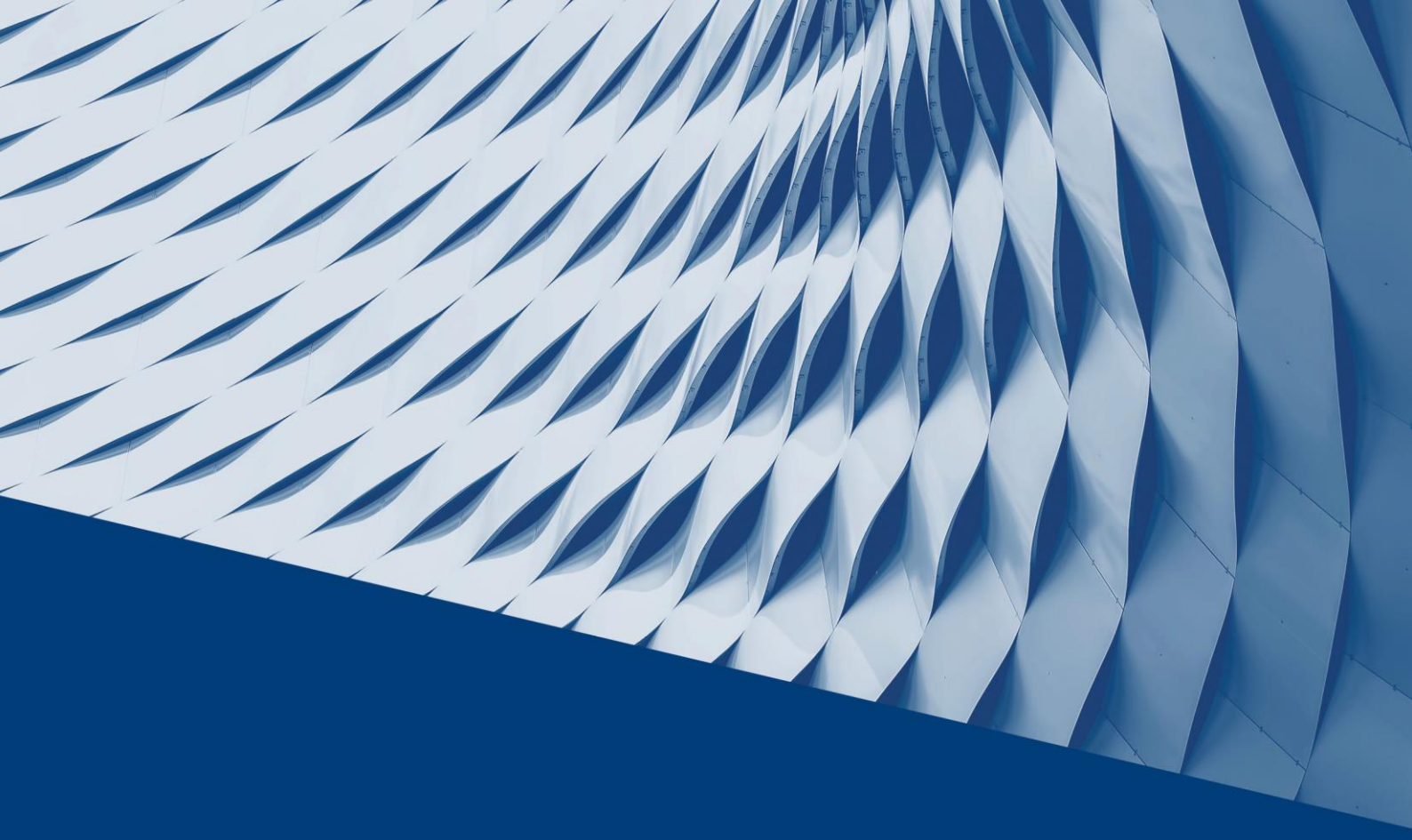

Automatic Mutual Recognition – A Premature Reform

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ACTU
australian council of trade unions

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Introduction

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 1.5 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector. As the representative voice for Australian workers, the ACTU represents the interests of the 17% of the workforce who require a licence or registration to undertake their work. While we believe we should have been consulted far before this late juncture, we nonetheless welcome the opportunity to have input into the Government's proposed Automatic Mutual Recognition Scheme (AMRS).

Australian unions, while acknowledging the benefits of such a scheme, have a number of concerns about the proposed AMRS. These concerns can be broadly categorised as:

- A lack of a clear rationale for a new scheme.
- Unclear benefits.
- The top-down nature of the system.
- The inability to deal with regional variation.
- The risk to strong licensing schemes.

While some of these concerns may be able to be addressed through changes to the proposed scheme, we believe some represent insoluble issues in the current Australian context. It is our view that this scheme should not proceed until these issues can be addressed through other, industry-led, mechanisms.

