# Better occupational entry regulations: Policy implications of new research

September 2024





### **Acknowledgement of Country**

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

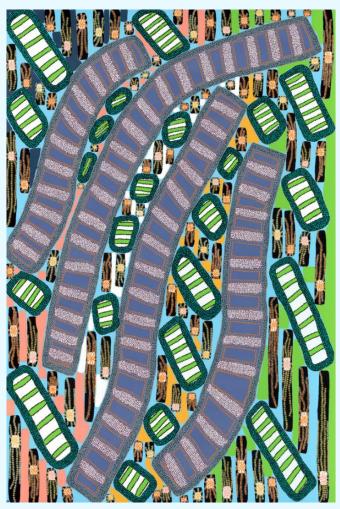
We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas, and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social, and cultural outcomes.

Artwork: Regeneration by Josie Rose



## About the NSW Productivity and Equality Commission

The NSW Productivity and Equality Commission (formerly the NSW Productivity Commission) was established by the NSW Government in 2018 under the leadership of its inaugural Commissioner, Peter Achterstraat AM.

Productivity growth is essential to ensure a sustained growth in living standards for the people of New South Wales, by fully utilising our knowledge and capabilities, technology and research, and physical assets. The Commission is tasked with identifying opportunities to boost productivity growth in both the private and public sectors across the state. The Commission seeks to continuously improve the NSW regulatory policy framework and identify levers that can increase competition to deliver better and more affordable goods and services for NSW residents.

The Commission's priorities include:

- productivity and innovation
- fit-for-purpose regulation
- efficient and competitive NSW industries
- climate resilient and adaptive economic development.

The Commission provides objective, evidence-based advice to the Government.

In 2024, Mr Achterstraat was reappointed for a further two years in the expanded role of Productivity and Equality Commissioner. In performing its functions, the Commission considers equity and how costs and benefits are distributed across the community and over time. For instance, the Commission's research on housing examines the equity and environmental benefits of policies and reforms to improve housing affordability, beyond the overall productivity and economic benefits.

The Commission regularly engages with stakeholders to ensure its research and recommendations are well-informed and to encourage a public conversation on productivity reform.

### **Disclaimer**

The views expressed in this paper are those of the NSW Productivity and Equality Commission alone, and do not necessarily represent the views of NSW Treasury or the NSW Government.

The NSW Productivity and Equality Commission's recommendations only become NSW Government policy if they are explicitly adopted or actioned by the NSW Government. The NSW Government may adopt or implement recommendations wholly, in part, or in a modified form.

# Contents

Exec	utive	summary	. 5
1	OER	impose large economic costs	. 6
2	Our (	DER are often tougher than other OER	. 7
3	Take	steps to balance OER	. 9
	3.1	Check regularly that OER is effective and proportional	9
		OER review candidate 1: NSW hairdressers	10
		OER review candidate 2: NSW air conditioning and refrigeration mechanics	10
		OER review candidate 3: NSW project builders	. 11
	3.2	Lower barriers to mobility across jurisdictions	. 11
	3.3	Assess regulators' risk tolerance and consider regulatory experiments	12
Refe	rence	s	14

# **Executive summary**

### Occupational entry regulations (OER) must be effective and proportional

This paper aims to highlight the policy implications of <u>Bowman, Hambur, and Markovski (2024)</u>, a technical paper published jointly by NSW Treasury and the Reserve Bank of Australia.

That technical paper finds that imposing OER hinders economic dynamism when the regulation goes beyond what is needed to safeguard workers and consumers. As a result, overly stringent OER can leave consumers facing higher prices and less choice, while making the economy less productive.

### Australia has opportunities to ease the stringency of OER

- OER in Australia are more stringent for select occupations, particularly in personal services, compared to the average OECD country. The additional OER requirements in Australia may be unduly hindering economic dynamism, especially if they do not improve consumer or worker outcomes.
- Policymakers should periodically review OER to ensure that the benefits to workers and consumers are worth the costs. These reviews should use international and interstate evidence. Policymakers should consider easing OER if:
  - o other jurisdictions have similar safety/quality outcomes but lower OER
  - the stringency of OER has increased over time but safety outcomes have remained the same or have worsened.
- Regulators should also evaluate their own risk tolerance. Regulators need to have some tolerance for risk when they assess whether occupational requirements strike the right balance between promoting competition and protecting consumers.

