

Your ref:

Our ref: BRB00479/01

Enquiries to: Norm Griffiths

25 July 2008

Ms Carole Gardner (Administrative Coordinator)
Mutual Recognition Review
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Ms Gardner

REVIEW OF MUTUAL RECOGNITION SCHEMES

Thank you for the opportunity to make a submission to the Productivity Commission's Review of the Mutual Recognition Agreement (MRA) and the Trans Tasman Mutual Recognition Agreement (TTMRA).

The Builders' Registration Board (the Board) is responsible for registering builders in Western Australia under the *Builders' Registration Act 1939*.

The number of builders registered in Western Australia through mutual recognition is increasing dramatically. For example, in the 2007/2008 financial year, the Board registered 86 builders through mutual recognition, a 34 per cent increase from 64 in the previous period.

Applications for registration under mutual recognition in 2007/2008 constituted over 20 percent of all approved applications. Of the applications received under mutual recognition in that period, the Board refused only two applications. This demonstrates that the current scheme does not, to any significant degree, unnecessarily impede mobility of builders between other jurisdictions and Western Australia.

The primary purpose of registration and licensing schemes is to protect consumers. The Board believes that the increasing number of builders being registered through mutual recognition, without the Board having the ability to first examine the bona fides of those persons, is undermining the integrity of the registration system and creating additional risks for consumers in this State. The Board is therefore of the view that the current mutual recognition scheme, as it applies to the registration or licensing of occupations, requires some change.

Key issues for comment and improvement in the mutual recognition scheme

The Board has identified three key issues for comment as they relate to occupational licensing schemes.

1. Financial and Character Checks

There have been several instances identified in recent years where applicants have not met the requirements for registration as a builder under the *Builders' Registration Act 1939*, who have then obtained registration in another jurisdiction and re-applied for registration under mutual recognition, to which the Board is obliged to grant. In one instance, an applicant failed the Board's Assessment Papers three times, only to return later and obtain registration under mutual recognition.

The instance described above is becoming more common as the proportion of registrations through mutual recognition continues to grow. This provides a fundamental challenge to the registration system and is contrary to the intent of the MRA/TTMRA. Given the purchase or building of a home is the largest investment that most consumers will make in their lives, it is creating risks with potentially serious consequences for consumers who may deal with those applicants.

The Board believes that the MRA/TTMRA must, in the public interest, include provisions that provide State/Territory registration bodies with the ability to subject applicants to further assessment, including financial and character checks. Any decision by the registration authority to not grant registration in such circumstances would continue to be subject to appeal by the applicant to the Administrative Appeals Tribunal.

Section 17(2) of the *Mutual Recognition Act (Western Australia) 2001* (the MR Act) may be an option to address this issue. However, recent advice from the Western Australian State Solicitor's Office suggests, in essence, that section 17(2) can not be relied upon for this purpose. The Board is of the view, therefore, that this section requires clarification.

In making these suggestions, the Board is not attempting to review an applicant's qualifications or experience, which will have been assessed by the first registration authority.

2. Deemed Registration

Under the MRA/TTMRA, an applicant is entitled to carry out their occupation pending the grant or refusal of registration (ie. 'deemed registration'). The Board has one month from receiving an application to make a decision to grant, postpone or refuse registration, essentially permitting the applicant to carry out building work until that time.

It is possible for a builder to make a substantial impact on consumers and the building industry in a one month period. It is not unreasonable in the Board's view for builders from other jurisdictions to have to wait one month while their applications are processed. The Board is therefore of the view that the one month 'deemed registration' period creates significant risks for consumers and should be abolished.

If a concern exists that registration authorities may unnecessarily delay registration, then consideration could be given to changing the deemed registration period to commence *after* one month if the registration authority has not granted, postponed or refused the application.

The deemed registration period also has the potential to create legal problems if a builder with deemed registration enters into contracts with consumers but is subsequently refused substantive registration.

3. Uniformity and National licensing

The Board notes the recent COAG Communique of 3 July 2008 announcing the development of a national licensing proposal in respect of building occupations. The details of that proposal are yet to be communicated.

Every jurisdiction in Australia has different legislation governing their building industry and there is a need for some uniformity in order for the principle of mutual recognition to deliver successful outcomes.

In Western Australia, there is one category of registration for builders yet in other jurisdictions there are a number of classes of registration/licences based on the complexity of work. The Board supports a national harmonised framework regulated by individual jurisdictions. In particular, consideration should be given to the introduction of a nationally consistent tiered registration/licensing scheme related to the complexity of work to be undertaken and linked to the Building Code of Australia building classifications, as well as the recently endorsed National Qualification Training Package.

In doing so, this would assist in recognising equivalence issues between jurisdictions and addressing them through the principles of mutual recognition.

Contact

Should you have any queries regarding the Board's submission, please do not hesitate to contact the Board's Manager Policy and Education, Mr Norm Griffiths, on (08) 9476 1250.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kim Fare', written in a cursive style.

Kim Fare
REGISTRAR