Rail Tram and Bus Union

Submission to the Productivity Commission Draft Report Progress on Rail Reform.

May 21, 1999

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Overview

The Productivity Commission is the Federal Government's principal review and advisory body on micro-economic policy and regulation. It has been an extreme advocate of economic rationalism since the 1980s. While the Australian community has rejected the social devastation these policies have caused during the 1990s, the recent draft report on rail reform has hit back with a vengeance.

Key message

The Draft Report demonstrates that the Productivity Commission has passed its use-by date. It would derail the rail industry. The Draft Report must be decisively rejected by federal and state governments and the community, just as the reports on Textile Clothing and Footwear, and the Motor Vehicle Industry were rejected.

The PC feels that although some privatisations have happened in South Australia, Tasmania and Victoria since its 1991 and 1994 Reports, a final push is required to achieve privatisation of all public transport in Queensland, NSW, SA, TAS and WA. This would impact on the lives of millions of Australians in the city and the country.

The scale of job losses would be 50% on privatisation, and at least 20% on contracting out.

The Productivity Commission has a major international comparison study underway on urban public transport but has proceeded with the Draft Report without it. The public will not be able to make submissions on it.

The PC found that the road freight industry has received more government support than rail but then recommends that there be *another* inquiry into road funding, rather than measures to re-balance rail investment.

In August 1998, the House of Representatives Standing Committee on Transport, Telecommunications and Micro-Economic Reform, in its *Tracking Australia* report, recommended urgent federal investment of $2.75 million in commercially justified investments in the interstate mainline rail network. The PC failed to endorse this.

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Reforms since 1991

The RTBU agrees with the PC that changes in the rail industry since the Industry Commission Report on Rail Transport (1991) and on Urban Transport (1994) have been extensive and significant. However, the union argues that the PC has failed to grasp the significance of the changes that have taken place.

This is because the PC, both in 1991 and now in 1999, believes that the structure of private ownership will itself deliver the “commercial focus” which in turn will deliver efficient, productive and viable rail industry enterprises.

The most significant reform since the 1991 Report was the formation of the National Rail Corporation out of the interstate operations of the five separate rail systems that provided the interstate service until then.

National Rail Corporation - a success story for reform

The National Rail Corporation was created through a decision by an inclusive process of governments, rail systems, unions and users in 1991. This decision-making process was addressing the fragmentation, poor service quality, productivity and profitability of interstate rail operations.

It united the interstate train operations of five separate systems into one corporation, with a totally new industrial relations regime that reduced the 20 unions in the previous set up to just two unions. Under its Award and Enterprise Agreements, NRC developed a leading example of skills development through nationally accredited training, career paths and a competency-based classification system.

The NRC’s government owners capitalised it, enabling the modernisation of its locomotive, wagon fleets, terminals and communications.

Employees in interstate rail operations fell from 9,000 in 1990 to 1,300 in 1998, with a further 460 workers employed by outsourced maintenance companies. According to the Ernst & Young benchmarking exercise in 1998, productivity rose by 31% to 575% across a range of categories, and overall costs fell by 42%, for the period 1990-1998. "… in most expense categories National Rail is performing in the vicinity of world's best practice", said Ernst & Young.

Between 1991 and 1998, NRC reduced the operational deficit of interstate train operations from $321 million to $20 million. Despite this dramatic turnaround, NRC has not achieved profitability after its 5 year establishment period.

NRC identifies the main reasons for profits not matching productivity as follows:

- the switch in policy in 1995, in the middle of the establishment period, to allow 3rd party operators on the east-west corridor. This reduced volume and revenue for NRC without adding any new rail business to the corridor. Costs were reduced to match falling revenue, but margins on this corridor have now been negative for 3 years.

- poorer than expected locomotive and rolling stock quality in 1993, causing very adverse service quality in the early part of the establishment period.

- poor track quality combined with the 1995 decision not to transfer track to NRC, thus stopping NRC from applying enhanced maintenance and new investment to the track.

Although there is ample documentation of the NRC experience, the PC Draft Report fails to provide any evidence that the NRC has "failed" or that a private owner could do any better.

The Draft Report provides superficial data on the privatised AN businesses, but no comparable data from QR, FreightCorp, CountryLink, or Westrail, to sustain its argument that there is insufficient "commercial focus" in the public sector railways.

The evidence from NRC is that a government-owned corporation, provided with significant new capital, modernised a moribund rail freight business of national significance. This was despite further major government interference to change the basic NRC concept of a vertically-integrated railway, and then to allow customers to run their own trains in competition with NRC.

However, the NRC experience with the poor quality of track also shows that corporatisation and reinvestment in equipment is not enough to gain the potential productivity improvements in rail freight, but that significant investment in the infrastructure and comparable competitive conditions with the road freight sector are also required.

The PC Draft Report does not indicate how privatisation of the now-corporatised public rail systems will address these infrastructure and overall freight market issues. Its obsession with privatisation has inhibited it in a more balanced assessment of rail reform since 1991.

3

Competition

The Productivity Commission *Progress in Rail Reform*, Draft Report, shifts the privatisation pressure firmly onto New South Wales and Queensland by its call for reform under the Competition Principles Agreement to be extended to the "private provision of rail services - whether through contracting out, franchising or privatisation" as "a more effective means of aligning commercial practices between competing rail operators".

This means the privatisation of Queensland Rail, the NSW State Rail Authority (CityRail and CountryLink), Rail Services Australia, and FreightCorp, State Transport Authority of SA urban rail, and Westrail freight and urban services.

The States are under no obligation to privatise these services because the Competition Principles Agreement states explicitly that it favours neither public nor private ownership. Furthermore, rail was not included in those areas marked for "reform" under the CPA to attract payments from the Federal Government.

The Productivity Commission argued that: "Reforms under corporatisation have the potential to place government-owned railways on a commercial footing, but in practice they appear insufficient to achieve competitive neutrality in the rail transport market." (p192)

Rail sector employees, rail customers and rural communities supported by rail are clearly warned that their jobs and services are on the line if they are government-owned.

The outcome would be a major new shrinkage of rail within the transport sector of the Australian economy, a transport task that would be shifted mainly to road.

Vertical integration and market solutions

The PC strongly advocates the separation of infrastructure and train operations in the high-revenue coal and grain rail markets and even in urban passenger train markets. This is to promote competition on the tracks between train operating companies. Competition is to give "commercial focus" and viable rail operations.

Where is the evidence for this abstract ideological assertion?

ILO Conference cautions on privatisation

In 1993, the International Labour Organisation (ILO) held a conference on *Consequences for management and personnel of the restructuring of railways*. The participants were rail managements, rail unions and governments.

In the report, the conference concluded: *"It has become increasingly clear that most railways cannot continue to operate successfully under the legal, administrative and financial regimes of the past. But it is equally true that, at the national level, the arguments in favour of re-structuring are often not based on systematic analysis of the problems."* (p 33)

The ILO conference recognised that in logical terms the issue of private vs public ownership was secondary to the issue of efficient provision of railway services in accordance with established social objectives. However, it accepted that there was an intense debate about the private / public issue, with ideologists on both sides, and the ideological positions often leading the debate in a sterile direction.

Railway and government deficits have been the most common factor behind partial privatisations, with ideological and political factors being stronger in Central and Eastern Europe - but these issues are down-played by privatisers in favour of arguments that privatisation promotes competition, private enterprises will not use state support to cover for inefficient management, and private enterprises are more efficient than public ones.

Empirical evidence does not support the argument that private enterprises are more efficient than public enterprises.

World Bank cautions on privatisation of railways

A World Bank study, *Pricing, cost recovery and production efficiency in transport*, (Washington DC, World Bank, 1990) stated: "private firms may be inefficient for the same reasons that the public firms are inefficient. Each of the causes of inefficiency … can lead to inefficiencies in both private and public firms. Privatisation might not therefore be the correct remedy for public sector inefficiency, since the resultant private firm may be inefficient as well. A policy designed to rectify the cause of inefficiency - such as modification of managerial incentives, introduction of competition, regulatory reform, or any necessary combination of these - could be more effective in promoting efficient production than privatisation, or any other policy reform used in isolation". (p 31)

Conrail and Amtrak are good US examples.

Conrail today is a successful private company. It began in 1976 when the US government merged seven bankrupt private railways, invested in the end US$7,000 million, hired an effective management team and created a new more commercially-oriented rail regulatory framework, the 1980 Staggers Act. The company moved into profit in 1981 and was privatised in 1987. It would probably have been just as successful if it had stayed publicly owned. Conrail is a vertically-integrated freight railway.