ACTU Response to the proposed scheme

The ACTU recognises that Automatic Mutual Recognition (AMR) is, on paper, a desirable feature for many workers and would assist to streamline some aspects of the working lives of current cross-border workers and may assist some workers to take up work across borders which they currently consider difficult to undertake. On this basis the ACTU is not, in principle, opposed to AMR schemes. It is our view that at some future point such a scheme could be effectively implemented in such a manner as to deliver the benefits outlined above without significant drawbacks. We do not believe however that the AMRS proposed by the Government is that scheme and nor do we believe that current system settings in other areas are right for an AMR scheme to be implemented. Below are outlined a number of concerns that Australian unions have about the AMRS as proposed.

A lack of clear rationale for a new scheme

In the discussion paper, released with the draft legislation, the current scheme of Mutual Recognition (MR) is categorised as burdensome, slow, costly and overly complex. The purpose of the AMRS, as laid out in the paper, is to address these issues and create an easy to use and seamless system for recognition for licences and occupational registrations. The only issue with this narrative is that this is not at all the reality of the MR scheme as experienced by our affiliated unions or their members. The current scheme is considered to be relatively effective, with reports of recognition processes taking place in mere days and with a minimum level of administration required to ensure safety and consistency. While there is always room for improvement in any process, the current MR scheme should not be considered to be so broken as to require replacement. Indeed, the Government itself appears to recognise this, intending to keep the scheme in place even if the AMRS is implemented. It is our view that the lack of significant issues in the current MR regime renders the proposed AMRS a solution looking for a problem – an unnecessary and, as explored later, deeply flawed project.

Unclear benefits

A lack of clear issues with the existing MR system would be less of an issue if the AMRS was able to point to clear, quantifiable and well-established benefits. Unfortunately, the benefits laid out in the discussion paper are nebulous and are unclear about their underpinning assumptions. The discussion paper claims that "*that AMR could lead to an additional $2.4 billion in economic activity over ten years as a result of savings to workers and businesses, productivity improvements and extra surge capacity in response to natural disasters. Over 160,000 workers would benefit, including 44,000 people who will work interstate that would not otherwise have done so.*" Some of these figures seem highly questionable and appear to be based on generous assumptions about increases in economic activity and worker decision-making. The AMRS, seeking as it does to supplant (if not eventually replace) a functioning MR system, must be backed up by rigorous analysis of its benefits. This is not the case here.

A Top-Down System

A successful AMR system, if such a system is implemented in the future, will likely have one crucial feature which the AMRS does not – it will have been developed in consultation with industry and will be tailored to the realities of the various industries to which it applies. It should be obvious that any such system would be best served through joint development with industry and the jurisdictions to which it will apply. Instead, the AMRS has been developed by the federal government – those people most removed from the reality of the work occurring on the ground and from the realities of state-based regulation. It is this failure by Government to develop the AMRS through consensus with industry, on an industry-by-industry, profession by profession, basis, which has caused the most significant issue with the scheme – its inability to appropriately manage variations between jurisdictions.

Jurisdictional variation

The AMRS as proposed assumes a world in which registered and licenced occupations are broadly identical across jurisdictions, that work is carried out in a broadly identical way from state to state and that all the important rules and guides for how work is carried out in registered and licenced occupations is contained within the rules relating to that registration or licence. This is not the world that the AMRS would operate in if it were to be implemented. The reality is that there is significant variance from jurisdiction to jurisdiction in many licenced and registered occupations, partially driven by differences in licensing regimes from state to state and partially due to differences in VET course content and delivery (which feeds into the definition of occupations) across jurisdictions, which would render workers unable to operate either safely or effectively without additional testing or training. That the AMRS, as proposed, would automatically deem those individuals to be licenced, as if their occupations and work were identical, is a significant issue. Some examples of these variations, by no means a complete list, are:

- There exists significant variation in how and who can perform electrical work across jurisdictions – largely driven by local and geographical factors. There are also a suite of conduct rules for electricians which workers may not be aware of in each state – rules which carry significant fines or possible jail terms if breached.
- There are different classes of electrical licences across electrical related trades. For example, electrical mechanics, electrical fitters and refrigeration mechanics are issued different licences depending on the jurisdiction in they reside.
- In terms of the teaching profession, the current jurisdiction-specific registration process aligns well with and complements the responsibility of states and territories for the provision of school education, the employment of teachers, the regulation of entry into the teaching profession, the complex and specific legislation operating in each jurisdiction including substantial differences in later years of schooling curricula, and respects the

importance of the close relationships between the teaching profession and the registration process. In practise, any teacher working across two or more jurisdictions would actually be delivering a substantially different curriculum depending on the state in which they were practicing. This is due to a number of factors, including:

  - Although there is a common Australian Curriculum from Foundation to Year 10, there is variation in the way that curriculum is delivered in various states. In Queensland for example, the Australian Curriculum itself is taken as the basis for classroom teaching, but in Victoria, the Australian Curriculum is delivered in a modified format which incorporates the Australian Curriculum but alters this to reflect uniquely Victorian priorities and standards.
  - Similarly, there is considerable variation in approaches to education in Years 11 and 12. Although most states now provide graduating students with an Australian Tertiary Admissions Rank (ATAR) score, there is substantial variation in how that ATAR is obtained. Some states (e.g. New South Wales and Victoria) rely substantially on student performance in culminating external examinations while Queensland uses a combination of school-based and external assessments.

