
9 Safety regulation and operating procedures and standards

Inconsistent safety regulations and operating procedures and standards are an impediment to efficient rail operations, particularly between States. They can reduce rail safety, add to costs, create uncertainty and inhibit innovation. Ultimately, existing and potential operators are impeded from taking advantage of market opportunities, investment is discouraged and rail's competitiveness relative to other modes of transport declines.

Although progress has been made by Commonwealth, State and Territory Governments and industry to reduce inconsistent regulation in railways, progress could have been faster and the outcomes are still uncertain.

Regulations discussed in this chapter relate to safety and operating procedures and standards. Chapter 8 discusses regulation relating to access regimes. Rail regulation in this chapter takes various forms including legislation, standards and codes.¹

In the past, each State managed and regulated its own rail system.² Prior to the 1990s, differences in regulations between States were not of concern to operators because there was little scope for more than one operator in each system. However, during the 1990s the completion of the national standard gauge track linking the five mainland capital cities through Melbourne, the introduction of open access on the track, the creation of the National Rail Corporation (NRC) and the entry of new private operators have focused attention on inconsistent rail regulations as a major

¹ The Council of Australian Governments (COAG) defines regulation to be the 'broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as to those voluntary codes and advisory instruments ... for which there is a reasonable expectation of widespread compliance' (COAG 1997, p. 2).

² The Australian Capital Territory (ACT) has four kilometres of track under NSW regulation. Railways in the Northern Territory were administered by Australian National until July 1998. The *Rail Safety Act 1998* (NT) has been gazetted but no decision has yet been made regarding the administration of rail safety.

impediment to efficient interstate rail operations.³ These differences can increase costs and reduce the ability of rail to compete with other modes of transport.

Prior to the 1990s, vertically integrated State government-owned railways operated primarily within their own State so that any rail safety and operational issues related mainly to individual jurisdictions. Today, train operators are dealing with multiple jurisdictions. However, State-based accreditation authorities retain responsibility for regulating safety and ensuring compliance, and track owners adopt their own operating procedures and standards, while complying with each State's safety regulation. Many participants commented on issues relating to safety regulation and operating procedures and standards, in particular inconsistencies between jurisdictions and their impact on efficiency. The Australasian Railway Association (ARA) noted with respect to safety that:

State-based regulatory regimes remain a barrier to entry into rail operations. Despite their excellent safety record, rail operators are subject to a vastly more complex and costly regulatory regime than road operators. (sub. 51, p. 11)

And with regard to operating procedures and standards that:

These different standards have adversely affected interstate rail operations. (sub. 51, p. 10)

Great Northern Rail Services (GNRS), referring to both safety regulation and operating procedures and standards in general commented that:

The industry, particularly those operators who work across State borders, are presently burdened with onerous regulatory requirements. The plethora of regulations ... are expensive imposts on all operators. (sub. 46, p. 8)

And NRC held a similar view in referring to both:

The complexity of regulation of interstate rail equipment, operational procedures and employee competencies is a significant barrier to entry and a significant impost on innovation for existing operators. (sub. 53, p. 18)

The WA Government, however, held a different view in relation to safety accreditation. It noted that:

Perceptions held by a small element of the industry that there is a lack of coordination, and inconsistency between States are generally unfounded ... (sub. 60, attach. B, p. 2)

The focus of participants' comments was on the interstate network. However, inconsistent safety regulations and operating procedures and standards can also

³ In this chapter interstate rail operations include the activities of operators running trains on any track in any State other than the State in which their principal activities take place, as well as national operators, such as NRC and Great Southern Railway.

affect operators wishing to run trains on the intrastate network in States other than the State in which their principal activities take place. Although participants focused on freight operations, passenger operations are also affected.

Safety regulation and operating procedures and standards for railways are substantially more complex and confusing than for many other industries. The complex safety accreditation system, layers of regulation, confusion between safety and operating procedures and standards, different interpretations and terminology within the industry, and complicated mechanisms for progressing reform have all been highlighted in this inquiry. These are overlaid by change over the past few years and during the course of this inquiry.

