SUBMISSION

BUSINESS REGULATION AND COMPETITION WORKING GROUP

FUTURE COAG REGULATORY REFORM AGENDA
STAKEHOLDER CONSULTATION PAPER

OCTOBER 2011
The Australian Logistics Council (ALC) is the peak national body for Australia’s freight Transport & Logistics (T&L) industry. The aim of ALC is to influence government policy decisions to ensure that Australia has a safe, secure, reliable, sustainable and competitive freight T&L industry.


» ALC Discussion Paper - A Smarter Supply Chain - Using ICT to Increase Productivity in the Australian Transport and Logistics Industry - January 2010

» “Cross Border Regulation in Australia” – Cross Border Regulation Report - Sunraysia/Riverland (Summary) – Cross Boarder Regulation Report - Sunraysia/Riverland (Full Report)

» “Australia’s supply chains - fixing the blockages. Advancing Australia’s Competitiveness” – ALC Supply Chain Blockages Summary – ALC Supply Chain Blockages Final


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

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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.
Summary of Recommendations

National Schemes for National Rail and Maritime Safety and Heavy Vehicles

1. To maximise the economic benefits of the national transport reforms under the Seamless Economy Agenda, ALC recommends that:

the new national transport laws be administered under a ‘single agency’ model in which one agency is answerable to a single ministerial council, in this case the Standing Committee on Transport and Infrastructure (SCOTI), with

a. full responsibility for policy and legislation development and service delivery; and
b. funds and resources transferred from existing regulators to do the job.

2. In the interim, ALC recommends that:

a. all critical functions of a national transport safety law should be performed by officers of 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 national and jurisdictional regulators will appear on the national regulator’s website.

3. To increase the mobility of licensed labour, reduce red tape and enhance efficiency, ALC recommends that:

a single system of licensing, with a consistent licence-sanctioning regime within a national heavy vehicle regulatory scheme, should be a priority ‘second wave’ reform project.
Derogations from national schemes

With some jurisdictions contemplating derogations from the proposed Heavy Vehicle National Law, ALC recommends that:

a. the introduction of an institutional mechanism to be put in place to guard against ‘backsliding’ by jurisdictions to provide assurance that there is no jurisdictional derogation; and to ensure that national schemes are administered consistently.

b. the COAG Reform Council should be tasked to review cross jurisdictional regulatory reforms taken forward under the Seamless National Economy National Partnership to determine:
   - whether there have been any jurisdictional derogations from nationally agreed legislation, and if so, the effect of the derogation; and
   - that there has been national consistency in the administration of similar legislative provisions by jurisdictional regulators exercising powers under service level agreements with national regulators.

Planning and zoning issues

1. In the context of a predicted increase in dwelling investment, a rising freight task, and a limited focus on the needs of freight in respect to planning, ALC recommends:

   the development of a National Partnership that:

   a. acknowledges that land use decisions should prioritise the efficient operation of the ports and infrastructure identified as being nationally significant infrastructure; and

   b. creates a fund for state and local governments which incur expense as a result of making land-use decisions that favour nationally significant infrastructure over other land uses with COAG to consider this proposal as one of the next steps along the road to regulatory reform.

2. With the Discussion Paper correctly identifying an example of restrictive curfews imposed on retailers by local governments which limits the operational efficiency and cost effectiveness of retailers’ logistics networks, ALC recommends that:

   a review be undertaken (perhaps by the Productivity Commission) into the manner in which land use regulation generally frustrates the efficient operation of existing transport networks.
SUBMISSION ON THE REGULATORY REFORM AGENDA
STAKEHOLDER CONSULTATION PAPER

ALC is pleased to make a submission on the Future COAG Regulatory Reform Agenda Stakeholder Consultation Paper (the consultation paper).

ALC particularly wishes to make a contribution to themes two (workforce mobility) three (improving sectoral competitiveness) and four (ensuring the benefits of national reform are retained) as set out in the consultation paper.