Amtrak was also created and assisted by the US government to provide interstate rail passenger services. It was formed in 1971 from the assets of seven bankrupt railways. From 1980, it was transformed into a "for profit" corporation fully owned by the US Department of Transportation, and allowed to reorganise its fares and industrial relations through the Rail Passenger Transport Act. Its operational subsidy in 1976 was 58% of costs, down to 21% in 1991, and aiming to go lower. Amtrak is considered to be a successful company. Amtrak is a passenger train operator, paying access charges to use the tracks of vertically-integrated private railway freight companies.

The ILO conference listed the net income for the 1980s of railways in seven countries. Four of them were positive for all or most of the decade: India, China, US Class I railways, Netherlands. French railways moved into the black in 1988. German railways operated with a stable deficit throughout the decade, and Zimbabwe's railway had a progressively worse deficit as the decade went on.

Of these, all but the US railways were publicly owned.

This list demonstrates the need to undertake a deeper analysis of the realities of railway operations rather than adopt a simplistic ideological position in favour of privatisation when dealing with a public sector railway in difficulty.

Government policy today is to encourage private sector investment in infrastructure on a build-own-operate models, with the road tollways as the most prominent example. The same model is being pushed with some success in the rail sector. A study by the Economic Planning Advisory Commission (EPAC), *Private Infrastructure Task Force Report*, September 1995, concluded that in road construction, it was likely to be more efficient and cost-effective for the public sector to own the infrastructure and simply contract for its construction (p37-42).

A significant factor in this conclusion was that network risk contributed to higher costs for the owner of a specific link in the road network, and that the public sector was better able to bear this risk. The risk is that changes elsewhere in the network can affect traffic flows in the privatised link, thus affecting revenue and profitability of the project.

Symonds Travers Morgan study of Track Australia

There have been two studies in Australia of the likely impact of vertical separation. The first was in 1995, by Symonds Travers Morgan, on the proposed Track Australia Corporation - now the Australian Rail Track Corporation. The second was by Mercers on whether Queensland Rail should continue as a vertically-integrated railway, or separate infrastructure from train operations.

The Track Australia Consultant's Report found that the level of return available for investment in rail is worst under the model now adopted by the federal government - vertical separation and open access for train operators on the interstate mainline network. This finding is demonstrated in Table 1.

• Table 1: Potential surplus for track authority 1997-98 ($M 1994-95)

	Basis [1]	Potential surplus			Possible TA share [2]
		North-South	East-West	Total	
A [3]	NR CP4 without access and NRC take-up	-12.1	46.7	34.6	12.1
B	NR CP4 with access and Track Australia	-14.9	26.5	11.5	-0.5
C	As B with yields reduced by 5%	-24.4	5.5	-18.8	-24.9

1. After allowing for operating and maintenance costs, rollingstock capital costs (at 7% pa real interest), and medium-run infrastructure capital expenditure (based on 10-year renewal program). Does not allow for administrative cost of Track Australia; some of this cost was assumed to be undertaken by NRC.

2. The North-South corridor includes some traffics generating a surplus which will have to be shared with operators. This surplus is a function of charges by other track authorities (Railnet in NSW and possibly WA and Queensland).

3. Case A assumes the volumes, revenues and costs assumed in the National Rail Corporate Plan (CP$), with NR take-up of the infrastructure. Case B uses these volumes and revenues adjusted by Symonds Travers Morgan for estimates of the impact of open access (estimated at a 4% increase in volume and 7% reduction in average yield) and the establishment of Track Australia. Case C has these revenues further adjusted for Symonds Travers Morgan's reassessment of base forecast yields (reduced by 5% over Case B).

Source: Track Australia Consultant's Report, 1995, 6-24.

Under the full separation and competition model, there is a drain on funds for infrastructure investment of between $0.5 million and $24.9 million per year.

On the other hand, the model envisaged in the NRC Shareholders Agreement provides a potential surplus for infrastructure of $12.1 million per year.

The table also shows the massive difference in financial performance on the East-West track as compared to the North-South (east coast) track.

The Track Australia Consultant's Report insisted:

"Track Australia must have long-term assured funding, to allow it to focus on its key objectives of encouraging competition and managing the infrastructure effectively:

- Long term financial viability is important for Track Australia's success.
  - It will allow management to focus on running the business, rather than continually negotiating for funding.
  - It will ensure proper planning of maintenance and renewal to minimise costs and disruption of service.
  - It will ensure investment meets market needs, when it is needed.
- In the medium to long run, overall revenue from access prices should be sufficient to meet recurrent operating and maintenance requirements.
- However, in the short-run transition period, a revenue shortfall of up to 20% is expected.
- It is important that this is funded on an assured basis.
- Will reduce over time as maintenance costs are reduced and / or traffic increases.
  - The long run goal should be to fund maintenance and renewals within the access charge.
- Major investments in capital improvements and deferred and extraordinary maintenance will need to be funded on a clear, agreed long-term plan with Government." (7-9)

Queensland Rail study confirms vertical integration

In 1996, Queensland Rail requested international rail consultants Mercer Management Consulting to study the impact of separating infrastructure from train operations in Queensland Rail. This is the only such study of a real railway in Australia and deserves close scrutiny.

Mercer Management Consulting set out its ***Case for an Integrated Railway*** in the following Executive Summary:

"The brief argues that until outcomes of the separation experiments currently being undertaken in southern states are known, economically and socially it is more appropriate for the railway in Queensland to remain integrated. In summary:

- World-wide, the most commercially successful railways are integrated - notably the railways of the USA, Canada, India, New Zealand and Western Australia.
- Infrastructure is one of the basic production elements of the rail transport system. An integrated railway can most effectively make the infrastructure and operational trade-offs necessary to provide the best possible service to customers.
- Overseas experience shows that separation of a railway results in considerable legal and administrative complications and non-recoverable costs. An independent international consultant has estimated that the costs of separating Queensland Rail would be in the order of $30 million to $50 million.
- Introduction of new institutions - the result of railway separation - has been shown to be inevitably accompanied by duplication of managers and support staff and significant increases in Government resources to manage the complexity that has been created. It will also reduce the flexibility of Government to deliver on its policy agenda.
- There is no evidence to suggest that the increased efficiency and competition sought by proponents of railway separation cannot be achieved under Queensland Rail's current structure. QR already operates in a highly competitive market versus road and shipping. Since corporatisation and the introduction of the National Competition Policy, the organisation has
  - established an Access Unit independent of QR's own integrated businesses to ensure that there is no discrimination against third parties in favour of QR's own operations (ie QR is operating in a competitively neutral manner);

- separated the costs of infrastructure processes from above rail operations and these will be clearly identified in the 1995/96 Annual Report, and;

- clearly advocated in the 1996 Corporate Plan that above and below rail CSOs need to be explicitly identified.

- Contrary to the view that favours separation, private sector investment in railway infrastructure is driven by commercial return and is not related to organisational structure. If a commercial return is achievable in the long run, QR can now deliver private investment for rail infrastructure. Experience in New South Wales has shown that if private firms undertake public infrastructure projects which prove to be unprofitable, they will require major government subsidy.

- QR staff reaction to separation is likely to be antagonistic with the potential for widespread instability and industrial unrest. Overall, staff and community reaction could parallel that of the branch line closures proposed by the previous government.

- A major change in industry structure would effectively stall QR's reform program. In five years the program has delivered wagon and labour productivity gains of 52% and 76% respectively and is planned to deliver further significant gains as QR moves toward Best Practice."

The main international benchmarks used for Australian rail systems are the US private rail operators, which are freight operators owning their own track and negotiating track access charges for competitors who need to use parts of their track.

In 1993, NZ Rail was privatised and bought by a regional US operator, Wisconsin Central, but maintained as an integrated rail system. NZ Rail, now known as TranzRail, is often quoted approvingly by Transport Ministers who promote vertical separation of Australian railways. Wisconsin Central, through TranzRail, won the bid for Tasrail, and is aggressively pursuing other freight rail privatisations in Australia.

Government confusion on rail competition

In the lead up to the privatisation of V/Line Freight, the Victorian government initially proposed a vertical separation and open access regime. However, US bidders convinced the government that vertical integration was a better option, and the bidding documents were changed. When the sale took place in February 1999, the winner, RailAmerica, bought the locomotives, rolling stock and workshop assets and leased the track for 15 years.

A similar about-face has happened in Western Australia in the lead up to its proposed sale of Westrail Freight.

The Australian and international evidence does not support the PC's case that vertical separation and open competition are the best options for Australian railways.

4

Productivity and Best Practice

The PC concluded that productivity has improved more rapidly in Australian railways than North American railways since 1991, but that productivity is still well below levels achieved in North America. This conclusion is then part of the argument for privatisation to achieve more "commercial focus".

However, the method used by the PC to reach this conclusion, set out in Appendix D, does not take account of the economies of scale and geographical differences between the Australian and North American railways (D23). The PC says it will have a better study in the final report.

In other words, the study set out in the Draft Report does not adequately support the conclusion set out in the Draft Report.

