



AUSTRALIAN RAIL TRACK CORPORATION LTD

ARTC SUBMISSION: 31 July 2009

**Annual Review of Regulatory Burdens on Business:
Social and Economic Infrastructure Services**

**Productivity Commission
Draft Research Report**



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KEY POINT SUMMARY

Subsequent to the ATC recently recommending a single national rail safety regulator, COAG has only agreed to investigate rail further, despite agreeing to a single national heavy vehicle regulator. ARTC continues to stress that a single national rail safety regulator is most critical in relieving regulatory burden on business and this should be progressed and implemented without further delay.

Economic

In relation to the certification process, ARTC believes that the ACCC should take on the role of receiving and assessing applications, and making recommendations. This would mean the assessment of national access regimes and state based regimes would be undertaken by a single party resulting in greater consistency of assessment and regulatory outcomes nationally.

Environmental

ARTC believes harmonisation of environmental legislation is critical, whereby the Commonwealth, state, and Territory regulators facilitate and ensure national consistency for both existing and any new legislation. These issues were included in ARTC's original submission but are not acknowledged in the Draft Research Report.

INTRODUCTION

The Productivity Commission (PC) has been asked to conduct ongoing annual reviews of the burdens on business arising from the stock of Government regulation. In December 2008 the PC released an Issues Paper to which the Australian Rail Track Corporation (ARTC) made a submission, outlining the major issues that ARTC sees arising from the current regulatory arrangements in the areas of economic, rail safety, environment and occupational health and safety regulation.

This further submission is in response to the PC's subsequent Draft Research Report of June 2009.



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RAIL SAFETY REGULATION

ARTC strongly advocated in its previous submission, that a single national safety regulator is the only option that will deliver the required benefits for the national rail network, and provide improvements to rail safety and industry efficiency. The draft Productivity Commission Report Overview notes the following:

The inconsistent state and territory government regulation surrounding the operation of road and rail freight imposes considerable regulatory burden on business. This has been acknowledged by all Australian governments and has been a focus of recent government reforms.

Despite a number of previous attempts, there has been limited progress in advancing regulatory reforms in road and rail. In particular, the flexibility provided to jurisdictions through the use of model legislation has only maintained regulatory inconsistency. However, all jurisdictions have recently agreed to implement national regulatory frameworks to overcome inconsistencies in these sectors.

In July 2008, the ATC directed the National Transport Commission (NTC) to prepare a RIS for a single national rail safety regulatory and investigation framework. The draft RIS concluded that a single national safety regulator and investigation framework was the superior option.

All jurisdictions have agreed to implement national regulatory frameworks to overcome inconsistencies, and recently, the Australian Transport Council (ATC) recommended to the Council of Australian Governments (COAG), the establishment of a single national rail safety regulator and a single national rail safety investigator.

In the PC's Draft Research Report's assessment, it has been assumed that the ATC's recommendation will be progressed however, COAG, while agreeing to establish a single national heavy vehicle regulator, only agreed to investigate rail further. COAG has agreed only to develop a 'national rail safety regulatory system' with further consideration of the scope and form of the regulator at the end of 2009, following further advice from the Standing Committee on Transport on specific safety requirements within jurisdictions. The ATC is to report on progress to COAG in 2010, with approvals of recommendations not planned until mid-2011.

ARTC is concerned with this non-committal approach to rail, despite there being wide recognition and agreement that both road and rail require reform in this area. It is unclear why a firm decision on road has been made, but any decision for rail has been deferred.

ARTC stresses that a single national rail safety regulator is most critical in relieving regulatory burden on business and this should be progressed and implemented without further delay.



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ECONOMIC REGULATION

In relation to a 'single national access regulator', ARTC would like to clarify its position as posed in its previous submission to this Review in February 2009. It was not the intention to imply that the National Competition Council (NCC) should not have a role in regulation, it was rather that the ACCC should take on part of the role that is currently the responsibility of the NCC.

In the case of declaration, which is available under Part IIIA of the Trade Practices Act 1974 (TPA) for third parties to share in the use of certain infrastructure facilities of national significance, currently the NCC undertakes the declaration assessment of which the recommendation is then considered for approval by the relevant State or Territory Minister.

ARTC did indicate in its last submission that there would be benefit in Commonwealth Ministerial responsibility for the declaration approval.

Part of the declaration assessment requires the NCC, under section 44G(2)(e) of the TPA, to consider whether access to the service is already subject to an effective access regime.

State and Territory governments can seek to have an access regime declared as effective by applying to the NCC for certification. If certified, access to relevant services is exclusively governed by that regime, and it provides immunity from declaration under Part IIIA of the TPA.

The current certification process sees the NCC's recommendation on the matter forwarded to the designated Commonwealth Minister who then decides whether or not to certify the regime as effective, and specify the period for which certification will be in force.

ARTC does not propose to remove the declaration role from the NCC. However, in relation to the certification process, ARTC believes that the ACCC should take on this role (receiving and assessing certifications applications, and making certification recommendations). Assessment of national access regimes and state based regimes would be undertaken by a single party resulting in greater consistency of assessment and regulatory outcomes nationally.

ENVIRONMENTAL REGULATION

On the issue of ARTC being subject to assessment and approval processes under the Environmental Protection and Biodiversity Conservation Act (1999) (EPBC Act), as well as under state and territory legislation, ARTC is willing to explore potential solutions with the Department of Environment, Water, Heritage and the Arts in order to alleviate the current duplicative reporting requirements, as suggested by the Productivity Commission in its Draft Research Report.

However, ARTC would like to reiterate, from its original submission to this review, that there are numerous types of regulation applied to the rail industry over multiple jurisdictions, resulting in inefficiencies which include additional costs to the industry due to repetitive approvals, administrative work, and reporting. The Cooperative Research Centre for Rail Innovation completed an inventory of environmental



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regulations pertaining to the rail industry, a process which identified 151 pieces of environmental legislation.

The multitude of legislation leads to overlaps, duplication and inconsistencies, and ultimately, inefficient environmental regulation, including additional costs to the rail industry through repetitive administrative processes across jurisdictions

ARTC believes harmonisation of environmental legislation is critical, whereby the Commonwealth, State, and Territory regulators facilitate and ensure national consistency for both existing and any new legislation.

These issues relating to environmental regulation and harmonisation of legislation are not acknowledged in the Draft Research Report.