

Pursuing mutual recognition for bus and coach operator accreditation in Australia

– principles, progress and prospects

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1 Introduction

Bus and coach operator accreditation regimes vary considerably between the various legislative jurisdictions of Australia. The differences impose unnecessary burdens and limit the potential growth and performance of the industry by restricting cross-border portability of accredited operators. Mutual Recognition (MR) is seen as desirable by industry and government for breaking down barriers to cross-border portability.

The MR Act of 1992 was passed to allow persons registered in one state for an occupation to be entitled to legally practice the equivalent occupation in other states. Despite the involvement of various parties and the recommendations of several government-supported reviews, MR has not yet been achieved for bus and coach operator accreditation.

The purpose of this paper is to examine the developments so far and the future prospects for successfully adopting MR for bus and coach operator accreditation between the various bus safety regulatory regimes of Australia. It begins by tracing the legislative and regulatory backdrop that is partly, at least, responsible for the MR dilemma in bus and coach operations in Australia. It then examines the economic principles and European experience that prevail over this discussion, and traces the history of events and actions of various parties in shaping the quest for MR in bus and coach operator accreditation in Australia. After looking briefly at several implications and prospects for MR implementation, the paper concludes with a recommendation for an evidence-based and cautious approach.

2 Legislative and regulatory background to Mutual Recognition in bus and coach operations

When Australia was formed in 1901 by the federation of the States, the new Constitution (Attorney-General's Department, 2003) gave relatively few powers to the federal government. Although land transport was not specifically referred to in these, the federal government made limited use of Section 92 of the Commonwealth Constitution, which provides for trade within the Commonwealth to be free, to establish a partial regulatory scheme for road transport vehicles engaged in interstate trade by road (Wilson and Moore, 2006). The federal government also used Section 51 of the Commonwealth Constitution, which provides for powers over foreign, trading or financial corporations within the Commonwealth, to regulate motor vehicle safety and environmental standards connected with road transport (Wilson and Moore, 2006). As the authors point out, what the federal government did not do is use the abovementioned corporations' power to pass national legislation over road transport operations Australia-wide.

On the whole, it would appear that the federal government is reticent to take direct action in promoting the national interest of the road sector. The Bureau of Transport and Communication Economics (BTCE, 1993) points out that a federal body called the Inter-State Commission with responsibility for planning and regulation of interstate transport was established in 1913 but allowed to expire in 1920. The same source also reports that from

the early 1930s until the early 1950s, the High Court's much-disputed interpretation of Section 92 of the Commonwealth Constitution allowed the states to step in and regulate interstate road transport with ease. Today, the states have assumed responsibility for a host of regulatory matters in road transport, ranging from traffic regulation and registrations to licensing and accreditation.

The mid 1990s saw the introduction of sweeping reforms to the regulation of passenger road transport in Australia. In a nationally conceived strategy to liberalise the industry and check anti-competitive behaviour in the bus and coach segment of the industry, several Australian governments adopted competition legislation. The Victorian parliament passed the Public Transport Competition Act in 1995, followed by the Public Transport Competition Regulations in 1999. The new competition legislation described in detail the requirements of bus and coach operator accreditation in Victoria.

Accreditation is a term used by governments and industry to certify a person or persons as meeting official requirements for a stated purpose (National Transport Commission – NTC, 2007). In several jurisdictions, passenger transport legislation specifies accreditation requirements, which include the standards to be observed and the procedure for conformity assessment. In the bus and coach segment of road transport, several regulatory conditions are attached to the granting of operator status. Persons responsible for bus operations need to possess, amongst other things, the ability and capability for running a bus service that will meet minimum legal requirements (NTC, 2008) and be able to demonstrate their knowledge and skills in business management, vehicle maintenance and customer service. NRTC (2003) notes that accreditation regimes with their particular requirements may vary significantly between jurisdictions, creating problems for bus operators in matters of conformity as well as recognition.

As long as bus and coach businesses or operators are employed in, and work solely within their home jurisdiction, they would cause little concern for regulatory bodies. However, it is when bus and coach businesses or operators wish to operate in other jurisdictions that problems emerge. A cross-border move may require accreditation and conformity against both home and host regulatory regimes. Such requirements could be difficult if not impossible to meet, and pose problems for bus and coach businesses and operators wishing to expand their operations or just transit through another jurisdiction.

