

Priority areas for reform

Introduction

- 2.1 This chapter provides an overview of the key reform issues raised during the seminar.
- 2.2 We have focused on the broad issues of planning, access and accreditation, Commonwealth/State relations and competitive neutrality. We believe that progress on and hopefully resolution of these overarching issues will go a long way towards securing an effective and efficient rail industry.

Planning

- 2.3 The Commonwealth Minister for Transport, the Hon John Anderson MP, has clearly indicated that the Government does not support a 'centrally-planned' approach, which might be seen to be 'dictating national transport development'.¹ Representatives from the Department of Transport and Regional Services at the seminar reiterated this position. The Commonwealth's position is that the 'ATC should iterate target performance levels which are agreed by all jurisdictions and which provide the certainty within which the industry can plan'.²

1 The Hon. John Anderson MP, Minister for Transport and Regional Services, *Speech to Ausrail'99 Conference*, Sydney, 1999.

2 Transcript of proceedings, 24 November 2000, Sydney p. 7 (Greg George)

- 2.4 However, the rail industry continues to advocate strongly for a national strategic and integrated plan for the transport industry.³ The Australasian Railway Association argues for a National Transport Strategy, setting out the Commonwealth's overarching policy framework, including policies governing investment evaluation. The Australasian Railway Association believes that this would provide greater certainty for private sector investment, whereas the Commonwealth's preferred 'case by case' approach promotes uncertainty and does not encourage private sector investment.⁴
- 2.5 Support for a national plan or strategy also came from some State government representatives. The Victorian Department of Infrastructure argues that Commonwealth strategies such as the new tax system and the establishment of the National Transport Secretariat may not meet the needs for a national land transport policy or strategic policy framework that takes account of cross-modal issues and maximises the efficiency of land transport resources and logistics chains. Therefore, they call for the Commonwealth or the National Transport Secretariat to develop an initial strategic overview and planning framework for early Commonwealth and Australian Transport Council consideration.⁵
- 2.6 A positive initiative that will assist in planning future development of rail is the ARTC's audit of the national network. This will analyse the national network by 'corridor' (for example, Sydney-Melbourne), rather than being project based, and include externalities such as diversion of freight from roads, savings in hospitals, and environmental savings. In terms of planning, the audit will 'give the investment decision makers a range of choices against benefits'.⁶
- 2.7 It was also noted by seminar participants that the rail industry 'was probably not as advanced as the road industry in terms of having planned projects sitting in the top drawer for when money is allocated'.⁷ In response, a question was raised as to how the Commonwealth could encourage states to develop plans in advance.⁸ Greg George, from the Commonwealth Department of Transport, said that the audit 'is effectively the Commonwealth funding an evaluation of the merits of investing in rail', which would allow for forward planning.⁹

3 Transcript of proceedings, 24 November 2000, Sydney, p.60-61 (John Kirk)

4 Submission No 3, Australasian railway Association, p.8.

5 Submission No 13, Department of Infrastructure, Victoria, pp. 80 and 83.

6 Transcript of proceedings, 24 November 2000, Sydney, p.14 (David Marchant)

7 Transcript of proceedings, 24 November 2000, Sydney, p.9 (Greg George - DOTRS)

8 Transcript of proceedings, 24 November 2000, Sydney, p.18 (Dr Philip Laird)

9 Transcript of proceedings, 24 November 2000, Sydney, p.18 (Greg George)

- 2.8 We fully support the audit of the national network and the 'corridor analysis' methodology, and understand that the audit will be completed soon. However, we do not need more studies and plans that will just be put on a shelf to wither and die. It must be matched by a firm commitment from Commonwealth and State governments to bring rail up to a standard where the industry can compete fairly with road transport for its share of the national transport task.
- 2.9 We note that there is some ambiguity in the Commonwealth's position in relation to national planning in the rail industry. On the one hand the Commonwealth decries 'central planning' but on the other hand it supports the ARTC's national corridor-based audit. Greater consistency and clarity would be helpful.

Funding and investment

- 2.10 The quantum of Commonwealth and State funding was not raised as a key issue at the seminar. However, there was concern raised regarding the release and spending of current Commonwealth funds. Additional issues included the need to allocate sufficient funding to accommodate growth in rail and to harmonisation of the technical aspects of rail operations, such as communications and signalling. The importance of overcoming obstacles to private sector investment was also stressed.

