AUSTRALASIAN RAILWAY ASSOCIATION INC
Association Number A03958 ABN 64 217 302 489

6 March 2009

Regulatory Burdens: Social and Economic Infrastructure Services
Productivity Commission
GPO Box 1428
Canberra City ACT 2601
regulatoryburdens@pc.gov.au

Dear Sir/Madam,

**Australasian Railway Association Submission to the Productivity Commission for the Annual Review of Regulatory Burdens on Business**

The Australasian Railway Association (ARA) is pleased to make a submission to the Productivity Commission for the Annual Review of Regulatory Burdens on Business.

Efficient transport is particularly important to Australia, and rail plays a key role in meeting the future freight task and ensuring the liveability and efficient functioning of our cities. Australia is facing several challenges in the foreseeable future which must be met to ensure economic, social and environmental sustainability. At present, there are a number of regulatory impediments hampering the efficient provision and productive use of the rail system. Therefore, it is essential that these unnecessary regulatory burdens be eliminated.

The following actions are recommended to reduce regulatory burdens improve the efficiency and effectiveness of the rail system as a whole.

1. Develop a new pricing framework for road and rail freight transport;
2. Investigate access improvements for rail operations;
3. Harmonise environmental legislation nationally in collaboration with industry;
4. Establish a single national rail safety regulator and investigator;
5. Establish a single national OH&S regulatory framework;
6. Ensure clear and consistent interfaces between OH&S and safety regulation;
7. Ensure land-use and transport planning is integrated and complementary; and
8. Undertake government planning and protection of strategic transport infrastructure.

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The ARA looks forward to continuing to work co-operatively with the Productivity Commission on this and other issues relevant to the rail industry. In future could you please liaise with ARA's Director Policy, Brett Hughes on (02) 6270 4508 or bhughes@ara.net.au and our other rail industry members.

Yours sincerely,

Bryan Nye
Chief Executive Officer


# The Regulatory Burdens Pertaining to Rail in Australia

Submission to the Productivity Commission for
the Annual Review of Regulatory Burdens on Business

# Contents



## Attachments

# 1. Introduction

The Australasian Railway Association (ARA) is a member-based association that represents the interests of the rail sector in Australia and New Zealand. The ARA represents all railways interests in Australia including freight and passenger, public and private, urban and regional railways, as well as manufacturers and contractors.

The ARA assists its members by providing relevant information on a wide range of topics affecting the rail industry including rail research, technology, safety, operations and infrastructure. The ARA is also actively involved in the development of rail industry policy to ensure the industry's views are represented in government decision making.

## 1.1 Rail Industry Background

In 2008 the rail industry provided jobs for over 51,800 employees directly[1]. The industry contributed 0.54 per cent of total Australian GDP in 2002-03, amounting to $4.86 billion in value to the Australian economy[2]. Further economic value and jobs are provided in the support industries, such as rolling stock manufacture, track and equipment suppliers, and the tourist sector. Significant parts of this workforce are employed in regional Australia. Rail plays a key role in every Australian's life. Currently in Australia, rail carries 183 billion tonne-km or 53% of the land freight task and 616 million public transport passengers per annum[3].

Rail offers a significant cost benefit, for example rail moves inter-capital city freight for a cost of 3.6 cents per net tonne kilometre compare to a cost of 6.3 cents for road[4]. In addition, rail offers significant benefits in reducing the costs of accidents, environmental damage and congestion.

Despite the benefits of rail transport, its mode share for most tasks is not increasing. In fact, rail mode share is declining in some critical areas such as east coast intermodal freight and grain transport.

## 1.2 Railway Regulation

Since the mid-1990's, there has been significant changes in the structure and operation of the rail transport sector and how it is regulated. The key structural and economic regulatory changes to the industry include:

- vertical and horizontal separations within the industry;
- privatisation and corporatisation of rail assets;
- state-based and national third party access regimes to rail infrastructure; and
- a marked increase in cross-jurisdiction train operation due to rising cross-border freight flows.

[1]Australian Bureau of Statistics, *Labour Force, Australia, Detailed - Electronic Delivery*, Nov 2008.
[2] Australian Bureau of Statistics *Australian Industry Experimental Estimates Industry Performance by ANZSIC Class*, Australia, 2002-2003, 2005. More recent figures are unavailable.
[3] Bureau of Transport and Regional Economics (BTRE), *Australian Transport Statistics*, 2007.
[4] Australasian Railway Association (ARA) unpublished rail and road costs research undertaken by Port Jackson Partners 2004.

Rail is destined to play an important role in meeting the nation's future freight task. However, major challenges remain:

- productivity is lower and freight rates higher than in comparable countries[5];
- rail's competitive position vis-à-vis other transport modes is under challenge; and
- the industry continues to suffer from regulatory fragmentation.

