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18 May 1999

Ms Helen Owens
Presiding Commissioner
Progress in Rail Reform
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 8003

Dear Ms Owens

SUBMISSION ON DRAFT REPORT - PROGRESS IN RAIL REFORM

I have been asked as Chairman of the Australian Rail Safety Accreditation Authorities meeting to respond on their behalf to the above draft report.

The Accreditation Authorities are responsible for rail safety regulation in their respective states and territories and therefore this response only deals with safety regulation issues and in particular comments on chapter 8.

Perception of inconsistent regulation

There are many references in the report which infer that there is inconsistent rail safety regulation between the states. There are many possible reasons for this perception but perhaps the most important and major issue is the lack of understanding by some on how rail safety regulation is undertaken in Australia.

Each and every state and territory (except the Australian Capital Territory) regulates the rail industry to one standard (AS4292 Rail Safety Management). This standard is a management standard only and provides the rail industry with a set of railway safety requirements which should be incorporated into management systems to adequately control risk by adhering to a set of safety principles.

The standard does not prescribe detailed operational and technical standards or safeworking rules (often referred to as regulations). The accreditation and rail safety regulatory approach in Australia is a non-prescriptive co-regulatory approach which gives accountability for rail safety to the railway operators and railway managers (access providers).

This approach is one which is not only fully supported by regulators but also by industry and in fact would be vigorously challenged by industry if this approach was to change to that of a prescriptive regulatory regime.

A comment in appendix G5 of the report states that "in the United States inconsistent regulation does not appear to be as significant an issue as it is in Europe or Canada." This is clearly because the USA model is based on prescriptive regulation with the regulator setting all the standards with which the railways must comply. This approach is resource hungry and changes to standards are extremely slow and most attempts are unsuccessful. This is not the case in Australia. The non-prescriptive approach allows the rail industry itself to determine the most appropriate standards as it is argued that any other approach would stifle innovation and would place accountability for safety with government rather than industry.

This approach however can and does result in railway managers (access providers) determining different standards and safeworking rules (regulations) for the infrastructure which they control. As a result of this operators who run trains over different managers tracks find that they have various safeworking rules to which they must comply.

It has been argued that this situation should improve with the advent of ARTC but, as ARTC does not have control over the entire interstate network but in some cases merely has train paths, the current situation where there are many safeworking systems will not only continue but potentially even more differing systems will be introduced as rail networks are either broken up, sold off or new lines built with different managers (owners) who have the right to determine the safeworking systems to be used. It must be quite clearly stated that under the current approach of non-prescriptive regulation this situation is one over which accreditation authorities have little or no control.

The problem with the Productivity Commission report is that it does not clearly recognise that it is the rail industry itself which is determining the different standards and not government authorities. Comments attributed to ARA, GNRS and NRC on page 162 of the report seem to be where the basis of the myth lies.

The Maunsell Report showed there are two distinct areas for regulation:

- by the Accreditation Authority for safety management

- by the industry, mainly the track owner, for safe working systems that others using that track need to comply with. If you like, these are the road rules on that track.

Accreditation Authorities do not develop these road rules. These are operational standards.

These two areas of regulation have been partly recognised by the Commission. However, the issues are somewhat mixed up in Chapter 8 where it has become confused and drawn confusing conclusions. It would be far better if they were treated under separate chapters.

Other reviews have had the same problem. The consequence has been that progress in reform is stalled as parties argue to try and achieve clarity or even to accept recommendations.

The Commission will have difficulty doing this as a lot of the information collected or heard is riddled with misunderstandings and confusions arising from earlier reviews by others. Where possible this information should be tested for truth or relevance.

The information is in many cases outdated. For example, issues raised three years ago by operators about mutual recognition of accreditation have been long resolved by Accreditation Authorities.

Up until then, they correctly claimed mutual recognition wasn't working. It couldn't as most States didn't have legislation that required accreditation. As soon as the legislation was in place (SA in 1998, WA, NT and Tasmania in 1999) the jigsaw was complete.