National Schemes for Heavy Vehicles, and Rail and Maritime Safety

Since the National Competition Policy reforms of the 1990’s, rationalisation of regulations imposed on the transport and logistics sector has been identified as being one of the major areas where improvements can be made that will enhance national productivity.

For instance the February 2011 Heavy Vehicle National Law Draft Regulatory Impact Statement estimated $12.4bn in productivity gains if the proposed National Law is fully implemented.¹

On 19 August 2011 COAG signed Intergovernmental Agreements for the establishment of a heavy vehicle national law and for the harmonisation of safety laws in the rail and commercial vessel sectors².

Each scheme is to be nominally administered by a national regulator.

ALC has the expectation these reforms will not only lead to the implementation of a single set of national laws but also with the development of national regulators with the ‘teeth’ to ensure the national laws would operate in a uniform fashion nationally.

National legislation is being developed, albeit at different speeds.

However in all three areas, much of the administration of the scheme has been left with jurisdictionally based regulators, controlled largely through service level agreements negotiated between the respective national regulators and the residuary jurisdictional regulators.

For example, the Intergovernmental Agreement on Commercial Vessel Safety Reform. In the case of commercial vessel safety, the IGA reads:

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.

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…

ALC is concerned that notwithstanding the clearest of guidelines, individual government entities exercising powers contained in service level agreements 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.

¹ Page iii.
² Western Australia did not sign the Heavy Vehicle IGA, but will do so once satisfied that detailed arrangements are put in place that meet its requirements.
The net effect will be that the national law will not be enforced uniformly – and if that is the case, the benefits of a single national law identified in the various RIS’ supporting national reform could be lost.

ALC believes the new national transport laws should be administered under a ‘single agency’ model in which one agency is answerable to a single ministerial council, in this case the Standing Committee on Transport and Infrastructure (SCOTI), with

a. (full responsibility for policy and legislation development and service delivery; and

b. (funds and resources transferred from existing regulators to do the job.

This is because ALC believes there are synergies in having those enforcing the law working closely with those responsible for the development of policy.

When coupled with interaction with other stakeholders, a more informed legislative structure should be capable of development, thereby offering the maximum benefits to the Australian community.

In the interim, ALC believes that:

a. all critical functions of a national transport safety law should be performed by officers of 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 national and jurisdictional regulators will appear on the national regulator’s website.

ALC’s views are set out in its September 2011 publication ALC Position on the Administration of National Transport Legislation – Background Paper which is attached to this submission.

**Derogations from national schemes**

In the absence of a reference of powers to the Commonwealth, there are two methods of introducing national uniform legislation:

- national ‘applied laws’ legislation (or ‘template’ legislation) i.e. legislation enacted in one jurisdiction and applied (as in force from time to time) by other participating jurisdictions as a law of those other jurisdictions; and

- national ‘model’ legislation i.e. legislation that is drafted as model legislation and that is enacted in participating jurisdictions (with any local variations that are necessary to achieve the agreed uniform national policy when the legislation forms part of the local law).

The first attempt of harmonising Australia’s heavy vehicle legislation was through model legislation – the NTC model Road Transport Reform Compliance and Enforcement Bill.

However, such was the nature of the jurisdictional variations (tolerated under the model legislation concept) it was resolved that the Heavy Vehicle National Law currently under development was to employ the applied laws method, with Queensland being the host jurisdiction for the national law.

ALC is concerned that, notwithstanding the principles behind the applied laws model, some jurisdictions are contemplating derogations from (in particular) the proposed Heavy Vehicle National Law.

Should it become culturally acceptable that jurisdictions can derogate from an applied national law, all the productivity benefits derived from a single scheme of regulation can quickly unravel.

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3 Parliamentary Counsel's Committee: Protocol on Drafting National Uniform Legislation 3rd edit. 2008 p.1
An institutional barrier to ‘backsliding’

There is a need for an institutional mechanism to guard against ‘backsliding’ by jurisdictions, including, in particular:

a. assurance that there is no jurisdictional derogation; and
b. that national schemes are administered consistently.

