

## Managing the risks with licensing – implications across Australia

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### Introduction

- The NSW Independent Commission Against Corruption (ICAC) has conducted various investigations into different licensing processes, including building and driving licences, over the past few years.
- These investigations highlighted corruption risks within the various NSW licensing agencies involved and uncovered various instances where individuals had corruptly obtained licences.
- The potential ramifications of a corruptly obtained licence are extremely serious. Just two examples from our recent investigations are:
  - 1) a person who had obtained an electrician's licence without having completed the required electrical course<sup>1</sup>
  - 2) building construction workers who obtained certificates of competency for things like driving fork lift trucks and building scaffolding without undergoing the required practical assessment.<sup>2</sup>
- Licensing, particularly occupational licensing, is also a topic of great relevance to a national anti-corruption conference because corruption in occupational licensing in one jurisdiction can have an impact on other jurisdictions. Today I will be focusing on the national, and even international, implications that corruption in licensing can have. I will also be looking at suggested strategies for managing cross-jurisdictional corruption risks in licensing processes.

### Why licensing matters

- Members of the community use the services of people who have been licensed in a particular occupation every day. This can include when they visit a mechanic or a real estate agent, call a taxi, pay someone to teach them how to drive or contract with someone to renovate their home.
- By "licensing", I am referring to all forms of regulation (including licensing but also certification, registration and accreditation) that limit entry to an occupation or the use of a particular professional title to those who have met set requirements.
- Such requirements could include completing certain qualifications, passing a practical or knowledge test, being a fit and proper person and/or having relevant work experience.

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<sup>1</sup> ICAC, *Report on investigation into schemes to fraudulently obtain building licences*, 2005 at 115-116

<sup>2</sup> ICAC, *Report into investigation into safety certification and training in the NSW Construction Industry*, 2004 at 20 and 28

- Licensing is vital for protecting the public by ensuring that only skilled practitioners engage in particular professions.
- This type of regulation also plays an important role in protecting licence holders, by ensuring they have the skills and knowledge in order to work safely. For example, various construction occupations require certificates of competency or licences. This reflects the fact that the construction industry has one of the highest levels of employee injuries.<sup>3</sup>
- Licensing is also of great importance to licence holders, allowing them the right to practice a particular occupation. The high value of licences creates a risk that some individuals will seek to obtain them even if they aren't entitled to them. As I will discuss shortly, the ICAC has investigated various instances where this occurred.

### **How we often deal with corrupt conduct**

- Most of the allegations we receive at the ICAC are about an individual or individuals in NSW doing something improper in NSW which adversely affects a government process in NSW. This makes it relatively easy for the ICAC to send staff to investigate. In corruption prevention (CP) terms, it also makes it easy for the ICAC to communicate with the relevant 'gatekeepers'- that is, the agencies that can play a role in preventing the corrupt conduct from occurring in future.
- Occupational licensing is an area which can diverge from this model because an improper act, if it results in an occupational licence, can affect almost any Australian state or territory or New Zealand, not just the jurisdiction where it took place. A NSW licence can be used to obtain an equivalent licence in another jurisdiction. Similarly, someone who has been licensed in another jurisdiction can apply for a NSW equivalent without having to be retested by the NSW licensing authority.
- In corruption prevention terms, it means that the states, territories and New Zealand agencies involved in licensing cannot just rely on being corruption resistant themselves. They are now more like a chain, which is only as strong as its weakest link. If one jurisdiction has systems which allow corruption to occur, there are potential ramifications for all other jurisdictions.
- All in all, licensing is an issue of national and trans-Tasman interest.

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<sup>3</sup> ICAC, *Report into investigation into safety certification and training in the NSW Construction Industry*, 2004 at 9.

## **CHANGES IN OCCUPATIONAL LICENSING**

- The trend in more recent times has been to make occupational licences more portable amongst jurisdictions, in order to assist movement of labour.
- There are a couple of different ways that this has been achieved:
  - 1) National licensing schemes
  - 2) Licences recognised under mutual recognition
- The ICAC has conducted investigations into licences under both types of schemes in recent investigations.