A further problem with the productivity study is that it conflates the data of NRC and AN. This has the effect of obscuring the achievement of NRC in the period 1993-98, and allows the PC to wildly skew its argument against public sector ownership of railways. These achievements are already summarised on pages 5-7 of this response, and were sufficient for Ernst & Young to find that NRC had largely achieved "world's Best Practice".

The massive differences in market density, infrastructure quality, and terrain, between Australia and North America, make the PC productivity comparison an exercise of comparing apples with oranges.

North American railways carry 30 times the freight carried by Australian railways. They have 35 tonne axle loads, compared to 20 tonnes in Australia. These fundamental differences greatly affect overall productivity outcomes and freight rates, but have nothing to do with privatisation or "commercial orientation".

Yet it must be emphasised that the PC has not indicated in its report that the North American railways used in the comparison abhor the model that the PC advocates for Australian railways - vertical separation and open access.

The RTBU promotes Best Practice to meet the justified public expectation that its assets will be used as efficiently as possible for the intended purpose. This is a viable alternative to the "let the managers manage" and "let the market decide" approach that is often pursued by aggressive contracting out and privatisation.

However, in some important cases, such as the former AN, the union has found management quite hostile.

The RTBU urges the PC to seriously consider this approach to achievement of improved productivity, instead of arbitrary imposition of neo-liberal market theory on operating rail systems.

However, Best Practice is a concept much abused in the debate.

International Best Practice, Performance Indicators and Benchmarking in the National Rail Corporation, October 1992, a report by the Apius Network, Zarabay Pty Ltd, described the components of International Best Practice as they appear in the main literature:

- a focus on simultaneous improvement in cost, quality and delivery;
- closer links to customers;
- closer relationships with suppliers;
- the effective use of technology for strategic advantage;
- less hierarchical and less compartmentalised organisations for greater 'flexibility'; and
- human resources policies which promote continuous learning, teamwork, participation and flexibility.

The study notes that these are features that attach to the enterprise. Little reference can be found in them to the external (or macro-economic) environment in which the enterprise operates. Yet the external values of railways are an important feature of their support by the public - their contribution to overall land transport efficiency by reducing congestion, conserving energy and lowering pollution.

The concept of International Best Practice arose from US debates over the decline of their industries in the 1970s and '80s. US organisational theorists tried to identify and emulate the most successful enterprise strategies, with a focus on Japanese companies.

This comparative analysis is greatly complicated by differences in the cultural, economic, institutional and political structures which influence the productive process, and which may not be capable of empirical measurement. This is especially true of patterns of labour organisation and industrial relations.

International Best Practice as a concept has the following deficiencies:

- the emphasis on the internal operations of an enterprise ignores the issue of externalities, which may be particularly relevant to public sector enterprises;

- the orthodox concept of IBP emphasises the 'employee', to the exclusion of organised labour ie trade unions;

- the concept of 'flexibility' which underpins IBP has a variety of meanings which may be contradictory;

- IBP emphasises processes internal to the enterprise, when in fact competitiveness may be derived from organisational *linkages* eg between the enterprise and the public training system;

- often IBP offers little insight into management practice.

Benchmarks and Performance Indicators are often confused: benchmarks may be legitimate targets, but PIs are merely indicators.

There is a tendency when identifying IBP, and when establishing benchmarks and PIs, to concentrate on outputs rather than outcomes. There is also a tendency to choose PIs based on measurement capability. These tendencies lead to a concentration on cost-cutting (as reflected in the term World Standard Efficient Costs) rather than on *processes*. The revision of the World Standard Efficient Cost Savings identified by Booz Allen Hamilton and / or Travers Morgan since March 1991 is indicative of the weaknesses of this approach.

The difference between outputs and outcomes can be illustrated by reference to measurements of productivity which use a diminishing number of employees as the denominator, while contract labour may be ignored or ill-measured. This will distort the level of 'savings' achieved by the enterprise.

Benchmarking should be concerned with processes rather than with statistical details of what companies do. Even if the enterprise does not achieve its nominated benchmark, this should not be automatically considered as failure. It may be due to cultural, economic, institutional or political factors. Benchmarks should therefore be set through consultation between management and unions.

There are two basic types of PI: comparison between enterprises in the same industry, and a comparison of the performance of the one enterprise over time.

If PIs focus on costs, a loss of focus for the enterprise as a whole may be the consequence. In the context of devolved and decentralised corporate structures, managers may select PIs which they find easy to control, but which may not be relevant for the enterprise as a whole. The result is concentration on measurable outputs rather than enterprise outcomes. (One example recently used by QR was their search for a benchmark on urban electric car maintenance costs. They found that Hong Kong had the lowest cost in the range of systems they studied. But then they found that Hong Kong had the worst availability of urban electric cars of all the systems studied. What is the more appropriate PI?)

In 1991 a US specialist on PIs for public sector enterprises said: *"The 'ethic of citizenship' suggests that productivity and quality management strategies should be judged, in part, on whether they serve to enhance citizens' capacity for self-governance and self-development".* This is perspective missing from virtually every discussion of PIs in Australia.

PIs may measure:

- input (eg, employee numbers, training budgets etc)
- output (eg productivity, either of single variables - labour, capital equipment - or in conjunction through techniques such as Total Factor Productivity. Accounting ratios such as EBIT / interest are also output PIs.
- general performance (eg quality of service, customer satisfaction etc).

The *Tracking Australia* report included the following comments about International Benchmarks (p156-157):

> **6.21** The Public Transport Union (PTU) was supportive of international best practice as a mechanism for helping rail to contribute 'to overall land transport efficiency by reducing congestion, conserving energy and lowering pollution.' However, the PTU claimed that any 'comparative analysis is greatly complicated by differences in cultural, economic, institutional and political structures which influence the productive process, and which may not be capable of empirical measurement.' The PTU believed benchmarks may be legitimate targets but international best practice 'is a

concept much abused in the debate' (Sub 39, *Submissions* pp.491-2)

6.22 The PTU then listed a number of deficiencies which it claimed characterised international best practice as a concept:

- externalities which may be relevant to public sector enterprises, were often ignored;
- organised labour may be excluded in any development of international best practices;
- 'flexibility' in the context of international best practices sometimes had different meanings;
- international best practices emphasised internal processes when external linkages may be equally pertinent;
- international best practices often offered little insight into management practices; and
- concentration was placed on outputs rather than outcomes (Sub 35, *Submissions* p. 492)

6.23 While not endorsing all the comments made by the PTU, the committee nevertheless maintains some weight should be given to these aspects in any consideration of international benchmarks. It is important that Australia develops its own benchmarks which take into account Australian conditions, much as QR has achieved.

5

The Competition Principles Agreement

The PC in this draft report continues to apply an extremely narrow concept of “reform” to the rail sector, for which it was roundly criticised in 1991 over its original Rail Inquiry, when it was the Industry Commission.

“Reform” means shifting the rail industry towards private sector, profitable operation. Change in any other way is a negative “intervention” in “the market”.

Corporatisation and competition policy were meant to achieve the required reform, but, in the PC’s view, this hasn’t worked well enough. Private ownership is the only answer.

The PC approves of the privatisation of Australian National Railways and V/Line Freight, and the pending sale of Westrail Freight and the National Rail Corporation. It disapproves of the continuation of government ownership in New South Wales, Queensland and Western Australia.

Yet all public sector railways undertook massive restructuring and rationalisation programs in the 1990s, and freight operations in particular achieved spectacular productivity growth in the decade, according the PC. All have adopted a sharp commercial focus, especially in freight operations.

The PC Draft Report is calling for Federal and State Governments to impose change beyond that envisaged by National Competition Policy and the Competition Principles Agreement.

The changes introduced by the Competition Policy Reform Act 1995 and its associated Competition Principles Agreement focused around three main ideas:

1) bring all government business enterprises under the Trade Practices Act;

2) impose competitive neutrality principles on government business enterprises;

3) create third party access regimes for declared services.

The practical effect of these ideas on the rail, tram and bus industry has been to accelerate corporatisation, privatisation, and contracting out, and the entry of third party operators onto some rail systems.

The Competition Principles Agreement stated that it was neutral regarding public or private ownership.

The Competition Principles Agreement required governments, where relevant, to take account of a wide range of employment, investment, consumer and environmental sustainability issues when deciding on introducing competition to public sector business enterprises.

This “public interest” assessment has not been done in even one case in our industry, but no one could sustain an argument that these issues have not been relevant.

The Rail Tram & Bus Union believes that an economic benefit / cost study of the impact of privatisation and contracting out in our industry would show that the public has not received value for its capital in these processes. This is important for the broader economic capacity of the public sector to address ongoing social and environmental objectives.

