



MIAL response to National Competition Council Mutual Recognition Review

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1. About MIAL

1.1. Maritime Industry Australia Ltd (MIAL) is the voice and advocate for the Australian maritime industry. MIAL is at the centre of industry transformation, coordinating and unifying the industry and providing a cohesive voice for change.

1.2. MIAL represents Australian companies which own or operate a diverse range of maritime assets from international and domestic trading ships; floating production storage and offloading units; cruise ships; offshore oil and gas support vessels; domestic towage and salvage tugs; scientific research vessels; dredges; workboats; construction and utility vessels and ferries. MIAL also represents the industries that support these maritime operators – finance, training, equipment, services, insurance and more. MIAL provides a full suite of maritime knowledge and expertise from local settings to global frameworks. This gives us a unique perspective.

1.3. We work with all levels of government, local and international stakeholders ensuring that the Australian maritime industry is heard. We provide leadership, advice and assistance to our members spanning topics that include workforce, environment, safety, operations, fiscal and industry structural policy.

1.4. MIAL's vision is for a prosperous Australia with strong sovereign maritime capability.

1.5. MIAL's overarching position concerning maritime policy in Australia is that we ought to have a sustainable, viable maritime industry. This activity can occur anywhere – coastal, offshore and international. This maritime activity should encompass anything – freight, tourism, passenger movement, port and harbour services, offshore oil and gas, construction, scientific/research, essential services, and government services.

1.6. MIAL is an advocate for a fiscal and regulatory regime that makes it attractive for shipping and maritime businesses to exist in Australia and affords those Australian businesses every opportunity to compete for work and participate in maritime activity worldwide.

2. Executive Summary

MIAL appreciates the opportunity to provide a response to the National Competition Council's Review of Australia's mutual recognition schemes for workers. Workers in the Australian maritime industry are largely covered by two regulatory frameworks. It is apparent that these industry frameworks have been developed without due recognition that some of the tasks required to be performed are subject to a more general regulatory framework that varies from state to state and does not readily recognised industry frameworks that operate federally.

Changes made in the industry to make the Australian Maritime Safety Authority (AMSA) the single national safety regulator for the maritime industry were the culmination of years of negotiations amongst state and territories to bring Australia's domestic maritime industry under the single umbrella. These reforms have now spent over a decade being bedded down, and while challenges still remain, particularly from workers who obtained their certification under a state regime, on balance the changes have been beneficial in creating consistent standards of training, competence and certificate across jurisdictions.

However, the National Law has not solved all problems and despite it operating at a commonwealth level, certain elements of training, certification and safety remain able to be regulated by the states. This creates confusion and uncertainty for workers and businesses alike about what tasks they may perform on a vessel with a maritime certificate of competency issued by the federal maritime regulator and what task on board a federally regulated domestic commercial vessel (or regulated Australian vessel in some cases) require separate licensing from a state licensing Authority.

A clear example exists in maritime where the national law permits regulation in relation to gas and electrical safety by the states. Such an approach does not suggest a gap exists (competency and training standards understood through AMSA certification address levels of electrical work performed on marine systems) but permits state regulator involvement. This is an example of how mutual recognition between jurisdictions of occupational licensing specific to industry plant and systems has not achieved then level of occupational mobility in the maritime industry as was anticipated when the National law was contemplated.

3. Response to Consultation Questions

1. *Have mutual recognition schemes made it easier to work across jurisdictions and/or pursue job opportunities outside of a worker's home state or territory?*

MIAL's members work across both state/territory and federal jurisdictional frameworks in the maritime industry. In 2011 an intergovernmental agreement¹ was entered into whereby the national system for the regulation of commercial vessels was entered into, with an agreement between states, territories and the federal government to take the necessary steps to implement the single national jurisdiction for commercial vessels. This meant that the Australian Maritime Safety Authority (AMSA), the long-time regulator of vessels who are regulated in line with international conventions, became the safety regulator for all commercial vessels regardless of the regulatory framework under which they were regulated. This includes training and certification standards of maritime crew working on vessels in any state and/or territory and outside of Australia's coastal waters.

