



UNIFORM LEGISLATION AND PARLIAMENTARY SOVEREIGNTY

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Background

The Parliamentary Standing Committee on Subordinate Legislation is a statutory committee of the Tasmanian Parliament. It was established under the *Subordinate Legislation Committee Act 1969*.

The Committee's charter is to examine every regulation, by-law and rule. Regulations comprise all subordinate legislation made by the Governor-in-Council but do not include Orders, Proclamations or Rules of the Supreme Court. By-laws are those made by municipal councils, marine boards and other semi-government authorities. The Subordinate Legislation Committee Act 1969 uses "regulations" as the generic term to cover all subordinate legislation, be it a regulation, a by-law or a rule.

The Committee has six members, comprising three each from the Upper and Lower Houses of the Tasmanian Parliament. The Committee generally meets during parliamentary sitting weeks and receives regular briefings from departmental officials in relation to more complex regulations under consideration.

Introduction

This paper examines the trend over the past 25 years towards the adoption of nationally consistent regulations via COAG and the consequences for states, particularly smaller jurisdictions such as Tasmania.

The paper will discuss two case studies. The first is national heavy vehicle regulations which was adopted by COAG in 2011 and adopted in its entirety in Tasmania in 2013. However, as new provisions of the regulations began to be implemented, a number of factors were identified that made implementation of the new regulations problematic to Tasmanian operators and inappropriate to Tasmania's road infrastructure.

The second case study provides an example of national legislation that was found to be unworkable to the extent that it was consequently repealed by COAG. National occupational licensing regulations were adopted by COAG in 2009 and passed in Tasmania in 2011. However, the regulations were found to be costly and extremely difficult to implement and administer by a number of states and was repealed by COAG

in 2013. The Tasmanian Parliament is currently amending Tasmanian occupational licensing regulations accordingly.

These case studies demonstrate that, whilst the introduction of nationally consistent legislation is well-intentioned and can be beneficial, one size does not necessarily fit all. In many cases, national regulations have been difficult and costly to administer and may not be appropriate to all states, particularly smaller states such as Tasmania. The paper concludes that if national regulations are not drafted with considerable consultation and care, the unintended consequences may result in the regulations being repealed and replaced by state-based legislation. This, in itself, is a costly and time-consuming exercise.

Heavy Vehicle National Law (HVNL)

In 2009, the Council of Australian Governments (COAG) agreed to establish a national heavy vehicle regulator underpinned by a single national law applicable to all vehicles over 4.5 tonnes¹. The agreement was formalised in an Intergovernmental Agreement in 2011.

Tasmania adopted the HVNL in its entirety other than some minor aspects and transitioning provisions in 2013. Subsequently, the HVNL commenced in the Australian Capital Territory, New South Wales, Queensland, South Australia, Victoria and Tasmania in February 2014. The Northern Territory and Western Australia have not adopted the HVNL, although Western Australia is expected to adopt mirror legislation.

The HVNL established a National Heavy Vehicle Regulator (NHVR) based in Queensland.

The rationale for the decision was to bring together model legislation developed through national heavy vehicle regulatory reforms and included provisions on accreditation schemes, load limits, mass and dimension, chain of responsibility and compliance requirements and fatigue management. It aimed to facilitate a single national market and remove inconsistencies and duplication across jurisdictional borders and promote more safe and efficient transportation practices. It also provided for mutual interstate recognition of inspections and defect clearances, which is intended to reduce vehicle downtime.

At the time of Tasmania adopting the HVNL, it was recognised that the main beneficiaries would be interstate operators travelling up and down the eastern seaboard.

¹ <https://www.nhvr.gov.au/law-policies/heavy-vehicle-national-law-and-regulations>.

In practice, State and territory police and relevant officers are appointed to enforce heavy vehicle offences under the HVNL and many aspects of existing heavy vehicle regulations remain unchanged. Registration, inspections, driver licensing and matters relating to the carriage of dangerous goods are still the responsibility of the relevant state and territory authorities. Legal and court processes remain unchanged. These factors represent a fairly pragmatic approach to implementing a national law, allowing states and territories to retain some autonomy.

