

national harmonisation beauty or beast?

Is national harmonisation of regulations at the expense of genuine reform? Graham Wolfe poses the question.

The world we live in is awash with laws and regulations, most of which aim to protect us. Our working environment is also awash with legislation and regulations.

Whether each regulation is effective, or in fact necessary, is often a matter for heated debate. Whether they can be improved, reduced, expanded or abolished is also a matter of contention.

Many of the regulations that impact on the residential building industry are state based – OH&S, planning and development, consumer protection, licensing, for example.

In each case these state-based regulations have evolved over time, and the scope, nature and speed of change has usually varied from state to state.

The existence of differences between state laws is the inevitable product of each state/territory's democratic decision-making processes. They reflect the political agenda of the time, the impact of external events, inquiries (such as the Productivity Commission and coronial inquiries) and ultimately the preferences of the stakeholders.

HIA has long argued that the regulatory burden on the residential building industry is overwhelming, that red tape adds significant costs to business, that regulations often only distract business, and that regulatory reforms are necessary.

The broad idea of harmonisation is that by reducing regulatory overlap and inconsistency between the states/territories, efficiency and productivity gains will be achieved across the country. This would be

achieved not by 'nationalisation' or by state and territory governments handing over their powers to the Commonwealth, but rather by the two levels of government working cooperatively to craft and adopt consistent laws and regulations.

With the annual cost of duplication currently estimated to be \$20 billion, the Productivity Commission anticipated the economy-wide benefit in reducing compliance costs through harmonisation could be up to 1.6 per cent of Australia's GDP.

Nearly four years on, the theory is yet to deliver the tangible improvements promised. And while no-one said the reform would be easy, it seems that few actually challenged whether it is achievable.

One point that has been lost in the drive to realise the enormous potential savings and national efficiency gains is that the mere existence of differences between state/territory laws will not always mean that harmonisation of those laws is necessary or even desirable.

Harmonisation measures that may be desirable at a national level may in fact impact negatively at a regional or local level. And while around 40,000 businesses may operate in multi-state jurisdictions, the majority of small and medium businesses do not.

Importantly, unlike 'nationalisation', national harmonisation involves the adoption of consistent, identical or unified laws and regulations. And concern is growing that harmonisation in practice will mean adopting the high-water mark of the jurisdiction with the highest stringency level.

As long as state/territory jurisdictions are hesitant to 'give up' on the regulations they have developed and implemented over many years, adopting the line of least resistance becomes an appealing target for those involved in the

reform process. That might mean adopting the middle ground between disparate stringency levels, or alternatively defaulting to the strictest elements of the more stringent jurisdictions.

Harmonisation at the expense of genuine, positive regulatory reform for the residential building industry is not a desirable outcome. Nor is it a good outcome if it mandates one or more states/territories to unjustifiably increase regulation stringency, merely because that level exists elsewhere.

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What is harmonisation?

National harmonisation of state/territory-based regulations offers the potential for improved, more consistent regulations across state and territory borders and, in theory, sounds promising.

By removing waste and inefficiencies caused by regulation variations, Australia would work towards a 'seamless national economy'. The *National Partnership Agreement to Deliver a Seamless National Economy*, made between the Commonwealth and state/territory governments in 2008, seeks to lock in both levels of government to work cooperatively to achieve regulatory reform.

Under the Council of Australian Government (COAG) reform agenda, a range of priority areas were identified for 'deregulation', including OH&S, payroll tax, licensing, consumer protection, planning and building laws.

Harmonisation was considered a key vehicle in the regulatory reform agenda.