### **1) NATIONAL SCHEMES**

- There are some national certification schemes in Australia, whereby once a worker has received certification in one state or territory, they are automatically empowered to work in other states or territories without any further steps.
- ICAC has conducted two recent investigations into certificates in one particular scheme- that is national certificates of competency in the construction industry.
- By way of background, the national certification system came into effect in the 1990s. Prior to it being implemented, licences were issued by each state and territory and were only valid in those jurisdictions.<sup>4</sup>
- The national certification scheme aimed to standardise the assessment for persons awarded certificates of competency to operate industrial equipment. The various state and territory licences were converted into 35 national classes. Now, when licences are issued by a particular state or territory authority, the system allows the holder to operate anywhere in Australia.<sup>5</sup>
- A possible downside of this is that a corruptly obtained certificate can also be used anywhere in Australia. For this reason, other jurisdictions may be interested in the ICAC's investigations into these certificates.

#### ***Investigation into safety certification and training in the NSW Construction Industry 2004***

- In 2004 and 2005, the ICAC conducted two investigations involving national certificates of competency and Occupational Health and Safety induction certificates.
- The first investigation was into safety certification and training in the NSW construction industry.
- One aspect of the first investigation related to six assessors, who were accredited by WorkCover to assess the skills of applicants who

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<sup>4</sup> ICAC, *Report on investigation into safety certification and the operations of the WorkCover NSW Licensing Unit*, 2005 at 44

<sup>5</sup> *Ibid* at 44

wanted to perform certain roles and/or use heavy machinery in the construction environment.

- The types of areas that assessments are carried out for include scaffolding, dogging, rigging, the use of cranes, hoists and load shifting machines.<sup>6</sup>
- The ICAC investigation report found that:

*“From the evidence made available to the Commission it is conservatively estimated that, in the life of the scam, many thousands of Notices of Satisfactory Assessment were issued, and thousands of applicants obtained Certificates of Competency when their competency to operate machinery was either not tested at all or was not adequately tested”<sup>7</sup>*

- Following the ICAC investigation, WorkCover NSW took action to retest thousands of certificate holders.<sup>8</sup> However, the investigation demonstrates the potential problems that can occur between corrupt conduct occurring and the conduct being detected, not only in NSW but interstate. This is because, as the 2004 investigation report noted, the certification system in NSW is part of a national system, so “operators are able to use their Certificates of Competency- whether properly or improperly issued – interstate as well as in New South Wales”<sup>9</sup>

### ***Investigation into safety certification and the operations of the WorkCover NSW Licensing Unit 2005***

- In 2005, the ICAC conducted another investigation regarding WorkCover issued certificates of competency.
- This investigation involved certain staff in the licensing unit, who fraudulently entered personal details onto WorkCover’s computer system and then generated licence cards in those names<sup>10</sup>.
- Again, the ICAC found that thousands of certificates of competency were improperly issued by the corrupt officers<sup>11</sup>. Again, these could have been used anywhere in Australia prior to being detected.

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<sup>6</sup> ICAC, *Report into investigation into safety certification and training in the NSW Construction Industry*, 2004 at 17

<sup>7</sup> *Ibid* at 70

<sup>8</sup> WorkCover 12 month progress report for Op Cassandra

<sup>9</sup> ICAC, *Report into investigation into safety certification and training in the NSW Construction Industry*, 2004 at 7

<sup>10</sup> ICAC, *Report on investigation into safety certification and the operations of the WorkCover NSW Licensing Unit*, 2005 at 13

<sup>11</sup> *Ibid* at 13

## 2) MUTUAL RECOGNITION SCHEMES

- Another way that a licence in one jurisdiction can impact on other jurisdictions is through mutual recognition.
- The Australian Mutual Recognition Agreement began in 1993 and was extended to include New Zealand in 1998.<sup>12</sup>
- The Commonwealth, states and territories and New Zealand are all participating parties in the schemes.
- The idea behind mutual recognition is to “promote economic integration and increased trade” by reducing the obstacles relating to the movement of goods and people in registered occupations between jurisdictions.<sup>13</sup>
- In relation to occupations, mutual recognition applies to those occupations where some form of legislation-based approval is required before a person can legally practise.<sup>14</sup> The main principle of mutual recognition is that a person who is registered to practise an occupation in an Australian state or territory or in New Zealand can practise an equivalent occupation in another participating jurisdiction, without the need to have further tests or exams.<sup>15</sup>
- If an individual wants to apply to have an existing registration recognised in another jurisdiction under mutual recognition, they forward details of their registration to the relevant agency of the second jurisdiction. Subject to checks, registration is recognised and, if appropriate, approval to practise is given by the second jurisdiction.
- Under the existing mutual recognition arrangements, NSW licensing agencies check the registration status of mutual recognition applicants in the other jurisdiction and, if it is valid and the equivalent, issue the NSW licence without further checks.