The National Heavy Vehicle Regulator, together with the National Transport Commission, has a process of regular review of the national law in order to ensure consistent implementation and operation across jurisdictions.

As the national law was implemented only recently in Tasmania, there has not been sufficient time for a full evaluation. However, one issue already identified by the heavy vehicle industry is a significantly higher licensing cost for certain categories of heavy vehicles. In the case of medium combination trucks, this price increase is expected to have a significant impact on smaller operators.

Truck type	2 axle	3 axle	4 axle	5 axle
Truck (type 1)	566	896	793	793
Truck (type 2)	896	1,067	1,067	1,067
Short combination truck	896	1,067	1,937	1,937
Medium combination truck	7,085	7,085	7,653	7,653
Long combination truck	9,778	9,778	9,778	9,778

This may provide a case for harmonisation by region rather than jurisdiction, as well as a concession scheme for regional areas.

Occupational Licensing law

In 2011, COAG agreed to adopt a harmonised national licensing law for occupations plumbers, electricians, gasfitters, maritime, air conditioning and refrigeration, building, passenger and dangerous goods vehicle driving and property agents². The rationale for the decision was to make it easier for practitioners and companies working across multiple jurisdictions in relation to the differing requirements of states and territories by the introduction of simplified cross jurisdictional licensing to enable anyone with a licence in one jurisdiction to be considered licensed in another jurisdiction. At the time, national licensing laws were intended to be extended to additional trades at a later time.

² Occupational Licensing National Law Act 2011

Consequently, the *Occupational Licensing National Law Act 2011* was implemented and established the Victorian-based National Occupational Licensing Authority (NOLA) as the body with responsibility for administering the national system³.

Tasmania adopted the national licensing law in 2011 although, at the time, concerns were expressed in the Tasmanian Parliament as to how effective the system would be in practice, particularly in relation to electrical licensing. Tasmania, however, did not go as far as implementing the administrative processes of the national law and, as time passed, the licensing system was identified as being extremely costly and problematic to administer⁴.

Similar difficulties in implementing the national occupational licensing law were reported by most other states and territories⁵. In particular, strong opposition was submitted by the National Electrical and Communications Association (NECA) which pointed out that certain definitions in the scheme would have lowered existing standards, increased the likelihood of further safety concerns by potentially allowing unlicensed persons to perform electrical work⁶.

NECA described the proposed scheme as "inferior" and "potentially life threatening...another pink batts debacle waiting to happen".⁷

Considerable resistance was also received from the real estate sector. It was noted that, despite the adoption of the national law, licensing would still not be uniform throughout all jurisdictions as some jurisdictions planned to retain existing licensing systems which were not part of the national model, as well as not introduce licensing for some areas that were regulated under the national scheme⁸.

The Real Estate Institute of New South Wales (REINSW) criticised the model as leading to a reduction in existing standards, as the lowest standard applying in some states would be used for the national model. It also drew attention to situation where a national licensing and training system existed, but conduct and practice rules would continue to vary amongst states and territories. It also pointed out that:

*Furthermore, not all licensees have an equivalent licence in other jurisdictions, and some occupations (or areas of work within occupations) are not licensed in all jurisdictions. In these cases, individuals may be required to be licensed where they were previously not required to be, or they may need to apply for a new licence because there is no equivalent to the licence that they currently hold*⁹.

³ John Ross, 'Licensing system at risk: COAG council', *The Australian*, February 3 2012

⁴ Hansard Transcript, Tuesday 24 May 2016, Mr Brooks, p. 42

⁵ COAG Communique, Friday, 13 December 2013, p. 5

⁶ National Electrical and Communications Association Submission, 12 October 2012, p. 3

⁷ <http://neca.asn.au/vic/content/national-electrical-licensing-abandoned-coag>

⁸ REINSW Submission – National Licensing Decision Regulatory Impact Statement, 10 October 2012, p. 2-3

⁹ Ibid

Consequently, in December 2013, COAG decided to repeal the legislation and disband NOLA in December 2013¹⁰.