Existing Commonwealth funding

- 2.11 While it is pleasing to see that the Commonwealth continues to invest substantially in roads, we are disappointed that similar commitments have not yet been made in relation to rail infrastructure. All road funding directly benefits not only private motorists but also the road transport industry. The rail industry does not enjoy this advantage.
- 2.12 There was a feeling among participants that, in the context of government funding commitments for roads, funding for rail is not a government priority, despite the success of reforms in boosting efficiency and productivity.
- 2.13 The Commonwealth's September 1997 announcement of a \$250million rail update program was acknowledged, as was the achievement of many of the operational targets specified by the ATC at the time of the program's announcement. It was particularly noted that these targets have been met, for the most part, on the east-west corridor (Melbourne-Adelaide-Perth).
- 2.14 There was some considerable discussion, however, about the success with which those funds allocated to projects in NSW have been managed. Approximately \$160million of the \$250million has been allocated to works

in NSW. About \$30million has been spent or has been attributed to track improvement works – principally the construction of loop tracks. Most of the balance of funds, an amount of \$124million, has been set aside for improvements to freight corridors through Sydney.

- 2.15 There have, however, been significant delays in determining the most cost-effective improvements and in negotiating cost sharing arrangements between the NSW and Commonwealth Governments.¹⁰ These delays have contributed to a considerable sense of frustration within the industry at the inability of governments to find and fund solutions to the access problems that freight operators are experiencing.
- 2.16 There are, no doubt, many difficulties associated with identifying suitable freight corridors through the busy Sydney metropolitan network. Finding and funding the development of an appropriate freight corridor is, however, a matter of national importance. Negotiations between the NSW and Commonwealth departments of transport seem stalled and we believe that the matter now demands Ministerial intervention.

Accommodating growth

- 2.17 Accommodating growth is a key issue impacting on rail funding. There is a risk that the very success of the rail industry in attracting and growing new business will be negated due to a lack of capacity on the inter and intra-state rail networks.
- 2.18 For example, the Rail Infrastructure Corporation (formerly the Rail Access Corporation) reports that in NSW they have experienced a 16% growth in non-coal rail freight, but that the rail industry has 'experienced 30 to 40 years of a mindset of stagnation'. A mindset focused on growth is required along with suitable funding to accommodate growth.¹¹

Most critically, increasing capacity will require funding and with the current road-pricing regime, rail projects are unable to be self funding. This means Governments will also need to undertake repositioning of their views of the industry, or all of the reforms to date will have been of little value as rail becomes incapable of growing due to lack of capacity.¹²

- 2.19 This is further highlighted by Lucio Di Bartolomeo's (FreightCorp) comment that 'customer complaints to date have got to do with the

10 Transcript of proceedings, 24 November 2000, Sydney, pp.9–10.(Greg George), pp.11-12 (David Marchant) and p.17 (David Marchant)

11 Submission No 14, Vol 1, p.85 (Rail Access Corporation)

12 Submission No 14, Vol 1, p.88 (Rail Access Corporation)

limitations imposed by the infrastructure as opposed to the behaviour or practices of operators'.¹³

Funding for harmonisation

- 2.20 Funding will also be required in order to undertake certain aspects of harmonisation between jurisdictions, particularly in regard to technical issues such as communications and signalling.
- 2.21 Andrew Kitto (SA Dept Transport) stated that 'in order to fix many of the problems that still exist in terms of inconsistencies you are talking about investment: you cannot fix radio systems or signalling systems without spending money'.¹⁴
- 2.22 In *Tracking Australia* we recommended that the Commonwealth provide a 'specific one-off grant to standardise signalling, radio and telecommunications and safety operations for the national track'.¹⁵ Such funding support is evidently still required.

Promoting private sector investment in rail

- 2.23 The Commonwealth is interested in encouraging and utilising private sector investment in rail infrastructure investments and rolling stock and terminal infrastructure as part of private rail operations. As such, the Commonwealth believes that private sector investment can be fostered by governments 'delivering a consistent and predictable regulatory and industry environment within which investors can reliably plan'.¹⁶
- 2.24 However, participants identified a number of obstacles to private sector investment in rail. As discussed in Chapter 1, while operators are prepared to invest in the industry, the current lack of consistency in the regulation and management of the rail system is seen as a major impediment to private investment in the rail industry.
- 2.25 David Marchant (ARTC) argued that consistency of rules and competitive neutrality with roads are both essential if significant levels of private sector investment are to be attracted and retained. At present, the rules (such as those for safety and access) can be changed in each state with no consistency. In addition, there is no competitive neutrality between road and rail. For example, access charges are different, as are rules such as Environmental Protection Agency rules for noise, which are much tougher

