLA costs \$4m, and Register development \$5m)</p>	<p>Reduced red tape for industry.</p> <p>Reduced fee revenue for regulators, restricting compliance activities</p> <p>Reduced licence revenue for some jurisdictions due to jurisdiction shopping</p> <p>Increased regulator compliance costs due to confusion over licence categories and scope</p> <p>Loss of approx. \$25m in direct sunk investment (inc Taskforce costs \$16.4m, NOLA costs \$4m, and Register development \$5m – does not inc regulator and govt costs)</p>	<p>Reduced red tape for industry.</p> <p>Reduced fee revenue for regulators, restricting compliance activities</p> <p>Reduced licence revenue for some jurisdictions due to jurisdiction shopping</p> <p>Increased regulator compliance costs due to confusion over licence categories and scope</p> <p>Costs of developing and maintaining a national register (register operating costs are currently approx.</p>	<p>Reduced red tape for industry.</p> <p>Reduced fee revenue for regulators, restricting compliance activities</p> <p>Reduced licence revenue for some jurisdictions due to jurisdiction shopping</p> <p>Loss of approx. \$25 million in direct sunk investment (inc Taskforce costs \$16.4m, NOLA costs \$4m, and Register development \$5m – does not inc regulator and govt costs)</p> <p>Reduced long term economic benefits, depending on uptake of NOLS categories.</p>	<p>Reduced red tape for industry</p> <p>Lack of clarity over central coordinating body, including in relation to the ongoing management of the register.</p> <p>Costs of maintaining a national register. (register operating costs are currently approx. \$43,000 per month)</p> <p>Loss of some sunk investment, value would depend on the scope of uptake of NOLS policy.</p>	<p>Long term economic benefits offset the implementation costs.</p>

	1. Mutual recognition (status quo)	2. Automatic mutual recognition (un-harmonised) with no national register	3. Automatic mutual recognition (un-harmonised) with a national register	4. Automatic mutual recognition (harmonised) with no national register	5. Automatic mutual recognition (harmonised) with a national register	6. National licensing with a national register
	– does not inc regulator and govt costs) Loss of significant long term economic benefits under NOLS – valued at approx. \$204.14m.	Loss of significant long term economic benefits – valued at approx. \$21.74m under AMR and \$204.14m under NOLS.	\$43,000 per month). Loss of approx. \$25m in direct sunk investment – although some value may be recovered through the Register. Loss of significant long term economic benefits – valued at approx. \$21.74m under AMR and \$204.14m under NOLS.		Reduced long term economic benefits, depending on the scope of NOLS policy retained.	
Implementation costs	Nil other than updating ministerial declarations of equivalent licences	Resources to develop policy and procedures for automatic mutual recognition. Amendments to mutual recognition legislation	Amendments to mutual recognition legislation. Development of national register based on mutual recognition	Amendments to mutual recognition legislation. Finalisation of agreed categories and scopes of work and process for achieving harmonisation.	Amendments to mutual recognition legislation Finalisation of national register based on agreed NOLS categories	Start up and ongoing costs for NOLA and the jurisdictions, including national register.
Implementation tasks	Repeal of National Law in all jurisdictions except WA and ACT Update of ministerial declarations Wind down of NOLA, including \$2.3m in liabilities (22/11/2013) Communication to stakeholders	Repeal of National Law in all jurisdictions except WA and ACT Amendment to MR Act Update of ministerial declarations Wind down of NOLA, including \$2.3m in liabilities – as at 22/11/2013 Communication to stakeholders Training of jurisdictional staff	Repeal of National Law in all jurisdictions except WA and ACT Amendment to MR Act Update of ministerial declarations Redevelopment of National Register Establishment of managing body for the National Register Communication to stakeholders Training of jurisdictional staff	New legislation in all jurisdictions to mirror NOLS categories Amendment to MR Act Update of ministerial declarations Wind down of NOLA, including \$2.3m in liabilities – as at 22/11/2013 Communication to stakeholders Training of jurisdictional staff	New legislation in all jurisdictions to mirror NOLS categories Amendment MR Act Redevelopment of National Register, including redevelopment of jurisdictional systems Establishment of managing body for the National Register Update of ministerial declarations Communication to stakeholders Training of jurisdictional staff	Legislation required in all jurisdictions National regulations (5) to be made by SCFFR Finalisation of the National Register Redevelopment of jurisdictional databases to match NOLS licences Update of ministerial declarations Communication to stakeholders Operational guidelines and training of jurisdictional staff
Advantages	Scope of licence outside of home jurisdiction is clear	Allows licensee to work in new jurisdiction immediately without any application or payment process Projected long term economic benefits, valued at approx.	Allows licensee to work in new jurisdiction immediately without any application or payment process Has a mechanism for identifying phoenix	Scope of licence in new jurisdiction is clear (at least initially) Single national training package for licence category	Scope of licence in new jurisdiction is clear (at least initially) Single national training package for licence	Scope of licence in new jurisdiction is clear Single national training package for licence category Harmonisation of licence

