



Australian Education Union

Submission

regarding the

Automatic Mutual Recognition of Occupational Registrations: Exposure Draft Legislation

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The Australian Education Union (“**AEU**”) makes this submission on behalf of its 195,000 members employed in public primary, secondary and special schools and the early childhood, TAFE and adult provision sectors as teachers, educational leaders, education assistants and support staff across Australia.

The AEU strongly opposes the proposed automatic mutual recognition (“**AMR**”) reforms, which would have a significant, negative impact on children’s right to quality and safe education.

We support the submission from the Australian Council of Trade Unions, to which we are affiliated.

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Introduction

On 11 December 2020, exposure draft legislation (“**draft Bill**”) was released which would amend the *Mutual Recognition Act 1992* (Cth) (“**MR Act**”) to insert AMR processes in addition to the existing mutual recognition (“**MR**”) processes, with the Australian Government seeking feedback regarding the draft Bill in the form of public submissions.

AEU members affected by the draft Bill include all teachers in Australian public education settings, including teachers in early childhood education and in schools.

This submission focuses on the effects of the proposed reforms on professional standards and child safety in public education.

Summary of submission

The AEU considers that the proposed AMR processes are unnecessary and dangerous. Many of the AMR processes will have a practical operation indistinguishable from the existing MR processes, making the proposed reforms an ill-conceived, unsolicited, redundant, and untargeted regulatory intervention. To the extent that the AMR processes differ from the existing MR processes, they will have a significant, negative impact on child safety and professional standards.

Due to the essential requirement that vulnerable person and public protection checks must be completed as part of the AMR processes (mandatory checks which the AEU strongly supports) the AMR processes are no more ‘automatic’ than the existing MR processes. The AMR processes are substantially similar, parallel processes to the existing MR, offering no advantage to the effective and efficient regulation of the teaching profession. Where the proposed AMR processes differ from the MR processes, such provisions of the proposed AMR processes, specifically those relating to Ministerial discretion, teacher privacy, and regulator funding and responsibilities are clearly disadvantageous to the effective regulation of the profession. Finally, the draft Bill’s misalignment of regulator funding, and its multiplication of ineffective, costly, parallel regulations, will burden regulators and the profession with red tape, diverting funding and operations away from regulators’ critical role in maintaining child safety and professional standards.

The proposed AMR reforms are simply unworkable and unfit for purpose. The draft Bill is a rushed and uninformed piece of reform, far too broad in scope, untargeted to the realities of the teaching profession’s existing registration and MR processes and practices, and imposing costly, parallel regulatory burdens on the millions of Australians reliant on an effectively and efficiently regulated teaching profession.

Recommendation

We note that the Australian Government intends to introduce a bill in or substantially in the form of the draft Bill to Parliament “as soon as possible”.¹

The AEU strongly recommends that no such bill be introduced to Parliament, and that the government restart its reform process by engaging with education unions and state and territory teacher regulators regarding how to improve the existing MR processes.

Alternatively, in any bill to amend the MR Act in or substantially in the form of the draft Bill, the AEU recommends that teachers be explicitly exempt from the AMR processes.

AEU views regarding registration and mutual recognition schemes

The AEU supports state and territory-based teacher registration. Jurisdiction-specific registration 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, and respects the importance of the close relationships between the teaching profession and the registration process.

The AEU supports, as far as is practicable, nationally consistent approaches to teacher registration. Regulation of the teaching profession, while respecting the primacy of state and territory-specific requirements, should aspire to nationally consistent registration criteria, terminology, and administrative processes.

The AEU supports MR processes promoting quality and safe education, and facilitating teachers’ transition across state and territory boundaries. However, mutual recognition processes must not be misused to bypass or undermine state and territory-based teacher registration requirements, must preserve the role of the profession’s regulators and teacher representation and involvement in the governance of the profession, and must not disproportionately undermine teachers’ privacy.

In considering reforms to MR schemes, the AEU is particularly mindful of the impact of reforms on teachers living and working near a border between two or more states and territories, and that the effect of reforms on such teachers must be closely considered.

¹ Deregulation Taskforce, Department of Prime Minister and Cabinet, ‘Automatic Mutual Recognition of Occupational Registrations: Exposure Draft Legislation Consultation Paper’, 11 December 2020, p6 accessible [here](#).