13 Transcript of proceedings, 24 November 2000, Sydney, p.12 (Lucio Di Bartolomeo –Freight Corp)

14 Transcript of proceedings, 24 November 2000, Sydney, p.26 (Andrew Kitto – Transport SA)

15 See *Tracking Australia*, recommendation 4.

16 Transcript of proceedings, 24 November 2000, Sydney, p.7 (Greg George – DOTRS)

for rail than for road. He argues that these factors support the need for the development of a 'one stop shop' for access and accreditation to allow for consistency and certainty.¹⁷

- 2.26 Deborah Cope stated that 'it is very much the state of flux in access arrangements which is causing uncertainty'. In contrast to the investment environment in rail, she provided the example of investment in the gas industry, which has healthy private investment because the access regime provides consistency and 'people know what the access regulations are'.¹⁸
- 2.27 Governments, especially the Commonwealth Government, must look very closely at the extent of its commitment to rail, particularly compared to the level of its support for the road transport network. We believe it also important that the ARTC's performance and investment audit take account of the need to increase the carrying capacity of the rail network in order to accommodate actual and expected growth in the rail freight sector.
- 2.28 A number of seminar participants noted that, while more funding and investment would be welcome, the main problems facing rail revolve around management not money.

The funding dilemma

- 2.29 No one at the seminar advocated that the Commonwealth simply throw more money at the industry. Instead, it was argued strongly that development of the industry was being impeded by disjointed network management, which creates inconsistencies and across jurisdictions and regulatory uncertainty, and by policies which deny competitive neutrality to the rail industry. These factors represent a barrier to the effective use of available funds and to the creation of an unattractive environment for private sector investment.
- 2.30 This sentiment reinforces the conclusion drawn by the Productivity Commission in its report *Progress in Rail Reform*. While recognising that there has been inadequate investment in infrastructure, the Productivity Commission argued that reform and investment go hand in hand:

Investing more government money without other reforms—particularly to loss making railways—is not the answer. Rather, it

17 Transcript of proceedings, 24 November 2000, Sydney, p.66-7 (David Marchant –NRTC): See also Andrew Rooney (Transport SA), who notes that the different treatment of road and rail extends to matters such as noise pollution requirements, arguing that these differences are 'something that we really need to monitor and watch because the standards are more restrictive [for rail] than for road', p.63

18 Transcript of proceedings, 24 November 2000, Sydney, p.67 (Deborah Cope – NCC)

is the role of governments to create a sound and stable operating environment to provide greater certainty for the industry.¹⁹

- 2.31 The Rail Infrastructure Corporation went on to argue that, despite a decade of successful reform (resulting in cost cutting and efficiencies), some policy-makers retained a mindset of stagnation rather than growth. Changing this perspective, and promoting the industry as one that is entering a dynamic period of growth, is an important element of establishing a positive investment environment and attracting private sector funding for the industry.²⁰
- 2.32 We believe that a key obstacle to the provision of Commonwealth funding for rail is the lack of clear boundaries for Commonwealth funding responsibility. As part of the microeconomic reform agenda in the early 1990s, COAG agreed to the Commonwealth taking responsibility for the National Highway network in an explicit arrangement that committed the Commonwealth and the States to pursue uniformity of road rules and single road reform package. This arrangement led to the establishment of the National Road Transport Commission and to the development and implementation of such things as uniform road rules and the harmonisation of heavy vehicle regulations between jurisdictions. This arrangement also provides clear funding responsibilities for the Commonwealth, which in turn allows for effective and targeted Commonwealth road funding.
- 2.33 A similar arrangement has not been made in regard to rail, despite rail being a truly national industry and the national track being vital to the further development of the industry and Australia's transport task.
- 2.34 We reiterate our recommendation in *Tracking Australia* that the Commonwealth declare a national track for interstate rail services on the standard gauge network from Brisbane to Perth and pursue COAG agreement for the Commonwealth to take over funding responsibility the national track. This would provide the foundation on which to build an improved rail service with a focus on national outcomes and address the chronic deficiencies in the interstate infrastructure. It would also provide for better management of the national rail network.
- 2.35 Perhaps most significantly, it would provide the Commonwealth with the necessary certainty and clarity in regard to responsibility, enabling the better targeting of Commonwealth rail funding. A corresponding move would be to establish a body modelled on the National Road Transport

19 Productivity Commission, 1999, *Progress in Rail Reform*, Inquiry report no.6, Ausifno, Canberra, p.xxxiii

20 Submission No 14, Rail Access Corporation, pp.85 and 88

Commission with the aim of working towards common objectives and practical reforms in rail.