ALC agrees with the observation contained in page 4 of the consultation paper:

Despite a strong commitment to reform by all governments, some national regulatory frameworks have not endured as well as others, particularly where jurisdictions retain the discretion to amend agreed frameworks or where there are variations in the implementation and enforcement of national schemes by local regulators.

And the proposal contained in pages Page D1 and D2:

No comprehensive assessment of the consistency over time of the national reform outcomes has been undertaken to date. The COAG Reform Council could be tasked with reviewing existing national frameworks to identify whether they are operating as intended. The COAG Reform Council or another appropriate body could report on the degree of harmonisation retained within existing frameworks and the mechanisms which have been successful in maintaining consistent approaches. The outcomes of this review could inform the future reform and could be undertaken every five years to provide assurance that the national reform agenda is continuing to provide the intended regulatory reform benefits.

ALC believes the COAG Reform Council should be tasked to review cross jurisdictional regulatory reforms taken forward under the Seamless National Economy National Partnership in the manner anticipated by the consultation paper, with the Council tasked, in particular, to determine:

a. whether there have been any jurisdictional derogations from nationally agreed legislation, and if so, the effect of the derogation; and
b. that there has been national consistency in the administration of similar legislative provisions by jurisdictional regulators exercising powers under service level agreements with national regulators.

Workforce Mobility

ALC notes the consultation paper’s observation on page 3:

» National reforms that remove unnecessary impediments to labour mobility have the scope to address skills shortages emerging at the regional, industry and occupational levels, by allowing workers to move seamlessly across jurisdictions in response to skills needs.

Nationally consistent regulations under the Heavy Vehicle National Law and the Rail Safety National Law will facilitate mobility by reducing the time, cost and likelihood of errors occurring with retraining and recertifying.

ALC was particularly disappointed that the opportunity to introduce a national heavy vehicle licensing scheme was not taken up under the first wave of regulatory reform. ALC believes such a scheme would increase the mobility of licensed labour, reduce red tape and enhance efficiency.

ALC believes a single system of licensing, with a consistent licence-sanctioning regime within a national heavy vehicle regulatory scheme, should be a priority ‘second wave’ reform project.
Planning and zoning issues

ALC notes pages C4 and C5 of the consultation paper reads:

Reforms to transport restrictions

The operational efficiency and cost effectiveness of retailers’ logistics networks can be diminished by local government restrictions on the times during which goods can be transported and loaded / offloaded.

The intention of these restrictions is appropriately aimed at reducing noise and light disturbances at night for local residents. Some local governments have however, sought to impose restrictive transport curfews on retailers, rather than looking at other noise mitigation measures. A more balanced approach to regulation could allow retailers to transport goods at night, allowing for the more efficient movement of products and have additional benefits of improved safety and reduced congestion and emissions by removing heavy vehicles from the roads during peak daylight periods. In addition, State-based regulation limits the size of vehicles used for store deliveries and line haul operations. This restriction on the use of larger trailers has been estimated by Woolworths to limit their freight capacity by 10 to 12 per cent due to the requirement for additional runs.

Some of these restrictions flow from zoning and other council decisions.

On 7 December 2009 COAG approved the National Objective and Criteria for Future Strategic Planning of Capital Cities (the national criteria).

Criterion 3 of the national criteria requires that a capital city strategic planning system should:

- Provide for nationally significant economic infrastructure (both new and existing) including;
  - (a) transport corridors;
  - (b) international gateways;
  - (c) intermodal connections;
  - (d) major communications and utilities infrastructure; and
  - (e) reservation of appropriate lands to support future expansion.

By 1 January 2012, all States are required to have in place long-term plans that meet the nationally agreed criteria. Future infrastructure funding decisions made by the Commonwealth will be based on States meeting the national criteria.

However, ALC notes that according to the 2010/2011 budget papers, dwelling investment was forecasted to grow by 7.5% in 2010-11, with a significant pipeline of construction work to be completed. Strong population growth and low vacancy rates will support activity in the sector.

Moreover, according to the Bureau of Infrastructure, Transport and Regional Economics, Australia’s freight task will triple by 2050 from 503 billion tonne kilometres to 1,540 billion tonne kilometres. Meeting this task will require a massive effort and companies will have to improve transport and logistics strategies and efficiencies, and governments will have to undertake substantial new investment and policy reform.