Also the example at page 169 from Patrick is poor. This information should be checked against Accreditation Authority records in Victoria and South Australia and against dates when legislation was proclaimed. It should be noted that as soon as the South Australia legislation was proclaimed, transitional provisions in effect deemed Patrick to be immediately accredited for a 12 month period!

When a railway expands its territory of operation, (eg into another State or region, or into different activities), it is faced with different operational risks. Whether it is in the State where it is currently operating or in another State, it needs to address the safety risks and if necessary revise its safety plans and maybe introduce new standards. This costs resources but it has to do it as part of expanding its business whether there is an Accreditation Authority or track owner or not. It is a cost of normal business.

The last paragraph at page 168 says Patrick's costs exclude fees but it is clear from the table on page 169 that fees are included

Further possible reasons for the perception of regulatory inefficiency are as follows:

Time differences

Railways complain about the time taken.

NRC is a classic example. At page 169, they complain about the volume of documentation required. This is an invalid argument. Accreditation Authorities only ask that any additional risks from the expansion of operation be addressed. There may not be any, in which case the application will be a minimal document that is quickly processed. However, NRC insists on giving every Accreditation Authority a copy of its complete safety plan. Even when told we don't need that, they insist. Then they complain about the time and the volume of documents.

The question of how long it takes to get accredited also needs balanced review. If a railway has a well documented and implemented safety management system, (which it should have anyway), then where is the extra effort? It should be a simple matter of presenting it to the Accreditation Authority. NRC for example, claims it has a system that covers all of Australia. If that is so, the documentation required in Western Australia for mutual recognition of their new accreditation, should be minimal. However, despite being invited with all other railways operating in WA to a workshop in May 1998, where the proposed Rail Safety Act was explained, and despite proclamation of the Act on 2 February 1999, they still had not made an application for mutual recognition as of May 13. Of eight rail owners and operators requiring mutual recognition in WA, only one has made a formal submission. In fact, the Accreditation Authority in WA and NSW are having to keep writing to and calling NRC and other railways to get their applications in so formal accreditation can be given before the transition date cuts off on 2 August.

The Accreditation Authorities continue to refine or improve their processes and document them to assist with consistent application by all Authorities (see attached example). They have reached a point where, in effect, NRC has a "national" regulator in the New South Wales Transport Safety Bureau. That office coordinates the annual compliance audit process. The result is meant to be a seamless 'one-stop-shop' approach without duplication by other Accreditation Authorities. In effect the Accreditation Authorities are working as a team under the coordination of the Accreditation Authority most appropriate for the relevant rail operator (eg NRC based in NSW is coordinated by NSW Transport Safety Bureau).

National Rail was first accredited in NSW in 1994, when NSW had a very prescriptive regulatory regime. To compare the requirements in NSW in 1994 with the requirements in South Australia (for example) in 1999, and blame it on State differences is quite invalid. South Australia, along with most States including NSW now, have a very process oriented regulatory regime based on Australian Standard 4292. Indeed, in 1994 this AS 4292 did not exist.

The loudest complainant about this problem is probably National Rail, as they were the most affected by NSW's old regulatory regime. At best, this view is out of date, but it continues to be aired - by them and some others.

Change of nature of the operation

In some cases, an operator seeking accreditation in another State is also seeking to change or enhance the nature of the operation. (For example, a heritage operator seeking to become commercial.)

This obviously changes the requirements that must be embodied in any Safety Management Plan. Thus, extra information and procedures required are a result of a change to the nature of the operation, and are not a State difference.

This is comparable to road industry where a license to drive a car does not automatically confer rights to drive buses, motorcycles or trucks.

Change of territory and risk environment

The Acts require risk assessment to be carried out appropriate to the operation for which any operator is accredited. Different territories have different risks, and therefore a change in territory necessitates a reassessment of risk.

For example, operating in rural Australia is not the same as operating in major cities. Again, this is a regional difference, not a State difference.

Access agreements

The Acts require operators to show that they have, or are in a position to have access agreements with track owners. An expansion of territory clearly brings with it the possibility that more access agreements must be in place. Again, this is a territorial difference, not a State difference and is not an accreditation issue.