Especially, there are separate regulatory regimes for access, safety, OH&S and environmental functions, which are overseen by a mix of state governments and the Commonwealth. These regimes are regarded as leading to inefficiency within the rail sector.

### 1.3 Regulatory Principles

The ARA proposes that the following principles should guide the streamline of regulations pertaining to rail:

- a single regulatory framework for the rail industry should be achieved;
- regulation should be equitable and fairly enacted;
- the regulatory burden should be as low as possible;
- any perverse regulatory, market or environmental outcomes should be minimised; and
- compensatory mechanisms should be implemented where these regulatory objectives are not achieved.

## 2. Economic Regulation

Economic regulation generally covers fair access arrangements and pricing.

### 2.1 Access Regulation

Currently in Australia:

- there are five state-based regulatory regimes based on the negotiate-arbitrate framework and overseen by five state-based regulators;
- there are two inter-state rail networks with separate regulatory regimes based on the negotiate-arbitrate framework and overseen by ACCC and a state-based regulator; and
- some major corridors are regulated by a number of different regimes for example on the East West corridor a rail operator would need to gain access through the ARTC undertaking, the NSW Rail Access Regime and the WA Rail Access Regime.

The evolution of a number of regulatory regimes across the seven jurisdictions has resulted in a divergence in the regulatory approach for rail infrastructure. There are a number of possible burdens arising from this diversity:

[5] Organisation for Economic Co-operation and Development, *Economic Surveys Australia 2004*, Paris 2005, p. 106.

- the transaction cost incurred by operators dealing with a number of different regulatory regimes has the potential to be significant and as a consequence act as a potential barrier to entry in the above rail freight market; and
- inconsistencies in the manner by which the price of access is established across the regime may give rise to inefficient use of, and investment in, the below rail industry. This is in turn results in distortions in the above rail freight market, and other downstream markets[6].

Australia does not have a single rail infrastructure pricing system—whether defined in charging levels, structures or principles. There is divergence at the detailed level across and within regimes[7]. Access charging structures and levels are illustrated in Appendix I.

## 2.2 Transport Pricing Regulation

Rail access prices add significant costs to rail operations and can make up to approximately a third of operating costs for rail freight companies. Rail network providers in Australia have a legislated responsibility or market requirement to seek a commercial return on their investment, which can lead to pressure to increase rail access charges and or underinvestment in the rail network.

Inefficient competitive markets and pricing distortions exist between road and rail freight transport. The road industry makes contributions to infrastructure investments and maintenance through taxes and licensing fees. As a consequence, the burden to achieve financial viability is less onerous than in the rail industry where infrastructure is owned and maintained by the firms in the industry. This pricing disparity between the two transport modes has reduced the price differential between road and rail and protected the road industry, despite government investments in rail.

The adoption of a single consistent regulatory objective will help to eliminate inconsistencies and any regulatory uncertainty that may arise when a number of regulators are charged with overseeing the access regime. A national approach to rule setting and regulation are expected to bring further competitive and efficiency benefits to the rail and road sector.

***Recommendation:***
**Develop a new pricing framework for road and rail freight transport.**

The primary objective of a road and rail pricing regime is to ensure efficient competition between road and rail freight and thereby optimise the effectiveness of both modes. There are a number of issues that need to be addressed in a new pricing regime. They include[8]:

[6] NERA Economic Consulting, *Comparative Assessment of Road and Rail Infrastructure Charging Regimes in Australia 2006*, p.21.
[7] Bureau of Transport and Regional Economics (BTRE), *Optimising Harmonisation in the Australian Railway Industry 2006*, p.188.
[8] Australasian Railway Association (ARA), *Submission to the Ministerial Taskforce working for the NTC advising the ATC on an Economic Framework for an Efficient Transport Marketplace*, 2009, pp.9-10.

- developing a common approach to the recovery of capital costs for both historical and new, road and rail infrastructure investments, including accounting for the financing costs associated with road infrastructure investment;
- calculating a historical road asset value, preferably using the Depreciated Optimised Replacement Cost methodology, identical to that used for most rail assets, with an equivalent treatment of land and easements;
- addressing the equivalence of government contributions between road and rail infrastructure, to ensure there are no distortions in the mix of road and rail infrastructure use, and to provide appropriate incentives for ongoing efficient infrastructure investment;
- increasing the transparency of road and rail pricing through the introduction of mass-distance-location based charging, for road freight transport;
- including externalities not currently accounted for; and
- introducing a greenhouse gas charge and elimination of the offset to heavy vehicles proposed under the current carbon pollution reduction scheme.

