



AUSTRALIAN LOGISTICS COUNCIL



ALC POSITION

ON THE ADMINISTRATION OF NATIONAL TRANSPORT
LEGISLATION – BACKGROUND PAPER

SEPTEMBER 2011

ALC POSITION

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THIS SUBMISSION HAS BEEN PREPARED WITH THE
ASSISTANCE OF KM CORKE AND ASSOCIATES, CANBERRA.

PO Box 20 DEAKIN WEST ACT 2600
P: +61 2 6273 0744 F: +61 2 6273 3073 E: admin@austlogistics.com.au
www.austlogistics.com.au

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Background on the Australian Logistics Council

The Australian Logistics Council is the peak national body representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Vision

To be the lead advocacy organisation to all levels of Government and industry on freight transport and logistics supply chain regulation and infrastructure issues.

Mission

To influence national transport and infrastructure regulation and policy to ensure Australia has safe, secure, reliable, sustainable and internationally competitive supply chains.

2011 – 2013 Strategic Intent

To establish the Australian Logistics Council as the 'go to' organisation representing the major and national companies participating in the Australian freight transport and logistics supply chain.

Objectives:

1. Be the nationally recognised voice of Australia's freight transport and logistics supply chain.
2. Be the leading advocate of appropriate national regulation and infrastructure to ensure Australia enjoys the full benefits of freight transport and logistics policy development and reform.
3. Promote and encourage greater recognition by Government and the community of the importance of the freight transport and logistics industry's contribution to Australia's economy.

ALC Members are major and national companies participating in the Australian freight transport and logistics supply chain. ALC also has a number of Associate Members, which include associations, organisations, government agencies and companies participating in the Australian freight transport and logistics supply chain.

Australia's freight task is estimated to triple by 2050 – from 503 billion tonne kilometres to 1,540 billion tonne kilometres, with local demand for total freight movements increasing by as much as 60% by 2020.

The Transport and Logistics Industry is a critical part of the Australian economy, generating 14.5% of Australia's GDP and providing more than 1 million jobs across 165,000 companies. ALC estimates that every 1% increase in efficiency will save Australia around \$1.5 billion a year.

ALC POSITION ON THE ADMINISTRATION OF NATIONAL TRANSPORT LEGISLATION

Introduction

As ALC said in an open letter to the Council of Australian Governments on 17 August 2011:

Australia's size means our national spend on freight is relatively larger than for other modern economies. Gains made in reducing freight costs can therefore significantly improve our international competitiveness. We believe that microeconomic reform in the freight industry must be a priority for all governments.

.....

A single best practice regulator to replace the complexity of regulators in each state and territory is probably the most important microeconomic reform on COAG's current agenda. Consistent regulations doing away with state borders and different methods of enforcement will not only lead to significantly improved safety outcomes but, if done well, will bring cost savings from along the supply chain and back to consumers.

ALC was therefore pleased that on 19 August 2011, COAG signed the:

[Intergovernmental Agreement on Heavy Vehicle Regulatory Reform;](#)

[Intergovernmental Agreement on Rail Safety Regulation and Investigation Reform;](#) and

[Intergovernmental Agreement on Commercial Vessel Safety Reform;](#)

Each of agreement anticipates a national law and establishes a national regulator:

- » A National Heavy Vehicle Regulator will operate under a Heavy Vehicle National Law;
- » the office of the National Rail Safety Regulator will operate under a Rail Safety National Law; and
- » the Australian Marine Safety Authority will act as a national regulator under the Maritime Safety National Law.

For the anticipated productivity improvements to be achieved all Australian jurisdictions will need to implement these national laws *as approved* by the relevant council of ministers.

Moreover, to ensure these national laws operate in a uniform fashion nationally there is a need to have a single national regulator with 'teeth'.