	1. Mutual recognition (status quo)	2. Automatic mutual recognition (un-harmonised) with no national register	3. Automatic mutual recognition (un-harmonised) with a national register	4. Automatic mutual recognition (harmonised) with no national register	5. Automatic mutual recognition (harmonised) with a national register	6. National licensing with a national register
		\$21.74m, could be realised.	companies by having a national register. Projected long term economic benefits, valued at approx. \$21.74m, could be realised. Additional benefits may accrue from adoption of national register.	Projected long term economic benefits, valued at approx. \$21.74m, could be realised. Benefits may be higher depending on uptake of NOLS policy.	category. Has a mechanism for identifying phoenix companies by having a national register. Projected long term economic benefits, valued at approx. \$21.74m, could be realised. Benefits may be higher depending on uptake of NOLS policy and register.	categories is retained Consumer protection enhanced through national register Has a mechanism for identifying phoenix companies by having a national register. Model agreed by industry. Improved labour mobility All NOLS occupations included in the model, with the ability to use the infrastructure to expand to other occupations in the future. Centralised policy development process provides a mechanism to obtain & maintain harmonisation. Realise value from sunk investment of approx \$25m, comprised of Taskforce, NOLA and Register costs to date. Retain projected long term economic benefits – valued at approx. \$204.14m under NOLS.
Disadvantages	Requires licensee to apply and pay for licence in each new jurisdiction Inhibits mobility of the workforce through delays in MR process No national register –	Scope of licence in new jurisdiction is unclear – confusion for licensees and consumers Different training packages and requirements in each jurisdiction	Scope of licence in new jurisdiction is unclear – confusion for licensees and consumers Different training packages and requirements in each jurisdiction	No national register – reduced consumer protection Initial harmonisation of licence categories will dissipate over time – leading back to Model 2 Retains confusion over conduct	Initial harmonisation of licence categories will dissipate over time – leading back to Model 3 Retains confusion over conduct requirements A limited number of	Retains confusion over conduct requirements in the short term

	1. Mutual recognition (status quo)	2. Automatic mutual recognition (un-harmonised) with no national register	3. Automatic mutual recognition (un-harmonised) with a national register	4. Automatic mutual recognition (harmonised) with no national register	5. Automatic mutual recognition (harmonised) with a national register	6. National licensing with a national register
	<p>reduced consumer protection</p> <p>Different training packages and requirements in each jurisdiction</p> <p>Retains confusion over conduct requirements</p> <p>Costs to regulators of checking of applicant's details with regulators, verification of documents and possible reassessment of applicants</p> <p>Doesn't cover contractor licences</p>	<p>Retains confusion over conduct requirements</p> <p>Reduced capacity for regulators to proactively maintain standards.</p> <p>Model limited to occupations which have been declared under mutual recognition provisions.</p> <p>Doesn't cover contractor licences</p> <p>No proactive compliance checks on operators to identify problems</p> <p>No overall coordinating body.</p> <p>Licensees would still need to be aware of multiple jurisdictions' licence and conduct requirements</p>	<p>Retains confusion over conduct requirements</p> <p>Model limited to occupations which have been declared under mutual recognition provisions</p> <p>Licensees would still need to be aware of multiple jurisdictions' licence and conduct requirements</p> <p>Doesn't cover contractor licences</p> <p>Not clear what this register would look like or who would manage it</p> <p>Current NOLS NLR is based on single licence categories and would require redevelopment to display the varying licences of 8 jurisdictions - with little increased consumer benefit.</p>	<p>requirements</p> <p>No central coordinating body, including for management of the register.</p> <p>Licensees would still need to be aware of multiple jurisdictions' licence and conduct requirement</p> <p>Inability to adapt the model to other occupations in the future.</p> <p>Doesn't cover contractor licences</p>	<p>occupations are included in the model with inability to adapt the model to other occupations in the future.</p> <p>Doesn't cover contractor licences</p> <p>Licensees would still need to be aware of multiple jurisdictions' licence and conduct requirements</p> <p>Not clear who would manage this register</p> <p>No mechanism to prevent initial categories and scopes of work are likely to changing over time as jurisdictions make unilateral legislative changes.</p>	