## 2.3 Interchange Agreements For Rail Infrastructure

The Surface Transportation Board (STB) in the USA has the power to make decisions to ensure that arbitrary impediments which adversely affect rail transport do not exist. Existing and potential measures include[9]:

- **Rates:** a rail carrier is authorized to establish any rate for transportation or other service provided by the rail carrier except where the STB has determined that a rail carrier has market dominance. A rate can be challenged as being unreasonable pursuant to a complaint;
- **Competitive access:** the STB has the authority to require cooperation between the railroads concerning terminal facilities (and main tracks for a distance outside of the terminal) and reciprocal switching agreements where it finds such use to be practicable and in the public interest;
- **Intervention:** interventions are involved only when the STB finds a rail carrier has market dominance. If, upon a complaint, the STB finds that a rail carrier is in violation of the statues, the STB can compel its compliance. Establishing the existence of market dominance is a prerequisite to the STB's jurisdiction to review the reasonableness of a complaint.

There is a range of rail infrastructure which could potentially benefit from allowing greater access to rolling stock, track and intermodal terminals.

***Recommendation:***
**Investigate access improvements for rail operations.**

Government should investigate the benefits and mechanisms to eliminate access impediments, such as track and intermodal terminals. This may extend to rolling stock maintenance facilities and services,

[9] The Surface Transportation Board (STB), *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition*, Volume 3, pp.20-21, 2008.

# 3. Environmental Regulatory Reform

## 3.1 Regulatory Inefficiency and Ineffectiveness

There are environmental regulators in all Australian States and major territories. As a consequence, there are numerous overlaps, conflicts and omissions. For instance:

The Cooperative Research Centre for Rail Innovation concluded:

> *It is evident that there is a multiplicity of regulatory regimes and styles of regulation covering rail operations (both train and track). There is also a multiplicity of regulation and regulatory practice for different individual environmental aspects (such as noise, vibration, dust, emissions, etc).*
>
> *The Australian railway industry perceives that the existing environmental regulations that it faces are in thorough need of improvement. It is a commonly held view that there is a need for harmonisation in three areas: (1) the structure of environmental legislation (the framework); (2) the administration or regulatory processes; and (3) the actual prescriptive regulations.*[10]

The Cooperative Research Centre for Rail Innovation completed an inventory of environmental regulations pertaining to the rail industry. Their study identifies a total of 151 pieces of environmental legislation. WA leads in environmental legislative output, followed by NSW, VIC and QLD. Overall, the amount of quasi-regulation (e.g., guidelines, strategies) is an approximately one-third of primary and subordinate legislation[11] as illustrated in Figure 1).

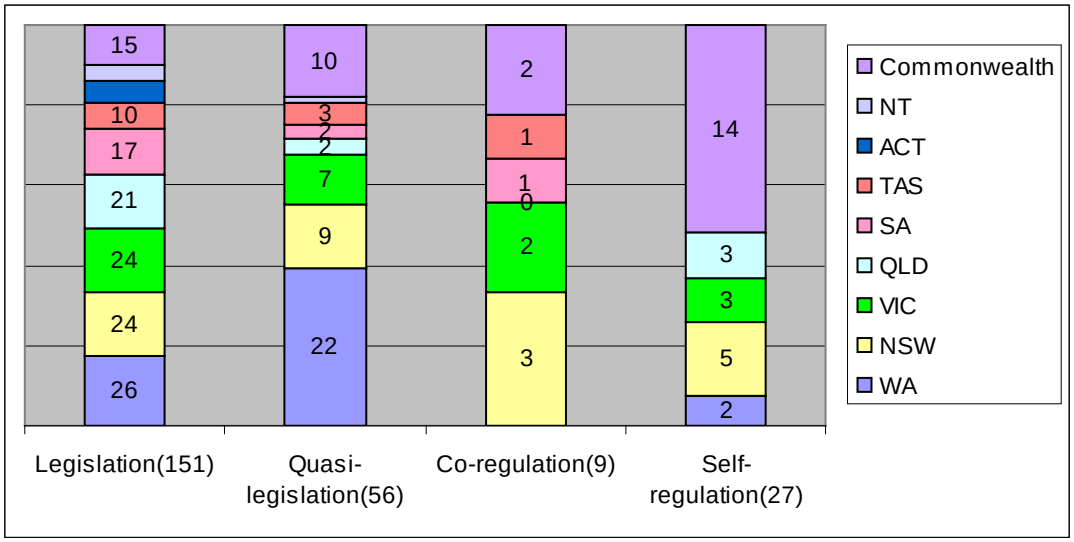


**Figure 1: Type of regulation primary/subordinate legislation, quasi-regulation, co-regulation, and self-regulation.**

[10] *Environmental Regulations Pertaining to Rail Towards a case for change*, CRC for Rail Innovation, 2008, p. iv