### ***Investigation into schemes to fraudulently obtain building licences 2005***

- The potential impact of mutual recognition is seen in the Commission’s 2005 investigation into various schemes to fraudulently obtain building licences.
- This investigation found that various building licences had been fraudulently obtained, such as through the use of false educational qualifications and fraudulent claims about work experience.
- The report noted that the impact of the corrupt activity in the investigation was not necessarily confined to NSW because a licence holder can apply for mutual recognition of the licence in other

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<sup>12</sup> Council of Australian Governments (COAG) and New Zealand Government, *Users Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA)*, Foreword

<sup>13</sup> *Ibid* at Foreword

<sup>14</sup> *Ibid* at 10

<sup>15</sup> *Ibid* at 10

states and territories.<sup>16</sup> An example from the investigation demonstrates this:

**Case study:**

In NSW, electrical work can only be performed by someone who has been licensed by the NSW Office of Fair Trading or OFT.

In 2004, an individual applied to the OFT for an electrician's licence and was successful in their application.<sup>17</sup> The individual had presented a false qualification to the OFT. They had not completed the required electrical course.

The individual's electrician's licence was cancelled by the OFT following the ICAC investigation into the matter. However, the individual held an electrician's licence for over a year before this happened. During this time, they were entitled to work in NSW. They could also have applied to any other State or Territory or New Zealand for mutual recognition of their NSW licence.

- In the above case study, if the licence holder had obtained a licence elsewhere under mutual recognition (and we have no evidence that this was the case), it would have been affected once the NSW licence was cancelled. This is because the *Users Guide* to mutual recognition states that if an initial licence is cancelled, any other licences in other jurisdictions that had been awarded based on mutual recognition are affected the same way.<sup>18</sup> However, as the case study shows, there is still a potential for considerable damage to be done in the period before a corruptly obtained licence is discovered.

**Occupational licensing publication**

- In the wake of the licensing investigations that I have just discussed, the ICAC produced a corruption prevention publication highlighting some of the corruption risks that were common in various NSW licensing processes.
- As part of the publication, the ICAC reviewed its data holdings and also invited input from 36 NSW agencies identified as having licensing functions. 24 agencies responded and provided valuable case studies.<sup>19</sup>
- Mutual recognition emerged as a corruption risk both from agency feedback and our own data holdings.
- The 2006 *Users Guide to the Mutual Recognition Agreement and the Trans Tasman Mutual Recognition Agreement* describes one of the benefits of mutual recognition as being the increased opportunities

<sup>16</sup> ICAC, *Report on investigation into schemes to fraudulently obtain building licences*, 2005 at 68

<sup>17</sup> *Ibid* at 115-116, 120

<sup>18</sup> COAG and New Zealand Government, *Users Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA)* at 16

<sup>19</sup> ICAC, *Corruption risks in occupational licensing and strategies for managing them*, 2006 at 12

for Australians to work anywhere in the country, and for Australians and New Zealanders to work in each other's country.<sup>20</sup> However, mutual recognition also created a system in which persons wanting to obtain a licence often have a choice of which jurisdiction they obtain it in.

- Some concerns have been raised about this feature of the scheme. One concern was raised by an agency that was consulted as part of the occupational licensing publication:

**CASE STUDY:** A NSW licensing agency raised concerns about applicants who had failed the NSW licensing agency's exam but then passed an interstate exam. The applicants then obtained a NSW licence based on mutual recognition of the interstate licence.<sup>21</sup>

- Under the existing arrangements it is not improper to obtain a licence in one jurisdiction and then gain a licence in another jurisdiction through mutual recognition.
- However, there is a potential for mutual recognition to be exploited for an improper purpose, as seen in the next case study:

**CASE STUDY:** The Commission received an allegation that NSW residents had improperly obtained occupational licences in another state by obtaining the answers to that state's licensing test. It was alleged that after being issued with licences, the individuals then applied for mutual recognition of these licences in NSW and subsequently obtained NSW licences based on them. The Commission referred the information to the NSW licensing body and the licensing body in the state where the licences were alleged to have been fraudulently obtained.<sup>22</sup>

- This case study demonstrates the potential for people to try to use mutual recognition as a way to improperly obtain a licence.
- Mutual recognition potentially offers a way for individuals to improperly obtain a licence from a state with more stringent corruption prevention measures, by going via another jurisdiction first.