# NSW OER are considerably more stringent than other states for occupations including hairdressers, project builders, and air conditioning and refrigeration mechanics – but the benefits from higher requirements are unclear

- Future reviews into OER should focus on occupations that have stricter requirements than other jurisdictions, and where there is no clear evidence that these stricter settings are supporting worker and consumer outcomes. In New South Wales, such areas include hairdressers, air conditioning and refrigeration mechanics, and project builders.
  - o **Hairdressers:** New South Wales and South Australia are the only states that require hairdressers to have an industry qualification. In New South Wales, the industry qualification can cost aspiring hairdressers around \$13,000.
  - Air conditioning and refrigeration mechanics: New South Wales offers fewer pathways to obtain the necessary qualifications required for becoming an air conditioning and refrigeration mechanic compared to other states.
  - o **Project builders:** Unlike Queensland, New South Wales does not have a process for recognising builder qualifications obtained overseas.

# Improving the recognition of interstate and international licences can reduce OER stringency with minimal risk to consumers

- By improving the recognition of interstate and international licences, New South Wales can make it easier for people to move to better NSW job opportunities.
- New South Wales has exempted many occupations from Australia's automatic mutual recognition (AMR) scheme, which seeks to let workers move between states and territories. These exemptions undermine the benefits of the AMR scheme.

# 1 OER impose large economic costs

OER are a set of legal requirements that individuals must meet to enter certain professions. They often require people to obtain a particular licence or qualification which requires skills and training.

Good OER play important roles. Typically they keep consumers and workers safer than they would otherwise be, and gives consumers greater confidence in what they are thinking of buying.

But regulation comes with a cost.

Setting effective and proportional OER is a balancing act. It requires regulators to weigh the benefits and cost of various occupational regulations.

Table 1: Regulators must balance the benefits and costs of OER

Benefits	Costs
Worker and consumer safety	Exacerbates skills shortages
Boosts confidence in service quality	Reduced competition and higher prices
Maintains minimum quality standards	Lowers incentive to innovate
	Lower productivity
	Less adaptable business environment

Source: NSW Productivity and Equality Commission.

The costs of OER come in several forms:

- By design, OER stop some workers from automatically taking up some types of work. Entry
  requirements are widespread in the labour market: in 2011, around one in five Australian workers
  was subject to occupational licensing requirements (Commonwealth Productivity Commission
  2015). These barriers make it harder for workers to change occupations or to work across
  jurisdictions. That, in turn, may be exacerbating current skills shortages.
- More stringent OER can also lower the number of businesses offering a service, leading to less competition and higher prices for consumers. One US study estimated that licensing arrangements reduced labour supply by an average of 17 to 27 per cent across several occupations (Blair & Chung 2018). Similarly, Bowman, Hambur, and Markovski (2024) find that stricter OER are associated with lower business entry and exit rates. This suggests regulations are weighing on competition in certain occupations.
- Occupational licensing can weigh on productivity by increasing barriers to entry and reducing the incentive for businesses to innovate (Andrews et al. 2022; Andrews and Hansell 2021).
   Consistent with this, firms' productivity growth tends to be lower where OER are more stringent (Bambalaite et al. 2020).
- More broadly, OER impacts productivity growth by restricting the efficient allocation of resources from low- to high-productivity firms (Bambalaite et al. 2020). Workers are a key input for the production of goods and services in the economy, but firms differ in how well they make use of their labour resources. Stringent OER inhibits the flow of workers to firms and industries where they can be more productive. Bowman, Hambur, and Markovski (2024) show that OER make it harder for more productive businesses to expand, imposing costs on the economy in the form of lower productivity.
- Occupational licensing may also affect productivity by making it harder for occupations to adapt
  to technological innovations and changing consumer preferences. International evidence has
  demonstrated that the tasks required by narrowly defined occupations have changed

significantly over time (Atalay et al. 2020). Stringent OER can inhibit the natural evolution of occupations to make use of new technologies and meet consumer demands.