However much of the administration of the scheme has been left with jurisdictionally based regulators as these extracts from the relevant IGAs illustrate:

| From the Heavy Vehicle IGA | From the Rail Safety IGA | From the Marine Safety IGA |
|--|--|---|
| <p>12. The objectives and outcomes of this Agreement will be achieved by delivering:</p> <p>.....</p> <p>d) service level agreements between the NHVR and each State and Territory to deliver heavy vehicle regulatory services and activities to support the implementation of the National System as further described in Part 3 (National System) and Schedule B (National Heavy Vehicle Regulator arrangements).</p> <p>25. The Parties agree that the NHVR may, through a service level agreement with an individual State or Territory, agree for a State or Territory agency or third party to deliver regulatory services and activities that fall within the scope, role and functions of the NHVR.</p> <p>26. The Parties agree that the service level agreements agreed between the NHVR and each State or Territory agency will uphold the objectives and outcomes of this Agreement and will achieve the national standards to be agreed as per paragraph 12 and 24 through a flexible approach that considers the risk and operational context of each jurisdiction.</p> | <p>40. The Parties agree that with regard to the provision of national rail safety regulation:</p> <p>.....</p> <p>(e) where jurisdictions elect to enter into a service agreement to deliver rail safety regulation services on behalf of the NRSR, the NRSR will make payments to the service delivery agency according to the service agreement; and</p> <p>.....</p> <p>41. The Parties agree that with regard to the provision of national rail safety investigation services:</p> <p>(a) jurisdictions with their own identified existing investigator, that elect to enter into a service agreement to deliver investigatory services on behalf of the ATSB, will fully meet their own on-going costs; and</p> <p>(b) all other States will pay the full cost of ATSB investigatory services in their jurisdiction.</p> | <p>38. The National Regulator will be responsible for the operation and administration of safety regulation of commercial vessels in Australian waters. State and Territory jurisdictions will deliver a range of National Regulator's operational and enforcement functions within their respective jurisdictional territory. This will enable staffing and resourcing to remain at the discretion of each respective maritime agency.</p> <p>39. The Standing Council has agreed which of the National Regulator functions will be carried out by the National Regulator and which will be carried out by State and Territory authorities. These functions are set out in Schedule B to this agreement and will be undertaken in relation to vessels as defined in clause 10 (c) of this agreement.</p> <p>40. While State and Territory agencies will be the primary partner for the National Regulator within each jurisdiction, other third party providers may be accredited by the National Regulator to deliver services under the national system, for example, survey and on-water compliance services.</p> |

The ALC concern

As Mike Steketee said in the *Weekend Australian* of 27 – 28 August 2011:

The idea is that the number of authorities regulating road, rail and maritime transport would be cut from 23 to three. In rail alone, seven safety regulators would be replaced by one and 46 pieces of legislation would be abolished, including seven rail safety acts, nine occupational health and safety acts and seven dangerous goods acts. That can make a real difference in running a business.

It is just that these things take time. In July 2009, Kevin Rudd, the great champion of the COAG process, announced agreement on the very same reforms, which he called “historic”. Since then there has been progress of a kind. The agreement in 2009 has now been turned into formal intergovernmental agreements carrying the signatures of heads of government.

But that doesn’t mean we’re ready for the brave new world just yet. There are still details to be sorted out and this is where the Humphrey Applebys come into their own. In rail, NSW is talking about keeping its own regulatory system and delivering services to the national regulator.

Victoria does not want its metropolitan rail network to be part of the national system, meaning freight trains that have to use the metropolitan lines would have to follow two sets of rules. As Lance Hockridge, the head of QR National and chairman of the Australasian Railway Association, put it recently: “In a process which will be a standout for the Sir Humphrey Appleby award for services to regulatory reform, we seem to be inexorably spiralling towards snatching defeat from the jaws of victory”.

The ultimate concern of ALC is that notwithstanding the clearest of guidelines established by national standard setting authorities, service providers will:

- a. develop their own cultures;
- b. interpret the provisions of the national law in perhaps novel ways (and may perhaps develop internal guidelines that will effectively become the law as those guidelines are utilised in practice by junior officers); and
- c. develop their own enforcement priorities

with the net effect that the national law will not be administered uniformly – and if that is the case the benefits of a single national law could be lost.

Dangers in a multiplicity of regulators

When developing a national energy market for Australia, COAG commissioned what was known as the Parer Committee. It produced a report called *Towards a Truly National and Efficient Energy Market*.

One of its major findings was that there were too many regulators. The report said:

The multiplicity of regulators creates a barrier to competitive interstate trade and adds costs to the energy sector... Submissions to the Review indicated significant disquiet about the present regulatory burden on energy businesses from national and local regulators, in particular different compliance regimes and the need to develop separate customer management systems for each state and territory to address different regulatory requirements...¹

Under a heading *Cooperative Approaches are not an Alternative to a National Regulator*, the Parer report indicated:

Cooperative approaches, under which existing regulators work together to achieve consistency in regulation and avoidance of duplication would not achieve a satisfactory outcome... The Panel's assessment however is that such cooperative approaches are a suboptimal solution. It is in effect a status quo solution, with no drivers for national solutions. As Delta Electricity states:

Although the various state and federal regulators meet at regulators forums to share views, this does not ensure a consistent national approach to the regulation of the network businesses in the NEM.