[11] *An Inventory of Environmental Regulation Pertaining to Rail in Australia* 2008, p. 32, CRC for Rail Innovation

| Environmental issue | Legislation | Quasi-legislation | Co-regulation | Self-regulation |
|---|---|---|---|---|
| General | 21 | 5 | - | 1 |
| Air pollution emissions | 20 | 4 | - | 1 |
| Waste efficiency | 18 | 4 | - | 1 |
| Flora and fauna (biodiversity) | 16 | 4 | 1 | 1 |
| Sustainable development | 16 | 17 | 1 | 2 |
| Land contamination | 14 | 3 | - | 1 |
| Water efficiency | 11 | 3 | 1 | 1 |
| Noise emissions | 10 | 3 | 4 | 3 |
| Water quality | 9 | 1 | - | 1 |
| Pest management | 5 | 2 | 1 | 1 |
| Ozone | 4 | - | - | 1 |
| Land degradation | 4 | - | - | 1 |
| Energy use | 2 | 4 | - | 1 |
| GHG emissions | 1 | 2 | 1 | 1 |
| Visual amenity | - | 2 | - | 2 |
| EM and compliance | - | - | - | 8 |
| Total | 151 | 56 | 9 | 27 |

**Table 1. Overview of environmental regulation pertaining to rail by environmental issue**

The scope of environmental regulation applied to rail is summarised in Table 1[12]. It is evident there are overlapping responsibilities, and interfaces between jurisdictions which may be incompatible, which the rail industry advises results in unnecessary cost. There are also inconsistent frameworks, policies, practices and procedures in multiple jurisdictions (application, approval, reporting, etc.) that result in repetitive and inefficient environmental regulation. Together, these factors lead to sub-optimal rail operations.

The rail industry recommends that Commonwealth and State/Territory environmental regulators ensure national consistency of existing and any new Commonwealth and State/Territory based environmental sustainability strategies, frameworks and action plans.

Existing environmental issue-specific State-based government regulation across jurisdictions should also be aligned to the greatest possible extent, notably the regulation related to rail infrastructure planning and development, and rail noise. The rail industry concurs with the CRC for Rail Innovation which concluded that: *Harmonisation of environmental regulations could potentially be achieved by the following means:*

- *Strengthening industry's calls for more optimal government frameworks, processes and regulations.*
- *Strengthening industry's capacity to self regulate by moving beyond quantitative regulatory targets.*
- *Working toward overcoming industry fragmentation through appropriate forms of industry cooperation on the matter of regulation.*

[12] ibid p. 33

- *Incorporating multiple regulatory areas within one regulator (e.g., an empowered NEPC, NTC, or a new national environmental commission).* [13]

***Recommendation:***
**Harmonise environmental legislation nationally in collaboration with industry.**

It is not clear which alternative regulatory model is most appropriate to improve regulatory efficiency and effectiveness. The CRC for Rail Innovation suggests various models are possible, such as self regulation and co-regulation (similar to that which applies to rail safety). The rail industry is moving towards consistency of rail standards through the Rail Industry Safety and Standards Board[14] (RISSB).

The rail industry recommends that sound environmental management within each rail organisation be accompanied by coordinated and cooperative, industry-wide initiatives. This could be extended to cooperation with government regulators and ministerial councils in order to ensure alignment of expectations and requirements relating to rail's ecological and economical sustainable performance. In many cases, the ARA together with NTC could lead the changes, together with existing environmental regulators.

# 4. Rail Safety Regulation

## 4.1 Duplication and Inconsistency

Requirements and conditions differ in most jurisdictions, with seven rail safety regulators. There are thought to be nine Rail Safety Acts (six accordingly to BTRE 2006), and three different rail safety investigators in NSW, Victoria and rest of the country, which is covered by the Australian Transport Safety Bureau (ATSB) (see Appendix II). There is in addition to investigations undertaken internally by rail safety regulators.

There are three areas where safety regulations may be perceived to be duplicated:

- there are safety regulators for each jurisdiction;
- there are overlaps between rail safety legislation and OH&S legislation in each state[15]; and
- there is a degree of duplication of activities between the users and the safety/licensing regulators.

The ARA initiated a survey of its members on the costs to business of rail safety regulation. The responses were analysed in Synergies paper '*The Cost of Rail Safety Regulation*' which estimated the direct cost of compliance for respondents as being around $23 million per annum. Scaling-up the estimates to whole-of-industry estimates results in a total compliance cost estimate of $42 million per annum (see table 2)[16].