Structure of submission

This submission focuses on the following specific aspects of the draft Bill:

1. The automatic deemed recognition (“ADR”) processes, which, by requiring teachers’ compliance with a second state’s vulnerable person and public protection requirements before being relied upon, are in effect substantially similar to the existing MR processes, and defeat the intent of the draft Bill’s proposed ‘automatic’ MR processes.
2. The Ministerial discretions to make determinations requiring that notice be required by a teacher before they may rely on ADR, and to make both temporary and longer exemptions from teacher registrations being covered by ADR, which inappropriately marginalise regulators.
3. The prohibition on second state regulators from charging fees to ADR holders while obliging such regulators to investigate and discipline ADR holders. This mismatch between funding and responsibilities will lead to funding shortfalls, reducing regulators’ ability to protect professional standards and ensure child safety. Given most regulators are solely funded by teacher registration, any attempts to remedy funding shortfalls will likely lead to increased teacher registration fees.
4. The requirement that second state regulators share teachers’ private information with all other state and territory regulators. The Bill requires a regulator, upon suspending or cancelling a teacher’s ADR, to provide details of the suspension or cancellation to every other state and territory regulator. This unnecessarily broadcasts teachers’ private information to irrelevant regulators with no benefit to child safety or professional standards. It would have the effect of imposing burdensome information sharing and processing obligations on regulators for no tangible benefit, misdirecting their attention away from upholding child safety and professional standards.

This submission also comments on the general inadequacies of the draft Bill, including that the reforms:

5. Present operational concerns and challenges related to the draft Bill’s imposition of costly and confusing parallel regulations with no benefit to the profession or the public.
6. Are a missed opportunity for effective reform to the existing MR processes, such as promoting nationally consistent state and territory teacher registration processes.

1. Automatic deemed recognition

Proposed reform

The existing MR processes provide that a teacher is considered to have, upon providing notice to a second state regulator seeking MR for their home state registration, interim deemed registration (“**IDR**”). However, before a teacher with IDR may teach in the second state they must comply with public protection requirements² such as satisfactorily completing criminal record checks and working with children checks (“**WWCC**”).

Subsection 42D(1) of the draft Bill provides that a teacher registered in their home state is taken to be registered in a second state by virtue of ADR.³ Due to the teacher’s registration in their home state, that teacher may practice teaching in a second state without registering or applying for MR with the second state regulator.

However, s 42D(2)(a) of the draft Bill provides that in order for a teacher to rely upon ADR they must first comply with public protection requirements and vulnerable person character tests, and comply with any requirement the second state has that a teacher must notify the second state’s regulator of the teacher’s intention to rely on ADR to practice teaching in the second state.⁴

Regarding what may constitute public protection requirements and vulnerable person character tests prior to relying on ADR, the AEU considers that this would include WWWC and criminal record checks, for example a Nationally Coordinated Criminal History Check. The Australian Government’s consultation document regarding the draft Bill similarly considers that compliance with ss 42D(2)(a) would involve compliance with a state regulator’s requirement that a person proposing to conduct the registered activity first complete a WWCC.⁵

Effect of the reform

ADR is no more ‘automatic’ than the existing MR processes in that ADR is contingent upon a teacher first complying with public protection requirements and vulnerable person character tests.

In this significant aspect, the ADR is indistinct from IDR. In both processes, teachers must comply with criminal record checks and WWCC, and so must effectively give notice to the regulator before practising teaching. ADR offers no benefit to teachers, children, parents or the general public. The proposed reforms multiply existing processes, creating confusion for users, burdening regulators to no public advantage, and bloating the statute books.

² MR Act s 27(3)(a).

³ Draft Bill s 42D(1).

⁴ Draft Bill s 42E(1).

⁵ Above n 1, p 2.

Note that the AEU strongly supports the existing MR processes' requirements that teachers crossing state and territory boundaries must, before practising teaching, first satisfactorily complete criminal records checks and WWCC. These checks should be maintained in any reforms to the MR processes. The AEU's concern is that, in their similarity to the status quo, the ADR reforms are redundant and duplicative.

2. Ministerial discretions

Proposed reform

The AMR reforms include the creation of new Ministerial discretions.

Section 42E of the draft Bill provides that a Minister of any state or territory may make a determination that a registered teacher provide notice to the local regulator before they may rely on ADR in the state or territory. The local regulator may not charge a fee for a person providing such notice.