The Commonwealth Constitution enshrines free trade and free movement between the States and Territories (Attorney-General's Department, 2003). The Bureau of Transport and Communication Economics (1993) states that "a number of provisions of the Commonwealth Constitution suggest that a major economic reason for the establishment of the Australian federation was the creation of an integrated national economy" (p.137) and that "the original intention of Section 92 was to ... facilitate the development of an internal common market" (p.19). Lehmkuhl (2002, p18) notes that "the basic mechanism building the backbone of the Single Market project aims at creating a market that guarantees a free flow of goods, services, people and capital". In a liberalised economy like Australia, the outcome of sectoral regulation that restricts mobility and prevents common market objectives of federalism from being achieved could be viewed as nothing short of limiting. It would be right to question if sacrificing Australia's liberal inheritance for the sake of parochial regional objectives is in Australia's best interest.

One solution to the problem of free movement may be found in applying the force of federal law to cut across all of the non-conforming collective and uncoordinated regulatory practices of several jurisdictions in bus and coach operations. The federal government could do so using the Corporations power of the Commonwealth Constitution. The seeming reluctance of the federal government to take such interventionist action may be indicative of its lack of conviction that this is the best politic. Williams (1998) points to the fractured jurisprudence in

interpreting the relationship between Section 92 and Section 51(i) on the subject of boundaries in interstate trade and commerce. In view of the fact that the subject has already caused contention in many legal forums including trade and industrial relations (Williams, 1998), the federal government's stance is not surprising. The next section examines alternative forms of control in the shape of various economic principles that may be applied in a regulatory environment for realising freedom of movement in the internal market.

3 Economic principles and the European experience

Over the past two decades, an increasing amount of scholarly attention has been directed to understanding the theory, strategy and practice of economic regulation. In Europe, in particular, the focus has shifted away from institution-building and policy-making to examining the impact of European integration on the political and social processes of member states (Lehmkuhl, 2002). This has inevitably led to a closer examination of the economic mechanisms required for bringing about a smooth transition to a new order.

In their review of mechanisms used to facilitate free but regulated trade between the member states of the European Union, Courville and Crucefix (2004) found that the classical model of standards and conformity assessment established a framework for movement of goods and services based on two principles: a) Harmonisation and Equivalency of standards and regulations, and b) MR of conformity assessment systems. Generally, harmonisation implies systems, activities or rules in agreement, working together without impeding. Harmonisation also implies convergence, where convergence is generally one-sided, as when between two parties, one party makes changes to come into line with the other (Courville and Crucefix, 2004). Equivalence is a mechanism for recognising and accepting another system by acknowledging that the variations between the systems uphold the objectives of the respective systems, while providing the same level of assurance (Courville and Crucefix, 2004). MR, on the other hand, is a mechanism in which only the conformity assessment bodies are deemed to be equally capable, and there is no attempt to converge the standards against which products are judged (Courville and Crucefix, 2004). A key point here is that harmonisation does not imply MR. The former relies purely on technical procedure and the latter places emphasis on trust.

Pelkmans (2003) compartmentalises the mechanisms of free trade and movement somewhat differently. Since his contention is also relevant to this work, it is worth noting here. Pelkmans (2003) identifies three ways of realising free trade and movement in the internal market. These are: Liberalisation, Approximation and Mutual Recognition, and according to Pelkmans, all three have limitations and no single method can suffice for all cases. The first of these, namely liberalisation, according to Pelkmans (2003), involves the imposition of free movement by the prohibition of member states from intervening in cross-border trade either directly or indirectly. In layman's terms, such a strategy would translate to command and control regulation backed by criminal sanctions (Baldwin and Cave, 1999). The second method, namely approximation, is the adaptation of national laws in a manner and degree that allows cross-border trade and movement without direct or indirect hindrance. Pelkmans (2003) explains that approximation has the same basic meaning as harmonisation, however, it is more complementary to liberalisation than to harmonisation because it allows the two strategies to be implemented together or separately, depending on whether there are market failures to be addressed or not. Market failures occur in "uncontrolled market places (which may) for some reason, fail to produce behaviour or results in accordance with the public interest" (Baldwin and Cave, 1999, p.9). High risk areas such as public health, safety, the environment and consumer protection are most susceptible to market failure (Pelkmans, 2003). Mutual Recognition, according to Pelkmans (2003), starts from the idea that member states already possess equivalent regulatory objectives in high risk areas. When this is the case, potential market failure has already been addressed, and the way is clear for

introducing MR. Pelkmans (2003) insists that MR must be understood as either an alternative or a complement to liberalisation and/or approximation. If, as stated earlier, Courville's and Crucefix's notion of harmonisation parallels Pelkmans' notions of approximation and liberalisation, it could be reasonably assumed that MR and Harmonisation could be used as alternative or complementary strategies in a cross-border project. The literature emerging from the European experience supports this contention.