There is little evidence that work on the harmonisation of regulatory requirements would progress as expeditiously as if under the leadership of one agency. Differences, or perceived differences, in the actual application of any 'template' arrangements would remain and there would be no clear way forward for rectifying that concern.
(Emphasis added)²

The Parer report recommended the creation of a single regulator to deal with what are called 'economic' regulatory issues. The Australian Energy Regulator (the AER) has now been established to perform these functions.

ALC had the expectation the national transport safety regulators would be similar to the AER – that is, with the 'teeth' to ensure the proposed national law operates in a uniform fashion nationally.

Alas that is not the case.

1 Council of Australian Governments Energy Market Review Final Report *Towards a National and Efficient Energy Market*, pp.74-5, 2002

2 Ibid p.87

Administration models for other Seamless Economy national schemes

Since the inception of national competition policy in the 1990's there has been a push to consolidate state based registration and enforcement schemes into a single national scheme for each relevant industry.

This is to facilitate the 'seamless' Australian economy.

There are two ways of implementing a scheme of national regulation and enforcement.

The Health Professionals Model

The national registration and accreditation scheme for health professionals brings together the registration and investigation functions of eight different registration systems for nine different health professions, ranging from doctors to pharmacists, into one integrated system, in which one large national agency:

- » performs the regulation function;
- » receives complaints about practitioners and, after discussions with state based health regulators³, undertakes in most jurisdictions⁴ the investigation and disciplining of underperforming practitioners; and
- » provides the support for the specialist committees that develop national standards for each of the regulated professions.

As the relevant decision regulatory impact statement says:

The aim of these changes is to reduce red tape, facilitate workforce mobility and enhance safety and quality in the provision of healthcare. The RIS discusses the potential costs and benefits for consumer, professional and government stakeholders of two options – the continuation of the status quo and the establishment of a new national scheme for health practitioner registration and accreditation.

Registration and accreditation is currently the responsibility of individual State and Territory Governments. This has resulted in variable standards and inconsistent approaches across the country, impeding the freedom of movement of practitioners. A primary objective of the national cross-profession approach to registration is to develop consistent and high-quality registration standards for each of the professions for the enhanced protection of the public. The proposed national Scheme will also develop an accreditation framework to bring about consistently high accreditation processes across professions...

Under the new Scheme, health practitioners will be registered nationally (entitling them to practice anywhere in the country) and they will pay only one annual registration fee. Conversely, under current arrangements they are required to register in each jurisdiction where they wish to practice, entailing the payment of multiple registration fees.

Another key benefit is the administrative efficiency and consistency to be gained through the move from a system where the registration function is performed by more than 70 State and Territory registration boards, to one where registration for each profession is handled under the auspices of a national agency with a single cross-professional office in each State and Territory.⁵

3 In cases where a particular issue is more of a systemic problem, e.g. how a hospital operates, a decision may be made to allow a state based entity to deal with a complaint

4 NSW has retained its own investigation function.

5 AHMC *Regulatory Impact Statement for the Decision to Implement the Health Practitioner Regulation National Law*, 3 September 2009, p.76.

In practice, this has meant that a number of public servants from different registration schemes have been transferred to work in the one national body, with one set of rules under one set of priorities.

This is the preferred ALC outcome for the national transport safety laws.

The Specified Occupations model

A separate occupational licensing scheme brings together under the one umbrella the regulatory schemes for a further seven occupations, ranging from air conditioning and refrigeration mechanics to real estate agents.

In this case a National Occupational Licensing Authority supports specialist licensing committees in developing national standards.

However, the responsibilities of registration and enforcement remain with jurisdictional regulators via delegations from the National Occupational Licensing Authority.⁶

The regulatory impact statement for the specified occupations licensing scheme compared a single agency model of regulation with what the RIS called a 'National Delegated Agency' model.

The national transport safety schemes follow the National Delegated Agency model.

The RIS said:

The National Single Agency model would require greater investment at the establishment stage due to the need to establish a separate physical presence for the national body and its agency branches.

Substantial ongoing savings in operational costs could be expected, however, once standards and major policy processes had been agreed and established.

