

Inquiry into reform of South Australia's Regulatory Framework

J O'Dwyer/ September 2021



Introduction

Master Electricians Australia (MEA) is the trade association representing electrical contractors recognised by industry, government and the community as the electrical industry's leading business partner, knowledge source and advocate. Our website is www.masterelectricians.com.au

Draft Recommendation 2.1: Cross border issues

To ensure that cross-border issues between SA and other Australian jurisdictions are appropriately identified and addressed in the development of South Australian regulation, the Commission recommends that the SA Government amend the Better Regulation Handbook to require agencies to consider equivalent regulatory settings in other jurisdictions when undertaking regulation impact assessment.

And...

Draft Recommendation 6.2: Harmonisation

To reduce regulatory costs and duplication on business and the SA economy and to improve access of SA businesses to national markets, the Commission recommends that the SA Government commits, where possible, to harmonisation with best practice or to regulatory equivalence of the state's regulatory settings with other best practice Australian jurisdictions, including in border regions of the state, while also pursuing, where possible, mutual recognition at the national level for new or amended regulation.

And

Information request 6.2: Cross border regulatory inconsistencies

MEA supports the resolution of cross boarder issues, duplication and additional costs for electricians across Australia. The electrical services industry generates approximately \$19 Billion in revenue has over 37,000 enterprises and employs over 80,000 registered electrical workers . This does not include the electrical generation and supply industry.

The electrical contracting / services industry is regulated via 8 state and territory-based licensing regimes. The industry has two main designations, electrical contractors and electrical workers. Currently there is a system in place for mutual recognition of electrical licenses for electrical workers.

Workforce mobility is a significant factor for Australia as we have seen since the GFC and end of mining booms whereby many thousands of employees have had to adapt and move to where work is located. In a recent paper by NCVER "An exploration of labour mobility in mining and construction: who moves and why." By Georgina Atkinson Jo Hargreaves National Centre for Vocational Education Research © 2014. [NCVER exploration labour mobility](#). The researchers summarise the need well by saying

" Labour mobility is one of the core elements of a well-functioning labour market and is

a relatively common phenomenon in Australia. The Australian economy, during its various cycles, often experiences both labour and skills shortages. This study reinforces that labour mobility itself is linked to those cycles, in that in a slow labour market a person may move for stable employment, while in a buoyant economy employers use incentives to influence mobility. With the Australian mining industry now experiencing a downturn after a very strong peak, it is imperative that more is understood about what encourages or impedes mobility”

The report goes on to identify some key messages

- Around 10% of workers change their job each year. Of those who change jobs, only 5% move considerable distances (for example, interstate). Around 2% of workers commute long distances.
- The majority of labour mobility decisions are driven by the personal priorities of the individual, including family commitments.
- When the labour market is buoyant, competition for workers is high and poaching is common. This can lead to cycling through the same group of workers and an increase in the temporary movement of workers, especially those who have the desired skills and experience.
- Sudden fluctuations in growth require a rapid response to labour recruitment by industry. If this is coupled with a strong preference from employers to hire individuals with specific levels of experience, then contradictions arise.
- In relation to fly-in fly-out (FIFO) workers, individuals are often attracted by high salaries and new opportunities, but may struggle to find employment due to strict entry requirements (including experience levels and regulatory and licensing requirements).
- Solutions to filling skill and labour shortages may be best addressed through a combination of a broader search radius, a more flexible approach to relevant experience, engagement with apprenticeship programs and collaborative programs/activities with education providers to produce work-ready graduates.

It is clear from the key messages that mobility is needed to address sudden fluctuations in growth and requires a rapid response to labour recruitment, but workers may struggle to find employment due to strict entry requirements (including experience levels and regulatory and licensing requirements). It is therefore imperative that this review lead to the simplification and adoption of Automatic Mutual Recognition for the electrical industry, in particular trade qualified electricians.

MEA supports, a deemed recognition of licensing being automatically recognised in another state, subject to state and territories exemptions. MEA strongly supports that exemptions should be as a last resort and that recognition should be the starting position of all regulators. To support automatic deemed recognition MEA would highlight there are no state or territory governments that require workers to demonstrate any knowledge of local state-based rules or regulations prior to commencing under the current system of assessed recognition. This should be progressed as soon as possible.

