
The Parliament of the Commonwealth of Australia

Harmonisation of legal systems

Within Australia and between Australia and New Zealand

House of Representatives
Standing Committee on Legal and Constitutional Affairs

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Foreword

While the basic concept of harmonising legal systems – reducing or eliminating inconsistencies, duplication, or complexity between those systems – is straightforward enough, some of the attendant issues are more involved. When is legal harmonisation justified, and what are its benefits? Are there any disadvantages to harmonisation? What forms can it take? What are the areas within Australia and between Australia and New Zealand that might require legal harmonisation? These are the sorts of questions that the Committee seeks to examine in this report. The Committee is also mindful that the harmonisation of laws is very much the art of the possible, particularly in the context of international relations and Australia’s complex federal system. Thus the merger of Australia and New Zealand or the progression to a unitary system of government in Australia, however desirable, might not be easy to achieve.

During the course of the inquiry some examples of quite absurd situations resulting from a lack of legal harmonisation were reported to the Committee. These include:

- A power of attorney granted by an individual in New South Wales (and possibly in other States) will not be valid in the Australian Capital Territory. Thus an individual who grants an enduring power of attorney in NSW, relocates to the ACT, and suffers a loss of capacity to make a new grant will be disadvantaged as he or she will not be covered by the NSW power of attorney in the ACT.
- Each of the Australian jurisdictions has legislation requiring employers to provide first-aid kits in workplaces. However, the jurisdictions stipulate different requirements for the contents of first-aid kits, including bandage width. Employers operating in more than one jurisdiction must therefore purchase different types of kits according to the requirements of each

jurisdiction rather than purchasing one type in bulk and distributing to workplaces.

- An importer of diagnostic kits for testosterone analysis in young children must comply, at considerable cost, with the registration requirements of five separate agencies, four of which come within one Australian Government department.

While these situations are not earth-shaking in themselves, they exemplify the senselessness that can result from a lack of legal harmonisation, and they are valuable too in that they illustrate the practical, day-to-day impacts and frustrations that can occur when laws are not as harmonised as they might be.

I would like to thank all Members of the Committee who gave of their time and expertise in examining the issues raised during this inquiry. The range of matters covered was quite broad, and Members made every effort to give each area its proper consideration. I would also like to thank all of the individuals and organisations who took the trouble to make their views known to the Committee during the course of the inquiry. Finally, I would like to convey my thanks to the staff of the Committee Secretariat, particularly the Inquiry Secretary Dr Nicholas Horne.

Hon Peter Slipper MP
Chairman



Membership of the Committee

Chairman The Hon Peter Slipper MP

**Deputy
Chairman** Mr John Murphy MP

Members Mr Michael Ferguson MP
(from 09/02/2006)

Mrs Kay Hull MP

The Hon Duncan Kerr SC MP

Mr Daryl Melham MP

Mrs Sophie Mirabella MP

Ms Nicola Roxon MP

Mr Patrick Secker MP

Mr David Tollner MP

Mr Malcolm Turnbull MP
(to 07/02/2006)

The Hon Malcolm Turnbull MP
(from 07/02/2006 to 09/02/2006)

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	Ms Cheryl Scarlett (A/g) (from 11/08/2006)
Inquiry Secretary	Dr Nicholas Horne
Research Officers	Ms Emily Howie
	Mr Thomas Wood
Administrative Officers	Ms Kate Tremble
	Ms Jazmine De Roza



Terms of reference

To inquire and report on lack of harmonisation within Australia's legal system, and between the legal systems of Australia and New Zealand, with particular reference to those differences that have an impact on trade and commerce. In conducting the inquiry, the Committee will focus on ways of reducing costs and duplication.

Particular areas the Committee may examine to determine if more efficient uniform approaches can be developed include, but are not limited to:

- Statute of limitations
- Legal procedures
- Partnership laws
- Service of legal proceedings
- Evidence law
- Standards of products
- Legal obstacles to greater federal/state and Australia/New Zealand cooperation.

(Referred by the Attorney-General 7 February 2005)



List of abbreviations

AANZFTA	Australia-ASEAN-New Zealand Free Trade Agreement
ACCC	Australian Competition and Consumer Commission
AFC	Australian Finance Conference
AGD	Attorney-General's Department
AIJA	Australian Institute of Judicial Administration Inc
ALRC	Australian Law Reform Commission
ANZTPA	Australia-New Zealand Therapeutic Products Authority
ASMI	Australian Self-Medication Industry
AUSFTA	Australia-United States Free Trade Agreement
BCA	Business Council of Australia
CER	Australia-New Zealand Closer Economic Relations Trade Agreement
CGA	New Zealand <i>Consumer Guarantees Act 1993</i>
COAG	Council of Australian Governments
DFAT	Department of Foreign Affairs and Trade
DSE	Victorian Department of Sustainability and Environment