Under the National Delegated Agency model, transition impacts and costs would be minimised and initial implementation costs reduced due to the use of existing infrastructure and staff. National consistency could be achieved through the use of appropriate delegation of administrative responsibilities to existing jurisdictional regulators, together with clear service agreements between the national body and those regulators.

The National Delegated Agency model still requires significant legislative and administrative change, however the use of existing sites and staff would minimise the external appearance of change. It is possible that reform gains could be affected by the reduced influence of the national body, the maintenance of existing administrative procedures and by the cultural affiliations natural to those continuing to operate within separate agencies.⁷

6 To create the national scheme, states and territories will apply the Victorian *Occupational Licensing National Law Act 2010* (Act 66, 2010).

7 *National Licensing System for Specified Occupations Decision Regulation Impact Statement*, April 2009, p.15 (emphasis added).

Other difficulties noted with a delegated agency model included:

- » there will be fewer opportunities for rationalising and streamlining existing administrative arrangements and any existing organisational inefficiencies may be perpetuated;
- » transition and implementation could be more difficult as additional effort would be required to ensure consistent licence service delivery in the separate State/Territory agencies; and
- » national consistency of policy and operations could take longer to achieve due to the need to change the established practices of existing regulatory agencies, some of which will have competing policy priorities.⁸

ALC believes a 'single agency' model is the best way to administer the scheme created by the relevant National Law.

This is because it is clear the synergies of having those enforcing the law working together with those responsible for the development of policy and with the interaction with other stakeholders should lead to a more informed legislative structure and so offering the maximum benefit to the Australian community.

ALC therefore believes the proposed national transport safety laws should be administered and have services delivered by a single agency which has both:

- » the full responsibility for policy and legislation development; and
- » the funds and resources transferred from existing regulators.

At best, a 'delegated agency' model of administration, conferring significant responsibilities on jurisdictional regulators, is a transitional step towards a single regulator that not only sets standards, but provides services.

During this period ALC expects:

- a. all critical functions of a national transport safety law should be performed by officers by the relevant national regulator;
- b. other agencies **will** only be eligible to receive a delegation if they have undergone suitable training provided by the national regulator;
- c. all delegations must be made by the national regulator and the power of sub-delegation should not be provided to people outside of the agency;
- d. to ensure national consistency, the national regulator should have a general right to review, amend or substitute any decision made by a person or entity exercising delegated powers;
- e. any agencies conferred with delegated responsibilities should be prohibited from publishing guidelines on how the relevant national law is to be interpreted or implemented; and
- f. the text of any 'contracting out' arrangements between the NHVR and jurisdictional regulators will appear on the Regulator's website.

Australian Logistics Council
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⁸ Ibid p.20. In the case of the national licensing system for specified occupations, it was decided to commence the scheme with a national delegated agency model 'but that options should be retained for moving to a national single agency model over time'. – see page 20.



MEMBERS



ASSOCIATE MEMBERS

- » Agility Logistics
- » Allied Express
- » Australian Air Express
- » Australian Food and Grocery Council
- » Australian Livestock and Rural Transporters Association
- » BlueScope Steel
- » Broome Port Authority
- » Cement Australia
- » Coca-Cola Amatil
- » Department of Defence
- » Department of Transport NSW
- » Department of Transport VIC
- » Department of Transport and Main Roads QLD
- » GS1 Australia Limited
- » John Swire & Sons Pty Ltd
- » Metcash Ltd
- » OneSteel
- » Origin Energy
- » PGA (Management) Pty Ltd
- » PNG Ports Corporation Limited
- » Port of Melbourne Corporation
- » Schenker Australia Pty Ltd
- » Sydney Port Corporation
- » Telstra
- » TNT Australia Pty Ltd
- » Transport & Logistics Industry Skills Council
- » Transport Certification Australia
- » Victorian Freight & Logistics Council
- » Victorian Transport Association
- » Victoria University
- » Wallenius Wilhelmsen Logistics
- » Westgate Ports

HONORARY FELLOWS

- Paul Little AO – February 2011
- Peter Gunn – February 2011
- Ivan Backman – May 2010
- David Williams OAM – May 2010

PO Box 20 DEAKIN WEST, ACT, 2600
17b National Press Club Building, 16 National Circuit, Barton, ACT, 2600
P: +61 2 6273 0744 F: +61 2 6273 307 E: admin@austlogistics.com.au
www.austlogistics.com.au