The European Union (EU) is a political and economic community of twenty-seven member states, located primarily in Europe. It has developed a single market through a standardised system of laws which apply in all member states, guaranteeing the freedom of movement of people, goods, services and capital. When it was first launched, there had been an attempt to fully harmonise divergent national regulations across borders, but such attempts ended in failure (Schmidt, 2002). Despite the careful construction of programs by the Council of Ministers to realise the freedom of the establishment and the freedom to provide services in a single market, these efforts were doomed by individual nations' inability to break away from their local regulatory traditions. When the EU was re-launched in the mid eighties, the principle of harmonisation was largely replaced by the principle of MR (Schmidt, 2002).

Nicolaidis (1996) states Mutual Recognition Agreements (MRAs) will likely occupy centre stage in trade diplomacy in the years to come. True to his prediction, a decade after its introduction in the European context, MRAs are being negotiated or considered in several other countries including the United States, Australia, New Zealand and Canada. Their relative popularity is a curious fact however. MRAs are by no means a perfect instrument. In economic theory, they are defined as "insecure contracts" because they are generally negotiated between governments under conditions of uncertainty and ambiguity (Nicolaidis, 1996). They are also considered to be incomplete contracts because they are unable to predict all situations that could emerge during their implementation (Nicolaidis, 1996). However, their adaptability to mutual and cooperative control (Nicolaidis and Schmidt, 2007) is probably their best recommendation.

Nicolaidis (1996) explains that MRAs are undertaken between home and host countries, where the host country agrees to grant access to its market in exchange for adequate supervision of the players by the home country. In its pure form, an MRA reflects full reallocation of authority from the host to the home jurisdiction. In reality, in the EU, a form of bilaterally-negotiated MRAs referred to as "managed mutual recognition" has been the preferred form; They vary in regulatory scope, devolve residual powers to the host state, involve mutual monitoring, encourage enhanced cooperation and insist on stringent conditions before and after (Nicolaidis, 1996).

Some have described MR as a remarkable innovation for facilitating economic intercourse across borders (Pelkmans, 2003). With it, the need to carry out prior testing or licensing in order to move goods and services across borders is done away with. It allows national regulations to remain largely intact, while facilitating regional mobility. Only in special cases would member states be able to block the movement of goods and services across borders, and then mainly to protect the health or safety of their jurisdictions. However, if for some good reason, these special areas also need to be opened up, it could be done by invoking the exemption clause of the law in question working with and alongside an harmonisation principle applied at the broader level. For regulated, free movement of goods and services to occur, Courville and Crucefix (2004) believe that a degree of harmonisation combined with MR is the ideal arrangement. Minimum harmonisation coupled with MR became the new approach to realising the single market in the EU in the mid eighties.

Despite the acclaim for the merits of MR, the principle still remains a curious paradox (Pelkmans, 2003). According to Pelkmans (2003), in the EU, it is thought to have contributed only modestly to the realisation of free movement in the single market, and the many costs

and uncertainties associated with its application and practice have left European businesses somewhat sceptical and disenchanted about its worth. Pelkmans (2003) outlines six reasons for his belief that MR generates fairly high information, transaction and compliance costs in the EU. Pelkmans' reasons can be summarised as follows: First, MR is not visible, but a distant abstraction; second, there is no rule book for MR; third, there is lack of clarity about the equivalence of effects; fourth, the costs of monitoring are very high; fifth, judicial review could be slow because of overload from increased requests for rulings; and sixth and last, the application of MR has turned out to be much more complex than originally envisaged.