Beyond the economic aspect, the public interest in transport is to provide a quality, safe and reliable service accessible to everyone, either through full infrastructure and externalised cost recovery in the commercial sector or by community service obligation subsidies in the non-commercial sector. These are the broader economic, social and environmental issues that the Competition Principles Agreement said should be taken into account in any decision to introduce competition into a sector served by a government business enterprise.

And beyond this fundamental social justice aspect of the public interest, the transport sector has an environmental task to carry out for the entire community - to contribute to an ecologically sustainable economy.

The public interest also encompasses the quality of working life for employees everywhere, including basic trade union rights to organise and to bargain collectively, to work free from discrimination, and free from forced labour and from child labour, and to work in a safe and healthy environment, to have a balance between work and family and social life, to be free to access education.

These basic workers rights are set out in the Core Labour Rights defined by the following ILO Conventions: 87 - Freedom of Association; 98 - The Right to Organise and Collective Bargaining; 100 and 111 - Equality and Non-Discrimination in the Workplace; 29

and 105 - Banning of Forced Labour; 138 - Banning of Child Labour; and 155 - A Safe and Healthy Working Environment.

Several of these rights, which are part of the public interest, are being undermined by the application of NCP, in the context of the Workplace Relations Act 1996 and parallel State legislation.

So far, no change in the rail industry that has been motivated by the NCP has been justified by any open enquiry into the broad economic, social and environmental benefits and costs of the proposed change, as envisaged in the Competition Principles Agreement.

This failure to live up to the letter of the NCP, as set out in the Competition Principles Agreement, is itself a detriment to the public interest in having a free flow of information about public affairs and a democratic debate about the use of public resources.

This record compares abjectly with even the British approach. There Prime Minister Margaret Thatcher established a Royal Commission to report on the proposed privatisation of British Rail. A white Paper and a full parliamentary debate followed.

In Germany, the parliament held a major enquiry into the introduction of competition in the rail industry, with all parties represented, and then held a full parliamentary debate, before deciding on a new policy.

In contrast, look at two Australian examples.

In late 1998, the Western Australian government declared that Westrail Freight is up for sale as an integrated railway. Actually this was announced by the Minister for Transport on June 30, 1998, then denied by the Deputy Premier in parliament on August 19, 1998, then re-confirmed by a government statement on December 6, 1998.

Although there have been reports on consultancy studies and internal taskforces, none of these documents has been tabled in the parliament or released in any other way to the public.

The 1997 Brew Report on Australian National Railways was only released on the formal insistence of the Senate, and after there had been a sharp argument about its substance in the Federal Cabinet.

When the Senate set up an inquiry into the Brew Report, the Federal Government pre-empted the outcome by announcing the sale of AN and of the National Rail Corporation.

The Brew Report had recommended the sale of the NRC, but this had not been pat of its Terms of Reference, nor did the report seriously analyse the situation with NRC.

These examples demonstrate clearly that the public interest has been spurned in some historic decisions about rail enterprises.

6

Competitive Neutrality issues

“Competitive Neutrality” is conceived in the Hilmer Report as a principle to correct the alleged advantages enjoyed by government enterprises over private enterprises. This was modified in the Competition Principles Agreement to correct any ‘net advantage’ enjoyed by the public sector. However, it is still applied without public investigation, and in a way that impacts on the wages and conditions of employment of public sector workers.

The RTBU strenuously argues that the major competitive issue in our industry is the imbalance of infrastructure investment and access costs between the rail and road modes. This issue was completely ignored by the very narrow and theoretical perspective of the Hilmer Report, which only allowed for a consideration of competition between rail sector enterprises.

Competitive neutrality *within* the rail industry is not the most important issue. “Competitive neutrality” between the rail and road sectors is much more fundamental, and the relative investment regimes and access charge regimes are the key elements in this issue.

The PC Draft Report repeats the errors of the Hilmer Report with its unreal expectation that on-rail competition will correct the perceived inefficiencies and lack of profitability of rail systems.

Road access charges provide a subsidy to the long-distance road freight industry because the charges are based on a fixed registration cost plus a fuel charge, instead of a mass x distance charge which more accurately accounts for road pavement damage.

Until road access charges are increased to full cost recovery, or to a level similar to rail, there will be an incentive in transport to put more freight onto long distance trucks than is justified by real transport economics. This requires a review of the charges recently imposed by the National Road Transport Commission.

The Industry Commission stated in its 1991-92 Annual Report:

> *“Annual fixed charges are not efficient because costs vary with the distance travelled and the mass of the vehicle. The result is that*

some vehicles - the heaviest travelling long annual distances - will meet less than 20 per cent of their attributed costs. Charges for heavy vehicles that reflect costs they impose are essential to ensure best use is made of the nation's road and rail infrastructure, and that industry location decisions are appropriate in terms of minimising the overall cost of economic activity. Differences between recommended charges and road-related costs are greatest for vehicles competing with rail. The charges, as recommended, will therefore potentially distort the long-haul freight market as rail reform takes effect …" (p197-98)

As a result, a national set of charges were introduced for heavy vehicles, but these were a compromise which eventually forced down the costs of six axle articulated trucks at 42.5 tonnes gross mass from \$8,000 to \$4000 per year, and the charge for an eight axle B-Double was reduced from \$14,000 to just \$5,500. This had a direct effect on heavy road vehicle competition with rail.

B-Double competition in the east-west corridor is already squeezing National Rail Corporation, which is already a highly efficient rail operator. The pressure is even worse in the north-south corridor where the rail infrastructure is of lower quality than on the east-west.

Attached as Appendix 1 is the 1996 RTBU submission on the application of Competitive Neutrality to Public Transport in NSW.

7

Investment

The PC Draft Report correctly notes the imbalance of investment in railways and the National Highway System, and accepts that this may be an aspect of unfair advantage of road transport over rail transport.

However, its recommendation for an inquiry into road funding is an obtuse denial of the major work undertaken on the transport investment issue undertaken by the National Transport Planning Taskforce and the House of Representatives Standing Committee on Communications, Transport and Micro-Economic Reform in its *Tracking Australia* Report.

Tracking Australia reported in August 1998 that "many of the rail tracks [on the interstate mainline] still followed 19th century alignments with twists and curves, tunnels which were not sufficiently wide or high for double-stacking and bridges which were not able to take today's heavy loads".

The report warned that unless urgent action was taken, sections of the east coast corridor would not be operational within ten years. It called on the Commonwealth Government to show leadership by declaring, along with the States, a National Rail Network, and committing itself to a $2.75 billion investment program over the next 12 years.

Tracking Australia requested the government to respond to the parliament on its recommendations by June 1999. The PC draft report is a parallel effort by the Treasurer and the government to neutralise the impact of *Tracking Australia*.

The solution is not a reduction in road investments, but an urgent increase in investments in the interstate mainline rail network.

The RTBU urges the PC to endorse the recommendations of *Tracking Australia*.

These recommendations included the establishment of a National Land Transport Commission.

The RTBU recommends that the urgent $2.75 billion rail investment program identified by Tracking Australia be implemented by a National Rail Transport Commission. When this program is well underway, with an adequate planning and technical base, that the Rail Transport Commission by merged with the NRTC to form the recommended National Land Transport Commission.

Then the National Transport Planning Taskforce recommendation for common investment criteria to be applied to rail and road projects in each corridor, could become a reality.

This is the area where Commonwealth leadership is vital, as identified in Tracking Australia.

8

Rail labour issues

An area of continuity between the 1991 and 1999 reports on rail is the emphasis on contracting out privatisation and insecure forms of employment eg. casual and part-time. The 1991 report said:

7.1 The Commission recommends the removal of all restrictions on the contracting of tasks so that railways can take every opportunity to attain maximum efficiency. Contracts could be competed for by other rail systems, between elements of the same system, or by the private sector.

7.2 The Commission recommends that all rail authorities strive for more efficient use of their most costly input, labour. There remains considerable scope for increased labour productivity from more flexible use of their workforce. Such changes might include:

- more employment of permanent part-time staff (particularly for peak periods);
- more extensive use of casual and temporary employment;
- wider shift spans and split shifts;

The 1999 Draft Report notes on p.xix, *Overview*, Key Messages, first dot point:

"- Many reforms in the 1990s have transformed the structure and operations of Australia's railways there now greater competition between railways and more private sector participation in some corridors".

The third dot point indicates:

"- greater commercial focus is needed:
this can be achieved by contracting out, franchising privatisation or the entry of new owners.

The draft recommendations on p.xxv have no direct reference to labour issues as in the 1991 Report, but the major recommendation has profound implications for workers and their rights. The draft recommendation says:

Governments should consider the scope for, and assess the potential benefits and costs of, further private sector involvement (through contracting out, BOOT-type arrangements, as an integral part of their approach to rail reform)

Outcomes for workers

On p.77 the Draft Report notes:

> "The interests of employees in an industry can be defined at a number of levels including numbers employed, wages and other financial benefits and conditions of employment.
>
> The RTBU agrees interests of workers can be defined at a number of levels including;
>
> - job security/insecurity/disguised unemployment
> - bargaining rights/national and international legislation / conventions
> - rail safety
> - Occupational health and safety
> - Wages and conditions
> - Family life
> - Training/professional development

The RTBU is concerned at the narrow scope of the Commission's Draft Report when it address labour issues.