FIA	Fundraising Institute – Australia Ltd
FSANZ	Food Standards Australia New Zealand
JASANZ	Joint Accreditation System of Australia and New Zealand
LSNSW	Litigation Law & Practice Committee, Law Society of New South Wales
MCCA	Ministerial Council on Consumer Affairs
MCCOC	Model Criminal Code Officers Committee of SCAG
MoU	Memorandum of Understanding
NTLRC	Northern Territory Law Reform Committee
NZCC	New Zealand Commerce Commission
NZG	New Zealand Government
OPC	Office of the Privacy Commissioner
PLRA	Property Law Reform Alliance
QLRC	Queensland Law Reform Commission
SAFTA	Singapore-Australia Free Trade Agreement
SCAG	Standing Committee of Attorneys-General
SIAA	Science Industry Action Agenda
SME	Small-to-medium-sized enterprise
TGA	Therapeutic Goods Administration
TPA	Commonwealth <i>Trade Practices Act</i> 1974
TTASAG	Trans-Tasman Accounting Standards Advisory Group
TTMRA	Trans-Tasman Mutual Recognition Arrangement
TTWG	Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement
VAIC	Australian Institute of Conveyancers Vic Division Inc

VLRC	Victorian Law Reform Commission
WCT	World Intellectual Property Organisation Copyright Treaty
WPPT	World Intellectual Property Organisation Performances and Phonograms Treaty



List of recommendations

Chapter 2 - Basis and mechanisms for the harmonisation of legal systems

Recommendation 1 (paragraph 2.60)

The Committee recommends that:

- The Australian Government seek bipartisan support for a constitutional amendment to resolve the limitations to cooperative legislative schemes identified by the High Court of Australia in the *Re Wakim* and *R v Hughes* decisions at the Standing Committee of Attorneys-General as expeditiously as possible;
- The Australian Government draft this constitutional amendment so as to encompass the broadest possible range of cooperative legislative schemes between the Commonwealth and the States and Territories;
- A dedicated and wide-ranging consultation and education process should be undertaken by the Australian Government prior to any referendum on the constitutional amendment; and that
- Any referendum on the constitutional amendment should be held at the same time as a federal election.

Chapter 3 - Harmonisation between Australia and New Zealand

Recommendation 2 (paragraph 3.9)

The Committee recommends that the Senate and the House of Representatives of the Australian Parliament invite the New Zealand Parliament to establish a trans-Tasman standing committee to monitor and report annually to each Parliament on appropriate measures to ensure ongoing harmonisation of the respective legal systems.

The Committee further recommends that the trans-Tasman standing committee be required to explore and report on options that are of mutual benefit, including the possibility of closer association between Australia and New Zealand or full union.

Recommendation 3 (paragraph 3.11)

The Committee recommends that the Australian Government actively pursue with the New Zealand Government the institution of a common currency for Australia and New Zealand.

The Committee further recommends that appropriately equitable arrangements would need to be put in place with respect to the composition of a resulting joint Reserve Bank Board.

Recommendation 4 (paragraph 3.13)

The Committee recommends that the participating Australian governments move to offer New Zealand Government ministers full membership of Australasian (currently Australian) ministerial councils.

Recommendation 5 (paragraph 3.47)

The Committee recommends that the Australian Government propose to the New Zealand Government the legal harmonisation of the Australian and New Zealand banking regulation frameworks in order to foster a joint banking market.

Recommendation 6 (paragraph 3.73)

The Committee recommends that, wherever possible, the Australian Government should seek to utilise the joint regulator model for legal harmonisation between Australia and New Zealand.

Recommendation 7 (paragraph 3.82)

The Committee recommends that the Australian Government investigate with the New Zealand Government the feasibility of instituting a referred legislative responsibility mechanism between the two countries whereby:

- One Parliament can voluntarily cede legislative competency on a specific matter to the other Parliament for an agreed period; and
- The resulting regulatory framework could apply in each country.

Recommendation 8 (paragraph 3.103)

The Committee recommends that, consistently with work towards national harmonisation in this area within Australia, the Australian Government discuss with the New Zealand Government the legal harmonisation of Australian and New Zealand legislation governing non-excludable implied warranties in consumer contracts.

Recommendation 9 (paragraph 3.116)

The Committee recommends that the Australian Government propose to the New Zealand Government the legal harmonisation of the Australian and New Zealand telecommunications regulation frameworks with a view to fostering a joint telecommunications market.

Recommendation 10 (paragraph 3.119)

The Committee recommends that the Australian Government propose to the New Zealand Government that a formal and regular ministerial-level dialogue on telecommunications regulation issues be established between the two countries with a particular focus on consultation prior to regulatory change in either country.

Chapter 4 - Harmonisation within Australia

Recommendation 11 (paragraph 4.36)

The Committee recommends that the Australian Government again raise mutual recognition of power of attorney instruments at the Standing Committee of Attorneys-General with a view to expediting uniform and adequate formal mutual recognition among the jurisdictions, especially in relation to those jurisdictions that have not yet implemented the draft provisions endorsed by the Standing Committee in 2000.