More recently, Nicolaidis and Schmidt (2007) have argued that MR has been put on trial in the EU. While in the late 1980s, MR was hailed as the miracle formula for the much-needed liberalisation of services markets, twenty years later today, when the need for effective liberalisation seems even greater, the EU has recently passed a directive where the principle of MR is conspicuously absent (Nicolaidis and Schmidt, 2007). This directive overturned the letter and, to some extent, the spirit of MR with its leaning towards liberalisation and dominant home country control, and in its place instituted a compromise formula, which focused on the obligation to enable freedom of services without discrimination. Viewed as a minimalist approach, this formula is seen as favouring host country jurisdiction and sacrificing MR and the trust imperative, both of which are crucial to the liberalisation project (Nicolaidis and Schmidt, 2007). However, because it is accompanied by a long list of restrictions and prohibitions on the imposition of host country rules, the formula is seen as somewhat approximating "managed mutual recognition", and for this reason, mainly, viewed as a step in the right direction (Nicolaidis and Schmidt, 2007).

4 The quest for Mutual Recognition in bus and coach operations in Australia

Personal mobility is a vital investment in human resources, and one of the keys to successfully meeting the economic, social and cultural challenges of the future. In a liberalised society such as Australia, every citizen has a fundamental personal right to move, reside freely and seek employment within any of the country's states or territories. The only time this right may be in question is when it contradicts the needs of public policy, public security or public health. In an economic climate when there seem to be labour imbalances between the various Australian jurisdictions caused by mining booms, lack of skilled labour or other reasons, it is a curious fact that there appears to be less enthusiasm about personal mobility than goods and services mobility. Partly, at least, the reason must be attributable to the difficulties created through lack of MR for certain occupations.

One of the major obstacles to personal mobility is that an individual's qualifications and competencies may not be accepted in a jurisdiction other than their own (Shah and Long, 2007). Generally, this is because the qualifications and competencies of individuals in one region do not lend themselves easily to transparency or comparison for equivalence in another. Theoretically, at least, MR of qualifications would be the answer to this problem. Practically, however, it is far from being an easy remedy. Even when the separate jurisdictions of Australia share a common culture, a common language and a similar political system, the problems for MR processing are still formidable.

In Australia, where population growth has been fuelled by large scale immigration from all corners of the world, considerable resources have been directed to the problem of recognition of overseas educational and professional qualifications. It is ironic, therefore, that the recognition of internal qualifications to help address labour shortfalls between Australia's own states and territories has been so neglected for so long. It was not until 1992 that the MR Act was put into place in Australia to remove barriers for people wanting to practise a regulated occupation across borders.

Section 17 of the MR Act of 1992 (ComLaw, 2000) describes the mutual recognition principle as follows:

- a) ... a person who is registered in the first State for an occupation is, by this Act, entitled after notifying the local registration authority for the second State for the equivalent occupation;
- b) to be registered in the second State for the equivalent occupation, and
- c) pending such registration, to carry on the equivalent occupation in the second State;
- d) ... exception that it does not affect the operation of laws that regulate the manner of carrying on an occupation in the second State, so long as those laws;
- e) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State; and
- f) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

In a report commissioned by the NTC, Wright *et al.* (2000) confirmed that bus drivers and operators who operated outside their home state were often required to obtain separate authorisation or accreditation from the host states to operate in them. The authors also observed that despite the existence of the MR Act of 1992, which set out mutual recognition principles to enable the free movement of goods and services throughout Australia, several state authorities took action to prevent moves towards mutual recognition.

Nicolaidis and Schmidt (2007) draw attention to the particular difficulties associated with integrating services markets via MR in the European context. They make the point that services are generally harder to liberalise than goods, not only because they are generally more regulated but also because their mode of delivery often involves the movement of either service providers or consumers across borders. They further point out that almost all regulations for services have to do with processes related to home jurisdiction rules such as training for market access, solvency rules and speed limits for operations, acceptable products and acceptable distribution. Predictably, the burden upon host jurisdictions to ensure the right balance between quality and delivery of services is heavy indeed. Nicolaidis and Schmidt (2007) also distinguish between free movement of services and free movement of labour or establishment. Applying this rationale to bus operations, freedom of services would represent the crossing of boundaries temporarily to continue home jurisdiction services in another jurisdiction and the free movement of labour or establishment would represent the expansion of the business from one jurisdiction to two or more. The former would require a dominance of home jurisdiction rule and the latter a host jurisdiction rule. Whether attention to such delineation prevails or not over the Australian MR discussion is unclear. What is clear, however, is the sustained interest in achieving overall freedom of movement for road transport operations in Australia.