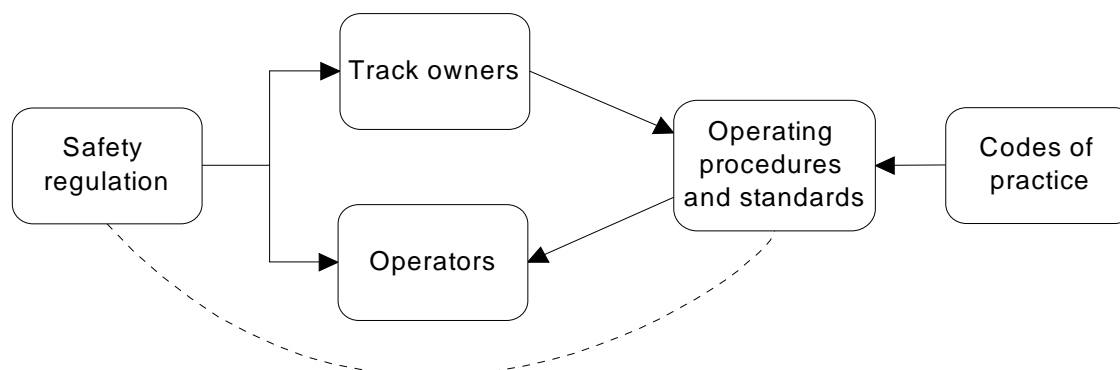
The Commission's approach is to treat safety and operating procedures and standards as separate although operating procedures and standards incorporate elements of safety. This chapter focuses on how to achieve efficient implementation of safety regulation by removing inconsistencies in safety accreditation and mutual recognition between jurisdictions (section 9.1). According to the Industry Reference Group (IRG), a joint government and industry initiative comprising industry representatives, rail safety regulation is about ensuring that activities are undertaken in a safe manner, that is, 'what you need to do' (sub. DR109).

Operational issues relate mainly to the choice of operating procedures and standards adopted by track owners to increase their efficiency while complying with safety regulations. Of particular interest is the extent to which operating procedures and standards should be harmonised or made uniform across track owners' rail networks (section 9.2) and the development of codes of practice (section 9.3). The IRG described the process for establishing uniform operating procedures and standards as being about allowing rail organisations to conduct their operations in a safe and efficient manner, that is, 'how to do it', taking into account the need to remove jurisdictional differences and improve efficiency (sub. DR109).

The relationship between safety accreditation and mutual recognition, operating procedures and standards, and codes of practice is represented in figure 9.1.

Alternative ways of maintaining the momentum of reform are considered in section 9.4. A stocktake of reforms and key developments in removing inconsistent rail safety regulation and operating procedures and standards during the 1990s are summarised in chapter 3, with greater detail provided in appendices D and G.

Figure 9.1 **Safety regulation, operating procedures and standards, and codes of practice**



9.1 Safety regulation

The industry recognises that there is a need to focus on managing safety risk, given the potential for rail accidents, the complexity of rail transport operations, and the recent entry of operators with little or no experience in rail (ARA 1997). The Australian Standard on Rail Safety Management (AS 4292) notes that the safety objective in the railway industry is ‘to minimise the risk of harm to people and damage to property’ (Part 1, p. 5). AS 4292 is described in box 9.1.

In 1995-96 the incidence of nonfatal accidents in rail transport reported in new workers’ compensation cases was substantially higher than for the ‘all industries’ total (table 9.1). Although there is no information on fatalities for that year, other data indicate that the number of fatalities⁴ associated with railways is substantial — in 1993 there were over 100 fatalities, and approximately 40 in 1997 (ABS 1993b, ABS 1997).

Table 9.1 **Incidence of new workers’ compensation cases reported^a, 1995-96**

<i>Industry</i>	<i>Fatal</i>	<i>Nonfatal</i>	<i>Total</i>
Rail transport	np	42.59	np
Transport and storage	0.18	41.84	42.01
All industries	0.05	25.47	25.51

^a Excludes Victoria and the ACT. Incidence relates to occurrences per thousand wage and salary earners. np not provided.