- 2.36 It is, however, important that any such arrangement be constructed in such a way as to avoid some of the jurisdictional difficulties associated with Commonwealth funding for the national highway. The ideal model would be for the Commonwealth to assume full care, control and management of the declared national track.

Access and accreditation

Access

- 2.37 In its response to the rail reports, the Commonwealth stated that if Commonwealth/State cooperative arrangements for access to the national track were not working by mid-2001, it would take measures to develop a new institutional framework, possibly involving a network manager based on Commonwealth legislation.
- 2.38 At this point in time the ARTC only controls access to the east-west corridor (as far as Kalgoorlie). The NSW and Queensland networks remain under State government control. Arrangements will have to be made with the Australian Railroad Group (the consortium that recently purchased WestRail) regarding access to the line from Kalgoorlie to Perth. The various control and management arrangements for what is known as the national track are shown in the following table.

Table 2.1: Who controls access to the 'national track'

TRACK SEGMENT	ACCESS MANAGER
Perth to Kalgoorlie	Australian Railroad Group
Kalgoorlie and Alice Springs to Albury and Broken Hill	Australian Rail Track Corporation
Melbourne to Albury	Australian Rail Track Corporation
Albury to Sydney and to Queensland border	Rail Infrastructure Corporation
NSW border to Brisbane	Queensland Rail

- 2.39 The industry view is that, apart from the ARTC controlled segment of the national network, access arrangements are a 'shambles', with terms and conditions, pricing, network management and train control differing between jurisdictions.²¹
- 2.40 It was also argued that the differentiation between intra and interstate freight is 'outmoded'²² and confuses the issue of achieving seamless access. The difficulty is that an interstate operator may need to access both intra and interstate track to transport freight. Robert Jeremy described the difficulty in trying to differentiate between intra and interstate freight:
- At the moment, if a customer of ours has a box of freight to move from regional Queensland to Melbourne, we can provide a truck to do that, and the truck will pick up and deliver it in essentially one movement, and the driver will not blink when he passes the border. The rail system regards that as an intrastate freight movement from regional Queensland to Brisbane under one set of terms and conditions, pricing and train control. Then it is an interstate movement from Brisbane to the border, under different terms and conditions and pricing. Train control may or may not be different; I am not sure. Then it is an interstate movement from the border to the border with terms and conditions, pricing and train control all different. Then it is an interstate movement from the border to Melbourne, under ARTC's terms and conditions, pricing and control.²³
- 2.41 The NSW Rail Infrastructure Corporation (formerly Rail Access Corporation) questioned the Commonwealth's claims that there are now fewer jurisdictions that have to be dealt with for access to track. For example, the Rail Infrastructure Corporation (RIC) claims that in order to operate freely in Victoria it is now necessary to deal with the ARTC, Freight Australia and two urban passenger operators. Similarly the release of the Alice Springs–Tarcoola railway will add another jurisdiction.²⁴
- 2.42 In addition, some state rail access authorities do not see access *per se* as a problem, with open access being the rationale for the existence of RIC and ARTC. It is argued that the problem is, rather, the seamlessness with which access is available, an issue which NSW claims to be working on intensely with the Commonwealth.²⁵