Overall, the evidence suggests that OER have material economic costs. While any changes to OER must weigh the benefits as well as the costs, these findings can help regulators to drive effective, fit-for-purpose occupational entry regulations.

# 2 Our OER are often tougher than other OER

OER in Australia's largest states tend to be more stringent compared to the average OECD country.¹ If other OECD countries' quality and safety outcomes at least equal Australia's, Australia may have scope to reduce our OER.

The same is true for New South Wales when compared to other big Australian states: NSW OER tend to be more stringent, and we can compare them with other states to find out where we might ease regulation.

More stringent OER are associated with reduced business dynamism and lower productivity, resulting in higher prices and less choice for consumers. Unless these more stringent regulatory measures can demonstrate improved safety or quality outcomes, we could be unnecessarily penalising ourselves.

Bowman, Hambur, and Markovski (2024) extend the work of von Reuden and Bambalaite (2020) to assess the stringency of OER for select occupations in Australia's three largest states.

The OER indicator reflects three aspects of the burden on those seeking to enter an occupation: administrative burdens that need to be met (e.g. compulsory membership in a professional association), the qualification requirements (e.g. requirements for compulsory practice), and any mobility restrictions across states or countries associated with the OER (e.g. Queensland licences are not automatically recognised in New South Wales, or vice versa).

Compared to the average OECD country (see Figure 1), Australian OER are:

- relatively more stringent in the selected personal services<sup>2</sup> (those provided directly to individuals)
- relatively less stringent in the selected professional services<sup>3</sup> (specialised services provided by professionals with specific expertise to clients or businesses).

Australia's OER are significantly more restrictive than those of the least stringent OECD countries<sup>4</sup>, such as Sweden and Switzerland.

<sup>&</sup>lt;sup>1</sup> Stringency is based on a composite indicator constructed for Bowman, Hambur, and Markovski (2024). The Organisation for Economic Co-operation and Development (OECD) is a group of 38 mostly high-income countries (including Australia) which are committed to democracy and the market economy.

<sup>&</sup>lt;sup>2</sup> The selected personal services occupations included aesthetician, baker, butcher, taxi driver, driving instructor, electrician, hairdresser, painter, plumber, and nurse.

<sup>&</sup>lt;sup>3</sup> The selected professional services occupations included accountant, architect, civil engineer, lawyer, and real estate agent.

<sup>&</sup>lt;sup>4</sup> These tend to include countries such as Sweden, Finland, Switzerland, and in some cases Great Britain, the United States, and Spain.

2.0

2.0

2.0

NSW Victoria Queensland OECD average OECD average of 5 lowest countries

Figure 1: Compared to the OECD average, OER in Australia are particularly stringent in personal services

Source: Bowman, Hambur, and Markovski (2024), von Rueden and Bambalaite (2020).

For the occupations considered, OER in New South Wales tend to be higher on average than those in Victoria and Queensland.

Professional services

A closer look at the individual occupations shows that, compared to the OECD average, OER are more stringent across each of the Australian jurisdictions for driving instructors, electricians, painters, plumbers, registered nurses, and architects (Figure 2). New South Wales' OER for hairdressers and real estate agents stand out as particularly stringent.

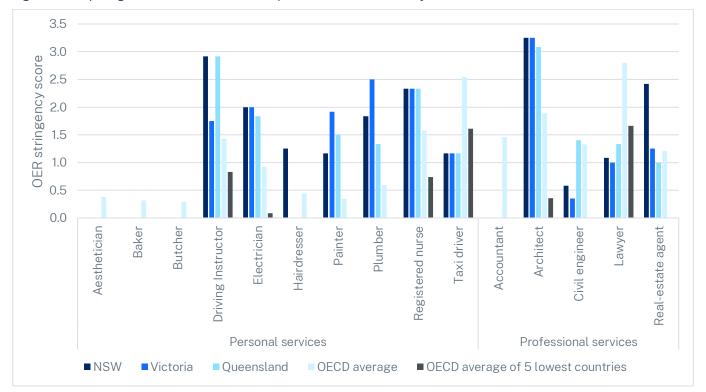


Figure 2: Comparing OER scores for select occupations across Australian jurisdictions and the OECD

■ Personal services

Note: The OECD average of five lowest-scoring countries refers to those countries that score the lowest within each respective occupation.

