



New South Wales

# Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to provide for the automatic mutual recognition of certain occupational licences issued in other jurisdictions (*recognised licences*) so that an individual who holds a recognised licence will be deemed to hold the equivalent New South Wales licence (with the licences to which automatic mutual recognition will apply to be prescribed by the regulations),
- (b) to require a NSW licensing authority to notify the relevant interstate licensing authority of any disciplinary or enforcement action taken by the NSW licensing authority in respect of a deemed local licence,
- (c) to provide for particulars about disciplinary and enforcement action taken in another jurisdiction against a NSW licence holder to be recorded in a relevant register kept by a NSW licensing authority,
- (d) to remove the requirement that persons who carry out refrigeration work or air-conditioning work must hold a specific refrigeration or air-conditioning authority for specialist work under the *Home Building Act 1989* and instead create a new category of specialist electrical wiring work that applies only to the disconnection and reconnection of refrigeration or air-conditioning equipment that is fixed electrical equipment,
- (e) to remove mandatory continuing professional development obligations for the holders of contractor licences, supervisor certificates and tradesperson certificates issued under the *Home Building Act 1989*.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. **Recognised licence** is defined to mean a licence issued under a law of another State or Territory, or another jurisdiction prescribed by the regulations, that is prescribed by the regulations as a recognised licence. The scheme of mutual recognition will only apply to those prescribed licences.

### Part 2 Mutual recognition of licences

**Clause 4** provides that an individual who holds a recognised licence under the law of another jurisdiction is deemed to hold the local licence that is prescribed as equivalent to that recognised licence, but only if the person's principal place of residence is in that other jurisdiction.

**Clause 5** provides for the application of the laws of New South Wales to a person who is deemed to hold a local licence. A person who holds a deemed local licence is taken to hold the local licence for the purposes of the laws of New South Wales (unless the regulations otherwise provide).

**Clause 6** provides that a person does not hold a deemed local licence in New South Wales if the person is disqualified in New South Wales from holding or applying for the local licence concerned.

**Clause 7** provides that if a licence held under the law of another jurisdiction is suspended in that jurisdiction, the deemed local licence is also taken to be suspended.

**Clause 8** provides that, if a recognised licence in another jurisdiction is subject to a condition or limitation, the local licence that the person is deemed to hold is taken to be subject to the same condition or limitation.

**Clause 9** provides that a local licensing authority may enter into an arrangement with interstate licensing authorities for the purposes of establishing a shared register of recognised licence holders and for other purposes related to the recognition of recognised licences issued in another jurisdiction.

### Part 3 Disciplinary and enforcement action

**Clause 10** defines the terms *disciplinary action* and *enforcement action*, which are used in the proposed Part.

**Clause 11** requires a local licensing authority to notify the relevant interstate licensing authority of any disciplinary or enforcement action taken by the local licensing authority in respect of a deemed local licence.

**Clause 12** provides for particulars about disciplinary and enforcement action taken in another jurisdiction against a NSW licence holder to be recorded in a relevant register kept by the local licensing authority.

### Part 4 Miscellaneous

**Clause 13** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 14** provides for the review of the proposed Act in 5 years.

## **Schedule 1 Savings, transitional and other provisions**

**Schedule 1** provides for the making of savings and transitional regulations consequent on the enactment of the proposed Act or any Act that amends it.

## **Schedule 2 Amendment of Home Building legislation**

### **Home Building Act 1989 No 147**

**Schedule 2.1 [1]** omits refrigeration work and air-conditioning work from the definition of *specialist work* in the *Home Building Act 1989*. This will mean that provisions of that Act that regulate specialist work will no longer apply to refrigeration work or air-conditioning work (including provisions that require a person to hold a specific authority under that Act for specialist work).

**Schedule 2.1 [3]** omits a requirement that an individual who does refrigeration work or air-conditioning work must hold an endorsed contractor licence, supervisor certificate or tradesperson certificate authorising the person to do that work or to be under the immediate supervision of the holder of an endorsed contractor licence or supervisor certificate that authorises its holder to do refrigeration work or air-conditioning work.

**Schedule 2.1 [4]** removes mandatory continuing professional development obligations for the holders of contractor licences, supervisor certificates and tradesperson certificates issued under the *Home Building Act 1989*. The amendment also removes the power that allows refusal of the renewal or restoration of an authority on the grounds that the applicant or its directors, partners or employees have not completed approved further education courses or other training.

**Schedule 2.1 [2] and [5]** make consequential amendments.

### **Home Building Regulation 2004**

**Schedule 2.2 [1]** omits the definitions of *air-conditioning work* and *refrigeration work* from the *Home Building Regulation 2004*, as a consequence of the repeal of the provisions of the Act that regulate that work as specialist work.