21 Transcript of proceedings, 24 November 2000, Sydney, p.42-3 (Robert Jeremy)

22 Transcript of proceedings, 24 November 2000, Sydney, p.46 (Robert Jeremy – Toll Rail)

23 Transcript of proceedings, 24 November 2000, Sydney, p.46 (Robert Jeremy – Toll Rail)

24 Submission No 14, Rail Access Corporation, p.86.

25 Correspondence received from J. Austen, NSW Department of Transport, 8 January 2001.

- 2.43 To a certain extent access is also affected by inadequate infrastructure capacity and poor timetabling on certain lines to accommodate the needs of operators. This appears to be a particular problem on the north-south corridor.²⁶ Terrence Bones of the RIC concurred with these views, stating that the north coast line in NSW is 'currently at, if not beyond capacity at this time', suggesting that funding for projects such as loop extensions is a key problem.²⁷
- 2.44 As well as access to track, participants complained of restrictive access to other infrastructure such as rail-yards and ports.²⁸
- 2.45 The ARTC has negotiated wholesale agreements for access in a number of jurisdictions. Wholesale agreements provide for jurisdictions to sell vacant train paths to the ARTC for on-selling to interstate operators. They set out the financial arrangements and conditions under which the paths are provided to the ARTC and are able to be on-sold. In effect, they provide the paths at a wholesale price to the ARTC, who then sell the path while keeping the margin.
- 2.46 Wholesale agreements are not the Commonwealth's preferred model. The Commonwealth would prefer to replicate on a national scale the arrangement that has been negotiated with the Victorian Government, where a 15 year lease has been granted to the ARTC to manage the interstate standard gauge track, thereby allowing for integrated 'whole of corridor' management.²⁹
- 2.47 It is clear that the wholesale agreement process has stalled. The Commonwealth has admitted that 'it has been recognised that a wholesale access agreement arrangement such as in Western Australia will not be achieved in New South Wales'.³⁰ It is now time to find a solution to this impasse.
- 2.48 The industry is calling for the Commonwealth to act immediately in order to bring about a 'one-stop-shop' for access to the national network, rather than wait until mid-2001. Similarly, the Victorian Department of Infrastructure argues that the Commonwealth 'should be encouraged to pursue its stated intention' in the 'expectation that the ARTC will be

26 Transcript of proceedings, 24 November 2000, Sydney, p.43 (Gary Camp – Patrick Rail Operations); See also Robert Jeremy, p.43.

27 Transcript of proceedings, 24 November 2000, Sydney, p.44 (Terrence Bones – RAC)

28 Transcript of proceedings, 24 November 2000, Sydney, pp. 37 (Mark McAvoy – STC) and 41 (David Marchant – ARTC) .

29 Submission No. 10, David Marchant (ARTC), p.5

30 Transcript of proceedings, 24 November 2000, Sydney, p.21 (Greg George)

unable to provide seamless access to the interstate corridors in NSW and Qld by mid 2001'.³¹

- 2.49 In opposition to this proposal the RIC argues that in NSW the majority of the rail network is used for both intra and interstate purposes, with intrastate traffic constituting the majority of traffic. As such, it is difficult to segregate inter and intra state traffic.³² Further, the RIC argues that such a move would increase the number of jurisdictional boundaries from 3 to 11, primarily impacting on intrastate freight services but also on Country Link and City Rail passenger services. This would also result in almost twice as much freight and three times as many trains needing to access the track of two track owners instead of one if NSW 'interstate' lines were leased to the ARTC.³³
- 2.50 In lieu of the ARTC taking control of access arrangements in all states, the RIC suggests a marketing 'joint venture' between track owners to accommodate access. This would take the form of a marketing platform as an interface between the track owners and operators and be jointly staffed by the various track owners. Operators would have a single point of contact through the joint venture. Further, it is envisaged that the joint venture would take over responsibility for management of all freight access, eliminating the artificial distinction between intra and interstate freight.³⁴

Accreditation

- 2.51 Despite moves towards harmonisation of accreditation, there are indications that accreditation has become more complicated and costly.
- 2.52 Vince Graham (National Rail) said that the number of bodies requiring accreditation has increased, with the Northern Territory now demanding accreditation. He stated that accreditation fees for the current financial year paid to the six accrediting bodies will cost National Rail \$250 000, noting that road operators do not pay similar fees.³⁵
- 2.53 Operators voiced their frustration at the lack of progress towards a national regulatory regime. Robert Jeremy cited the 1999 Booze Allen study on rail reform, stating that:

The resounding view from industry [in the Booze Allen report] was that it wanted a single regulatory framework with a single

31 Submission No 13, Victorian Department of Infrastructure, p. 83.

32 Transcript of proceedings, 24 November 2000, Sydney, p.45 (Terrence Bones – RAC)

33 Submission No 14, Rail Access Corporation, p.86.

34 Submission No 14, Rail Access Corporation, pp.86-7.

35 Transcript of proceedings, 24 November 2000, Sydney, p.32 (Vince Graham).

regulator. It did not want to go from 20 to seven working systems; it did not want to deal with seven harmonised accrediting authorities. It wanted to deal with one regulator and one set of systems.³⁶