In 1998, the Australian Bus and Coach Association (now known as the Bus Industry Confederation (BIC)) approached the National Road Transport Commission (NRTC), now known as the NTC, to seek assistance in obtaining MR between Australian States and Territories for bus and coach driver authorisations and coach operator accreditation. BIC held that differing practices in the various jurisdictions had negative impact on interstate operations and inhibited their capacity to move drivers quickly to different locations to meet seasonal demand (NRTC, 2003). NTC observed that general driver licences were already known to enjoy MR status between Australian States and Territories at this time, and this had

been the case for several years, however, bus and coach drivers were debarred from this privilege because of the special requirements of their employment, namely, the range of special attributes that these drivers would need to possess in order to carry out the job (NRTC, 2003). In Victoria, the Driver's Authority testified, amongst other things, to the good repute, capacity, fitness and knowledge of the holder. Difficulties for MR of driver authorisations for the occupation of bus and coach driving were eventually resolved, and driver authorisations were granted equivalent status under the MR Act (NRTC, 2003). MR of accreditations for the occupation of bus and coach operator, however, has not been as fortunate and is yet to be assessed as equivalent.

One of the core problems for MR of operator accreditation must lie in its dualistic status. Accredited operator is not just an occupation but an occupation with regulatory approval (accreditation) to practise. Assessing operator accreditation for equivalence would therefore be an enigma of not small proportions, since it would involve both occupational requirements as well as regulatory requirements to be considered separately for equivalence.

Under MR Act, two occupations are taken to be equivalent if the activities that are authorised to be carried out under registration are substantially the same (Council of Australian Governments – COAG, 2005). Case law from the Administrative Appeals Tribunal (AAT) has established steps for determining equivalence of occupations, which essentially involves identifying the occupation and its authorised activities in the two jurisdictions concerned and making a comparison between the activities. If standards between jurisdictions differ to the point of genuine concern, the jurisdictions concerned are expected to agree on minimum essential requirements and/or establish appropriate conditions that would enable equivalence between the occupations (Tasmania Dept of Treasury and Finance, 2007).

Several jurisdictions in Australia require bus and coach operators to be accredited, but the criteria for accreditation vary substantially between them. From definitions of bus and classes of services offered to training, there are many differences that challenge the very basis of what constitutes the occupation of accredited bus operator in each jurisdiction (NTC, 2004).

An interesting but less obvious problem is to be found in the semantics of accreditation terminology. Operator accreditation is a status currently granted not to an individual per se but to an individual who is in a controlling management position in a particular bus and coach business. This additional qualifier ensures that the receiving entity of accreditation is not made up of a single unit but two; the person and the business. One cannot function without the other. This inevitably means that the occupation of accredited operator is intrinsically and inherently tied to the particular business enterprise to which the accredited operator belongs. In turn, this will mean that a person with accredited operator status in one jurisdiction simply could not move into a second jurisdiction and take up an appointment as the accredited operator of a business in that jurisdiction. Even if MR is achieved for the course qualification, there would still be a need for the person holding the qualification to apply for, and be granted accreditation within a nominated business in the second jurisdiction.

Then there is the matter of superfluous qualifications for accreditation that do not hold up well for achieving MR. Section 4(1) of the MR Act defines 'registration' as including licensing, approval, admission, certification or any other form of authorisation required by or under legislation for carrying on the occupation (ComLaw, 2000). Accreditation is a form of registration. Case law from AAT has established that legislation requiring the entry of participants into a register can be enough to satisfy registration, however, regulation that sets certain qualification requirements for practice but which does not issue any authorisation based on attainment of that qualification is seen as being outside of the definition of registration (Tasmania Dept of Treasury and Finance, 2007). COAG (2005) identifies a difficulty for MR of operator accreditation brought about by the inclusion of superfluous qualifications in the requirements of accreditation by the dictates of competition regulations.

'Fitness to practice' is a case in point. Notwithstanding the problem of how to qualify, quantify or evaluate personal attributes for a statement of attainment, this requirement is actually meaningless in the contexts of both course and accreditation, since neither the course statement of achievement nor the operator accreditation certificate is awarded on the basis of personal attributes. However, by virtue of being included as a requirement for accreditation, personal attributes prevent both course and operator status from measuring up for MR (COAG, 2005).