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4 2010-11 Budget Paper No.1 Statement 2 - Overview
5 Infrastructure Partnerships Australia Meeting the 2050 Freight Challenge p.10
This means greater pressure on:

» transport infrastructure;

» greenfield sites that would permit the development of intermodal facilities (a concept supported by ALC and by the proposed draft port strategy); and

» increased risk of residential intrusion near, or too much congestion around, logistics infrastructure.

ALC finally notes the communiqué of the Joint meeting of Local Government and Planning Minister’s Council and Housing Ministers’ Conference held on 12 February 2010 in Canberra\(^6\) has many references to the need to

» ‘identify infill and redevelopment opportunities’;

and

» ensure that ‘outcomes for cities must improve sustainability and livability as well as productivity’.

This reflects limited focus on one area of planning, to the possible detriment to the interests of other land users such as freight logistics participants.

ALC agrees with observations made in the National Ports Strategy that freight is regarded as the ‘poor cousin’ of the urban planning context.\(^7\)

ALC believes that to ensure criterion 3 of the national criteria is delivered, state, territory and local governments must make land-use decisions prioritising the efficient use of the infrastructure over other possible land uses.

It therefore believes that ultimately a COAG agreement should recommend the development of a National Partnership that:

» acknowledges that land use decisions should prioritise the efficient operation of the ports and infrastructure identified as being nationally significant infrastructure; and

» create a fund for state and local governments which incur expense as a result of making land-use decisions that favour nationally significant infrastructure over other land uses (eg dealing with spillover effects on communities located within the ‘last mile’ of nationally significant infrastructure as a result of prioritising the freight effort over other uses).

So as to enhance the productivity of the Australian economy, ALC believes COAG should consider this proposal as one of the next steps along the road to regulatory reform.

More generally, there is scope for a review (perhaps conducted by the Productivity Commission) to review the manner in which land use regulation generally frustrates the efficient operation of existing transport networks.

Australian Logistics Council
October 2011


\(^7\) Infrastructure Australia and the National Transport Commission The Proposed National Ports Strategy May 2010 page 33
APPENDIX A

ALC POSITION ON THE ADMINISTRATION OF NATIONAL TRANSPORT
ALC POSITION

ON THE ADMINISTRATION OF NATIONAL TRANSPORT LEGISLATION – BACKGROUND PAPER

SEPTEMBER 2011
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Key Policy Documents


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» "Cross Border Regulation in Australia" – Cross Border Regulation Report - Sunraysia/Riverland (Summary) – Cross Border Regulation Report - Sunraysia/Riverland (Full Report)

» "Australia's supply chains - fixing the blockages. Advancing Australia's Competitiveness" – ALC Supply Chain Blockages Summary – ALC Supply Chain Blockages Final


ALC POSITION

ON THE ADMINISTRATION OF NATIONAL TRANSPORT LEGISLATION – BACKGROUND PAPER

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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:
<table>
<thead>
<tr>
<th>From the Heavy Vehicle IGA</th>
<th>From the Rail Safety IGA</th>
<th>From the Marine Safety IGA</th>
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<tbody>
<tr>
<td>12. The objectives and outcomes of this Agreement will be achieved by delivering:</td>
<td>40. The Parties agree that with regard to the provision of national rail safety regulation:</td>
<td>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.</td>
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<td>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).</td>
<td>(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</td>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
<td>41. The Parties agree that with regard to the provision of national rail safety investigation services:</td>
<td>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.</td>
</tr>
<tr>
<td>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.</td>
<td>(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</td>
<td>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.</td>
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<tr>
<td>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.</td>
<td>(b) all other States will pay the full cost of ATSB investigatory services in their jurisdiction.</td>
<td>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.</td>
</tr>
</tbody>
</table>
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.
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.

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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 regulators\(^3\), undertakes in most jurisdictions\(^4\) 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.\(^5\)

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\(^3\) 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.\(^7\)

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

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.