Universal accreditation

An alternative to progressively enhancing an organisations' accreditation is for all possible circumstances to be provided for on day 1. This means that a local operator may have a simple task that would be required to establish his credentials to operate over all the territory in Australia, when he may have no intention of doing so. This would be ludicrous.

We should not forget that intrastate operators are the major part of the rail business. It may not even help intrastate operators much as it would not avoid the problems associated with territorial expansion listed above.

Note that a license in the road industry does not necessarily provide for unlimited access to any territory.

Fees

Examples would be road trains licensed for specified routes or weight limits on bridges.

The comment that fees should only be paid in the State where the initial accreditation was sought, ignores the fact that initial accreditation is only part of the story. There are ongoing costs associated with the administration of the system.

Interstate regulator

The policy of charging fees at all, and competitive neutrality with road are indeed valid issues. However, multiple fees is a minor issue that could be solved by agreement for States to collect one fee and distribute it according to the work retained in each State.

I would support the comment in the report that an interstate regulatory regime would be a backward step, through imposing an additional layer of regulation. It would impose additional requirement on intrastate operators who would need local accreditation as well as interstate accreditation, as they often travel part of their journey on intrastate tracks.

. . .

Minor differences in the formulae used to generate the fees is a valid criticism, but not a major one, as I imagine that we could easily agree on a uniform formula. Fees based on such factors as GTK, are meant to reflect 'risk exposure' not the work done in processing accreditations.

Comments on statements made in the draft report

Page 161, 2nd paragraph. "A nationally consistent approach is needed, together with a regulatory mechanism to hasten the pace of reform". Given that accreditation authorities have a nationally consistent non-prescriptive approach and that the codes of practice being developed by the industry reference group (IRG) will largely be non-mandatory what does the Productivity Commission recommend should be done to prevent comments about inconsistent regulations being made particularly as the industry is strongly against prescriptive regulation.

It is agreed that inconsistent safety regulation could be an impediment. There has been more progress on this than the Commission has revealed. The Accreditation Authorities are working effectively as a team. For example, ARTC was accredited in SA in April this year. Accreditation was processed with a joint team comprising SA, WA and Victorian representatives meeting in Adelaide. Mutual recognition by WA and Victoria is now almost a formality. Similarly a joint compliance audit of NRC is being coordinated by NSW.

It is agreed that inconsistent operational standards and procedures are an impediment. This was identified by Maunsell and others. It is <u>not</u> an Accreditation Authority or regulation issue. Axle loads, communication systems etc are issues for the track owners to resolve with operators with Governments facilitating the process.

Page 162, 3rd paragraph. As the ARA would appear to be clearly placing the blame of differing standards with the state-based regulatory regimes and in fact claim they are a "barrier to entry into rail operations" could the Commission ask the ARA if they would like a prescriptive regulatory regime established. The IRG members (who have all been nominated by the ARA) have clearly argued that the codes of practice should be generally non-mandatory.

"Many participants commented on inconsistent regulations _." The ARA quote typifies the misinformation being circulated. It confuses the two issues again and blames "regulation" by Accreditation Authorities (the State-based regulators) for having different standards.

The NRC view is not the result of Accreditation Authorities but of different track operating procedures set by track owners.

The comment re the WA view is therefore out of context and based on a misunderstanding of the facts and confusion over the two main issues.

Page 163, 1st paragraph. The Commission recognises there are two separate issues. This should be moved right up to the front and the two issues strictly separated from then on. They can and should be dealt with separately despite the impact of some operational standards and procedures on safety.

Page 164, 1st paragraph. Given the explanations provided in this response I do not believe the statement "such as the safety accreditation process, in so far as they are part of the inconsistent regulations impeding the efficient operation of interstate rail" is correct.

The discussion on legislation should be further expanded to adequately explain what has happened. NSW legislation was followed in 1996 by an Intergovernmental Agreement on Rail Safety (IGA) and an Australian Standard on rail safety management AS4292.

The standard was developed by industry. Legislation in other States and Territories followed. Their legislation **is consistent** with the IGA.

The New South Wales Rail Safety Act is the only legislation not totally consistent with the IGA and that Act is currently under review.