Wright *et al.* (2000) proposed a short term option for achieving MR for bus operator accreditation through the recognition of equivalent regulatory requirements as part of each scheme. The operative principle in their proposal is that common or core standards satisfied in the home jurisdiction would be accepted as meeting the requirements of all jurisdictions. In this way, operators wishing to operate in another jurisdiction would need to satisfy only the unique requirements of that jurisdiction. To that end, Wright, Pearson and Wright (2000) created a list of core standards from an examination of all standards and requirements imposed by all the states and territories taken as a whole. In their recommendations, Wright *et al.* proposed that all states and territories adopt the core standards, recognise the core standards of other states and territories as equivalent and develop competency-based training arrangements for transport management qualifications. This strategy, the authors believed, would lead to equivalence in operator training, which in turn could lead to MR in bus operator accreditation.

Interestingly, a very similar approach has been set in train by the Victorian regulatory body in seeking to achieve MR for the accreditation qualification. In 2002, the Victorian Department of Infrastructure commissioned the Institute of Transport Studies at Monash University, which delivers the Transport Management Course (TMC) in Victoria, to develop a statement of competencies for the TMC. In a preliminary discussion document, Clements (2003) recommended the following approach to MR of educational qualifications as a lead up to MR in bus operator accreditation:

- Implementation of formal MR statements of subject/module exemption for various levels of service and requirements for any further study to meet individual state requirements validated by the regulatory authorities of VIC, NSW, ACT and QLD.
- Encouragement of those jurisdictions that do not currently require an educational qualification to support the introduction of a core national qualification, which could provide the basis for exemption from equivalent minimum requirements in other jurisdictions and leave the need for satisfying only the unique additional requirements of those jurisdictions.
- Adoption of a core national qualification based on competencies that are similar to those identified for subject 4101; the core subject of the transport management course provided in Victoria, and one which deals with the key legislation and operations framework for accredited operators in Victoria. These competencies should be positioned at Australian Quality Framework (AQF) Level IV, at a minimum, and appropriated from national packages such as TDT Certificate in Road Transport or TDT Diploma of Logistics.
- Acceptance of a core national qualification that could become the minimum required qualification for all operators including those who cross state boundaries on transit (temporary) operations. In addition, operators expanding their business activities into other jurisdictions would need to meet the additional training requirements of those jurisdictions as well.

NTC, in the meantime, had a different approach to achieving MR in bus operator accreditation. Since its establishment in 1992, the NTC has been actively involved in developing national policies for most areas of road transport law (NRTC, 2003). NTC held the view that the preferred means of achieving the free flow of road transport throughout Australia was to achieve national consistency in the laws, regulations and administrative practices across all states and territories. In a submission to the Productivity Commission, NRTC (2003) recommended that the current MR Act of 1992 relating to the MR of product standards and occupations be retained, but also extended to cover accreditation arrangements. Subsequently, NTC (2004) confirmed that regulatory authorities were seeking to fully harmonise the different bus and coach operator accreditation regimes but believed that it would take time.

Shortly after, BIC (2004) appealed to NTC to move forward with the MR project in partnership with the Bus Regulators Group (BRG), which was made up of key regulators from each state jurisdiction, and put in place an industry accreditation regime of integrity and credibility that would be mutually recognised across the nation. NTC (2005) declared its intention to develop a nationally consistent approach to training for bus operators and advised that it would consult with BRG and BIC in carrying out this task. In September 2005, The National Centre for Sustainability was commissioned by a group of stakeholders including NTC and regulatory and industry bodies to undertake a research study on bus operator training and accreditation (National Centre for Sustainability, 2005), but the report from this study does not appear to exist in the public domain.

In 2006, the bus and coach transport regulator Public Transport Safety Victoria (PTSV), commissioned a review to investigate whether the Victorian TMC had achieved its original objective and if those objectives were still relevant. In their report to PTSV, Bedggood and Bateman (2006) pointed out that while the survey feedback on TMC indicated that it met all its original requirements, the opportunity existed to take the debate about MR of training away from the idea of an agreement about an AQF qualification and focus it on agreement about what the critical training competencies should be in a training program for bus operators. They believed that initially, at least, PTSV could seek MR of its training program with those training programs in other jurisdictions that most closely aligned with its own. Following that, agreement could be sought for a system of gap training around the legislative frameworks for each jurisdiction. The review suggested that if recognition of training programs and gap training was reached, then it would subsequently facilitate MR of operator accreditation.