⁴ Based on Death Certificates issued by coroners. Includes all persons, not just employees. Excludes suicides.

Source: NOHSC 1998.

Box 9.1 Australian Standard on Rail Safety Management

The Australian Standard on Railway Safety Management (AS 4292) is referred to in the accreditation sections of most State rail safety/transport acts and forms an underlying component of the national guidelines for safety accreditation. The national guidelines state that 'applicants are required to develop their railway safety management system for their railway activities in a manner consistent with the Australian Standard for Rail Safety Management (AS 4292)' (sub. DR106, attachment on national guidelines).

The objective of AS 4292 is to provide a uniform set of railway safety requirements which can be incorporated into management systems to adequately control risk. It is not prescriptive in its approach.

AS 4292 consists of seven parts:

- Part 1: General and interstate requirements;
- Part 2: Track, civil and electrical infrastructure;
- Part 3: Rollingstock;
- Part 4: Signalling and telecommunications systems and equipment;
- Part 5: Operational requirements;
- Part 6: Railway interface with other infrastructure; and
- Part 7: Railway incident investigation (draft).

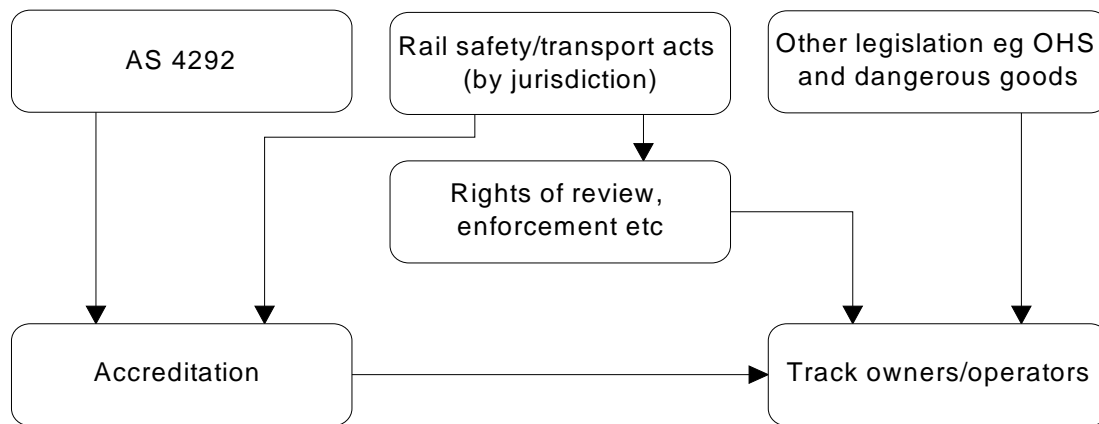
AS 4292 was prepared by Committee ME/79, Railway Safety, and approved on behalf of the Council of Australian Standards. Part 1, published in 1995, establishes the general principles. Parts 2-6, published in 1997, provide guidance on what is needed to comply with Part 1. Part 7 has yet to be finalised.

Sources: ARSAA sub. 106; Standards Australia 1997.

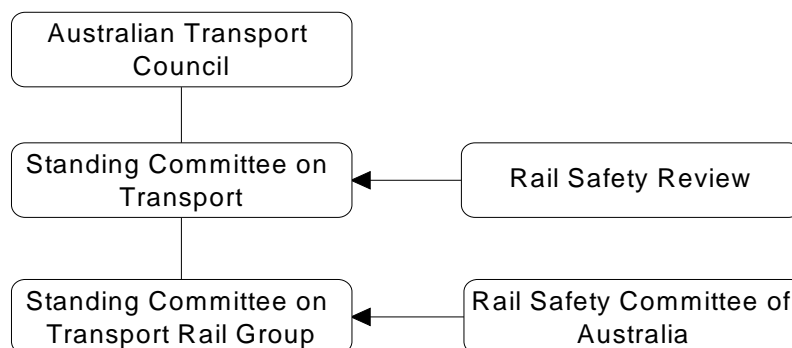
Although it is beyond the scope of this inquiry to assess safety risk management in the rail industry, it is within its scope to examine some of the tools used, such as the safety accreditation process, in so far as they may impede efficient interstate rail operations.