[13] ibid, p. v
[14] See www.rissb.com.au
[15] Maunsell 1998, p. 86, *National Occupational Health and Safety Commission* 2004, pp. 3-4.
[16] Synergies Economic Consulting, *The Costs of Rail Safety Regulation 2008* ,pp.6-7.

| Organisation | Respondents' Compliance Costs | Whole-of-industry estimate |
|---|---|---|
| **Accreditation and Audits** | | |
| **Site visits** | 8 108 281 | 14 742 330 |
| **Other** | 699 375 | 1 271 591 |
| **Collect and publish information** | 2 856 000 | 5 192 727 |
| **Rail safety investigation** | 4 108 988 | 7 470 886 |
| **Other** | 7 045 172 | 12 809 403 |
| **Total** | 22 817 816 | 41 486 938 |
| **Policy reform** | 982 219 | |

**Table 2: Summary of direct economic costs of regulatory compliance**

Regulation can also result in significant economic efficiency costs that are often very difficult to identify. If it is assumed that efficiency costs could be double or up to a factor of four times compliance costs, the indirect costs of regulation (compliance plus efficiency costs) could be as high as $83-$207 million per annum. Respondents to the ARA survey believed that between 5% and 75% of the current compliance costs incurred are avoidable[17]. These include:

- significant compliance costs result from duplication of systems inspections by regulators;
- significant avoidable costs result from duplicated requirements to provide information to regulators and safety investigators that does not translate into safety benefits;
- incident reporting processes are not offering the necessary privacy, confidentiality and commercial integrity within each jurisdiction and nationally to operators with similar risk profiles; accordingly, national operators are faced with differing reporting requirements, which impose unnecessary costs to comply and provide no value added to the operator:
- change notification requirements were seen as adding costs, but little value. As part of the accreditation process, safety management systems are reviewed including processes for managing change; as the regulator has an opportunity to review the system each year during the annual audit, the notification requirements for changes within the scope of the accreditation are unnecessary; and
- significant frustration was being caused by regulators exercising discretionary authority; regulatory operational staff were viewed as trying to influence/manage outcomes which they believe should happen without any legislative basis; scrutinising the minute details of documents and costing organisations an inordinate amount of money for very little or no safety benefit[18].

[17] Synergies Economic Consulting, *The Costs of Rail Safety Regulation* 2008, p.5.
[18] ibid, pp.6-7.

***Recommendation:***
**Establish a single national rail safety regulator and investigator.**

The rail industry recommends an alternative model of regulation based on a national rail safety regulation. A single national regulator and investigator are expected to result in reduced business compliance costs and improve regulatory efficiency and effectiveness. There are also economic efficiency costs that might not be incurred with a single national regulator operating co-operatively with industry

In November 2008, the National Transport Committee (NTC) released a Regulatory Impact Statement for the development of a single national regulatory framework for rail safety. The ARA looks forward to working co-operatively with the NTC and jurisdictions on rail safety issues and specifically the early introduction of a national rail safety regulatory framework.

# 5. Occupational Health and Safety

## 5.1 Fragmented and Inconsistent OH&S Regulation

There are 15 Acts with powers over occupational health and safety (OH&S) nationwide affecting rail operations and 72 different OH&S regulations. There are also authorities in each of the states and territories with their own versions of OH&S legislation. The duplication of effort and inconsistencies in interpretation involved in adhering to the requirements of this framework across government jurisdiction impose significant compliance costs on multi-state employers and operators.

These undesirable compliance costs include[19]:

- multiple fees;
- diversity in fee calculation;
- compliance costs;
- costs of multiple auditing; and
- inconsistent monitoring processes.

## 5.2 Overlapping of the OH&S and Safety Regulations by Jurisdictions

There are variations in the degree to which OH&S regulations overlap with the safety regulations and variations across jurisdictions. It is notable that having both OH&S and rail safety regulation leads to an additional safety interface for each regulator. Thus, with each jurisdiction having an OH&S regulator and a rail safety regulator, the number of interfaces is large. In addition to the industry-specific regulations, cross-industry occupational health and safety (OH&S) regulation also affect the railway industry. Inevitably, there are variations in the degree to which these regulations overlap with the industry regulations and vary across jurisdictions.

The National Occupational Health and Safety Commission has summarised the relationships between each jurisdiction's OH&S regulators and rail safety regulators

[19]Pacific National, *Submission to Productivity Commission inquiry into national workers compensation and occupational health & safety frameworks*, 2003, p.5.

(see Appendix III). It is clear from Appendix III that there is considerable variation in the relationship between the cross-industry regulations and the rail industry-specific regulations, including overlap of the OH&S and safety regulation.