### ***Investigation into corrupt issuing of driver licences 2007***

- The ICAC had a further investigation on licensing this year. This investigation related to NSW drivers licences.
- Since 2002, the NSW Roads and Traffic Authority has allowed holders of driving licences from certain countries, such as New Zealand, to convert these to full NSW licences without having to undertake a practical driving test.<sup>23</sup>

<sup>20</sup> COAG and New Zealand Government, *Users Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA)* at 11

<sup>21</sup> ICAC, *Corruption Risks in Occupational Licensing and Strategies for Managing them*, 2006 at 36

<sup>22</sup> *Ibid* at 37

<sup>23</sup> ICAC, *Report on an investigation into corrupt issuing of driver licences*, 2007 at 15

- Under an arrangement with Land Transport New Zealand, NSW motor registries can obtain this information about New Zealand licences by email.
- One aspect of Operation Sirona related to a manager at an RTA motor registry who created false documents purporting to be emails from New Zealand Land Transport. The false documents stated that someone had a New Zealand driving licence when in fact they didn't. Nine driving licences were issued through this process.
- This investigation highlighted the corruption risk when seeking confirmation from another jurisdiction about a licence: can you authenticate the sender (the licensing agency) and also guarantee that the information provided has been provided in a tamper proof form.
- Since the ICAC investigation, the RTA has changed its procedures and no longer uses email alone to verify NZ licences.<sup>24</sup>

### **CORRUPTION PREVENTION STRATEGIES**

- Following on from the investigations I've just discussed, the ICAC published *Corruption risks in occupational licensing and strategies* in 2006.
- The publication suggested a number of strategies for managing the risks arising from mutual recognition:
  1. Licensing agencies may wish to consider developing protocols with equivalent agencies from other jurisdictions about how they will deal with any allegations that licences have been improperly obtained in one state or territory and then presented to a second state or territory for mutual recognition. A protocol is recommended because allegations of this kind affect both of the jurisdictions involved and may raise an issue about which jurisdiction should investigate
  2. Licensing agencies may wish to develop a policy on how they will handle any instances where a person who obtained a licence under mutual recognition is subsequently found to have obtained the initial licence in another jurisdiction through improper means.

(The Users Guide to the MRA states that if a person's initial registration is cancelled, suspended or made subject to a condition then the registration under mutual recognition is similarly affected.<sup>25</sup> If a licence is cancelled or suspended, the licensing agency may want to have a process for checking whether any other jurisdiction which has mutually recognised that licence. This is so that the second agency can be made aware of the change to the licence status).

3. Licensing agencies may wish to discuss corruption prevention strategies they have in place with equivalent agencies in

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<sup>24</sup> Ibid at 52

<sup>25</sup> COAG and New Zealand Government, *Users Guide to the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Agreement (TTMRA)* at 16

other jurisdictions. This may help agencies develop minimum standards for corruption prevention and avoid some jurisdictions having or being perceived to have less stringent corruption prevention measures.

- The recent ICAC investigation regarding driver licences also highlighted another corruption prevention issue- relevant to licensing agencies which exchange information with other jurisdictions:
  4. Licensing agencies that mutually recognise licences from other jurisdictions may wish to review their processes for receiving information from other jurisdictions. In particular, it is critical that information about another licence cannot be forged, reproduced or easily amended.

## **CONCLUSIONS**

- Many of the initiatives allowing portability and recognition of licences have assisted in making movement of labour easier.
- However, from a corruption prevention perspective, these same initiatives appear to have created some new corruption opportunities.
- Strategies for managing these risks rely on jurisdictions working together to develop and maintain strong CP mechanisms across all jurisdictions.