The Draft Report only purports to examine the outcomes for workers still employed by Australian Government railways. This is a remarkable omission given from the Commissions view there have been "transformational" changes in the operations of Australian railway best characterised by new private sector owners eg. ASR, GSR and ATN. These companies are extensively quoted in the report eg. p.128, p.190, p.191.

The box devoted to ATN on p.128 notes in passing 'Tasrail…. Has also changed labour arrangements. It has introduced D.O.O. operations, individual contracts and bonuses'.

The Draft Report purports to analyse contracting out and its impact on the railway industry. Table 6.2 occupying the whole of p.117 is headed "Competitive Tendering and Contracting, Government Owned Railways, 1991 to 1998."

The Draft Report is at the minimum very supportive of CTC eg. p.116 and p.118. "The main benefits of CTC are argued to include lower costs, improved service delivery and quality and greater flexibility…

"Providing that tendering processes and contracts are well designed, the application of contracting out in rail transport, can lead to improvements in efficiency because of stronger commercial imperatives facing the private sector".

A confused reference to inter sectoral comparisons is made on p.77 of the report "to the extent that wages and conditions for contractors are not comparable to the wages and conditions of those directly employed in the railways".

On p.234 the Draft Report says:

"The effects of CTC on labour were considered in detail in the IC's (1996) report, Competitive Tendering and Contracting by Public Sector Agencies. The main findings of the report were that:

- Based on limited information, wages and conditions for those undertaking a function are often lower than after the introduction of outsourcing;
- Although outsourcing may result in changes to career structures, it may also lead to greater development opportunities for individuals through working for specialised employers and through exposure to different work environments; and
- Outsourcing is likely to affect some classes of employees more than others. To date, women, people from non-English speaking backgrounds, low-skilled and blue-collar workers appear to have been disproportionately affected by outsourcing.

Importantly, the IC also found that it seemed that protecting the employment of public sector employees by not engaging in CTC provided no long term guarantees for their job security

From a Railway Unionist's point of view the Draft Report has missed the train by not undertaking comparisons of Wages and Conditions pre and post Contracting Out.

The RTBU has filled this gap. Moreover the PC has failed to grasp the equity issue of contracting out ie. CTC often involves income transfers between low paid workers not genuine efficiency gains. Australia, as occurs in many countries of the world, should pass social legislation to protect workers eg. European Acquired Rights Directive and Transfer of Undertakings (Protection of Employees) Regulations in the UK.

CONTRACTING OUT IN THE RAIL INDUSTRY : RTBU CASE STUDIES

The ACTU Submission to the 1996 Industry Commission said:

Introduction

This submission will address the substantive threshold policy issues identified in the January 1995 Issues Paper produced by the Industry Commission. It will deal in detail with public policy and accountability, cost savings, managerial control, workforce skill development, productivity and flexibility, service quality and client impacts, access and equity issues for clients and employees, and impacts on employment levels and employment conditions.

The Industry Commission paper also addresses a second set of issues which are concerned with implementation once the decision to contract out has been made. The unions believe the major focus of the inquiry should be on the threshold issues identified above. The unions may make separate submissions on implementation issues at a later stage in the inquiry.

The issues in this submission will be examined with reference to examples and case studies from Commonwealth, state and local government, and from the public transport, health and corrections industries. The case studies are also provided in full.

Both the literature and case studies show that CT results in reductions in job numbers and/or employment conditions, which are not real efficiencies, but a transfer from employees. This conflicts with the requirements of public service delivery for a highly skilled and motivated workforce, with high standards of public accountability, ethics, and probity. There have been significant gains in efficiency, effectiveness and equity without CT, through award restructuring, job redesign, benchmarking EEO programs, and other forms of continuous improvement. CT results in casualisation of the workforce, loss of jobs and working conditions, and is particularly disastrous for the employment conditions of women and other disadvantaged groups.

Employees Pay

> When savings have been achieved through contracting out, it has been largely through the reduction of numbers of jobs and/or working conditions, particularly of the lowest paid. For example, when the Kennett government awarded 80% of Melbourne public bus services to the National Bus Company, the value of the employment conditions of the bus workers was reduced by 25%. (Case study 4a). Other examples of reduced staff numbers and working conditions are given in the section on employment conditions. As a number of economists have noted, this is not an increase in efficiency, but a transfer from employees. (Quiggin, 1994 and Borland, 1994).

The ACTU submission includes case studies on contracting out pertinent to public transport. Included are:

– The Met Bus Services in Melbourne

– The Contracting of Electric Car and Freight Wagon Bogie Maintenance in NSW to A. Goninan and Company : The Maintrain Contract"

– The Ready Power Contract to supply locomotive to the State Rail Authority of NSW.

Extracts from the ACTU submission including the case studies referred to above are attached as Appendix 2, and form part of the RTBU submission.

Contracting Out in the Rail Industry Shows That Competitive Tendering Results in Reductions in Job Numbers and/or Employment Conditions Which are not Real Efficiencies but a Transfer from Employees.

WAGES AND REMUNERATION

The RTBU is of the view that this section is very confusing. The Draft Report uses average labour costs and table 4.11 real average labour costs. The Draft Report notes "labour costs also include payments such as workers compensation premiums which may not directly benefit employees" and "average wages may rise because more workers at the lower end of the pay scale have lost their jobs, rather than any real increase to workers at each pay scale. This may be of particular relevance when contracting out becomes more prevalent if the tasks contracted out are those which attracted lower remuneration".

The Draft Report makes the following assumption on p.178:

> “It would be expected that, as employment falls, remaining workers received increased remuneration as a result of productivity increases. This describes what has happened to varying degrees in all jurisdictions, except NSW.
>
> The RTBU argues that the link is not clear cut. It would appear redundancy costs during the period are included and if this is so, they should be netted out.
>
> “In the case on AN-NRC, most of the increase has occurred since 1993-94, when NRC became operational, suggesting a change in the composition of employees and redundancy payments to be a major contributing factor”. P.79 Draft Report.

The productivity increases come from a range of factors - technological change, new skills, multi-skilling, devolution of responsibility, development of career paths etc. No attempt is made to examine the features of productivity increases.

The RTBU will attempt in future negotiations to secure wage increases based on falling job numbers and subsequent productivity increase. Wage increases during the period bear no relation to decrease in nob numbers.

The grouping together of AN and NRC is a travesty and underlines a failure to understand the nature of the changed labour arrangements and new EBA for NRC in 1993. These two organisations have totally different workforces. Of the NRC’s 1,300 direct employees, the RTBU estimates 150 came from AN. When the AN workforce of 1,800 workers were made redundant in November 1997, $120,000,000 was allocated in redundancy payments. The majority were not re-employed in the rail industry. Many still have no job.

On average, each AN employee received approximately $50,000 in redundancy, and the claim by the Productivity Commission concerning the increased levels of remuneration supposedly enjoyed by workers in this industry (and therefore the increases in labour costs claimed by the PC) is not accurate.

If that effect includes redundancy payments there is a clear explanation for the so-called increased labour costs. In the AN sell-off, workers got more than double their ordinary annual wage in a one-off payment. The problem is that once the package was paid many AN workers’ incomes from wages or salaries, dropped to zero. Where they managed to find a job with a new employer in the industry, the same jobs now suddenly paid up to 40% less that they did before.

By inference the Draft Report infers that railworkers have benefited handsomely from the increased productivity in the industry. eg. p.79 “All systems experienced a large increase in average labour costs between 1995-96 and 1996-97." An examination of 4.11 real average annual labour costs by jurisdiction would lead to many persons concluding that in AN/NRC a workers wage in the 7 year period increased by over 110%. We wish.

The Draft Report reference to changes to Superannuation laws refers to an increase in mandatory payments (Super Guarantee Levy increased by 1%). It fails to detect the more significant organisational change eg. interstate rail freight to NRC or privatisation or competitive tendering leads to the replacement of public sector superannuation (normally in the range of 12-18% of employees award wages) to the legal minimum provided by the S.G.L. (during the period 6%).

In addition, during the survey period, most state governments changed superannuation for new entrants to the industry, so that they were only paid the SGL.

EBA INCREASES

The RTBU details the outcomes of selected EBAs. In some jurisdictions eg. Western Australia, outcomes have not resulted in regular increases because the WA Government has directed Westrail not to collectively bargain. In other instances eg. GSR, ATN, no EBAs exist but workers are covered by AWAs. The GSR AWA provides for no wage increase over 3 years.