***Recommendation:***
**Establish a single national OH&S regulatory framework.**

In the rail industry's view, there should be a new, comprehensive national OH&S regulatory authority to replace the current dysfunctional regulation of OH&S by multiple, jurisdictional based regulators. The ARA submits that a Federal approach with a single OH&S legislative instrument is the only method by which it is possible to achieve truly nationally consistent regulation for safety.

The ARA recommends that States and Territories surrender power to the Commonwealth for the making of regulation in relation to OH&S and the Commonwealth use those powers to create Commonwealth legislation.

***Recommendation:***
**Ensure clear and consistent interfaces between OH&S and safety regulation.**

The situation already occurs when there is a train incident that there can be three or four investigators into the same incident. There is potential for OH&S and safety regulators to attempt to regulate the same activity. As such railways should be protected against duplication and conflicting regulation. While some interface agreements occur between OH&S and rail safety regulators, their validity is uncertain and should be clarified. Clear and consistent interfaces between OH&S and safety regulators' responsibilities would mitigate against potential future regulatory inefficiency and overlap.

# 6. Land Use Planning and Controls

## 6.1 Transport and Land Use Planning Inconsistencies

In most Australian jurisdictions, land use and transport are planned in recognition of the other, but rarely together. Generally, land use planning occurs and transport plans are developed to respond to the proposals or situations. Integration of land use and transport planning has been agreed in principle by professionals and methods have been well known for many years. However, integration is rarely practiced.

There is only one jurisdiction where land use and transport planning are co-located; the Department for Planning and Infrastructure in Western Australia. This is not to say that co-location is either necessary or sufficient. Nevertheless, the model is valid when well practiced. Furthermore, the land use planning legislation is integrated with the environmental approvals processes creating even larger synergies.

Numerous professional journals and texts attest to the value of integrated planning[20], but it appears the protectionisms evident in 'silo' mentalities is alive and well in transport and planning Departments, often with the apparent full approval of Ministers protecting their authorities.

The failure to integrate land use and transport results in inefficiencies in the two. Both are more costly to plan, design and build (due to duplication and conflict), and are subsequently less efficient and effective.

The security of land tenure for transport infrastructure and supporting freight terminals must be increased. Longer leases are needed to encourage the significant investment required to develop these terminals, in order to provide capacity and improve efficiency. Security regarding third parties seeking access also needs to be resolved, as such issues create investment uncertainty.

***Recommendation:***
**Ensure land use and transport planning is integrated and complementary.**

Government land releases should set aside and rezone portions of land available for transport corridors and supporting terminals. Such action would be low cost with the only cost to government being the lower revenue they may receive from leasing/selling this land for transport use than for other development use.

## 6.2 Land Availability for Future Transport Needs

### *Provision of Intermodal Terminals*

Intermodal terminals (IMT's; where freight transfers from one mode to another, especially between trucks and trains) are specific locations critical to the efficient operations of the transport system. However, IMT's are often neglected since they have generally been privately owned, developed and managed. Therefore the current and future IMT requirements are likely to be inadequate. For the same reasons it is not clear what the role of governments is in ensuring that IMT"s are not an impediment to the efficiency of the transport system. The Australian Logistics Council has investigated the issue and proposed appropriate remedial action[21].

IMT's can be difficult to provide due to their large land requirements, significant cost, low turnover, difficulty of development approval, long asset life and difficulty in finding a suitable location. Owing to urban expansion IMT's are becoming increasingly difficult to identify in effective locations, particularly close to ports and in inner city areas. Consequently, IMT's can be a strategic business facility and a barrier to new entrants. The lack of IMT's can impose inefficiencies on intermodal transport which is critical for freight, especially in cities.

Efficient transport is generally contingent on the efficiency of integrated movement across more than one mode of transport. A 'supply chain' approach yields efficiencies

[20] See for example Austroads, "*Cities For Tomorrow: 'Integrating Land-use, Transport and the Environment*" *Vol 1: Better Practice Guide and Vol 2 Resource Document* Report, AP 58/98, 1998.
[21] Meyrick & Assoc., *Infrastructure Programs for Addressing Supply Chain Blockages* (Draft), February 2008 for the Australian Logistics Council

which cannot be achieved by improving individual transport modes in isolation. Improvements to intermodal transport have been identified[22] as:

- develop the rail network that is needed to serve a rapidly growing resources sector;
- improve the service standards on the main North - South rail corridor to permit it to operate at a level at which rail will become the predominant mode for Melbourne – Brisbane traffic;
- expand the capacity of the East – West rail network to ensure that future growth can be accommodated without a deterioration of service standards;
- clearly define the role of rail in the future carriage of grain exports and upgrade the grain network to ensure that this role can be performed efficiently;
- identify the sites for strategic IMT development in all major cities and ensure that these sites are protected for future development;
- define and protect the road and rail access corridors to all significant ports and strategic intermodal terminals;
- develop short haul rail routes linking urban intermodal terminals and container ports to allow efficient rail operation, including where possible freight only tracks and provision for double-stacking;
- build on and integrate the AusLink corridor strategies to provide a clear and comprehensive plan for transport infrastructure of national importance, including port access links;
- develop comprehensive freight and logistics strategies covering both rural and urban freight movements in all states;
- effectively implement in each State fast-track planning processes for transport infrastructure of strategic economic significance;
- undertake a comprehensive national assessment of the effect of climate change on transport infrastructure and develop strategies for managing this effect to minimise the impact on infrastructure cost and reliability;
- ensure that, wherever practical, all significant new transport infrastructure is subject to an open access regime, and develop improved regulatory processes to reduce the delays and costs to both access seekers and access providers; and
- develop streamlined PPP approval processes to facilitate private investment in transport infrastructure.

### *Protection of Other Transport Infrastructure*

Other transport infrastructure, particularly rail corridors are difficult to provide in the long term. Routes must be planned and protected to ensure that future transport systems can be provided efficiently and effectively.

At the same time operations on existing or future routes can be severely limited if environmental and land use planning controls are too restrictive. This can occur especially if urban residential use is allowed to encroach within liveable distances, resulting in new neighbours influencing regulators to intervene in rail operations.

[22] ibid

***Recommendation:***
**Undertake Government planning and protection of strategic transport infrastructure.**

Governments should undertake whole of city, or region transport planning, integrated with land use (as above) to:

- locate and protect IMT sites; and
- plan and protect transport routes, including protection from pressure by users of surrounding land.

To ensure IMT's and other transport infrastructure can be provided in future, governments should protect sites, most likely through land use planning control legislation. For instance, strategic and detailed planning for the Kwinana Freight terminal is being undertaken by the Department for Planning & Infrastructure in Perth to ensure an efficient site and protect it for the future[23]. In 2004, Queensland Transport completed a larger study for South East Queensland[24]. In some locations it may be necessary for governments to purchase sites and even develop them for open access use.

# 7. Summary

Efficient transport is particularly important to Australia and rail plays a key role in meeting the future freight task and ensuring the liveability and efficient functioning of our cities. Australia is facing several challenges in the foreseeable future which must be met to ensure economic, social and environmental sustainability. At present, there are a number of regulatory impediments hampering the efficient provision and productive use of the rail system. Therefore, it is essential that these unnecessary regulatory burdens be eliminated.

The following actions are recommended to improve regulatory efficiency and effectiveness to improve the operation of the rail system as a whole.

1. develop a new pricing framework for road and rail freight transport;
2. investigate access improvements for rail operations;
3. harmonise environmental legislation nationally in collaboration with industry;
4. establish a single national rail safety regulator and investigator;
5. establish a single national OH&S regulatory framework;
6. ensure clear and consistent interfaces between OH&S and safety regulation;
7. ensure land-use and transport planning is integrated and complementary; and
8. undertake government planning and protection of strategic transport infrastructure.

[23] See Department for Planning and Infrastructure, *Kwinana Freight Terminal*; http://www.dpi.wa.gov.au/freight/19811.asp
[24] See Queensland Transport, *South East Queensland Intermodal Freight Terminal Study* http://www.transport.qld.gov.au/Home/Projects_and_initiatives/Projects/South_east_queensland_inter_modal_freight_terminal_study/South_east_queensland_intermodal_freight_terminal_study