This change has made it easier for seafarers holding certification obtained through training and working in one state or territory, being able to work in any state or territory. However, the National Law as created in 2012 was to operate to the exclusion of state and territory laws *except* in so far as it relates to specified areas. One such area, as defined in 6(2)(xx) of the *National Law (Domestic Commercial Vessel) Act 2012* (Cth) (National Law) is gas and electrical safety. For context, a level of electrical work is taught as part of marine crew qualifications, the standards of which are set out predominantly in Marine Order 505², a legislative instrument made under the National Law. MIAL members report high levels of uncertainty about what, if any, electrical work may be lawfully be performed on vessels regulated by a Commonwealth safety regulator AMSA, without holding a state electrical licence issued by the relevant state or territory electrical safety regulator. Contrast this to vessels regulated under the *Navigation Act 2012* (Cth) (Nav Act), where work in accordance with an employees' skills and training, largely set out in Marine Order 72, may be performed on a vessel regardless of the state or territory where the vessel is located without the need for state electrical licensing (subject to overall WHS requirements to ensure workers are duly competent to perform certain tasks on those vessels).

2. *Have mutual recognition arrangements generated economic benefits? For example, have they helped to improve workforce participation, address skills shortages or increase productivity?*

While the decision of the Council of Australian Governments (COAG) which resulted in the development of the national law intended that persons working on commercial vessels would enjoy, in effect, mutual recognition of their skills and training regardless of the state in which they work, in practice this has been subject to limitations. Subject to some grandfathering arrangements whereby individual states provided certification to work on vessels with different operational profile, conceptually mutual recognition has provided a level of occupational mobility. This is critical, as the workplaces on which workers work are inherently mobile and can move between state and territories. It has also provided benefit in regional and remote workplaces as there is greater opportunity to attract workers from metropolitan centers across the country.

3. *Does the Mutual Recognition Act, and the processes and policies implemented by jurisdictions in support of the operation of the Act, appropriately manage risks to worker safety and consumer protection?*

¹ Intergovernmental Agreement on Commercial Vessel Safety Reform 2011

² [Marine Order 505 \(certificates of competency – national law\)](#)

As seafarers working on commercial vessels are regulated federally, there is some confusion about the work that can be performed between jurisdictions. The lack of clarity for workers who do receive training to perform work on vessels can be frustrating. Equally, the lack of consistent recognition of training undertaken under federal laws is frustrating. For example:

- a. Seafarer issued a certification as an electro technical officer under Mariner Order 72 (issued under Nav Act) is permitted to perform electrical work (to a level) on a vessel regulated to an international standard under the Nav Act. However that same person may not be permitted to perform that same work on a vessel regulated under the National Law. This is not based on any increased safety risk as both are vessels regulated by AMSA and may be substantially the same installations and system. It related to the requirements of the state licensing authority which vary from jurisdiction to jurisdiction.

4. *Which trades, professions and/or sectors have benefitted from mutual recognition schemes?*

In the context of the maritime industry, generally marine crew have benefited from their licenses being recognised under the national law (for those who achieved their certification prior to 2012). However the lack of clarity on the ability to perform electrical work for marine engineering professionals who receive training to perform electrical work on marine systems (as set out in Marine Orders) remains a barrier to being able to perform to their optimum capability and requires businesses to engage shore based contractors to perform work which is within the crew's skills and competence.

Implementation and alignment of mutual recognition schemes

5. *Have mutual recognition schemes been implemented consistently across jurisdictions? Where variations exist, are these variations clear, and are they adequately justified and proportionate to risk?*

MIAL continues to try to gain clarity from the jurisdictions as to the requirements for licensing additional to crew certification each electrical safety regulator requires. The jurisdictions are inconsistent in terms of their requirements, which vary between no specific licensing requirement, restricted electrical licensing and unrestricted electrical licensing requirements for work performed in a workplace regulated by a commonwealth statutory body in AMSA.

6. *How do exemptions, delays or inconsistencies in recognition impact on the operation of mutual recognition schemes and the benefits that these schemes are intended to provide?*

MIAL members and their employees who are certified marine crew have been frustrated by the lack of certainty and clarity on the work which they can and cannot lawfully perform. While recognising the importance of ensuring electrical work in particular is performed safely, when a workplace is a vessel, a lack of clear direction as to what if any work may lawfully be performed by an individual trained specifically on marine systems, or when operators are required to call in an electrician who is licensed by the state regulator, who may or may not have experience performing work on marine electrical systems, is frustrating.