- Most registered occupations in the building and construction industry involve differing regimes in different states – meaning that workers would struggle to operate effectively with no oversight from state to state.

More information on these and other variations between jurisdictions which the AMRS seems incapable of managing can be found in the submissions from our affiliated unions, including the AEU, IEUA, CFMEU and ETU. This issue represents a fatal challenge to the AMRS. It should never be possible for a worker with insufficient knowledge to work safely or properly in a jurisdiction to be licenced or registered in that jurisdiction – yet that is what the AMRS achieves.

Race to the Bottom

Australian unions also have significant concerns that the implementation of AMR in a system where jurisdictions have differing levels of regulation and requirements and charge different registration and licensing fees may result in a race to the bottom on both requirements and fees. This would fundamentally compromise the strong systems which unions and business have fought to establish in some states as some employers and workers would seek out the jurisdiction with the least onerous requirements to act as their 'base of operations'.

Technical and Drafting issues

The Draft legislation for the AMRS contains a number of technical issues which also need to be addressed. These include:

- Introducing a concept of 'interim' deemed registration without explaining how that turns into actual deemed registration – it would appear that the act of notifying the state you go to work in (only if they require it) converts you from interim to deemed with no system of verifying this is the case or if the worker is aware of the jurisdictional differences.
- A worker is deemed automatically qualified to perform the work in a 2nd state by virtue of commencing work in the 2nd state unless the 2nd state proactively requires them to take steps to be recognised (42D (2)) which, amongst other things, places all the responsibility on the individual worker who may have little say in where they are directed to work or when.
- The 2nd state cannot impose any fee or any test on the worker (except if the 2nd state imposes a specific test for 'public protection' or 'vulnerable person') – the default is no 'public protection' test is required unless a state proactively creates one which fails to recognise the vast number of jurisdictional differences in licencing and conduct rules.
- A state can mandate that they are notified before a worker can commence working but broadly they cannot impose any additional obligation with the exception of public protection/vulnerable person tests in limited circumstances which is contrary to existing powers and functions of existing licencing bodies.
- A 2nd state is explicitly prohibited from charging any fees except if it relates to public protection or vulnerable person which raises the question of how will cost be recovered for regulatory activities including providing education and awareness to the jurisdiction and who is responsible for providing it to an interstate licence holder.
- There is never any requirement for renewal in a 2nd state – so long as you remain licenced in the 1st state you are deemed licenced in the second which will be used to avoid safety and compliance obligations in jurisdictions with higher standards.
- It doesn't require a worker working in a 2nd state to be added to any register of workers (although a state can choose to add them if they want to) removing employer and consumer protections to identify if individuals are appropriately qualified and licenced to perform the work.
- There is no requirement for the 2nd state to issue any evidence the worker is deemed registered (although a state can choose to) also removing employer and consumer protections to identify if individuals are appropriately qualified and licenced to perform the work.

- Where a worker is licenced in the 1st state and that licence has conditions on it, the 2nd state can waive some or all of those conditions at its sole discretion.
- Section 42L introduces the concept of inspectors working across borders subject to 2 states agreeing despite no framework existing to support this.
- 42P exempts a worker from being required to attend in person to the licencing authority of a 2nd state.
- 42R outlines the process for additional testing but in short it needs to be proactively declared by legislated instrument by the State Minister and not the licencing board or authority contrary to the powers and functions of existing licencing bodies.
- These issues will only serve to increase regulatory uncertainty rather than remove it. They also have the effect of neutering the existing licencing regulators who have largely proven responsive to emerging risks in the sector.

Next Steps

The ACTU proposes the following steps to ensure that an AMR regime can be implemented safely and effectively:

- The AMRS must be scrapped as not fit for purpose. For it to operate effectively as it stands entire professions and industries would need to be excluded from it (such as teaching and electrical & building trades) to prevent workers who are unable to work safely or effectively being licensed – rendering it ineffective.
- Government, through the National Cabinet, must form working groups for all affected industries made up of employers, unions and regulators to establish, implement and monitor a process to modernise and harmonise the relevant licensing and registration requirements for all occupations across all jurisdictions. Where necessary this may include forming multiple groups for industries to deal with specific professions, such as teaching, separately.

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