Sections 42R and 42RA provide that a Minister of any state or territory may make a declaration excluding a registration from the ADR process:

Section 42R provides that a declaration may be made if the Minister "is satisfied that the exclusion is necessary due to a significant risk", arising from circumstances or conditions in their respective state or territory, to consumer protection or the health and safety of workers or the public.

Section 42RA provides for the temporary exclusion of a registration for a six month period after the commencement of the draft Bill if the Minister "is not satisfied that the ADR does not create a significant risk", arising from circumstances or conditions in their respective state or territory, to consumer protection or the health and safety of workers or the public.

Effect of the reform

The proposed Ministerial discretions inappropriately expand the role of Ministers in the governance of the education profession, bypassing the appropriate state and territory regulators, and politicising the regulatory function.

The profession is appropriately regulated by state and territory-based teaching regulators with teacher representation and participation in these authorities. Ministerial discretion in education regulation deviates from this model – particularly in the case of s 42E determinations, which are unencumbered by thresholds or criteria, and are exercised entirely at the Minister's pleasure.

The draft Bill's promotion of unchecked Ministerial discretions, with the effect of marginalising of teaching regulators, and by extension the marginalising of the teaching profession from governance functions, is an inappropriate politicisation of the regulation of the teaching profession.

3. Regulator funding and responsibilities

Proposed reform

The proposed AMR reforms provide that, where a teacher relies upon ADR to practice teaching in a state or territory, that jurisdiction's regulator may, among other regulatory responsibilities for teachers relying upon ADR, investigate the provision of false and misleading information by the teacher relying upon ADR,⁶ monitor a teacher's compliance with any conditions imposed on their ADR,⁷ and take disciplinary action against a teacher relying on ADR, including conducting preliminary investigations and suspending or cancelling an ADR.⁸

However, that same jurisdiction's regulator may not charge a fee in relation to an ADR, specifically, may not charge fees in relation to the initial and ongoing provision of an ADR,⁹ or fees to generally support compliance activities regarding the ADR.¹⁰

Effect of the reform

This reform creates a misalignment between regulator funding and regulator responsibilities. Second state regulators – regulators in jurisdictions where teachers rely on an ADR to teach – are not entitled to raise fees related to ADRs, but are burdened with significant regulatory obligations in the overseeing, investigating, and disciplining of teachers relying on ADRs.

This funding misalignment will compromise second state regulators' crucial regulatory functions: funding shortfalls can result in substandard enforcement of child safety and professional standards.

Teaching regulators are almost exclusively funded by teacher registration fees, and, to address this ADR-related funding shortfall, regulators may seek to increase such fees. It is intolerable to the AEU that teachers would have registration fees increased as a result of the ineffective, counterproductive reforms in the draft Bill.

⁶ Draft Bill, s 42G(2)(a).

⁷ Draft Bill, s 42K(1).

⁸ Draft Bill, ss 42D(3)(a) and (b)(ii).

⁹ Draft Bill, s 42F(2)(a).

¹⁰ Draft Bill, s 42F(2)(b).

4. Privacy concerns

Proposed reform

Section 42LA of the draft Bill provides that, where a regulator suspends or cancels a teacher's ADR, that regulator must notify all state and territory regulators of: the teacher's name and address; information identifying the ADR; the fact that the regulator has suspended or cancelled the AD; whether the regulator's decision is subject to an appeal; information relating to the reason for the regulator's decision; if for a suspension, the period of the suspension.

Effect of the reform

The AEU supports the provision of teachers' relevant information to regulators of jurisdictions where a teacher is registered or has applied to be registered. However, the provision of a teacher's sensitive registration information to regulators of jurisdictions the teacher does not and does not intend to teach inappropriately undermines teacher privacy, with no improvement to professional standards or child safety.

The circumstances leading to the suspension and cancellation of a teacher's ADR – and the subsequent broadcast of a teacher's sensitive information to all Australian teaching regulators – are broad, and include matters such as a teacher providing false information to an authority, and preliminary or anticipated, rather than concluded, disciplinary matters.¹¹ So, for example, an ADR may be cancelled if a teacher provides an incorrect home address, or be suspended due to a pending investigation into a dispute between a parent and the teacher – in both cases, every single Australian teaching regulator would then be provided with a detailed report about the teacher. This is an unwarranted sharing of the teacher's sensitive information, and intrusion on the teacher's privacy.