Source: Bowman, Hambur, and Markovski (2024), von Rueden and Bambalaite (2020).

# 3 Take steps to balance OER

The findings about OER set out in Bowman, Hambur, and Markovski (2024) – and summarised above – underscore the findings of this section. Essentially, it is important to strike the balance that will keep workers and consumers safe without higher-than-needed costs.

To keep the OER balance right, and to rebalance it where it is out of balance, New South Wales and other Australian jurisdictions can do three things:

- 1. Periodically review OER, and when necessary revise them, to ensure they are effective and proportional (section 3.1).
- 2. Improve the recognition of domestic and international licences to let workers more easily move locations (section Error! Reference source not found.).
- 3. Assess whether regulators have the right risk tolerance and give appropriate weight to the costs and benefits of OER measures (section 3.3).

# 3.1 Check regularly that OER is effective and proportional

OER should be imposed only when they address substantial risks or problems, and should be avoided when they cannot be justified.

An example of current best practice in this regard comes from New South Wales' Independent Pricing and Regulatory Tribunal (IPART). It developed a licensing framework to determine whether existing or new licensing schemes are justified and well-designed. The IPART framework notes that mandatory attributes, such as qualifications, should only be imposed if a risk or problem is being addressed (PwC 2013). Regulators should adopt IPART's best practice licensing framework when assessing OER.

In practice, many assessments of OER risk have been driven by anecdotal evidence. This has increased the demands of licensing requirements or limited deregulation (Commonwealth Productivity Commission 2023).

Government agencies should periodically review OER to ensure that measures are backed by clear and up-to-date evidence that they support worker and consumer outcomes.

Reviews should analyse the risks of relaxing OER, particularly the risk of undermining safeguards for consumer protection. These reviews should leverage evidence across jurisdictions. For example, there may be opportunities to relax OER where other jurisdictions have delivered similar or better-quality consumer outcomes with less stringent OER requirements.

These OER reviews should also consider the economic costs highlighted in this paper. These include any limiting of innovation, competition, or choice, as well as rises in consumer prices.

Decisions to retain OER requirements should be supported by evidence that demonstrates licensing is the most effective approach when assessed against other regulatory and non-regulatory interventions, including certification. For example, regulators could adopt 'negative licensing', which would allow individuals to practice in a particular occupation without a formal licence or prior approval; individuals could be prohibited from practising if they breached standards or legislation. There is opportunity to trial such approaches for low-risk licences, or those with relatively low OER scores.

Reviews of OER could prioritise occupations that have comparably stringent OER compared with other jurisdictions and that are currently experiencing skill shortages. The benefit of reform here is likely larger.

In New South Wales, hairdressers, project builders, and air conditioning and refrigeration mechanics are three occupations that evidence suggests are among the most likely to benefit from review. In particular, hairdressing stands out amongst occupations examined in this study: it is the one occupation on which New South Wales places qualification requirements and mobility restrictions while neither Victoria nor Queensland do.

### **OER review candidate 1: NSW hairdressers**

Under the *Hairdressers Act 2003*, NSW hairdressers must complete a Certificate III in Hairdressing. While aspiring hairdressers in other states may choose to undertake formal training, New South Wales and South Australia are the only states that mandate hairdressers to hold an industry qualification.

In 2016, a review by the NSW Department of Finance, Services and Innovation (DFSI) suggested reducing the qualification requirements by updating or repealing the Hairdressers Act. This review found the qualification requirements impose additional regulatory burdens on hairdressers without any significant benefits for workers or consumers (DFSI 2016).