## Appendix I: Access charging structures and levels

| Regime | Cost item 1 | Cost item 2 | Level of charges |
|---|---|---|---|
| **ARTC regime #** | *Flagfall* | *Variable $/'000gtk* | Market-based, set within floor-ceiling price band |
| Line Charge: | | | |
| 1. Adelaide- Parkeston | 5525.29 | 2.191 | |
| 2. Crystal Brook - Broken Hill | 650.65 | 2.477 | |
| 3. Port Augusta - Whyalla | 128.25 | 3.871 | |
| 4. Adelaide - Pelican Point | 39.62 | 3.445 | |
| 5. Adelaide - Melbourne | 1529.9 | 2.519 | |
| 6. Tottenham - Albury | 479.63 | 2.205 | |
| 7. Melbourne dock Junction - Footscray Rd | 37.23 | 0 | |
| 8. Footscray Rd - Melbourne Port | 15.95 | 0 | |
| **Rail Infrastructure Corporation** | *Flagfall* | *Variable $/'000gtk* | |
| 1. All 'restricted' lines | 0 | 2 | Marginal costs |
| 2. Coal lines | | | |
| 3. Other lines | | | |
| **QR Network Access** | *Flagfall* | *Variable $/'000gtk* | |
| Line charge(standard gauge line): | | | |
| 1. NSW/Qld border - Acacia Ridge | 130.04 | 3.03 | |
| 2. Acacia Ridge - Fisherman Islands | 86.69 | 4.05 | |
| | | | |
| Line charges(narrow gauge lines) | | | |
| 3. General lines _ | Fixed_ | Variable_ | |
| 4. Coal lines | $/gtk maintenance + $/train path+$/ntk allocated cost + $/net tonne + $/electric gtk | | Based on 10-year access term; floor and ceiling price band |
| **Pacific National (Victorian intrastate)** | | | |
| 1. Geelong loop entrance | Fixed fee | per train fee | |
| 2. Sidings | - | Per tonne fee | |
| 3. Western (standard gauge) grain lines | 95% of cost base | 5% of cost base, levied pre gtk | cost recover'; no floor - ceiling price band |

*Source:* Bureau of Transport and Regional Economics (BTRE), *Optimising Harmonisation in the Australian Railway Industry.* 2006, p.299

## Appendix II: Overview of rail safety regulators

| Regulator | Rail Safety Regulator | Rail Safety Investigator | Statute |
|---|---|---|---|
| **Commonwealth** | No national safety regulator | Australian Transport Safety Bureau | No statute |
| **SA** | Department of Transport, Energy and Infrastructure | Department of Transport, Energy and Infrastructure | Rail Safety ACT 1996 |
| **VIC** | Department of Infrastructure - Public Transport Safety | Office of the Chief Investigator | Transport Act 1983 |
| **NSW** | Independent Transport Safety and Reliability Regulator (ITSRR). | Office of the Transport Safety Investigator | Rail Safety Act 2002 |
| **NT** | Dept Infrastructure Planning and Environment - Rail Safety Unit | Dept Infrastructure Planning and Environment - Rail Safety Unit | Rail Safety Act |
| **WA** | Department for Planning and Infrastructure - Office of Rail Safety WA | Department for Planning and Infrastructure | |
| **QLD** | Queensland Transport | Queensland Transport | |

*Source*: National Transport Commission (NTC), *Single, National Rail Safety and Investigation Framework Draft Regulatory Impact Statement*, 2008.

## Appendix III: Overlap between rail regulation and OH&S regulation by jurisdiction

| | SA | VIC | NSW | NT | WA | QLD | Commonwealth |
|---|---|---|---|---|---|---|---|
| **OH&S regulator** | Workplace Services | VIC Workcover | *NSW Workcover* | *(individual)l* | *Worksafe WA* | *QLD Workplace Health and Safety* | *Commcare* |
| **Rail safety regulator** | Transport SA's Rail Safety & Operations Unit | Department of Infrastructure - Public Transport Safety | Independent Transport Safety and Reliability Regulator (ITSRR). Recent increase in scope and powers | Dept Infrastructure Planning and Environment - Rail Safety Unit | Office of Rail Safety WA | Queensland Transport | No national safety regulator |
| **Statute** | Rail Safety ACT 1996 | Transport Act 1983 (road and rail transport) | Rail Safety Act 2002 | Rail Safety Act | | | |
| **To what extent does OH&S regulation overlap with rail safety regulation** | Not a great deal - predominantly at the investigation. Rail safety focus is on infrastructure and public safety. | Significant overlap in compliance and investigations. Approach is predominantly reactive as shift to prevention would require significant resources. Communication requirements clearly seen as OH&S issue. | Enormous crossover particularly in metropolitan region and with Waterfall findings of driver ill health. WorkCover bolstering regulator's initial operational limits - significant goodwill. | | Examples of areas where there may be overlapping regulatory interest are in the electricity industry, mines and the maritime industry. | | |
| **What practical issues have arisen from the regulatory relationship and how have they been addressed?** | Regulator unaware of OHS reporting requirements for notifiable dangerous occurrences System established for electronic reporting which triggers OHS inspectorate consideration of investigation | OHS used as IR lever - eg Driver (union) issues PIN on track owner for vibration in train cabins to force repair of track that is within acceptable rail safety parameters • Seeking a solution through stakeholder consultation | Increased short to mid term workload on WorkCover without increase in resources as regulator becomes established Focus on metropolitan area given Waterfall | | | | |

*Source:* Extract from Bureau of Transport and Regional Economics (BTRE), *Optimising Harmonisation in the Australian Railway Industry 2006, Report 114,* p.313