NSW State Rail Authority – EBA increased 1992-1998 compared with TransAdelaide

We probably should note the difficulty of calculating precise equivalence of EBA increases between the SRA and TA due to the split up of the NSW Rail Authority in 1996 into 4 corporations. Nevertheless, maintaining the focus on the existing SRA is appropriate for comparison purposes with TA. The calculations are for the years 1992-1998.

Calculation 1992-1998 for SRA

'92-94	4.5%
'94-96	3%
'96-97	6%
'97-98(June)	7%

Total increases for the period were 20.4% or 3.4% pa.

The next agreement was certified in the week 26 April and resulted in an increase of 4% up to June 2000

Calculation for TransAdelaide

Total increases for the period 1992-1998 have been 9% or 1.5% pa.

Comparison CPI increases and all industries EBA increases

CPI increases for the same period (1991/92-97/98) have been 14.2% or around 2.37% pa (Source ABS)

Average Annual Wage Increases from Enterprise Agreements all Industries for the Period 1992-1998

92	3.6%
93	4.3%
94	4.5%
95	4.7%
96	6.0%
97	4.7%
98	4.0%

Total increases for the period were **31.8%** or an average **5.3%** pa

Source: - CCH/ACCIRT Agreements Database and Monitor Report December 1998)

The observation in the Draft Report that SRA shifted from having the highest labour costs to the lowest average labour costs is hard to reconcile with the EBA increases applying to employees in the organisation over the period.

At p.90 of the Draft Report it is asserted that "Real average labour costs per employee (of the Australian railway industry) increased by around 30% over the period, partly as a result of enterprise bargaining.

"Some of the increase in average labour costs may be due to a reduction in the proportion of lower paid workers employed by railways and an increase in redundancy payments in some cases. Real average labour costs per employee remained relatively stable in the U.S. and Canada over the period".

The figures for Australia show extreme volatility compared to other countries. In addition in 3 of the 8 years a decline is experienced and in the final year 1996/97 there appears to be a 20% increase. Quite obviously these figures once again demonstrate that what is happening to railway workers' wages and conditions bears no relationship to the discussion on wages and employment undertaken in the Draft Report.

The RTBU is of the view that because of methodological flaws, inaccuracy of information and lack of detailed information the

PC's analysis of labour, wages and employment is of minimal value.

RTBU Analysis of Wages and Conditions and Bargaining Rights, Post Privatisation.

A major gap in the Draft Report is the lack of analysis of wages, conditions and bargaining rights post privatisation. This is at the minimum curious as much emphasis is placed in the report on privatisation, the entry of foreign controlled rail companies and the need in the view of the PC for this process to be accelerated to the point where public sector provision of rail services is eliminated.

In the attached ACTU Document (Appendix 3):

"NOT WHAT WE BARGAINED FOR : AN ACTU REPORT ON BARGAINING IN AUSTRALIA IN 1997"

The Executive Summary indicates:

1) Overview

2) The ACTU Report on Bargaining in 1997 considers the state of bargaining in Australia, in the context of the changes brought about by the Workplace Relations Act, 1996.

In the Second Reading Speech covering the proposed legislation, the Minister for Workplace Relations and Small Business promoted better agreements and better pay under the new provisions.

From the evidence available to the ACTU and the experiences of workers and unions over the past year, it is clear that the legislation has resulted in less choice for individuals, an imbalance of power over the bargaining process which favours employers, and a fundamental reduction in workers rights.

The ACTU Report in addition outlines a number of real life case studies and we have included two pertaining to the rail industry – one relating to GSR/Serco on Trains is headed "AWAs and coercion" the other involves Tasrail (ATN/CVC) and it is titled "Freedom of Choice (or lack of it)".

The rail industry case studies conclude in paragraph "14.85 The experience of the PTU (and other unions) in relation to the privatisation of ANR is that the Workplace Relations Act has operated in direct contradiction to ILO Conventions and permits and encourages employers to unilaterally lower terms and conditions of employment. There is no bargaining, and hence no choice and no freedom".

The ACTU Report says in relation to Management Practices relating to forcing the acceptance of individual arrangements over collective arrangements contrary to international law as set out in ILO conventions.

> 13. Management practices relating to forcing the acceptance of individual arrangements over collective arrangements contrary to international law a as set out in ILO Convention.
>
> 13.1 ILO Convention 98 (Right to Organise and Collective Bargaining) requires measures appropriate to the national conditions be taken where necessary to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers (or their organisations) and workers organisations, with a view to the regulation of terms and conditions of employment of collective agreements. The convention requires the following:
>
> 13.1.1. collective representation and collective agreements to be promoted and encouraged and have primacy over individual representation and individual agreements
>
> 13.1.2. employees and their unions must be lawfully able to engage in industrial action and advance claims made in the bargaining process
>
> 13.1.3. in collective bargaining, employee should be represented by representative workers organisations or in the absence of such organisations, representatives of workers duly elected and authorised by them
>
> 13.1.4. employers should recognise for the purposes of collective bargaining the main unions represented in the undertaking or the most representative of those unions
>
> 13.1.5. in keeping with the principles of freedom of association and the right to negotiate freely about terms and conditions of employment the scope of collective agreement ought not be restricted by authorities
>
> 13.1.6. collective bargaining should be possible at any level, whether at enterprise level or at the industry regional or national level
>
> 13.1.7. employers and workers organisations should bargain in good faith making every effort to reach an agreement
>
> 13.1.8. workers representatives should enjoy such facilities as may be necessary for the proper exercise of their functions, including the right of access to workplaces

13.2 The record of bargaining since the introduction of the Workplace Relations Act has failed to live up to these principles. In particular, the effect of the legislation has been to put the employers preference for agreement making first and not to encourage and promote collective agreements as is required by the legislation.

The history of AWA's in Tasrail is set out in the attached Appendix 4, headed "International Transport Workers Federation to Mr. E. Burkhardt Chairman and Chief Executive Officer Wisconsin Central".

Extracts from this correspondence include: "At the time of the sale of Tasrail to yourselves, Tasrail employees were made redundant and were then given five days to sign individual contracts of employment (AWAs), otherwise they would not be re-employed.

"Even the Workplace Relations Act 1996 provides for employees to opt for a trade union, or trade unions, to act as their bargaining agent. On 11 November 1997 the PTU organised a mass meeting of its Tasrail members. The meeting decided unanimously to support the negotiation of collective agreements and called on Tasrail management to withdraw the AWA's and bargain with the unions. Immediately after the meeting, the PTU informed Tasrail management of the employees' preference but management refused to countenance any course of action other than the imposition of AWAs.

"In the Industrial Relations Commission on 10 and 13 November 1997 the company actually opposed a request by the Electricians' Union, supported by the PTU, for a ballot of workers to see whether they wished to opt for union-negotiated agreements or AWA's.

"ATN/Tasrail clearly pursued a policy of excluding negotiation with the trade unions, and in particular with our affiliate the PTU, as a central plank of company policy. You therefore deliberately aligned yourselves with the union-busting strategy being pursued by certain political interests in Australia.

"We found Wisconsin Central's actions in Australia surprising as they represented a reversion to the initial anti-union attitude of the company in the United States. In the meantime, during the course of your acquisitions in Canada, New Zealand and Great Britain, you have demonstrated your willingness to respect established industrial relations practices and to negotiate in the normal way with the trade unions in these countries. We trust that what has happened in Australia was an aberration and does not represent a basic change in company policy on a world-wide basis, which could put us on a permanent collision course.

"You told me that you considered Tasrail rates of pay and general working conditions under AWA's to be excellent and generally superior to those of existing collective agreements. Roger Jowett has supplied me with quite extensive information which clearly throws considerable doubt on your statement."

Attached to the RTBU submission as Appendix 5 is a "Comparison of Major Condition AN Locomotive Drivers Agreements/Awards and Tasrail Workplace Agreements", and a "Comparison of On-Train Service Workers Terms of Employment".

The ACTU sent the ILO an official complaint that the enactment of the Workplace Relations Act 1996 placed Australia in breach of its general international treaty obligations and specifically in breach in regard to the Act's favouring of individual contracts over collective bargaining.

Attached to the RTBU submission as Appendix 6 is a press release from the International Confederation of Free Trade Unions of March '98 indicating that:

> "The international trade union movement has welcomed International Labour Organisation (ILO) findings released today (March 10) showing that the Australian conservative governments' labour laws are in serious breach of a key international treaty, ILO Convention 98.
>
> "The ILO committee, comprised of international legal experts, found that the Australian Workplace Relations Act, introduced in 1996, contravenes important provisions of ILO Convention 98 on Freedom of Association and Collective Bargaining. The legislation discriminates against collective bargaining and unfairly favours individual contracts, it provides inadequate protection from employer discrimination against workers for their union activities, and permits employers to choose who will bargain on behalf of workers. Convention 98 is a fundamental ILO treaty which guarantees basic rights in labour relations. Australia ratified the Convention in 1973."