The processes of rail safety regulation in Australia and organisational arrangements associated with progressing regulatory change are presented in figure 9.2.

Figure 9.2 **Safety regulation**



Organisational arrangements^a



^a Other organisations involved include the Australian Rail Safety Accreditation Authorities (ARSAA) and ME/79 (Australian Standards Committee).

Safety legislation

Safety is regulated by State and Territory Governments according to each jurisdiction's rail safety legislation. New South Wales was the first State to amend its railway legislation (in 1993) to include safety accreditation. It placed the onus on the industry to perform to agreed standards and introduced accountability and transparency (ATC 1993). This legislation was then used as a model for the development of legislation in other States.

In 1996 all jurisdictions⁵ agreed (through an Intergovernmental Agreement (IGA)) that legislation be passed making AS 4292 the principal standard forming the basis for safety accreditation. They also agreed that parties make provision under existing

⁵ Excluding the ACT.

or future legislation for accreditation by an accreditation authority and for mutual recognition (IGA 1996).⁶

Legislation, consistent with the IGA, followed in the other States and Territories. As a consequence, legislation covers many similar areas in each State, including accreditation of owners and operators, safety audits and inspections, rights of review, enforcement and fees. Legislative reviews in States other than New South Wales resulted in most also incorporating reference to mutual recognition and AS 4292.

Although the areas covered under the acts are similar, the detail varies between jurisdictions. For example, the clauses relating to suspension of accreditation in the Queensland *Transport Infrastructure Act 1994* (chapter 6, part 4) are different to the wording under this area in the South Australian *Rail Safety Act 1996* (part 2, division 2).

In New South Wales a review of the *Rail Safety Act 1993* (NSW) commenced in mid-1998. Industry consultation is being finalised and submission of legislation to Parliament is anticipated in September 1999. Rewriting of the Act is expected to be comprehensive, addressing issues such as mutual recognition.

Other legislation which is not specific to rail but affects the industry includes occupation, health and safety and dangerous goods legislation. Such legislation is not discussed in this chapter, but adds to regulatory oversight of railways (IC 1995c).

Safety accreditation

According to State legislation, an organisation or person wishing to operate a train must be accredited in the jurisdiction in which the principal activities are undertaken.