Page 165, 2nd paragraph. The second and third sentences of this section on the safety accreditation process really do clearly state what accreditation is all about and could hardly be argued to be a barrier to entry for any professional railway that wishes to operate in a safe manner. Surely this is what the rail industry, government and the community would all want.

Page 165, 5th paragraph. It is incorrect to say each safety regulator has its own set of rules. All accreditation authorities have agreed on a set of common processes and to apply them consistently. The processes are in the attached flow charts.

Page 166. Figure 8.2 box 2 mentions "additional requirements". There are none and never have been and this is one of the great myths that some railway operators continue to push despite the myth being exposed in 1997. Every so-called additional requirement in the original national guidelines was a requirement of AS4292. They are therefore a common requirement and not additional. The accreditation authorities recognise that to provide a guide with a list with such a heading was very unfortunate. The new national guidelines are attached for your information.

Page 167, 2nd paragraph. Queensland does not offer interim accreditation as stated in this paragraph. Whether Victoria offers interim accreditation is not of consequence. The fact is it can issue an accreditation with conditions which has the same effect. It is just a name. Again "additional requirements" are mentioned. This is false and should be deleted.

There is scope to vary the processes on a case-by-case basis for good reason. No two applications are the same. Sometimes an application for mutual recognition as an operator turns out to be an application for accreditation as an owner and an operator, ie different activities are involved.

Queensland Rail mutual recognition is another example. SA recently gave accreditation to QR for operation of its GSPE train operations with conditions. The accreditation doesn't cover all the activities for which QR is accredited in Queensland because it wasn't required. The conditions were required because the application was not complete. The conditions required certain things to be done before commencing operation. However, the accreditation was given quickly.

The next paragraph goes on to explain how "the differences have a historical basis as each State developed its railways in relative isolation". This is not relevant to the discussion. The historical issue relates to track operational procedures which are not the subject of this section. The fact is that all Accreditation Authorities have worked together from the beginning to develop a consistent approach. Rail Safety accreditation only commenced in 1993 in NSW with other States following. They have all learned from each other and worked to refine processes to find best practice.

Methods of calculating fees in each State are different for sound reasons. This has been researched and is understood. It does not mean they can't be the same but they do reflect in some cases what best suits the industry in a particular State.

Page 168, 3rd paragraph. In an effort to demonstrate that accreditation is a complex process the report quotes NRC "we had to submit to Queensland a document of some 60 or 70 pages - 60 pages, dealing with the differences between Queensland and New South Wales". This statement needs to be considered for what it is. I have attached for your information a copy of a letter which Queensland sent to the New South Wales Department of Transport on 22 May 1997 which requested information on 10 questions so that mutual recognition of accreditation could be granted. I am sure that any reasonable person would agree that this list was not onerous and in fact would be necessary to be satisfied that NRC could operate safely within Queensland and for Queensland Transport to understand what NRC was proposing to operate.

Page 168, last paragraph. "Patrick noted that the cost of the processes to date was in excess of $40,000". This paragraph then refers to Box 8.1 which gives a breakdown of the costs which Patrick claim were a requirement of the accreditation process. Surely Patrick are not claiming that all of these costs would not have been required if it was not for the accreditation process. If it is then I would suggest this is ample evidence of why accreditation is required. Two examples of these claimed accreditation costs are:

1. July- Nov Prepare insurances and documentation for initial interview

2. Jan-April Further written submissions providing additional information, arrange insurances, update training procedures to incorporate rail operations under accreditation.

Surely any professional organisation would require issues such as insurance and training to be addressed as part of normal safe management practices. It is not additional work or costs due to accreditation authority requirements.

In the report, the Commission seems to be accepting an underlying theme that Accreditation Authorities should simply accept what they are given. The discussion on SCT talks about the time taken from 1995 application to March 1999 accreditation. Did the Commission simply accept that statement? Did it find out from the Accreditation Authority that the law only came into effect in November 1998? Did it ascertain whether the application was complete and could be dealt with quickly when the Act was proclaimed?