Bedggood and Bateman (2006) also discussed the alternative built around alignment of the current TMC program to units of competency nationally recognised under the AQF. It suggested that a qualification or statement of attainment recognised under the AQF is a desirable outcome, and if the TMC is aligned to nationally recognised units of competency, participants could achieve course completion as well as recognition within the Vocational and Technical Education (VTE) sector for a number of units of competency.

In September 2006, Bedggood and Bateman were again commissioned by PTSV, this time to produce a discussion paper on the future role of training for bus operators. In their report, Bedggood and Bateman (2006) made the following suggestions for the role of training for bus operators from a Victorian perspective:

- There is an expectation within the industry that harmonisation of bus operator training across Australia will occur and that it is desirable. The industry is facing a time of change and the push for MR is not likely to disappear. Victoria should become proactive about the type of training that is required for Victorian bus operators and in considering likely developments in the foreseeable future.

- Future options for training put forward include working towards MR of training programs by focusing on agreement about what critical training competencies should be included in a training program for bus operators. These competencies would be called Operator Training Competencies, as opposed to Units of Competency.
- Another option for training would require the alignment of the current TMC program to Units of Competency nationally recognised under the AQF. In this option, participants achieve course training through an educational institution, but can also be recognised by a Registered Training Organisation within the VTE sector. PTSV could consider seeking alignment between the modules in the TMC with that of nationally recognised Units of Competency.
- Victoria's TMC is well-respected within the industry and it would be in the interests of both Victoria and New South Wales to have their courses aligned as closely as possible in a lead up to a national approach to training based on the systems of those two states.

5 The implementation of Mutual Recognition for bus and coach operator accreditation – some issues for consideration

Wilson and Moore (2006) identify three alternative models for land transport regulation in Australia: a centralised model where state and territory governments cede powers to the federal government or the federal government uses its powers unilaterally; a weakly-structured approach where the states and territories have charge for all regulation except those that they refer to the federal government; and a cooperative approach where regulation is coordinated through an independent commission representing the interests of all jurisdictions.

The NTC was first established in 1991 and is Australia's first experiment in cooperative federalism in road transport reform. In the short time that it has been in existence, the NTC has been at the forefront of cutting edge reform in the transport industry and has already successfully achieved several key national initiatives (Wilson and Moore, 2006). It is interesting to note that it was the NTC that was first approached in 1998 by the then Australian Bus and Coach Association, now known as BIC, for assistance in obtaining MR for bus and coach driver authorisations and operator accreditation. Since that time, the quest for MR in bus and coach driver authorisations has been achieved, and NTC continues to make progress in achieving the same for bus and coach operator accreditation.

The key feature about MR is that it creates a situation in which operators can function in more than one jurisdiction without having to satisfy more than one set of regulations. Nicolaidis (1996) discusses three benefits that arise from this. First is the freedom of choice that is made possible for operators. Depending on the type of service they offer, some firms may benefit from operating under stringent regulations and higher cost environments, while others may do so under less stringent regulations and lower cost environments. Second, the cross-border movement generated by such freedom of choice may make governments sit up and take notice. They may want to tailor their regimes to better suit their citizens' preferences, thus bringing about a culture of regulatory competition and increased efficiency. Third, a better division of labour and enhanced co-operation may be engendered between regulatory bodies, leading to better streamlining of home regulatory systems.

Regulatory competition is not always straightforward or fair. Nor does it always lead to positive outcomes. Since MR builds on home-jurisdiction control, the host jurisdiction cannot impose its regulations on visiting entities. Baldwin and Cave (1999) point out that the particular danger in this arrangement is that businesses operating in their own home territory

under stringent home control may find themselves outsmarted and outclassed by visiting businesses operating under their own less strict home control. They also point to several other potential problems including a 'race to the bottom' in which regulators apply less rigorous requirements in the hope of attracting investment or granting privileges to a chosen few.

Pelkmans (2003) warns that the application of MR to the internal market for movements of goods and services is not an unambiguous success story. The entire enterprise may carry high costs related to the management of information, transactions and compliance. Pelkmans (2003) identifies several cost elements that stem from having well specified jurisdictional law replaced by the 'invisible' notion of MR and the absence of a rule book for market participants. Any slowing down in the speed of judicial review because of overload may invite opportunistic behaviour on the part of participants, which could be detrimental to the MR project. It is inevitable that the increasing complications in MR interpretation, especially in the early days of its introduction, could create unprecedented legal burden in all jurisdictions. Furthermore, the major shift from the existing regional culture to a national MR culture will have serious implications for the management and administration of the new regime.