**Schedule 2.2 [2]** removes air-conditioning work and refrigeration work from the existing prescribed categories of specialist work, as a consequence of the repeal of the provisions of the Act that regulate that work as specialist work.

**Schedule 2.2 [3]** declares the disconnection and reconnection of refrigeration and air-conditioning equipment that is fixed electrical equipment to be a category of specialist work under the *Home Building Act 1989*, so that it will be a category of specialist work that a contractor licence or supervisor certificate can be issued for.



New South Wales

# Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014

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<b>The Legislature of New South Wales enacts:</b>	1
<b>Part 1 Preliminary</b>	2
<b>1 Name of Act</b>	3
This Act is the <i>Mutual Recognition (Automatic Licensed Occupations Recognition) Act 2014</i> .	4 5
<b>2 Commencement</b>	6
This Act commences on a day or days to be appointed by proclamation.	7
<b>3 Definitions</b>	8
(1) In this Act:	9
<b><i>another jurisdiction</i></b> means another State or a Territory, or another jurisdiction prescribed by the regulations.	10 11
<b><i>deemed local licence</i></b> means a local licence that a person is deemed to hold under this Act as a result of being the holder in another jurisdiction of a recognised licence.	12 13
<b><i>interstate licensing authority</i></b> means a person or body having the function of issuing a recognised licence under the law of another jurisdiction.	14 15
<b><i>licence</i></b> means a licence, permit, certificate, registration or other authorisation.	16
<b><i>local law</i></b> means the law of this jurisdiction under which a local licence is issued.	17
<b><i>local licence</i></b> means a licence that is prescribed by the regulations as a local licence for the purposes of this Act.	18 19
<b><i>local licensing authority</i></b> means the person or body having the function of issuing a local licence.	20 21
<b><i>person</i></b> means an individual.	22
<b><i>recognised licence</i></b> means a licence issued under a law of another jurisdiction that is prescribed by the regulations under this Act as a recognised licence.	23 24
(2) Notes included in this Act do not form part of this Act.	25

<b>Part 2</b>	<b>Mutual recognition of licences</b>	1
<b>4</b>	<b>Recognised licence to be a deemed local licence</b>	2
(1)	A person who holds a recognised licence under the law of another jurisdiction is deemed to hold the local licence (a <i>deemed local licence</i> ) that is prescribed by the regulations as equivalent to that recognised licence, but only if the person's principal place of residence is in that other jurisdiction.	3 4 5 6
	<b>Note.</b> The person is deemed to hold a local licence only while the recognised licence in the other jurisdiction is in force.	7 8
(2)	For the purposes of this section, a person's principal place of residence includes any jurisdiction that was, within the last 3 months, the person's principal place of residence.	9 10 11
(3)	A person does not hold a deemed local licence in New South Wales if the person actually holds the local licence concerned.	12 13
<b>5</b>	<b>Application of laws to deemed local licence holders</b>	14
	A person who holds a deemed local licence is taken to hold the local licence for the purposes of the laws of New South Wales except any provision of such a law that is prescribed by the regulations as not applying to a deemed local licence holder, either generally or in specified circumstances.	15 16 17 18
	<b>Note.</b> Because a deemed local licence is treated as a local licence for all purposes, disciplinary and enforcement action can be taken against the holder of a deemed local licence in the same circumstances as that action can be taken against the holder of a local licence. The same rights of appeal and review will apply in respect of any such action as apply in respect of a local licence.	19 20 21 22 23
<b>6</b>	<b>Effect of local licence disqualification</b>	24
	A person does not hold a deemed local licence under this Act if the person is disqualified in New South Wales from holding or applying for the local licence concerned.	25 26 27
<b>7</b>	<b>Effect of suspension of recognised licence</b>	28
	The suspension in another jurisdiction of a recognised licence issued in that jurisdiction operates to suspend the deemed local licence that is equivalent to that recognised licence.	29 30 31
<b>8</b>	<b>Conditions or limitations of deemed local licence</b>	32
	If a person's recognised licence in another jurisdiction is subject to a condition or limitation, the person's deemed local licence in New South Wales is taken to be subject to the same condition or limitation.	33 34 35
<b>9</b>	<b>Arrangements between local and interstate licensing authorities</b>	36
	A local licensing authority may enter into arrangements with relevant interstate licensing authorities for the purposes of establishing a shared register of recognised licence holders and for other purposes related to the recognition of recognised licences issued in other jurisdictions.	37 38 39 40