Similarly with the Patrick example. The presentation of the stories distorts the reality to try and demonstrate that accreditation takes too long. As stated earlier, if the railways had a safety system (which they should have had anyway), why does it take them so long to produce it?

Page 170, 2nd last paragraph. A comment contributed to GNRS states "perhaps (accreditation) fees should be based on services provided, not an arbitrary fee calculated to cover costs of an ever expanding bureaucracy ....". I would wish to point out that fees are based on cost-recovery of services and that there is no ever-expanding bureaucracy. In Queensland for example we manage the total rail safety regulatory regime with a total of four staff which is the same number of staff as when the Unit was established in 1995 even though the industry has grown since this time.

Page 172, first paragraph. Comment attributed to ASR states "each state has their own safety accreditation requirements which must be complied with. While the requirements are similar, there are enough differences to provide for employment of at least two people in our organisation." I would be greatly concerned if this were true. I do not believe it could be substantiated however particularly with the introduction of the new national guidelines.

Pages 172 and 173, auditing requirements. There are a number of comments here particularly from ASR and NRC which claim that auditing requirements are substantially different in each state and that audits are duplicated.

This is not true. All states have agreed to have auditors trained in quality systems auditing and a national process has been developed for conducting audits.

Also these organisations are not subject to duplicated audits by accreditation authorities. As an example, in Queensland, a decision was made not to conduct audits of mutually accredited interstate railways until a national process was developed. The first of these audits will soon take place on NRC with New South Wales facilitating a uniform audit with involvement where necessary from the other states.

Page 174, first paragraph. "The potential exists for considerable uncertainty about the roles and responsibilities of the track owner and regulator in the safety area in some jurisdictions. The whole process may become complex and costly for the operator."

I would agree with this comment if the roles were not defined and in this regard commonwealth and state ministers agreed that there would be one body nominated in each state with the responsibility for rail safety regulation and these were confirmed as being the relevant state accreditation authority. Therefore it should be re-inforced that it is the access authorities which now need to recognise this and be prepared not to try and duplicate this role.

Page 174, 3rd paragraph. The statement "these concerns about the existing accreditation and mutual recognition processes are widely accepted by the industry and commonwealth and state authorities as having validity". This statement is out of date. Whilst there may have been some problems initially with accreditation and mutual recognition these issues have now been resolved with the introduction of the national guidelines and uniform processes being developed by the accreditation authorities in consultation with industry. Even the industry representatives on the Rail Safety Committee of Australia have acknowledged that accreditation issues have been resolved.

Page 175. To claim progress has been slow is unfortunate. The law in many States has only been proclaimed in the last 12 months. When proclaimed, mutual recognitions were quickly granted. (See South Australian experience. In Western Australia, only one formal application has been received three months after proclamation). In the East, some railways took over two years to document their safety system! It has taken the Accreditation Authorities two years to develop and refine common processes from scratch.

While working to achieve better practice, the imposition of many reviews such as this, of regulatory procedures and the failure of industry to facilitate development of processes when given the opportunity to comment, all frustrate progress and increase the time of development.

Page 175, paragraph 3. This section concludes with the following statement "Inefficiencies in safety accreditation and mutual recognition processes are imposing substantial financial and time costs on operators. They also create uncertainty and barriers to entry to interstate operations."

I would totally dispute this conclusion however rather than simply put the view of the accreditation authorities, which it could be argued would have a biased position, let me provide some quotes from the recent (March 1999) report of the Independent Pricing and Regulatory Tribunal (IPART) of New South Wales titled Review of Rail Safety Accreditation Costs. I provide these comments as IPART is not only independent of the process but also is expert in matters of regulations - and their impact.

Some of IPART's comments are: "The Tribunal believes that the majority of benefits of the safety accreditation process are enjoyed by the rail industry or individual rail participants. Indeed the benefits received far outweigh the costs of regulation and therefore full cost recovery is justified for many of the functions of the TSB."

> "Individual organisations maintain responsibility for the management of safety in their critical area.

Organisations are required to demonstrate an understanding of the major risks associated with their operation and how those risks are managed or alleviated.