Although many unknowables exist for the future of bus and coach operations within an MR regime in Australia, the potential strategic advantages of MR cannot be ignored. Pelkmans (2003) identifies several of these benefits. From a much faster realisation of the internal market to constraints on overregulation by individual jurisdictions and the search for 'best practice' regulation between those jurisdictions, MR has the potential to be highly beneficial and create lasting gains for the nation. Furthermore, from the European experience, it would appear that a program of "managed mutual recognition", such as that described by Nicolaidis (1996) will likely suit the Australian situation best.

6 Current developments in Australia

There appears to be mounting interest in breaking down impediments to cross-border movement of people skills in transport. Several stakeholders have begun to demonstrate their interest in the subject through their involvement in various projects.

In February 2008, COAG issued a communiqué reaffirming its commitment to cooperative federalism. COAG also declared its agreement to two measures for making life easier for people moving and working across interstate borders. One of these measures involves the joint undertaking with Austroads to conduct a detailed analysis of the costs and benefits of policy and legislative changes required for greater harmonisation of licensing and registration across all jurisdictions (COAG, 2008).

In early May 2008, Australia's transport ministers agreed to begin an ambitious program of national reform to address significant national challenges across all modes - passenger and freight – including safety, efficiency and the skills crisis. In late May 2008, NTC issued a news release declaring its intention to provide input to the National Transport Plan on the various reforms currently underway, which includes, among other things, a reform plan for a single national market for transport (NTC, 2008).

Also in May 2008, the Productivity Commission confirmed that the Australian Government has asked them undertake a review of Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement (Productivity Commission, 2008).

7 Conclusion – the way forward

Is MR the best way forward with bus and coach operator accreditation in Australia? The literature seems to suggest that it is. What are the prospects for its success? Here, the literature is divided. The European experience suggests that the introduction of MR might turn out to be an expensive experiment (Pelkmans, 2003; Nicolaidis and Schmidt, 2007). The Australian lobbying suggests that there is enormous enthusiasm and determination among stakeholders that will enable the project to be a success.

A somewhat impartial and third party view is provided by Baldwin and Cave (1999) who believe that regulation is often a game in which the rules are uncertain. In their opinion, the waters become muddied because, so often, regulators' mandates tend to be imprecise and incompatible. Regulators are often required to juggle between exercising control, encouraging competition and upholding social objectives. In such a scenario, it would be difficult if not outright risky to settle on any single economic formula without having examined the problem and the solution fully, in their entirety. There is little evidence that such an exhaustive scrutiny has taken place yet in respect of MR for bus and coach operator accreditation in Australia.

Initially, there would be the need to fully understand the various economic constructs that underlie the notion of regulatory control and their interplay before determining the best model for Australian bus and coach operator accreditation. This would include delving deeply into the complexities of MR as well as other mechanisms. The indications so far are that MR, implemented on its own, is unlikely to yield success. There is some evidence, however, that a model which combines harmonisation with 'managed' MR may be a good formula. If such a formula is adopted, would it be prudent to reserve harmonisation for the high risk areas such as health, safety, environment and consumer protection, and apply 'managed' MR to all other residual areas including compliance training, business management and customer service? This proposition should be fully investigated. An evidence-based and cautious approach would be the key to determining the best way forward here.

As a means to the end, the role of training for national operator accreditation should also be fully investigated. The various reports seem to suggest that a program which blends core training based on national competencies linked to the AQF compendium with gap training based on the separate requirements of individual jurisdictions may be the best way forward to ensure agreement.

Above and beyond all of the above, there is an inarguable need for accountability to stakeholders. MR is an inclusive concept, which needs transparency and involvement. It needs clear definition and mandate so it can wade through the quagmire of highly variant regulatory procedures between jurisdictions and still make sense. When and if it is achieved, MR could have a part to play in sustainable mobility (bus and coach transport is environmentally friendlier than motor car travel) as well as a true liberalisation of services (Nicolaidis and Schmidt, 2007) in the free market that is Australia. As a first step, however, wide audience participation and debate is necessary to ensure the best chance for cross-fertilisation of ideas and a well-reasoned approach. This paper, it is hoped, will contribute to that objective.

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