A copy of the ILO Committee of Experts decision is included for the Commissions information as Appendix 7.

PRIVATISATION OF RAILWAYS : AN EXAMPLE OF RAILWORKERS WAGES AND CONDITIONS BEING PROTECTED

In March 1997 in accordance with the protected bargaining provisions of the Workplace Relations Act, the RTBU took significant strike action in relations to concerns about the potential impact of privatisation on wages and conditions on its members in Victoria. As a result of lengthy negotiations an Enterprise Agreement was reached with the union. It protected workers wages and conditions on the transfer of the business to a new employer. This proviso was included in the tender documents.

The new owner of the PTC Victoria's freight business is the small U.S. regional operator RailAmerica. They paid $160m for the business, $40m more than that of the second bidder. The *Australian Financial Review* reported that a person or persons were attempting to persuade financial institutions not to buy equity. Instability was immediately raised.

RailAmerica was part of a consortia. Originally the intended contractor for locomotive maintenance was Goninans. They dropped out and were replaced by the U.S. company Motive Power Industries. Three days before the RailAmerica take-up of the PTC Freight Business on 1st May, MPI dropped out and were replaced by Goninans.

The rail infrastructure contract was won by ABB. Job losses have been 30%. No new enterprise agreement has been reached in the three major areas of rail operations, loco maintenance and track maintenance. Because of the transfer of business provisions negotiated by the RTBU and in spite of the corporate turmoil, workers existing wages and conditions have been protected.

Negotiations are under way between the parties to replace existing awards and EBA's.

We have attached to our submission relevant extracts from the EBA relating to Victorian Transmission of Business provisions in Appendix 8.

TRAINING

The 1991 Industry Commission Report on Rail in its recommendations said:

> "7.3 The Commission recommends that a national accreditation scheme be established, perhaps under the auspices of the National Training Board, for the recognition of rail skills".

The Railway Industry Council 1990 Report "Rail into the 21st Century" said:

> " **7.3.4 Training and Retraining**
>
> Training is the key to obtaining a more highly skilled and flexible workforce. Opportunities must be created for retraining and upgrading skills, incentives offered for obtaining new skills and broadening existing skills, and acceptance gained for the concept of continual or lifetime training.

Rail unions consider that workers need to continue training throughout their careers. All parties should commit themselves to:

- national accreditation and consistency of qualifications and licences;
- recognising on-the-job training, skills and appropriate experience as part of a person's qualifications;
- reviewing the apprenticeship system to meet developing needs including competency-based approaches, core curriculum, a modular system, adult apprenticeships with credit for on-the-job training and experience;
- establishing a process such as skills audits as a basis for further and continuing training through which career training can take place;
- developing of curricula on the basis of input from unions, management and education/training specialists.

Because of the history of training in the rail industry, a staged approach will be required to establish a national training and accreditation infrastructure. The establishment of Training councils is a first step. The initial functions of a railway training council(s) would include:

- ensuring that the education and training arrangements, designed in conjunction with award restructuring, are coordinated in a nationally consistent approach;
- developing nationally consistent standards for both on and off-the-job training;
- responsibility for accrediting railways' in-house training; and
- acting as a national clearinghouse on training.

The most pressing need for retraining arises from the rationalisation programs of rail authorities which have resulted in thousands of rail workers seeking new careers in the industry. The results of a survey of redeployed and redundant rail workers conducted by the BTCE on behalf of RIC, indicate that frequently rail workers tend to be redeployed downwards with no training, or placed in positions which face rationalisation in the near future. Many rail workers feel current policies are detrimental to morale, leading to their leaving the industry. This would indicate that there should be greater emphasis on retraining.

> Processes are required so that rail workers can be redeployed or retrained either within the system, the wider public sector, or for jobs outside the industry."

The National Public Transport Training Board was established in 1992. It consisted of 22 members and included all major rail systems in Australia and major unions. The Board's objective was to establish a national competency based training system, with national recognition for its employees.

Following an ANTA Inquiry in 1996, the CSB network was reorganised, and the public transport industry became the rail sector of the Transport and Distribution Training Board. After 6 years hard slog the national competencies, which include national qualifications within a Rail Training package, were endorsed by ANTA in February 1999.

In the 1998 *Tracking Australia* Report the recommendation on training said:

> **Recommendation 5**
>
> "The committee recommends that the Commonwealth in conjunction with the States/Territories and appropriate parties, develop and accredit national qualifications based on consistent curricula and accredited training courses available to all rail employees from approved educational centres.(paragraph 2.90)."

The position in 1999 is that some rail employers support ANTA's rail training packages, and many do not. NRC and QR are two employers who support rail training packages. New entrants to the industry generally do not.

The RTBU recommends that all company's accredited under a Rail Safety Act be mandated as part of their accreditation to use and implement rail training packages as endorsed by ANTA. This requirement should also be extended to the Australian Rail Track Corporation legislation.

Social Dimensions

The Draft Report argues: "the reduced demand for labour by railways is largely due to technological change and competition from road transport" (p.219) and in relation to a Labour Adjustment Package said: "However implementing a similar scheme for rail now may not be useful given that large reductions in employment have been occurring since the 1960s and cannot be directly linked to changes in Government policy. In addition, it is not certain that employment in the industry will continue to decline in the future.

The RTBU makes the following points:

1) Government road user charging policies directly affect rail employment. The current vacuum in rail policy means rail workers jobs are being shed because of lack of modal equity in investment and road user charges.

2) Changes in government policy have led to the shedding of thousands of rail workers job eg. contracting out, establishment of NRC, privatisation of AN and PTC.

3) Job losses will continue eg. D.O.O., further privatisations. A phone call to any rail operator would enable a thumb nail sketch to be obtained of thousands of more railworkers jobs to go.

4) The comparison of the attempts by the Federal Government to help displaced rail workers with the European Social Fund is not valid. In Australia cuts to job and job training programs in 1996-97 were worth $627m, and over $900m in 1997-98.

The RTBU recommends:

1) **The Commonwealth Government fund a study to update the BTCE survey of redeployed and redundant railworkers.**

2) **The institution of a LAP for rail workers.**

9

Urban rail transport

Urban public transport is given scant attention in the Draft Report. When it is given attention, the PC recommends the adoption of the British Rail privatisation model as used this year in Victoria to split up the Melbourne trams and trains into four separate companies for franchising. Critical evidence of the failure of the BR model is not mentioned.

Urban public transport is considered as a commercial operation negotiated between a government “purchaser” and a private sector “provider”. There is no concept of urban public transport as part of an integrated urban planning strategy, such as the NSW government’s *Action for Transport 2010, an Integrated Transport Plan for Sydney*.

The “purchaser - provider” model proposed by the Industry Commission in 1991 was generally rejected. This is because it is highly impractical to expect the main purchasers of public transport - the departments of transport, education and social welfare - to be able to adequately negotiate with rail operators, let alone run a tendering process for the provision of rail, bus and ferry concessional services. It is politically unsustainable to have the level of these services debated in each annual state budget. It is also impossible for a rail, bus or ferry provider to plan efficient investments based on short term contracts with purchasers.

However, the Victorian privatisation model is a modification of the PC concept - the government negotiates with a provider to run an entire geographic unit of urban tramway or rail, and country rail passenger services.

The PC Draft Report indicates that urban passenger fares were increased by an average of 17% between 1989 and 1993, but then fell back in real terms by 1997 to a 1% increase over 1989.

Real average non-urban passenger fares increased by 65% over the period.

All rail freight rates were reduced, in real terms, by an average of 20% between 1989 and 1997.

However, this level of re-balancing charges towards passengers and away from business is clearly not enough for the PC.

British Rail privatisation outcome

While the PC likes to compare Australian railways to the private North American railways, its policy is to copy the British Rail privatisation.

BR was broken up into 27 geographical passenger train franchises, 3 separate freight companies, a Royal Mail carrier, 3 train leasing companies, the Railtrack company to own and maintain the infrastructure, and a large number of track maintenance contract companies.

After four years of operation, the dismal results are being exposed to public scrutiny by reviews instituted by the Blair Labor government.

A small US railway company bought all the freight companies and immediately re-integrated them.

Railtrack became a super-profitable company, receiving a massive share of subsidies paid to train operators, who in turn pay access fees to Railtrack. Subsidies now paid to franchisees add up to £1.8 billion per year. This is three times as much as the subsidy paid to BR before the privatisation. A new study by Dr Jean Shaoul, a public finance expert at Manchester University, shows that Railtrack is paid as much to operate the infrastructure as BR was paid to run the entire service.

She also found that BR before privatisation, had higher labour productivity than any other European rail service, for a significantly lower state subsidy.