Safety systems can be developed to match the needs of the organisation and its proposed operations. The requirements to ensure the safety of a high density high speed suburban passenger system are considerably different from a low density branch line. The accreditation approach allows the flexibility to meet these differing requirements.

Flexibility is provided for an individual operator to introduce new technology, or innovative work practices, without the whole industry having to change or conform.

NRC also point out that if "common standards were introduced, some areas of train safety and accreditation standards would be neglected, and some would be irrelevant to the operator, causing increased costs.

This method of assessing applicants is labelled a coregulatory model because substantial, but not total, responsibility, is devolved to the industry to manage its own risks. The system relies on a high degree of trust between the regulator and the applicant."

The provision of safety regulation therefore brings benefits to society, the rail industry and individuals or corporations by reducing the risk of adverse events occurring. Effective rail safety regulation can deliver the following practical benefits:

"... it provides an impetus for continued improvement in safety performance which subsequently engenders public confidence in the industry

it ensures that that one operator doesn't impose additional risks to another operator's businesses".

"On this basis it would appear that the benefits of the safety accreditation application flow substantially to the rail participant and hence full cost recovery of most of the functions provided by the TSB would seem to be reasonable."

"A rail participant receives a benefit from properly documenting its safety management system and procedures in an accreditation application. This is because it will gain a clearer understanding of its overall safety objectives and the methods it can use to achieve them. The TSB then undertakes an assessment of the safety material submitted in accordance with the requirements of the Act. This activity should provide useful feed back to the applicant regarding the adequacy and efficacy of its safety management systems.

The industry also receives a benefit from the TSB assessment of an application since operators with inadequate safety systems will be kept off the rail network where they may cause damage to infrastructure or other participants."

"External audits also provide the individual rail operator with an objective assessment of the effectiveness of their safety management system. The individual operator will also benefit from this function if the risks to the whole industry are reduced. This is because the regulator may be able to reduce the risk that a rail operator faces from the activities of another rail operator. For example, an unregulated rail operator with deficient safety systems may cause damage to another rail operator.

A company with marginal profitability may underspend on safety in an attempt to remain viable. Safety regulation therefore provides a mechanism which ensures a minimum level of safety providing some protection for all users of the rail network. The major benefits of auditing and monitoring are therefore received by industry as a whole and full cost recovery through annual accreditation fees seems appropriate."

"If the public feels safe when using passenger trains and business considers that their goods will be secure when carried by rail, then there is likely to be greater usage of rail services."

"At the fully prescriptive end of the regulatory continuum the TSB would set all standards and expect rail participants to comply. This would involve significant resources initially to establish standards, rules and procedures. The ongoing audit and monitoring activities would be simply a matter of checking whether or not the operator is complying with the set standard. This could be relatively low cost depending on the coverage and detail of the audit program."

"Coregulation, as it is currently applied, involves considerable amounts of time by the TSB in assessing applications for accreditation. This is because each applicant has different operating conditions with different methods of dealing with the safety issues. Whilst the costs of the TSB may be higher under this method of regulation, the total costs to the operator would be less since it is able to meld its safety procedures into its existing operating and management systems. It encourages the operator to discover ways of carrying out its safety obligations in a more efficient and effective manner."

"The TSB has substantially more staff allocated to rail safety than any other State."

"However, the TSB has been established longer than its counterparts in other States and the task is different because of the detail of the *Rail Safety Act 1993,* the industry structure and number of participants. It has been suggested that the staffing levels in other States are lower than can reasonably be expected in the long term because the agencies are still developing."

"There is wide spread belief among rail operators that the RAC, as the network owner, duplicates many of the safety related functions already carried out by the TSB. Confusion exists between the roles of the safety regulator and the network owner which arise from the:

- additional requirements being imposed by the network owner above that of the TSB
- concern that the network owner's requirements may conflict with the regulator's requirements RAC conducting audits in addition to the TSB
- responsibilities of the network owner in relation to safety not being legally defined and overlaps with the TSB not being clarified."

"Additionally, one of the corporate objectives of RAC is to maintain the value of the company for shareholders. This means that RAC is interested in protecting the value of its assets and therefore may require operators to have higher safety and engineering standards than those accredited by the TSB."