- 2.54 Lucio Di Bartolomeo supported this view stating that 'We do need a standard regulatory framework for the rail industry and the improvements that can be made there'.³⁷
- 2.55 Paul Blake from the National Transport Secretariat made the point that the chances of getting agreement from the States for a single national accreditation regime were, at present, remote - as some State governments strongly oppose the single regulator model.³⁸
- 2.56 A number of government representatives also cautioned against a 'blanket' approach to harmonisation, arguing that not all aspects of rail operations need to be, or should be harmonised. Andrew Kitto raised the question of whether it is appropriate to have total consistency. For example, would the control system appropriate for the Sydney metropolitan network be appropriate for the Adelaide to Kalgoorlie line.³⁹ A further issue is whether it is possible or desirable to differentiate intrastate freight from interstate freight operations under any proposed national regulatory regime. Paul Blake said that plans for national regulation should focus on 'those things that are really going to make a difference—that are going to help the rail industry move forward at a national level'.⁴⁰
- 2.57 However, most operators continue to support the need for a national regulatory and accreditation regime. There is a firm view that the States are either unwilling or incapable of agreeing to a national regulatory system and that the Commonwealth must take a lead role to force the issue.
- 2.58 In its reply to *Tracking Australia*, the Commonwealth proposed the establishment of a new institutional framework using Commonwealth legislation if, by mid 2001, the current process of rail industry co-regulation under State/Territory accreditation and operational codes were not working effectively. The new framework would be similar to the National Road Transport Commission.
- 2.59 John Kirk (Australasian Railway Association) called for the Commonwealth to start the process of establishing a new institutional
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36 Transcript of proceedings, 24 November 2000, Sydney, p.24 (Robert Jeremy)

37 Transcript of proceedings, 24 November 2000, Sydney, p.27 (Lucio Di Bartolomeo)

38 Transcript of proceedings, 24 November 2000, Sydney, p.25 (Paul Blake)

39 Transcript of proceedings, 24 November 2000, Sydney, p.27 (Andrew Kitto)

40 Transcript of proceedings, 24 November 2000, Sydney, p.33 (Paul Blake)

framework immediately. He argued that 'it is quite clear that the states have been unwilling to forgo the responsibilities and the powers they have got, and I think it is time the Commonwealth should actually implement the scenario'.⁴¹

- 2.60 Vince Graham (National Rail) stated that 'I do not think there is any rail operator around this table who will not foreshadow to you and your committee the need for the Commonwealth to proceed in that direction and to do it now, not mid next year'.⁴²
- 2.61 The Commonwealth argues that the Australian Rail Operations Unit fulfils a similar role to the National Road Transport Commission. However, an important difference is that the existence of the AROU is related to the introduction of the codes of practice, after which its work will have been completed.⁴³
- 2.62 We believe that the Commonwealth should consider extending the operations of the AROU, possibly putting it on a more firm footing similar to the NRTC. The AROU could then have a continuing role in affecting consistent regulation across all jurisdictions.

ARTC and wholesale agreements

- 2.63 The ACCC has identified a number of legal problems associated with the legal standing of the ARTC and the differentiation of 'intra' and 'inter' state track.
- 2.64 Under the 1997 Inter-Governmental Agreement (IGA), it was envisaged that the ARTC would have negotiated wholesale agreements covering the national network, thus providing the basis for the ARTC to lodge an undertaking with the ACCC.
- 2.65 As the ARTC has not achieved the goal of wholesale agreements across the country, it is doubtful the ARTC can lodge an undertaking with the ACCC.
- 2.66 According to the ACCC, there is additionally some doubt over whether the ARTC can be considered a service provider under the meaning of Part IIIA of the Trade Practices Act:

It appears that there may be no basis for the ARTC to lodge an undertaking under Part IIIA on its own behalf for the interstate network as, in essence, ARTC may not have sufficient control over

41 Transcript of proceedings, 24 November 2000, Sydney, p.30-1 (John Kirk - ARA).

42 Transcript of proceedings, 24 November 2000, Sydney, p.32 (Vince Graham - National Rail)

43 Transcript of proceedings, 24 November 2000, Sydney, pp.15 and 22.

the infrastructure under their proposed wholesale access agreements with the States.⁴⁴

2.67 A further problem arises from the Federal Court decision in the Hamersley Iron case, which questions whether intrastate and interstate services can be differentiated under Part IIIA of the Trade Practices Act. This means that the NCC may not be able to certify as effective a regime that only covers intrastate services without also covering interstate services, 'as they are in effect the same service'.⁴⁵

2.68 Therefore, in the event of the ARTC being deemed a provider and submitting an undertaking, the ACCC 'may not be able to assess it if services utilising tracks were subject to an effective regime':

Indeed, if a track is the subject of an intrastate regime, then an undertaking could not be lodged in respect of interstate services provided on the same track. Thus, in the case of the ARTC, the ACCC may not be able to assess as undertaking covering access to the interstate network if the tracks are also the subject of a state regime.⁴⁶

2.69 This is potentially a serious impediment to the work of the ARTC and needs to be resolved promptly.

Commonwealth/State relations

2.70 It is clear from the evidence at our seminar that many in the rail industry feel deeply frustrated at the lack of effective Commonwealth and State cooperation on rail reform.