Draft Recommendation 3.1: Performance measurement and reporting

To increase the transparency and accountability of SA regulators, the Commission recommends that the SA Government establish an across government policy framework to guide measurement, monitoring and assessment of performance by regulators, in line with good practice principles. This framework would include the following characteristics:

- *be flexible enough to recognise that regulators are a heterogeneous group with different legislative obligations, roles, structures and functions; and*
- *not be overly burdensome but be integrated into each regulator's performance monitoring and review cycle.*

Information request 6.1: Appeals processes

Are the processes for appealing decisions by SA regulators, including both internal and external appeal pathways, effective, efficient and timely?

Draft recommendation 5.2: Investment in cross-government RegTech solutions

Based on the study recommended in recommendation 5.1, the Commission recommends that the SA Government identify and fund specific priorities for investment in RegTech and digital solutions that enable:

- *more efficient data collection from regulated entities;*
- *more efficient data sharing between regulators, including regulators in other jurisdictions where appropriate; and*
- *improved coordination between regulators.*

The electrical industry along with many trades in South Australia have 2 Government entities that they interact with in relation to license. The Office of the Technical Regulator (OTR) and Consumer and Business Services.

According to the OTR annual report 2018-19 enforcement matrix is described in the following way

Enforcement

The Technical Regulator has a range of enforcement options to deal with non-compliant electrical installation work and other breaches of the Electricity Act 1996.

Directives to make installation safe

An authorised officer can give a direction to make an electrical installation safe. This direction can be given to the owner or operator of the installation or to the person who performed the work. In some cases this may also include disconnection of the installation until it is repaired and made safe to the satisfaction of the authorised officer.

Formal warnings

A formal warning can be given to the person responsible for breaching the Electricity Act 1996. If this is done verbally it is also confirmed in writing. Formal warnings provide a basis for additional enforcement activity should there be an escalation of the offence, in addition to establishing patterns of repeated noncompliance.

Expiations

Expiation notices are issued for more serious breaches of the Electricity Act 1996. They are an administrative penalty that is intended to minimise the impacts on the courts and legal system caused by relatively minor offences. The issue of an expiation does not register a conviction against the alleged offender, and paying the expiation is not considered to be an admission of guilt. Expiations can be challenged in court by the alleged offender, who then faces the potential of a significantly higher penalty if found guilty.

Prosecution

The Technical Regulator may prosecute a person where the non-compliance is so serious as to constitute gross negligence or where the offender has a history of significant non-compliances. The court will then decide the actual penalty up to the maximum stated in the Electricity Act 1996 should the person be found guilty.

Suspension/cancellation of licenses

In cases of serious or consistent non-compliance, the Technical Regulator may refer a case to the Commissioner for Consumer Affairs who is responsible for occupational licensing under the Plumbers, Gasfitters and Electricians Act 1995 for action. This may result in the suspension or cancellation of a contractor's licence or worker's registration, or the imposition of conditions to that licence/registration. Instances of electrical work performed by non-licensed/registered persons are also forwarded to the Commissioner.

What the above process shows is that there are 2 Government departments who may act against an electrical license holder. What is interesting is that the ultimate power of revoking a licence is held by a department that then uses the Attorney Generals (AG) Department to progress the contravention. The process above however does demonstrate that the OTR is trusted or allowed to prosecute in a court of law for a breach of the electricity act. This results in multiple location of enforcement activities which are difficult to ascertain and not well communicated. It is also our observation that while referrals are made regarding cancellation of licenses prosecutions are rare which undermines the confidence in the enforcement activity.

MEA has reviewed the annual reports of AG, OTR and CBS and in our research we have found that approximately 6 referrals are made by OTR for license cancellation per year. Upon review of annual reports from AG Department reports indicate that only one or two prosecutions are successful. This raises the question of were the other cases not conducted, abandoned for lack of evidence, or dismissed by the courts.

For this reason, we believe that cross departmental measurement and reporting in relation to enforcement is cumbersome, not transparent. The AG, OTR and CBS need to communicate

and publish data in an improved manner, more regularly, in a single location and detail the outcome of all referrals, regardless of outcome.



Jason O'Dwyer
Policy and Advocacy