"There are genuine differences between what RAC and the TSB require to ensure their respective aims are achieved. However, there are overlaps in some areas which could be overcome through cooperation and streamlining of activities, especially for accident investigations and audits."

"The Tribunal believes that most of these issues are gradually being resolved through combined industry and TSB efforts."

"The total fees currently collected by the TSB are very small and are in the order of one tenth of one percent of the total operating expenses of the rail industry."

I believe the comments from IPART above show that there are many myths and legends being pushed by some in the industry and would hope that the Productivity Commission can correct some of these matters so that the rail industry can focus on the real issues.

Page 175, last paragraph. The statement "The Australian Standard (AS 4292) provides the governing principles for the development of safety management systems to be accredited. It essentially provides a check list of what needs to be included in a good safety management system." is correct and considering that AS 4292 is what we accredit to how can this then be considered a barrier to entry.

Further to this page 176, 3rd paragraph confirms this with the statement "AS 4292, as it currently stands, is unlikely to form a barrier to entry to interstate operations because it is not prescriptive. It does not specify how or what inputs are required in a safety management system, so it allows for the development of systems with different standards and procedures." On the other hand further statements on page 176 confirm that codes of practice could be a barrier to entry. As these codes are being developed by industry and for industry what does the Productivity Commission suggest should be done. Perhaps it needs to be recognised that the current approach of non-prescriptive regulation by accreditation authorities, non-mandatory codes of practice and multiple track managers (access providers) will always result in operators being required to work under a number of safeworking systems and rules (regulations).

The comments from the report listed below would confirm that there is confusion on how to resolve these issues.

"Codes of practice are being developed, and existing codes (or manuals) reviewed by the Industry Reference Group (IRG) to provide the industry with a guide to assist with complying with AS 4292."

"The codes, on the other hand, do have the potential to increase costs substantially and create a barrier to entry to interstate operations if they become too prescriptive. Prescriptive codes of practice, by restricting flexibility, also have the potential to inhibit the introduction of new technology which may make the industry more efficient and competitive."

"The codes represent a major regulatory initiative within the rail industry and will have a direct effect on business _ to a greater or lesser extent depending on resolution of the outstanding issues above. There is the potential for these codes to develop in a way which imposes unnecessary costs on interstate operators and the industry in general."

"Operating standards and procedures may be viewed as broadly relating to safeworking systems, communications, management information systems, rollingstock design and other operating requirements relating to axle loads, train length and so on (Maunsell 1998). They are essential to the safe and efficient operation of rail networks. For example, safeworking systems are designed to avoid conflict between trains, people and property on or about the railway."

"Each jurisdiction has adopted its own operating standards and procedures; they differ between jurisdictions and vary within jurisdictions. Train crews operating on interstate track (that is, track which is in another State to the operator's principal activities) must have a detailed understanding of each system. This has implications for both the safety and efficiency of rail operations."

"Some differences in operating standards are primarily a function of geographical differences in terrain or the standard of the track, such as braking distance, axle loads, speed limits and double stack clearances. Regulatory reform is not an appropriate mechanism to address these particular issues."

This is highlighted by the comments on page 181 "There may be legitimate reasons why safeworking systems should not be made uniform" whereas on page 183 it states " inconsistent operating standards and procedures continue to impede the rail industry's growth."

Page 178. Operating standards and procedures should be in a separate chapter.

Paragraph 2 starts "Each jurisdiction". To attempt to remove the confusion identified at the top of page 174, it is suggested general labels such as jurisdiction be removed. Here "track owner" is more appropriate.

Similarly, specific terms such as Accreditation Authority, track owner, operator, OH&S organisation should be used rather than regulator. The Accreditation Authorities regulate under Rail Safety Acts, the track owners via codes, operating standards etc. Could the reports be reviewed using these terms consistently and then the paragraphs sorted out where roles and responsibilities have been unwittingly mixed up.

In Box 8.3 should read "Variation between track owners..."