2.71 Lucio Di Bartolomeo stated that:

...we have a clear inability at the political and bureaucratic level, between state and federal, to overcome differences that exist. Whether those differences are good or bad, the reality is they are impeding the progress of this industry for rail to have a bigger role for transport in Australia, for rail to take more freight off road and onto rail in a manner that is economically and financially justifiable.⁴⁷

44 Submission No 8, Australian Competition and Consumer Commission, p.43.

45 Submission No 8, Australian Competition and Consumer Commission, p.43.

46 Submission No 8, Australian Competition and Consumer Commission, p.43.

47 Transcript of proceedings, 24 November 2000, Sydney, p.27 (Lucio Di Bartolomeo-FreightCorp).

- 2.72 Operators also deride the political nature of decisions affecting rail, rather than decisions being based on economic realities. David Marchant commented that in regard to the ARTC attempting to establish a 'one-stop-shop' for access, it 'is very hard to put together on commercial principles a political nonsense, because most of the negotiations are about politics rather than commercial reality'.⁴⁸
- 2.73 Most importantly, the rail industry perceives a lack of 'political will' on behalf of Commonwealth and State governments to provide the necessary level of support to the rail industry and to push for fundamental reforms. There is a general view that the industry has done a lot of hard work in meeting government demands for reform but that there has been no corresponding change in government attitude towards rail in recognition of the reforms that have been made. The Australasian Railway Association argues that:
- The rail industry has constantly been chided by governments about having to 'get its act together'. The reality is that governments need to substantively lift their performance to enable rail to contribute to a more sustainable and internationally competitive Australian transport system.
- 2.74 State governments are viewed by many in the rail industry as impediments to progress, particularly in regard to developing a national rail industry. The general view is that the states are clinging to nineteenth century ideas about rail, which are inappropriate for the needs and possibilities of the twenty-first century. This view is perhaps best summed up by John Kirk (ARA):
- ...the states need to realise that they are the problem—the bureaucrats and the politicians at state level. They are the problem, and they should simply give up some of those powers in order to create the efficiencies we need.⁴⁹
- 2.75 Despite this strongly and widely held view, it is important to acknowledge that there have been some constructive steps taken at the State level.
- 2.76 Victoria and South Australia, in particular, are to be commended for transferring control of their standard gauge interstate track to the ARTC, thereby allowing the ARTC to provide seamless track access from Melbourne to Kalgoorlie.
- 2.77 Queensland and NSW have also taken some steps towards improving the operation of their internal rail systems, namely:
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48 Transcript of proceedings, 24 November 2000, Sydney, p.41 (David Marchant – ARTC).

49 Transcript of proceedings, 24 November 2000, Sydney, p.31 (John Kirk)

- Queensland Rail has invested \$1billion to upgrade the Brisbane to Cairns line;⁵⁰ and
 - NSW was the first to introduce a rail access regime in Australia, one of only two access regimes to have been certified by the National Competition Council as effective.⁵¹
- 2.78 As positive as these steps have been, they do not amount to an integrated national vision for the future of rail.
- 2.79 It is clear from the seminar and supporting evidence that there appears to be a significant difference in opinion between rail operators and state government transport authorities as to the rate and pace of reform.
- 2.80 This reflects the rapidly changing nature of the industry. The industry is now dominated by private operators who have different priorities and goals than their former State owned counterparts. At its core, we have a situation where a historically government owned and State centric industry has been rapidly thrown open to private operators with a predominantly national, rather than State centric view of the industry.
- 2.81 The apparently ambivalent attitude of some States toward rail reform was confirmed by the fact that both the NSW and Queensland Departments of Transport decided not to participate in our otherwise well attended seminar. In the words of one participant:
- ... some of the key players in attempting to solve some of those problems [that is, the problems in the rail industry] are not here. We do not have the key representatives of the departments of transport at this table? Where are they? Where is the relevance of rail to the departments of transport? Where does rail fit into their priority listing?⁵²
- 2.82 The issues of access and accreditation are intricately linked to Commonwealth/State relations. While both the Commonwealth and the States have indicated that they are working towards resolving issues of access and accreditation, there is a need to hasten the process of reform.
- 2.83 The Commonwealth has indicated that if cooperative arrangements with the states in regard to access and accreditation were not effective it would be willing to step in and establish Commonwealth legislation and