7. *To what extent are licensing and registration laws and standards harmonised across jurisdictions? Where they are misaligned, does this make it harder to work across jurisdictions and/or pursue job opportunities? If so, how?*

For the maritime industry, while the standards of training for seafarers are federally regulated, the licensing for performing electrical work is for some vessels federally regulated (Navigation Act) and for other vessels (indeed the majority of vessels in Australia) is regulated by legislation which permits states to separately regulate in respect of electrically safety. Therefore, the usual norm of a federal law overriding a state law to the extent of any inconsistency, does not apply in respect of seafarer certification regulated by the national law. This causes uncertainty and confusion for workers, to understand work they may lawfully perform within the bounds of their skills and competence as certified, as well as employers to ensure they appropriately discharge

their obligations and ensure workers have the appropriate licensing for the work that they direct be performed.

The experience of industry navigating mutual recognition arrangements

8. *In what specific ways do current mutual recognition arrangements impede or create barriers to the movement of workers, contractors or firms?*

The difficulty for maritime workers is that the licence is issued by a federal agency in Australia and therefore does not neatly fit into mutual recognition of one state of an occupational licence issued in another state. This means that a person with an occupational licence to perform work on board a vessel in accordance with the restrictions set out in the relevant certificate of competency issued under either Marine Order 505 or Marine Order 72 (for example) may be subject to different restrictions or licensing depending on the state in which they are performing the work. Such an instance does not appear to be captured by instruments made under the Mutual Recognition Act 1992 or instruments made under it.³

9. *Is it easy to find information regarding eligibility, processes, and mutual recognition requirements for workers and employers? How clear is this information? Is help available to navigate the process?*

MIAL members experience is it has not been easy to access information which assists the maritime industry in understanding how workers may be mutually recognized.

10. *Are requirements to notify regulators when working interstate imposing a barrier to mobility? Do regulators receive sufficient information on interstate workers? Could the notification process be simplified or improved?*

MIAL is not in a position to provide meaningful feedback on this question.

11. *How do registration authorities support cross-border mobility?*

It has been in our experience difficult to effectively interact with registering authorities. This has not been assisted by the lack of understanding of jurisdictional responsibility for work performed on commercial vessels.

Opportunities to strengthen and streamline licensing arrangements

12. *Reflecting on the questions and the answers you have given to the above: What are the opportunities to improve the consistency and efficiency of mutual recognition processes across jurisdictions?*

As an industry that has undergone some adjustment when AMSA became the single national regulator for commercial vessels, we consider there are opportunities for mutual recognition process to recognise that industry specific occupational licensing requirements should afford the holders of such licence the capacity to perform work on those specific workplaces (and not more broadly) regardless of the state that vessel is operating in. It might be that due to the federal regulation of commercial vessels, the inconsistent application of additional licensing overlay has not been properly recognised in mutual recognition schemes. That there continues to be this regulatory uncertainty for workers in the maritime industry adds operational costs and frequently results in delays where operations have to source shore based electrical contractors to perform work on vessels which, in the view of operators, is capably and safely performed by holders of certain maritime certificates of competence under either the National Law or the Nav Act and their enabling Marine Orders.

³ For example, [Ministerial Declaration regarding Electrical Contracting](#)

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13. *How can technologies, systems and/or processes reduce costs and improve safety, quality and employment outcomes?*

MIAL is not in a position to provide meaningful comment although where an active step is required to achieve a recognition outcome (i.e submission of material) to the extent possible digital platforms should be set up to support workers in obtaining recognition and certification.

14. *In what circumstances could a national licence (broadly defined as a single licence recognised in all jurisdictions to a common set of regulatory standards) complement or replace existing mutual recognition arrangements? What would be the potential benefits and costs of moving to a national licensing scheme?*

MIAL is of the view it is this outcome that the National Law intended to produce in 2012. However, the reservation of the state's having the ability to regulate in certain areas (but not mandating that they do so) has resulted in high levels of uncertainty as to the interaction between state licensing authorities for electrical safety and maritime licensing issuing bodies for duties that include limited electrical work. A situation where states recognise a federally issued occupational licence for the performance of elements of electrical work consistently would be of significant benefit to workers and operators in Australia's maritime industry.



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