



AUSTRALASIAN RAILWAY ASSOCIATION INC

Association Number A03958 ABN 64 217 302 489

16 July 2009

Committee Secretary
Senate Standing Committee on Environment, Communications, Information
Technology and Arts
GPO Box 6100
Parliament House
CANBERRA ACT 2600
by email: eca.sen@aph.gov.au

Submission on Inquiry into the *Telecommunications Legislation Amendment*

I refer to the request for submissions to the Senate Standing Committee on Environment, Communications, Information Technology and Arts on the *Telecommunications Legislation Amendment*. This submission is made by the Australasian Railway Association (ARA) on behalf of its membership.

While the Bill relates primarily to provision of information, there are indirect or implied consequences with respect to the National Broadband Network (NBN). Therefore, this submission applies to the Bill specifically and the NBN generally.

Railways use communications as an essential part of providing safe and efficient rail services, both passenger and freight, across the Australian rail network.

To ensure public safety, railways rely on radio communications. Therefore, railway communications systems must not be compromised.

The rail industry is concerned about the consequences legislation in terms of safety, cost and impact on railways operations.

The Telecommunications Legislation must not compromise rail safety or introduce additional costs.

Railways must be allowed to recoup any costs on a full cost commercial recovery basis.

The rail industry has not been consulted on the Bill. Therefore, neither government nor the rail industry has information about the consequences.

Further consultation with the rail industry must occur prior to the legislation being passed to ensure public safety is not degraded and to protect against unacceptable costs.

The rail industry looks forward to continuing to work co-operatively with the Australian Government on issues relevant to the rail industry. It would be greatly appreciated if in future you could liaise with the ARA's Director Policy, Brett Hughes on (02) 6270 4508 or bhughes@ara.net.au and our other rail industry members throughout Australia.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Bryan Nye', written in a cursive style.

Bryan Nye
Chief Executive Officer



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Committee on Environment,
Communications, Information
Technology and Arts**

**Inquiry into the Telecommunications
Legislation Amendment**

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Key points

While the Bill relates primarily to provision of information, there are indirect or implied consequences with respect to the National Broadband Network (NBN). Therefore, this submission applies to the Bill specifically and the NBN generally.

To ensure public safety, railways rely on radio communications. If railway communications systems are compromised in any way, railways will simply cease to operate.

The Telecommunications Legislation must not introduce conflicts with rail safety legislation which compromise safety of railway operations.

The rail industry is concerned about the consequences legislation in terms of cost and impact on railways operations, and therefore it supports provision of information on a cooperative or commercial basis.

Railways must be allowed to recoup the cost of providing information on a full commercial cost recovery basis.

The National Broadband Network has the potential to require work in rail reserves which may adversely affect rail safety.

Allowance must be made to recoup any additional costs introduced by the Telecommunications Legislation to ensure safety of railway operations on a full commercial cost recovery basis.

The legislation is vague and does not sufficiently describe requirements and consequences.

The full financial consequences of the legislation need to be properly described and include protections for all utilities.

The rail industry has not been consulted, so consequences of the legislation could not have been considered.

Further consultation with the rail industry must occur prior to the legislation being passed.

1. Introduction

Railways in Australia use communications systems as an essential and integral part of rail safety and efficient operations. Railways also own and manage corridors. Therefore, railways could be considered to potentially provide both a locational and communications system opportunity for the National Broadband Network (NBN).

The Telecommunications Legislation Amendment Bill has not been discussed with the rail industry, and its consequences for railways are not known.

While the Bill relates primarily to provision of information, there are indirect or implied consequences with respect to the NBN. Therefore the following information should be read as applying the Bill specifically and the NBN generally.

The Australian Rail Industry

The rail industry in Australia¹ has three main sectors; urban passenger, bulk goods (including minerals and grain) and intermodal (mostly containers between capital cities).

The rail industry is a major transporter of goods and people throughout Australia. Urban passenger rail carries more than 600 million passengers each year. Freight rail carries more than 600 million tonnes per annum, excluding the private bulk ore carriers.

Each year the rail industry turnover exceeds \$11 billion, and carries exports worth over \$180 billion.

The industry directly employs more than 44,000 people.

Railway infrastructure is currently valued at approximately \$40 billion and the industry continues to invest nearly \$4 billion per annum in capital expenditure.

The industry contributes over \$1.4 billion annually to governments in regulation/ accreditation fees, direct and indirect taxation.

Railways in Australia provide numerous benefits to business, the community and the environment.

The rail industry is currently under pressure on several fronts due to deteriorating infrastructure, increasing competition from road transport, increasing passenger demand and increasing freight demand.

The industry is in a substantial, multifaceted reform phase aiming to increase productivity by improving infrastructure, technological change, making operations more efficient and reducing the regulatory burden.

While the rail industry has similarities with other industries, it has several important differences, and is in many ways similar to the aviation and maritime industries. In particular, the rail industry:

- uses communications systems as part of critical ‘command and control systems’;
- requires an effective and integrated communications system, to ensure public and commercial safety in the first instance, including for counterterrorism systems; and
- is an industry in its own right consisting of public and private sector organisations, and should not be confused with government radio networks which ostensibly

¹ Australasian Railway Association 2005, *Australian Rail Industry Report*

address police and emergency services needs, which are not appropriate for railway operational needs.

2. General Issues

The rail industry is dependent on information and communications technology systems for safety and operational effectiveness. Reliable and efficient communications are a critical component of these systems.