50 Transcript of proceedings, 24 November 2000, Sydney, p.19 (Peter Gardiner –Qld Rail)

51 However, the effectiveness of the NSW regime, as certified by the NCC, expires in the near future. See Transcript of proceedings, 24 November 2000, Sydney, p.55 (Deborah Cope)

52 Transcript of proceedings, 24 November 2000, Sydney, pp.27-28 (Lucio Di Bartolomeo – FreightCorp)

regulatory bodies, as well as declaring a national track.⁵³ Accordingly, we believe that the Commonwealth should take the lead and use all the constitutional powers at its disposal to push through key reforms in the areas of access, accreditation and harmonisation.

- 2.84 The evidence at the seminar clearly indicates industry frustration at the current cooperative arrangements, which are impeding effective rail reform and investment. We believe that the Commonwealth should, without delay, declare a national track, establish a regulatory agency for accreditation, standard setting and safety regulation on the national network, and develop a new institutional framework for access to the national network to promote certainty and consistency.
- 2.85 This would then put the standard gauge national rail network on a similar footing as the national highway. It would also recognise that rail, like road, is a national industry and needs to break free of parochial state interests.
- 2.86 It is time that all governments, State and Commonwealth, stopped procrastinating about rail and got behind the industry.

Competitive neutrality between road and rail

- 2.87 One of the most intractable problems facing the rail industry is the impact of the different approaches taken to determining funding and charging regimes for rail transport as compared to road transport. It has been argued by the rail industry for many years that these differences work significantly to the disadvantage of rail operators.
- 2.88 National Rail provided the following access pricing for road and rail operators transporting 62.5 gross tonnes on interstate transport corridors.⁵⁴

53 Department of Transport and Regional Services, 2000, *Response of the Federal Government to Reports of the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform 'Planning Not Patching' and 'Tracking Australia'; Report of the Rail Projects Taskforce, 'Revitalising Rail', and; Report of the Productivity Commission 'Progress in Rail Reform'*, Department of Transport and Regional Services, Canberra, pp.12, 25, 36.

54 Submission No 2, National Rail, p.8.

Corridor	Road	Rail	% Variation
Sydney-Melbourne	\$126	\$191	52%
Melbourne-Brisbane	\$231	\$389	68%
Sydney-Perth	\$511	\$853	67%
Road Charge is registration at \$5500pa and fuel road access fee at 20 cents/litre and fuel consumption 60 lts/100km Rail Charge is \$3.20-\$3.50 per 1000 GTK (Gross Tonne Kilometres)			

- 2.89 This table indicates that, according to National Rail's analysis, rail pays at least fifty per cent more in access charges compared to road on interstate transport corridors.
- 2.90 Research conducted by the Bureau of Transport Economics (BTE) suggests that trucks are currently undercharged for their use of the road system, with large vehicles travelling longer distances being charged the least (per tonne kilometre).⁵⁵
- 2.91 The lack of neutrality in access pricing clearly impacts on the rail industry. The BTE has concluded that:
- If both road and rail paid more competitively neutral charges, including charges for externalities, in a system designed to fully recover costs from users, both road and rail freight rates would fall by 5 per cent relative to current freight rates. With no shift in relative freight rates, and in the absence of other changes, the historical decline in rail's share of intercity freight transport is likely to continue.⁵⁶
- 2.92 We believe that the Commonwealth must take firm action in regard to promoting and enforcing competitive neutrality between road and rail transport. Current practices are impeding growth in the rail industry and a continuation of the bias towards road transport will not allow Australia to reap the economic and environmental benefits of a healthy rail industry.

55 Bureau of Transport Economics, 1999, *Competitive Neutrality between Road and Rail*, Working Paper 40, Department of Transport and Regional Services, Canberra, p.10

56 Bureau of Transport Economics, 1999, *Competitive Neutrality between Road and Rail*, Working Paper 40, Department of Transport and Regional Services, Canberra, p.10