On pages 183 and 184 comments are made about the way in which the road and aviation industries have resolved some of these matters. It should be noted that road and aviation are prescriptive in their approach whereas the rail industry is not and does not want this approach to be taken.

On page 187 there is a suggestion that Australia may be able to learn from the Canadian and European models yet at the same time it is recognised they are no further advanced than Australia even though their regulatory regimes have been in place significantly longer than that of Australia. This would suggest that we need to take a different approach to these countries.

The idea of a single regulator for the national track would add not only an additional accreditation authority but to the confusion. It is maintained that accreditation has progressed to the point where all arguments that it doesn't work are unfounded except that the outstanding issue of fee methods is to be resolved. This does not need a single body for a solution.

It would be worth considering some statistics. How many railways in Australia operate between States? Our figures suggest the proportion is low with some 80% of operators only operating on the intrastate network. What will the impact be on them of a single national accreditation authority? Would they have to comply with a costly prescriptive approach that enforces common standards regardless of where the railway operates? Why should, or how can, a Hamersly Iron Railway have the same standards as a 15kph steam train carrying tourists in a forest or a high speed urban passenger train have the same standards and codes?

In chapter 11 "The way ahead" it states on page 244 "Inconsistent safety regulations and operating standards and procedures are still an impediment to efficient rail operations. Governments need to accelerate the process of reform. The principles for best practice regulation should be applied to any changes to safety accreditation and mutual recognition processes, and to operating standards and procedures" and then on page 246 it states "Governments need to accelerate the process of regulatory reform. The Commonwealth Government should take a leadership role in hastening the removal of regulatory impediments to interstate rail operations, particularly inconsistent safety regulations and operating standards. This process should be undertaken in consultation with the States and Territories. As part of the reform process, the Commonwealth Government should ensure that the future development of regulations proceeds in a consistent manner in each jurisdiction and that regulatory changes be subject to best practice principles, involving the use of Regulatory Impact Statements."

There are four alternate approaches. The one missed out is to give the new agreed national accreditation processes a chance to work and to work out how common codes and standards can be applied by track owners on the national track.

It is agreed the Commonwealth should have a leading role but first they need to overcome their own confusion on the difference between accreditation and operator/track issues.

I have no objection to regulatory impact statements being required however I would ask if the Productivity Commission is proposing that any changes to safeworking systems, operating standards or rules by track managers (access providers) should require these track managers to produce a regulatory impact statement.

Conclusion

Considering the above response the accreditation authorities contend that with AS 4292 as the basis for accreditation there are few if any issues that these authorities need to or can resolve that will address the Commission's concerns about inconsistent regulation. All other "regulation" is by the track owners or industry itself setting their own codes and standards.

Further, while ever the industry wants a non-prescriptive approach to regulation the inconsistencies are an issue with which the industry itself must either contend with or resolve.

Finally I would refer the Commission to a March 1998 survey of the rail industry report entitled "An Evaluation of Perceptions of Rail Safety Accreditation" which was conducted by an independent market research company for the InterGovernmental Agreement on Rail Safety Accreditation Working Group.

This independent report found that 94% were in favour of accreditation with reasons given by the major of industry for favouring accreditation including:

The process has provided a good safety discipline for our company

The benefits of having accreditation outweigh the costs

Rail Safety Accreditation will encourage safer working practices

Rail Safety Accreditation will improve safety on the railways

Rail Safety Accreditation will prescribe minimum safety levels

Also the great majority of industry did not believe that accreditation would be a threat to their operation or would make their operation less efficient.

Other reasons which industry gave for being in favour of accreditation included:

Safety standards and regulations are important

Safety standards should be improved

Minimum standards maintained through audits

Improves safety accountability

Removes doubtful safety operators from the industry

Provides independent regulation of the industry

Thank you for giving me an opportunity to respond on behalf of the accreditation authorities and I trust you will take our comments into account when the final report is produced. I would be happy to discuss any issues in this response at the Productivity Commission's convenience.

Yours sincerely

(Greg Ford)

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FOR AND ON BEHALF OF THE AUSTRALIAN ACCREDITATION AUTHORITIES

* Encl (1)

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