Cancellation of an ADR may even be at the simple, innocuous request of the teacher,¹² and even in that case draft Bill is worded as such that even in that circumstance every single Australian regulator would receive a detailed report of that teacher's registration and cancellation circumstances – a bizarre and presumably unintended effect of the draft Bill.

In addition to the serious privacy concerns raised by this reform, the reform is a significant increase in red tape for state and territory regulators. The suspension or cancellation of an ADR would prompt a flurry of useless bureaucratic activity: obliging a second state regulator to author and distribute copious, unnecessary reports, and inundating all other regulators with said unnecessary reports – drawing all regulators' attention away from their core functions of ensuring professional standards and protecting child safety.

¹¹ Draft Bill, s 42G(2)(b) and s 42L(2).

¹² Draft Bill, 42G(2)(a).

Moreover, given general concerns about data security, the broadcasting of sensitive teacher information across eight separate state and territory regulators is an unnecessary multiplier of cybersecurity risk.

5. Operational concerns and challenges

The draft Bill, due to containing concepts substantially similar in effect to existing concepts in the MR Act, but which are nonetheless separate and parallel-operating schemes, prompts a number of operational and administrative concerns and challenges. For example:

- i. ADR is a deemed registration and is not required to be displayed on searchable registers.¹³ This inappropriately shifts the burden of registration checks from regulators to school principals and administrators, who currently monitor existing teacher registers to comply with their obligation to ensure that teachers are registered, but who, to inquire into ADR status, would need to directly approach regulators to perform due diligence registration checks. Rather than the current model of reviewing and relying upon their local jurisdiction's register, principals and administrators would inappropriately be required to proactively contact all state and territory regulators to check teachers' registrations.
- ii. For a teacher practising teaching pursuant to a primary registration and to an ADR, there is risk and uncertainty regarding the satisfaction, recognition and recording of the separate states and territories' professional development obligations.
- iii. The various categories of and standards for teacher registration across the states and territories will be adversely affected by ADR. Teaching regulators provide for various registration categories – for example, the New South Wales registration scheme provides for 'Conditional' and 'Provisional' registrations, and Western Australia scheme provides for 'Provisional', 'Limited' and 'Non-Practising' registrations. Accreditation standards vary across States – for example, New South Wales' accreditation standards prohibits persons without tertiary education qualifications from practicing teaching. There should be consistency in which categories of registrations are given equivalent recognition, and state and territory-specific accreditation standards are respected, but such differences in categories and standards between states and territories are unaccounted for by the proposed AMR processes.

¹³ Draft Bill, s 42J(1).

6. Missed opportunity for effective reform

The proposed AMR processes affect all regulated occupations equally, and fail to take into account the nature of teachers' work and registration practices – it is not a targeted reform focused on the profession's identified risks and opportunities for regulation and deregulation. For example, the AMR processes appear to be targeted to a transitory, 'fly-in fly-out' workforce temporarily living and working away from their home state. However, for the vast majority of teachers, any move across state and territory boundaries is part of a change to their principal place of work and residence. In this scenario, the existing MR processes are well-aligned with the teaching profession's work and residence practices.

Similarly, for border communities, notwithstanding the AEU's consideration that the MR processes may be more efficient, and the AEU's concern that teachers must not be charged excessive fees or two sets of registration fees relating to ineffective and parallel regulations, the MR processes are workable, with most MR applications processed in a reasonable timeframe, and, in the meantime, IDR allowing teachers to practice subject to their completion of criminal record checks and WWCC.

The AEU considers that there is room for improvement and reform to the existing MR processes. The AEU has recognised the challenges and shortfalls in implementing MR, and called for improvements within the existing framework.¹⁴ Similarly, the Australian Institute for Teaching and School Leadership ("AITSL") recently proposed reforms to improve the existing MR processes including by promoting collaboration between teaching regulators, harmonisation of regulatory processes and language, and promoting timely and accurate processing of MR applications.¹⁵

Unfortunately, the draft Bill demurs from responding to a broad spectrum of stakeholder calls for meaningful, positive improvements to the existing MR processes, and instead proposes a duplicative, unfit-for-purpose AMR scheme. The draft Bill is a disappointing example of the poor policy outcomes that result from policymakers' failure to closely and positively engage with the teaching profession's representatives and regulators.

¹⁴ AEU, submission to *National Review of Teacher Registration*, May 2018, p 3.

¹⁵ AITSL, 'One Teaching Profession: Teacher Registration in Australia', 2018, p 44-46, accessible [here](#).