<b>Part 3</b>	<b>Disciplinary and enforcement action</b>	1
<b>10</b>	<b>Definitions</b>	2
	In this Part:	3
	<b>disciplinary action</b> in respect of a licence means:	4
	(a) the cancellation or suspension of the licence, or	5
	(b) the imposition of conditions on the licence, or	6
	(c) the imposition of any disqualification on the holder of the licence, or	7
	(d) the making of an adverse finding or determination against the holder of the licence, or	8 9
	(e) the issue of a reprimand or caution to the holder of the licence, or	10
	(f) the requiring of an undertaking from the holder of the licence, or	11
	(g) the imposition of a monetary penalty on the holder of the licence, or	12
	(h) any other action in respect of a licence that is prescribed by the regulations as disciplinary action for the purposes of this Part.	13 14
	<b>enforcement action</b> in respect of a licence means:	15
	(a) the prosecution or conviction of, or the issue of a penalty notice to, the holder of the licence for an offence, or	16 17
	(b) any other action in respect of a licence that is prescribed by the regulations as enforcement action for the purposes of this Part.	18 19
<b>11</b>	<b>Notification of disciplinary and enforcement action against deemed local licence holder to interstate licensing authorities</b>	20 21
	(1) A local licensing authority must notify the appropriate interstate licensing authority of any disciplinary action or enforcement action taken by the local licensing authority against a person in respect of a deemed local licence held by the person. The <b>appropriate interstate licensing authority</b> is the interstate licensing authority that issued the recognised licence that results in the person holding the deemed local licence concerned.	22 23 24 25 26 27
	(2) A local licensing authority is authorised to act under this section despite any law relating to secrecy, privacy or confidentiality.	28 29
	(3) This section does not affect any obligation or power to provide information under the <i>Mutual Recognition Act 1992</i> of the Commonwealth or the <i>Trans-Tasman Mutual Recognition Act 1997</i> of the Commonwealth.	30 31 32
<b>12</b>	<b>Recording of particulars about disciplinary and enforcement action in another jurisdiction</b>	33 34
	(1) A local licensing authority may record in a relevant register kept by the local licensing authority particulars of any disciplinary action or enforcement action taken in another jurisdiction against a person in respect of a recognised licence that the person is deemed to hold in that jurisdiction as a result of holding a local licence issued by the local licensing authority.	35 36 37 38 39
	(2) An entry in a register pursuant to this section may be made in terms used to describe the action in information provided to the local licensing authority by the interstate licensing authority in the jurisdiction in which the action was taken.	40 41 42
	(3) A <b>relevant register</b> is a register kept under a local law in which particulars about disciplinary action or enforcement action concerning a local licence are authorised or required to be included.	43 44 45

<b>Part 4</b>	<b>Miscellaneous</b>	1
<b>13</b>	<b>Regulations</b>	2
	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	3 4 5 6
<b>14</b>	<b>Review of Act</b>	7
(1)	The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	8 9 10
(2)	The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	11 12
(3)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	13 14

<b>Schedule 1</b>	<b>Savings, transitional and other provisions</b>	1
<b>Part 1</b>	<b>General</b>	2
<b>1</b>	<b>Regulations</b>	3
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	4 5
(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	6 7
(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	8 9 10
(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	11 12 13
(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	14 15 16

<b>Schedule 2</b>	<b>Amendment of Home Building legislation</b>	1
<b>2.1</b>	<b>Home Building Act 1989 No 147</b>	2
[1]	<b>Section 3 Definitions</b>	3
	Omit paragraph (d) of the definition of <i>specialist work</i> in section 3 (1).	4
[2]	<b>Section 3 (1), definitions of “supervisor certificate” and “tradesperson certificate”</b>	5
	Omit “section 13, 14, 15 or 16” wherever occurring. Insert instead “section 13, 14 or 16”.	6
[3]	<b>Section 15 Unqualified refrigeration or air-conditioning work</b>	7
	Omit the section.	8
[4]	<b>Section 40 Renewal or restoration of authorities</b>	9
	Omit section 40 (2D) and (2E).	10
[5]	<b>Section 106 Functions of Director-General under Act</b>	11
	Omit “gas, electricity, refrigeration and air conditioning” from section 106 (a).	12
	Insert instead “gas and electricity”.	13
<b>2.2</b>	<b>Home Building Regulation 2004</b>	14
[1]	<b>Clause 11 “Air-conditioning work” and “refrigeration work” defined</b>	15
	Omit the clause.	16
[2]	<b>Clause 46 Categories of residential building work or specialist work</b>	17
	Omit clause 46 (2) (g) and (h).	18
[3]	<b>Clause 46 (2) (k)</b>	19
	Insert after clause 46 (2) (j):	20
	(k) disconnection and reconnection of refrigeration and air-conditioning equipment that is fixed electrical equipment.	21
		22