



Office of Transport Safety Investigations

OTSI file reference: MQ190715

Yvette Goss
National Transport Regulatory Reform
Commonwealth Productivity Commission
LB2, Collins Street East
MELBOURNE VIC 8003

15 July 2019

Dear Ms Goss,

**NSW OFFICE OF TRANSPORT SAFETY INVESTIGATIONS SUBMISSION
TO THE PRODUCTIVITY COMMISSION'S - NATIONAL TRANSPORT
REGULATORY REFORM**

I am pleased to provide OTSI's attached submission to the Productivity Commission's National Transport Regulatory Reform inquiry.

OTSI has confined its response to the success of the enhanced national rail investigator.

Yours sincerely,

Mick Quinn
Chief Investigator



Office of Transport Safety Investigations

OTSI Submission to Productivity Commission

**Issues Paper 2019 – National Transport Regulatory
Reform**

15 July 2019

Introduction

The Office of Transport Safety Investigations (OTSI) is submitting this response to the Productivity Commission Issues Paper 2019 – National Transport Regulatory Reform with respect to the enhanced national rail investigator.

Prior to the creation of the Office of the National Rail Safety Regulation (ONRSR), a body corporate of state governments, rail operators were required to deal with multiple rail regulators, comply with multiple laws and pay accreditation costs to each jurisdiction.

Unlike the rail regulatory framework, in the realm of safety investigation there is no transfer of costs to industry or parties requested to be involved in the investigation. The States and Commonwealth Government agreed to adopt the NTCs suggested model¹ of an enhanced national rail safety investigator where the Office of Transport Safety Investigations (OTSI) NSW, the Chief Investigator Transport Safety (CITS) Victoria and the Commonwealth Australian Transport Safety Bureau (ATSB) have been working harmoniously through a tripartite collaboration agreement to deliver no-blame transport safety investigations in rail. The agreement has completed two, three year terms and the parties have recently agreed to operate in this fashion for a further three year term.

OTSI is confining its response to its views on the progress of the enhanced national rail investigator.

Who is OTSI

OTSI is a NSW independent statutory agency tasked to improve transport safety within the NSW heavy road vehicles (bus), rail (passenger and freight) and marine domestic commercial vessels (ferry) industries. This is achieved by conducting no-blame transport safety investigations into accidents and incidents, and to facilitate safety improvement by working with those industries.

In NSW, OTSIs scope constitutes approximately 406 million passenger journeys and greater than 200 million gross tonnes per annum by rail, 332 million passenger journeys by bus, 16.4 million passenger journeys by ferry.

NSW transport 2017-18 figures			
Rail passenger journeys per annum	Rail freight gross tonnes	Bus passenger journeys per annum	Ferry passenger journeys per annum
406 million	>200 million	332 million	16.4 million

The NSW Transport Administration Act (TAA) restricts OTSIs function so that it cannot apportion blame or liability, assist in court proceedings or allow any adverse inference to be drawn about a person. The TAA extends OTSIs functions to be exercised within or outside this State in relation to NSW transport operators. The NSW Passenger Transport Act outlines OTSIs powers to investigate.

OTSI will deploy promptly to accident and incidents and will decide whether to investigate a matter once details of the event have been verified. This quick response and engagement with industry and public supports a short initial deployment, enables the re-opening of

¹ NTC 2009 report – Single, National Rail Safety Regulatory and Investigation Framework – Regulatory Impact Statement.

networks, reduces the impact on transport, and the flow-on effect to the industry and commerce in NSW.

OTSI has a small team of staff, comprising of seven fulltime transport safety investigators (TSI), two management staff who also exercise functions as a transport safety investigator (TSI)/Investigators-in-Charge (IIC), and two administrative staff. This provides a ratio of 82% of staff qualified and capable to deploy and investigate a transport safety matter. OTSI operates under an annual budget of \$2.8 million. The agency is solely funded by the NSW Government. OTSI does not charge or transfer costs to any other body and the NSW Government funds OTSI investigations conducted under the Commonwealth Transport Safety Investigations Act (TSI Act). OTSI staffing has remained static since 2004.

OTSI's investigators regularly operate across the three modes of transport and have been since 2004. OTSI has a skilled team of investigators who collectively have extensive experience in the rail, bus and ferry industry and hold qualifications in heavy engineering, operations, navigation, safety science, human factors and aviation. OTSI employs staff with proven industry knowledge and qualifications ensuring all TSIs are capable of being an IIC from recruitment.

Management may also deploy to accidents and incidents under our jurisdiction, and carry out the functions of IIC. This arrangement has provided a direct relationship between OTSI, emergency services, operators, trade unions, technical authorities and the public. This enhances the effectiveness and efficiency of the investigation. The majority of OTSI investigations are on critical infrastructure and OTSI recognises the essential need to return the site to normal operations as soon as possible.

To maintain effectiveness, OTSI applies contemporary investigative risk tools used by most internationally recognised investigation organisations. OTSI will tailor the application of these tools for the transport mode and complexity of the accident to minimise burden on industry. OTSI will also seek the involvement of industry subject matter experts and other agencies to maximise the improvement in transport safety throughout the investigation.

OTSI is endeavouring to learn from successes in other transport modes to improve the delivery time of rail investigation reports. An example was OTSI's investigation into a road fatality where the timely completion of the investigation allowed detailed information to be released to other agencies. Subsequently, OTSI's recommendations were endorsed and adopted by the NSW Coroner. This provided a direct saving where the Coroner had dispensed with the Coronial hearing, based on the evidence provided through the OTSI investigation report. Additionally, The NSW Government and industry responded through implementation of relevant safety recommendations.