The NSW Government decided to retain the stricter qualification requirements in response to overwhelming opposition from industry stakeholders (Lemon 2016). The NSW Business Chamber (2016) suggested that further work could quantify the impact of changing the qualification requirements for hairdressers. The Chamber also suggested seeking input from diverse stakeholder groups, including those who might benefit from the reform.

A Certificate III in Hairdressing can take 12 to 34 months of full-time study and cost around \$13,000. Both requirements are significant barriers to someone seeking to enter the profession. NSW hair salons cannot employ an experienced hairdresser trained outside of New South Wales if they do not possess a Certificate III or have not been approved by the Vocational Training Review Panel (NSW Fair Trading 2024).

Table 2: Qualification requirements and mobility restrictions are driving higher OER for NSW hairdressers

Regulatory area	NSW	VIC	QLD
Administrative burden	0.00	0.00	0.00
Qualification requirements	0.58	0.00	0.00
Mobility restrictions	0.67	0.00	0.00
Total OER score	1.25	0.00	0.00

Source: NSW Productivity and Equality Commission. For further details on the OER index methodology, see Bowman, Hambur, and Markovski (2024), section 3.

### OER review candidate 2: NSW air conditioning and refrigeration mechanics

Air conditioning and refrigeration (AC&R) mechanics in New South Wales face considerably more stringent OER than mechanics in other states. A notable difference in New South Wales is that the only way to obtain an air conditioning and refrigeration qualification is through a Certificate III in Air Conditioning and Refrigeration.

Victoria and Queensland are more flexible; both allow people to qualify either through a Certificate III or by completing an apprenticeship. Victoria is particularly accessible, offering Certificate IV, Diploma, and Advanced Diploma qualification options. This can help to attract a wider set of professionals with diverse backgrounds and encourages greater variety and innovation in services.

Previous work has failed to identify the benefits of such strict OER settings for AC&R mechanics. Advocates of the NSW system often rely on anecdotal evidence and unquantified safety risks (Commonwealth Productivity Commission 2023). In Queensland, it appears some AC&R services are being performed by related trades, such as plumbers and electricians, with no evidence of poorer quality or riskier work provided (Commonwealth Productivity Commission 2023).

Adding AC&R to New South Wales' AMR scheme will help to alleviate the administrative and cost burden that workers face. This occupation was due to commence the scheme in July 2024, but was granted a further 12-month exemption.

Table 3: OER for air conditioning and refrigeration are much more stringent in NSW compared to other states

Regulatory area	NSW	VIC	QLD
Administrative burden	0.67	0.00	0.67
Qualification requirements	1.25	0.33	0.75
Mobility restrictions	0.67	0.67	0.00
Total OER score	2.58	1.00	1.42

Source: NSW Productivity and Equality Commission. For further details on the OER index methodology, see Bowman, Hambur, and Markovski (2024), section 3.

### **OER review candidate 3: NSW project builders**

Builders in New South Wales face the most stringent entry regulations, yet we have little evidence that the benefits of the tighter regulations outweigh the costs.

New South Wales does not have a process for recognising builders' qualifications obtained overseas. In Queensland, however, international licence holders can apply to have their qualifications recognised and assessed for equivalency. This puts New South Wales at a disadvantage: it is less attractive for skilled migrants with building experience to live and work in this state.

Shergold and Weir's (2018) *Building Confidence* report assessed the effectiveness of compliance and enforcement systems in the building and construction industry. The report found that some states and territories were reluctant to register builders registered in other jurisdictions based on perceptions that the registration standards set by other jurisdictions are of a lower level.

Consistent with the research, the *Building Confidence* report argues that such unnecessary mobility restrictions impose excessive costs on the industry, limit competition, and reduce choice for consumers.

Since the release of the *Building Confidence* report, Victoria has introduced AMR for project builders. Project builders in New South Wales were due to enter the scheme in July 2024 but were granted a further 12-month exemption.