2.1 Rail Safety

2.1.1 Community Requirements

Rail safety is critically important for Australian business and the general community. Therefore, there are strong public interest benefits in maintaining railway communications systems.

Past inquiries into railway incidents such as at Glenbrook, which resulted in multiple fatalities, have been critical of industry communications, and the industry has acted to address these concerns. There is a clear expectation that these systems will be appropriate, effective and reliable. The rail industry needs to ensure that changes to communications management do not threaten the integrity of rail communications systems. Railways, independent government railway safety regulators, Parliaments and the general public have all made it clear that they will not accept a degradation of rail safety which would occur if the quality of rail communications deteriorates.

To ensure public safety, railways need modern train protection and control technology, which is based on digital radio communications. Therefore, access to and security of radio spectrum is essential for safe and efficient railways.

2.1.2 Rail Safety Legislation

It should be noted that railways operate under specific legislation to ensure public and commercial safety. This legislation requires Safety Management Systems to be in place in all railways covering capacity, competence and systems to ensure safety of railway operations. More specific regulations or requirements are also imposed by rail safety regulators as necessary.

Specialised communications systems form an integral part of rail safety systems. For safety reasons, radio is a regulatory pre-requisite to operate trains in the majority of Australian railways.

To ensure public safety, railways rely on communications systems. Therefore, the integrity of radio communications is essential for safe and efficient railways. If railway communications systems are compromised in any way, railways will simply cease to operate. Rail safety regulation ensures safety partly through the communication systems requirements.

The Telecommunications Legislation must not introduce conflicts with rail safety legislation which compromise safety of railway operations.

2.1.3 Work in Rail Reserves

Any work in rail reserves is regulated through rail safety legislation and carefully managed by railways. The NBN has the potential to require work in rail reserves which may adversely affect rail safety through:

- increased safety regulation costs;
- increased safety management costs; and
- interruptions to operations.

Allowance must be made to recoup any additional costs introduced by the Telecommunications Legislation to ensure safety of railway operations on a full commercial cost recovery basis.

2.2 Administrative Costs

The rail industry is concerned about the level of cost which the legislation may impose on railways to provide information on “*the location of ducts, conduit, poles and similar infrastructure*” or other unspecified requirements.

Firstly, if the information is available, it may be costly to extract and provide dependent on the NBN company’s requirements. Secondly, the information may not be readily available, or not at sufficient accuracy for the NBN company. In both cases the legislation apparently assumes that railways will provide the information, which could be massive, no matter what the cost. Therefore, the legislation must allow protection from unconstrained requests for information.

The rail industry is concerned about the consequences legislation in terms of cost and impact on railways operations, and therefore it supports provision of information on a cooperative or commercial basis.

Railways must be allowed to recoup the cost of providing information on a full commercial cost recovery basis.

3. Specific Issues

The following individual points respond to specific details described in the Explanatory Memorandum accompanying the Bill.

In general, the legislation is vague and does not sufficiently describe requirements or consequences. In addition, the Explanatory Memorandum contains inaccuracies which suggest lower levels of impacts than will actually occur.

The full financial consequences of the legislation need to be properly described and include protections for utilities.

Inadequate Financial Impact Statement

The Financial Impact Statement (FIS) (page 5) is completely inadequate because it understates the costs and ignores potential financial risks. The FIS only reports an administrative cost within one Department. Other costs such as enacting the legislation and costs to other government Departments are completely ignored.

More importantly, the FIS ignores the costs to railways and other utilities if costs cannot be passed on to the NBN company.

The Explanatory Memorandum notes that “*It is very difficult to make a blanket statement about the compliance cost of this measure*” (page 12). At the same time, this section relates only to telecommunications interest and ignores requirements from other utilities.

Finally, the FIS ignores risks if information is inaccurate or the consequences if rail safety is ignored.

The full costs and risks of the legislation need to be properly described.

Objective ignores utilities’ interests

Section 2. Objective (page 8) considers the NBN’s objectives and factors by which options are assessed. However, this section fails to include any consideration of the consequences for other stakeholders, such as railways.

The consequences of the legislation for utilities needs to be described, and protections against adverse consequences need to be included.

Incomplete list of affected parties

The proposed legislation will affect a huge number of other interests not recognised as utilities (page 7). There are at least 15 major railway track owners and managers in Australia. The Australasian Railway Association (ARA) website www.ara.net.au lists 25 track owners, and there are numerous others including small tourist and heritage operators potentially affected. While eight road authorities are identified, there are more than 600 local governments potentially affected.

The consequences of the legislation for the full range and number utilities needs to be described.

4. Rail Industry Consultation

The rail industry has not been consulted on the Bill. Therefore, neither government nor the rail industry has information about the consequences of the proposed amendment.

The rail industry would like to work co-operatively with the Australian Government on this legislation and the NBN generally where appropriate. The government should liaise with the ARA and individual railways throughout Australia.

Further consultation with the rail industry must occur prior to the legislation being passed to ensure public safety is not degraded and to protect against unacceptable costs.

5. Conclusion

While the Bill relates primarily to provision of information, there are indirect or implied consequences with respect to the National Broadband Network (NBN). Therefore this submission applies to the Bill specifically and the NBN generally.

Railways use communications as an essential part of providing safe and efficient rail services, both passenger and freight, across the Australian rail network.

To ensure public safety, railways rely on radio communications. Therefore, railway communications systems must not be compromised.

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