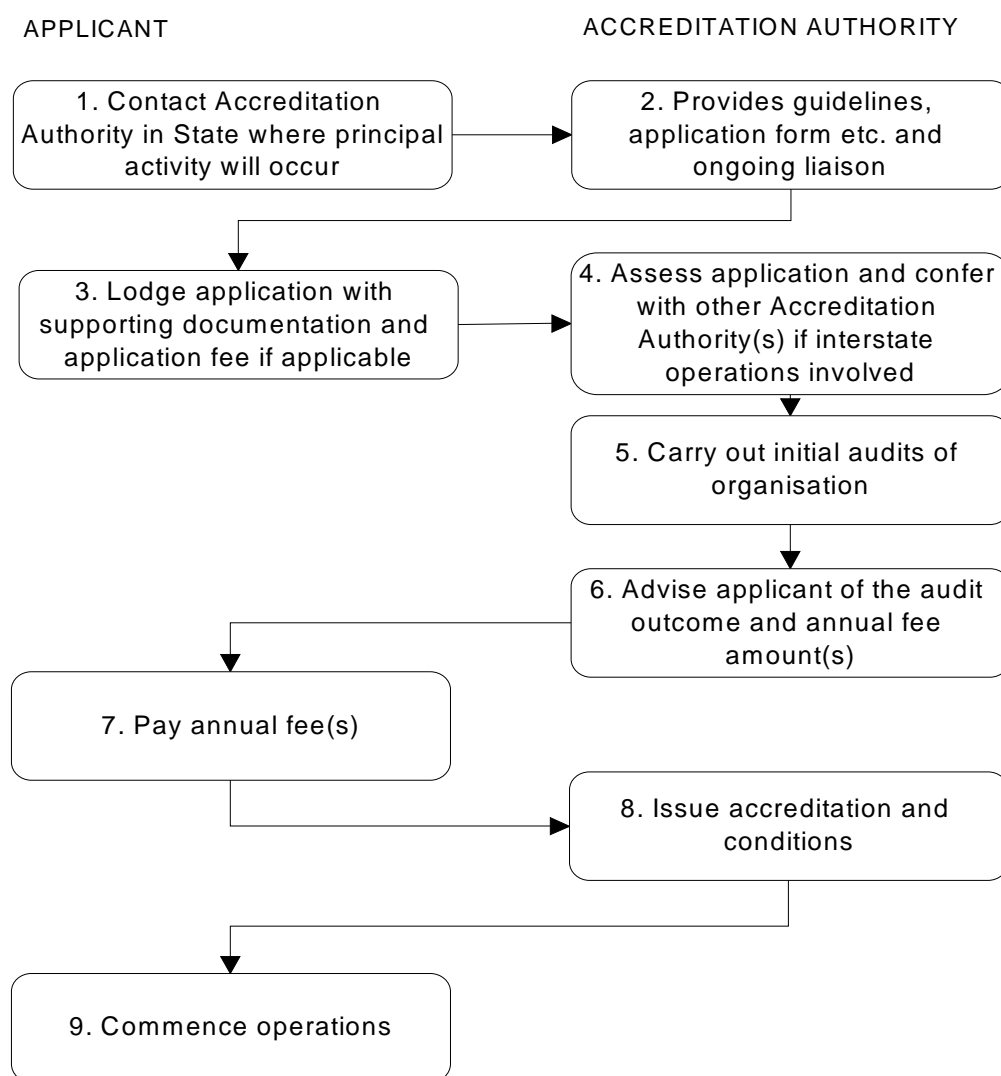
The accreditation process is based on the principle of coregulation, with rail safety being managed jointly by industry and government. The operator or track owner, not the regulator, is responsible for the safety of its activities. The accreditation authority, usually within a State transport department, must be satisfied that the operator or track owner has in place, and can demonstrate, an appropriate safety

⁶ Mutual recognition is based on the premise that safety accreditation of a rail operator or owner in one State or Territory should be acceptable in other jurisdictions. For a discussion see ORR (1997).

management system.⁷ This system must be consistent with AS 4292. The accreditation authority has no responsibility for the development or modification of the detailed operating procedures and standards of the applicants.⁸

The safety accreditation process currently being implemented by all accreditation authorities is set out in figure 9.3.

Figure 9.3 Rail safety accreditation process^a



^a Application and assessment in steps 3-4 may be iterative.

Data source: ARSAA sub. DR 106, attachment on Accreditation Authorities Administrative Processes.