OTSI's History

The NSW Government created OTSI as a direct result of the findings from the Honourable Peter Aloysius McInerney's Special Commission of Inquiries (SCOI) into the Glenbrook and the Waterfall rail accidents.

The Glenbrook SCOI reflected on Canada's separation of regulator and investigator and McInerney noted that

"The rail accident investigation board has no interest in determining blame and can therefore examine the role of any organisation which may have contributed to an

accident, including the adequacy of the rail safety inspectorate's (Regulator) monitoring of any accredited organisation involved in the accident or incident"

and,

"many features of the Canadian legislation which would be beneficial in the creation of the Rail Accident Investigation Board in New South Wales"

The Waterfall SCOI identified that NSW did not have an independent rail investigator. The NSW Government promptly responded by creating the OTSI to conduct independent no-blame safety investigations across, not only rail, but also the bus and ferry industries.

Originally, OTSI was a division of the NSW rail regulator and in May 2005, the Honourable Mr John Watkins, Minister for Transport introduced the Transport Legislation Amendment (Waterfall Rail Inquiry Recommendations) Bill to the NSW Legislative Assembly announcing the intent to create the Chief Investigator of OTSI. The following legislation provided OTSI with the powers and independence to investigate transport safety matters. Since then, OTSI has been successfully operating across the three modes of transport.

In 2012, OTSI commenced discussions with CITS and the ATSB to collaborate on rail investigations.

National Rail Investigations

OTSI, CITS and ATSB investigate different modes of transport, however the agencies share a commonality in rail.

In 2009, the National Transport Commission (NTC) released a publication entitled "Single National Rail Safety Regulatory and Investigation Framework - Regulatory Impact Statement"

The NTC 2009 report stated:

"Proposals for change in rail safety investigation must consider the current multi-modal composition of Australia's independent investigators to ensure that all modes benefit from changes in rail safety investigation."

and,

"the regulatory impact statement did not find persuasive stakeholder suggestions that the next logical step in reform is model investigation legislation and found little to support the idea of a new and separate national rail safety investigator."

In August 2011, the Council of Australian Governments (COAG) signed the Intergovernmental Agreement (IGA) on Rail Safety Regulation and Investigation Reform. The intent of the IGA was to reform regulation in a number of transport modes and to suggest an enhanced national rail investigator.

In 2012 and in response to the IGA, the Honourable Gladys Berejiklian, at the time the NSW Minister for Transport, provided permission for OTSI's Chief Investigator to enter into a tripartite Collaboration Agreement with the CITS and ATSB to work together in the rail environment.

In 2013, OTSI executed the initial collaboration agreement with the provision that nothing prevents OTSI from electing to fulfil a function under its own governing legislation separately to the arrangements in this agreement. This was to respect the need to maintain a robust

investigation capability over the large scale, high volume NSW passenger transport operations in rail, bus and ferry. Additionally, not to disadvantage other transport modes not covered under the rail collaboration agreement.

In acting within the agreement, OTSI at its cost, conduct agreed rail safety investigations in NSW under the TSI Act and in return the ATSB provides training to OTSI staff.

Notwithstanding, OTSI does investigate matters under its State legislated powers in cases where the NSW Minister of Transport and Roads directs OTSI to investigate, and/or if the ATSB has declined interest in a transport safety matter.

The 2013 three year term collaboration agreement was renewed in January 2016, and will be renewed in August 2019 to extend the agreement to 2022.

The collaboration approach has met the intention of the enhanced national rail investigator and enabled OTSI to continue to fulfil its obligations under the State legislation to investigate safety matters in other transport modes under its jurisdiction. Generally, the enhanced national rail investigator through the collaboration has been working well and delivered the desired results. Each party has been supportive of each other.

Separation of Regulator and No-blame investigator.

It is recognised world-wide that no-blame investigators must operate independently to investigations carried out by enforcement agencies, a matter raised by McInerney's SCOI into Glenbrook. This ensures persons who contribute to a transport safety investigation may do so without the threat of reprisal or specific interest by an enforcement agency and maintain a more than arm's length between regulators and safety investigators. Enforcement agencies such as regulators typically investigate to see if a law or a condition of licence has been breached. The outcome is typically a penalty and this fact prevents persons from coming forward to contribute to an enforcement investigation.

OTSI's no-blame investigation provides protections to persons who come forward to contribute to a transport safety investigation with comfort in the knowledge that the no-blame safety investigation is focussed on understanding what went wrong and to work with industry to develop recommendations to prevent a recurrence. This principle is embedded across the enhanced rail investigator collaboration.

Notification reports and response

Previously, incident notifications were reported to the collaboration of no-blame accident investigators via the ATSB. From 1 July 2019, rail operators were required to report directly to the rail regulator, ONRSR. This new development is in conflict with other transport industries, such as aviation, where incident notifications are reported to a no-blame investigator to enable full, open and accurate reporting of the event. Reporting to a regulator may inhibit industry submission of reports. Prompt and accurate reporting enhances a no-blame investigator's ability to assess and respond to incidents, and prevent unnecessary disruption to transport networks and commerce.

Summary

The enhanced national rail investigator model has provided an operationally seamless, cost free service to the rail industry. This importantly still enables the individual agencies to fulfil their investigative obligations, and not disadvantage the other transport modes in their individual jurisdictions.