A Booz Allen study of Railtrack is reported to find that Railtrack has failed its on-time running target by 50% - a sensational failure. (*The Guardian*, April 8, 1999).

The “commercial focus” so celebrated by the PC turns out to be a focus on public subsidies, in return for an inferior service.

The Draft Report failed completely to look at how urban public transport could be expanded to meet major social needs for better transport, less congestion and less pollution in our cities. This is because of the extremely narrow commercial focus of the PC and its acceptance that the car will dominate urban transport, while rail, bus and ferry services will be residual.

However, a study done by the Rail Industry Council in 1990 found that a concerted expansion of urban public transport in four capital cities would reap far greater economic rewards than it would cost, the exception being Melbourne. Car emissions would be reduced by 12% in each city under this scenario.

Instead, the PC recommends that urban passenger systems should be separated from freight systems, but should remain “vertically integrated” - controlling their own track. In fact, urban passenger services are separate enterprises in all systems now, but there is vertical separation in Sydney’s CityRail. The Draft Report argues that “vertical separation of train operations from track provision is less likely to generate benefits” (p248)

However, this affirmation of vertical integration is contradicted by the requirement for “purchasers” - departments of transport, education and community welfare - to competitively tender for the best “provider”. If this really happened, there would be vertical separation.

Of course, there would be chaos too - one operator providing services to age pensioners, another to school students, and yet another to commuters!

The Draft Report fails to mention that the Commonwealth Government completely withdrew from urban public transport investments in 1995, and that the major urban transport investments in recent years have been in tollways and motorways. These include the M5 and M2, the extension of the M4, and the Airport Motorway in Sydney, and the $1.7 billion TransUrban project in Melbourne.

However, when a major urban rail investment has happened, such as the Sydney Eastern Suburbs Line in 1979, and the East Hills extension 10 years later, or the Perth Northern Line in 1993, there was a significant lift in patronage.

Action for Transport 2010, an Integrated Transport plan for Sydney represents a commitment of $400 million per year for public transport investments for the 10 years after the Olympics. Its most important elements are the Chatswood - Parramatta Rail Link, the western suburbs busway network, the Hurstville to Strathfield Rail Link, the Epping to Castle Hill Rail Link and the high speed rail links to Wollongong and Newcastle. However, it still includes major tollway extensions. The plan incorporates two phases of community consultation in the 1990s, but this input is overshadowed by the roads lobby and Treasury support for tollways.

The Draft Report does not mention this major plan, and does not recognise that urban public transport cannot be evaluated and developed except in a broad urban planning framework.

While extolling the virtues of US railways on the productivity front, the PC failed to mention that the US government Federal Transport Equity Act injected billions of dollars to expand and improve public transport in US cities.

The PC reports in an obscure section - Appendix D.1 reports that the “productivity performance of urban passenger services is not analysed because of the lack of urban passenger systems data in the time available to conduct this preliminary study. However an attempt will be made to include an analysis of non-urban passenger services in the final report. In addition, the analysis in the final report will include a large sample of overseas railways which is likely to affect the final results.”

Again, this is a procedure that denies effective public response. This study should be completed and published for public comment before the final report is drafted.

How Australia compares on urban public transport

A 1997 study of urban public transport systems in 22 systems across the advanced economies, by Andrews Sykes Consulting of Melbourne, found that integrated publicly-owned transport systems worked better than privatised and fragmented rail systems, such as Premier Jeff Kennett is now imposing on Melbourne.

It showed that in 1995, Melbourne urban public transport achieved 63% cost recovery and Sydney achieved 58% cost recovery - very close to world’s best practice. Toronto and Oslo were best with 65% cost recovery.

Both Sydney and Melbourne achieved an average of 100 trips per person per year - equal to New York, Toronto, Montreal, Oslo, Hamburg, Paris, Munich, Zurich, Lille and Portland.

While the good urban mass transit systems, in Hong Kong, Singapore and London, are privately owned, they are strongly integrated and regulated monopolies.

10

Rail safety

The PC's main concern about rail safety was that it was too complicated for a new operator to become accredited in several different states, and that it was urgent for the Commonwealth Government to "give leadership" in creating a one-stop accreditation shop.

The PC recognised that workplace safety for rail workers had sharply deteriorated in the late 1990s, most likely related to the growing fragmentation of the systems.

In Table 8.1, the PC reported that in the rail industry in 1995-96, there were 42.59 non-fatal incidents per thousand workers, compared to 41.84 for all of transport and storage, and 25.47 for all industries.

In 1998, ten rail workers were killed in the NSW system. This compares to zero for each year for the last 8 years.

However, the PC consistently fails to address the human dimension of this problem, or suggest that it be addressed by another appropriate body.

In Appendix 9, the RTBU submission to the Review of the NSW Rail Safety Act, a number of major safety issues in the new rail operational environment are addressed. We draw the attention of the PC in particular to the recommendations listed in this submission.

11

Recommendations

1) Reject the major recommendation of the Productivity Commission that government rail businesses and systems be privatised, contracted out or franchised. Even the National Competition Policy, which has caused considerable pain in the community, does not extend to the extreme step of cessation of government-owned enterprises as government policy.

2) The Federal Parliament's Standing Committee on Transport 1998 report, *Tracking Australia,* recommended that a National Rail Highway and Tracks of National Significance be declared by the Commonwealth and State Governments, and that $2.75 billion of Commonwealth funds be invested in the interstate mainline system over the next 12 years. This should be endorsed by the PC.

3) That urban public transport requires Commonwealth investment funds, as occurs with the US Federal Transport Equity Act, and a community-based urban planning framework, if it is to contribute to livable cities. UPT must remain publicly-owned and become a more integrated system than we have today, and transport policies must be based on ecological sustainability principles.

4) That the 18 cents per litre charge applied to rail as a diesel fuel excise be allocated specifically to rail infrastructure development, and not go into general government revenue.

5) That the enormous federal subsidy allocated to the heavy road freight industry cease, and that proper road user charges be instituted, including social costs, pollution, congestion and accidents.

6) That the National Rail Corporation not be sold.

7) That where a system or part of a system is privatised or contracted out, that current awards and collective agreements automatically transfer to the new owners, as occurs in many countries, and individual workplace contracts not be used. Further, that tenders include these clauses for protection of wages and conditions, as occurred in the Victorian public transport privatisation.

8) That a National Rail Transport Commission be established to implement the $2.75 billion rail investment program recommended in *Tracking Australia*, and that when this program is well underway, this Commission be incorporated into a broader National Land Transport Commission to apply common investment criteria to rail and road investments in all land transport corridors.

9) That further public submissions be allowed on the PC's report of its expanded international comparative study of railways, including passenger railways, and that the rail passenger sections of the report not proceed at this stage.

10) That economic, social and environment benefit / cost analysis through a public inquiry process be mandatory before a proposed privatisation or contracting-out of a public sector function is undertaken; and that it be mandatory to apply the competitive neutrality test of "net advantage" when third party access, contracting out or privatisation of a public sector function is being considered.

11) That where a public sector function is privatised or contracted-out, there be a one year and a five year mandatory review of the decision, to ensure that the stated goals were achieved and to recommend changes, including return to the public sector, where required.

12) That the ANTA national, accredited competency-based training of employees and National Qualifications be mandated as part of the accreditation process for all Operators and Maintainers under the various Rail Safety Acts.

13) That the Competition Principles Agreement be amended to require respect for International Labor Organisation Conventions, including No 98 on the Right to Organise and Bargain Collectively, in any privatisation or contracting-out process.

14) That the British *Transfer of Undertakings (Protection of Employment) Regulations 1981*, and the *1977 Acquired Rights Directive 77 / 187 / EEC* provisions be enacted in Australian law, to protect employees from “competitive tendering” based on the bargaining downwards of employees’ wages and conditions of employment.

15) That the Labour Adjustment Programs used to assist workers made redundant from Australian National Railways, the car industry and the clothing, textile and footwear industry, be restored and updated, and applied wherever a public sector function is privatised or contracted out.

16) That an urgent review of the rail privatisation program be undertaken to assess whether the national interest, including economic, social and environmental interests, is served by the likely takeover of the various rail systems by foreign corporations.

17) That the decisions of the Victorian Government to refuse the right of the National Rail Corporation to bid for the V/Line Freight Corporation, and the decision of the Western Australian Government to refuse to allow public sector railways to bid for Westrail Freight, be condemned and these issues be referred to the Australian Competition and Consumer Commission for review.

18) That the 1989 Study on *The Social Impact of Rail System Rationalisations* (Report 72), and *Study on Redeployment and Redundancy in Australian Railways* (Report 65), carried out by the Bureau of Transport and Communications Economics, be updated. These studies were published by the Australian Government Publishing Service in 1990.

19) The institution of a LAP for rail workers.