Repeal of the national law has passed through the lower house of the Parliament of Tasmania and, at the time of writing this paper, was being considered by the upper house.

Conclusion

Whilst national laws tend to be enacted with good intentions, it is in practice extremely difficult to adopt national laws that are effective across all jurisdictions. Some states and territories may be beneficiaries of national laws, whereas others will be negatively impacted and finding a middle ground may well leave all jurisdictions dissatisfied. Unforeseen circumstances and unintended consequences appear to be a common theme expressed by states and territories.

During the second reading speech for the repeal of the national occupational licensing law in the Parliament of South Australia, Hon Vickie Chapman MP made the following observation:

*One would like to think that when you are working out a national model you pick the best from all the states and have a scheme that ultimately is superior. Sadly that is not always the case.*¹¹

As was the case with occupational licensing, the repeal of national legislation and its replacement by state-based law is, in itself, is a costly and time-consuming exercise.

COAG has gone some way to acknowledging the issue. In a December 2013 communique it stated: ¹²

The Commonwealth respects the States and Territories (the States) are sovereign in their own sphere. They should be able to get on with delivering on their responsibilities, with appropriate accountability and without unnecessary interference from the Commonwealth.

¹⁰. <http://workplaceinfo.com.au/legislation/state-and-territory/news/national-occupational-licensing-system-abandoned#.V2dEZaSKCcw>

¹¹ Hansard Transcript, Thursday 25 February 2016, House of Assembly, Occupational Licensing National Law (South Australia), Second Reading, Ms Chapman, p. 4501.

¹² COAG Communique, Friday, 13 December 2013

COAG agreed to work closely together on the Commonwealth White Papers on Taxation and Reform of the Federation and acknowledged the need to reduce duplication between governments.

In future, COAG will focus on a few important national priorities, and on outcomes rather than process.

HEAVY VEHICLE REGULATIONS IN TASMANIA

Heavy Vehicle National Law (Tasmania) Regulations 2014 (S.R. 2014, No. 7) – examined 5/6/2014

- New Regulations to provide for certain Tasmanian specific arrangements

Heavy Vehicle National Law (Tasmania) Amendment Regulations 2014 (S.R. 2014, No. 125) – examined 23/4/15

- An extension of transitional arrangements to enable a mass or dimension exemption permit under HVNL until the end of 2015 when it is envisaged Local Government arrangements will be in place

Heavy Vehicle National Law (Tasmania) Amendment Regulations 2016 (S.R. 2016, No. 2) – examined 7/4/16

- Amendment Regulations to update the table of infringement notice offences

Traffic (Compliance And Enforcement) Amendment (Heavy Vehicle) Regulations 2014 (S.R. 2014, No. 9)

- The Regulations amend the *Traffic (Compliance and Enforcement) Regulations 2011* and its traffic infringement notices offences in line with changes to other Regulations following the enactment of the Heavy Vehicle National Law (Tasmania) Act 2013.

Vehicle And Traffic (Driver Licensing And Vehicle Registration) Amendment (Heavy Vehicle) Regulations 2014 (S.R. 2014, No. 10)

- The Regulations amend the *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* by prescribing new demerit point offences.

Vehicle And Traffic (Review Of Decisions) Amendment (Heavy Vehicle) Regulations 2014 (S.R. 2014, No. 12)

- Minor changes - the Regulations amend the *Vehicle and Traffic (Review of Decisions) Regulations 2010* in line with recent changes to the *Traffic Act 1925* and the *Vehicle and Traffic (Vehicle Operations) Regulations 2001* made consequent on the enactment of the *Heavy Vehicle National Law (Tasmania) Act 2013*.

Vehicle And Traffic (Vehicle Operations) Amendment (Heavy Vehicle) Regulations 2014 (S.R. 2014, No. 13)

- The Regulations provide for certain provisions to light vehicles.

Vehicle And Traffic (Vehicle Standards) Amendment (Heavy Vehicle) Regulations 2014 (S.R. 2014, No. 14)

- Prescribed new demerit point offences