Recommendation 12 (paragraph 4.40)

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General investigate an expansion of the class of permitted overseas witnesses for statutory declarations along with the national legislative harmonisation of offence provisions relating to statutory declarations.

Recommendation 13 (paragraph 4.46)

The Committee recommends that the Australian Government encourage the Standing Committee of Attorneys-General to examine the Queensland Law Reform Commission succession law recommendations and to implement those on which agreement can be reached.

Recommendation 14 (paragraph 4.71)

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General or other appropriate forum undertake an investigation into the national legislative harmonisation of the existing regulatory frameworks for:

- Debt collection;
- Civil debt recovery; and
- Stamp duty.

Recommendation 15 (paragraph 4.77)

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General undertake an investigation into the national legislative harmonisation of partnership laws.

Recommendation 16 (paragraph 4.97)

The Committee recommends that the Australian Government propose that the Ministerial Council on Consumer Affairs undertake an exploration of the national harmonisation of consumer protection legislation governing the following areas:

- Consumer contracts including non-excludable implied warranties;
- Unsolicited marketing and telephone marketing;
- Door-to-door sales;
- Trade promotions; and
- Vouchers provided in relation to sales and promotions.

Recommendation 17 (paragraph 4.110)

The Committee recommends that, if it is not already on the Council agenda by the time of this report, national harmonisation of electrical product safety legislation should be incorporated into the work of the Ministerial Council on Consumer Affairs towards a national consumer product safety regulatory system.

Recommendation 18 (paragraph 4.120)

The Committee recommends that the Australian Government, in consultation with the not-for-profit sector and the States and Territories:

- Investigate the establishment of a single national regulator for the not-for-profit sector;
- Investigate the development of a simple but adequate legal structure for not-for-profit organisations;
- Initiate work towards the national legislative harmonisation of simple but adequate reporting and disclosure requirements for not-for-profit organisations; and
- Undertake a review of current licensing and registration requirements for not-for-profit organisations across the jurisdictions with a view to legislative harmonisation of these requirements.

Recommendation 19 (paragraph 4.144)

The Committee recommends that the Australian Government should formulate a harmonised national legislative framework for the development of hazardous substance reporting and monitoring requirements in consultation with the science industry and the States and Territories.

Recommendation 20 (paragraph 4.166)

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General or other appropriate forum undertake an investigation into the feasibility of establishing a trans-Tasman judicial commission to provide a comprehensive informational resource for the Australian and New Zealand judiciary in relation to Australian and New Zealand judicial decisions.

Recommendation 21 (paragraph 4.181)

The Committee recommends that the Australian Government seek to expedite national legislative harmonisation of limitation statutes at the Standing Committee of Attorneys-General.

Recommendation 22 (paragraph 4.204)

The Committee recommends that the Australian Government propose that the Standing Committee of Attorneys-General undertake an investigation into the development and implementation of a national model contract code.

Recommendation 23 (paragraph 4.219)

The Committee recommends that the Australian Government, at the Standing Committee of Attorneys-General or other appropriate forum, should highlight the strong need to finally achieve a national uniform evidence law system and seek to give fresh impetus to this goal.

The Committee also recommends that the Australian Government should seek to maintain this impetus until the uniform evidence law system is achieved.

Recommendation 24 (paragraph 4.222)

The Committee recommends that the Australian Government, at the Standing Committee of Attorneys-General or other appropriate forum, should highlight the strong need to move ahead with the national implementation of the MCCOC Model Criminal Code and seek to give fresh impetus to this goal.

The Committee also recommends that the Australian Government should seek to maintain this impetus until the Code is implemented nationally.

Recommendation 25 (paragraph 4.236)

The Committee recommends that the Australian Government should highlight the issue of regulatory inconsistency in privacy regulation, including in the area of workplace privacy regulation, in its submissions to the current Australian Law Reform Commission inquiry into the Commonwealth *Privacy Act* 1988 and related laws.

Recommendation 26 (paragraph 4.253)

The Committee recommends that the Australian Government raise, at the Council of Australian Governments or other appropriate forum:

- The circulation of draft intergovernmental agreements for public scrutiny and comment;
- The parliamentary scrutiny of draft intergovernmental agreements; and
- The augmentation of the COAG register of intergovernmental agreements so as to include all agreements requiring legislative implementation

With a view to the implementation of these reforms throughout the jurisdictions.

Recommendation 27 (paragraph 4.255)

The Committee recommends that the Australian governments discuss with the New Zealand Government the trans-Tasman harmonisation of legal systems in respect of all matters relating to Australian harmonisation where there can be mutual benefit. A special focus of this discussion should be the goal of achieving a single trans-Tasman legal market.