Table 4: OER for project builders are also more stringent in NSW

Regulatory area	NSW	VIC	QLD
Administrative burden	0.67	0.00	0.67
Qualification requirements	1.17	1.08	1.17
Mobility restrictions	0.67	1.33	0.00
Total OER score	2.50	2.42	1.83

Source: NSW Productivity and Equality Commission. For further details on the OER index methodology, see Bowman, Hambur, and Markovski (2024), section 3.

### 3.2 Lower barriers to mobility across jurisdictions

Improving the recognition of domestic and international licences can help reduce the stringency of OER while maintaining good worker and consumer outcomes.

Work is underway to improve skills recognitions across states under AMR. The AMR system allows certain licensed professionals to work across states and territories without needing to obtain additional licences or qualifications. But many occupations are exempt. That limits the benefits of the scheme.

State and territory ministers can exempt occupational registrations from the AMR scheme. In New South Wales this has happened with many occupations, due to perceived risks to the health and safety of workers or consumers. Current exemptions include general builders, mining surveyors, teachers, air conditioning and refrigeration mechanics, and property agents.

New South Wales also has opportunities to expand mutual recognition processes to capture additional international licences. This would reduce barriers to overseas skilled workers obtaining employment in Australia.

A mutual recognition scheme currently operates under the Trans-Tasman Mutual Recognition Agreement. It allows mutual recognition of occupational licences between Australia and New Zealand. This means that, for instance, a licensed plumber from New Zealand can apply to work in New South Wales. Regulators may reject applications under mutual recognition if there are differences in the occupational activities permitted under licences across jurisdictions.

The Commonwealth Productivity Commission (2023) recommended that Australian governments pursue further international recognition of occupational licensing by improving and formalising links between Australian licensing bodies and those in other similar countries. Regulators could limit the activities an international worker can perform if a domestic licence is significantly different to its international equivalent. Consideration of expanded AMR could start with countries which have similar standards to Australia, such as the United Kingdom, Canada, and Singapore.

# 3.3 Assess regulators' risk tolerance and consider regulatory experiments

Regulators are disincentivised to take risks. Regulators are criticised when negative outcomes eventuate that could have been prevented by regulation, though are not rewarded where positive outcomes result from decreased regulation. This results in a bias towards more stringent regulatory settings. The Commonwealth Productivity Commission (2023) found cases of risk assessments driven by anecdotal evidence and where regulations were not sufficiently justified by the risks.

There are likely benefits in assessing whether regulators possess the appropriate risk tolerance, as OER are often difficult to relax once implemented. For example, regulators that are too risk-averse may hesitate to relax OER even when it would bring overall benefits. They will place insufficient weight on the potential benefits to consumers of more competition, lower prices, and innovation.

An evaluation of risk tolerance allows regulators to align their objectives with the broader goals of the regulatory framework, ensuring that regulations strike a balance between promoting innovation and safeguarding against potential risks. By proactively evaluating risk tolerance, regulators can foster a regulatory environment that is both responsive to emerging challenges and conducive to productivity growth.

To explore the merits of relaxing OER while monitoring for risks and adverse outcomes, regulators can also use the technique known as 'regulatory experimentation'. By testing changes to OER in a limited environment, or for a limited timeframe, regulators can demonstrate that negative impacts either do not eventuate or can be managed (Behavioral Insights Team 2023). The evidence provided by the regulatory experiment can then be used to justify taking (or not taking) a particular course of action, ensuring that OER settings are balanced and effective.

Regulatory experimentation is particularly useful for policymakers seeking to refine and adapt regulatory settings in the face of technological change. The rise in the digital delivery of services such as telehealth reduces the physical limitations of service delivery and draws attention to issues of mobility restrictions. Advances in technology have the potential to augment many occupations in ways that reduce issues of safety or quality. This in turn can give rise to opportunities to trial relaxing OER settings to assess the benefits against the costs. Experimenting with OER settings can

help regulators to navigate the evolving regulatory environment to minimise barriers to entry, encourage productivity, and promote the wellbeing of NSW workers and consumers.

The NSW Productivity and Equality Commission website has free resources available to help agencies apply regulatory experimentation (NSW Productivity and Equality Commission 2024).

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