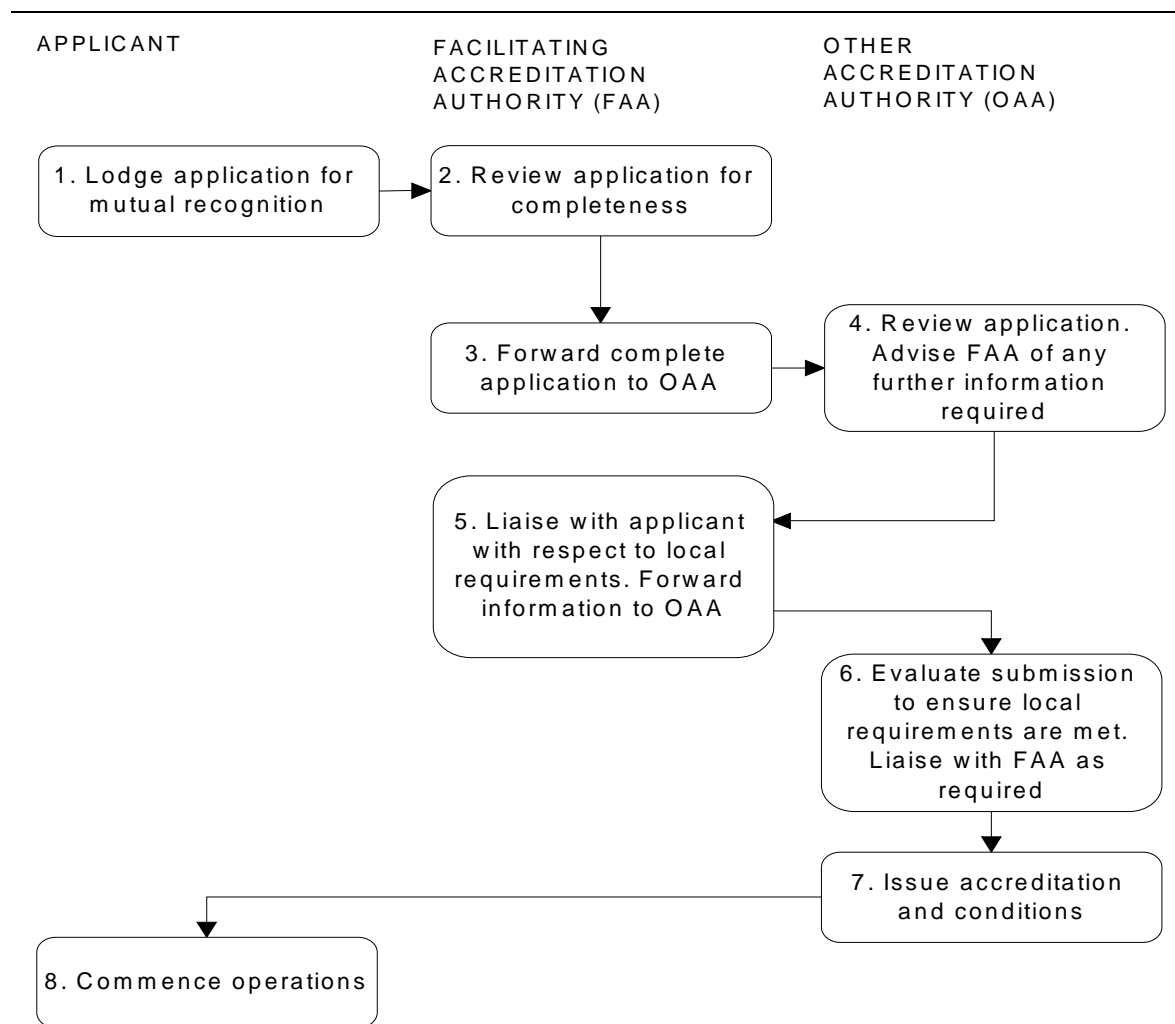
⁷ Sugar cane railways in Queensland are exempt from obtaining safety accreditation through this process, and the intent is for Pilbara railways in Western Australia to be also exempt by the end of 1999.

⁸ In addition to accreditation, potential operators must also gain access to the track (chapter 8) and meet any operating procedures and standards of the track owner.

An operator accredited in one State may apply for accreditation to operate in other States through mutual recognition. Mutual recognition was adopted in principle under the IGA and is legislated in all States, except New South Wales — mutual recognition is, nonetheless, available in that State.

The mutual recognition process agreed to by the accreditation authorities is outlined in figure 9.4.

Figure 9.4 Mutual recognition of accreditation



Data source: ARSAA sub. DR 106, attachment on Accreditation Authorities Administrative Processes.

Several operators have gained, or are in the process of gaining, accreditation or mutual recognition of accreditation in other States. Queensland, for instance, has accredited seven interstate operators through mutual recognition as of July 1999.

Process issues

Until early 1999, each safety regulator had its own accreditation process which was broadly consistent with other jurisdictions but varied in detail (see, for example, PTSD 1999). New South Wales offered interim accreditation, Victoria did not.⁹ Fees, additional requirements and auditing requirements also varied.

Inconsistencies in the approach adopted by jurisdictions imposed substantial financial and time costs on operators seeking accreditation and mutual recognition. They also created uncertainty and barriers to entry to interstate operations.

Participants raised a number of concerns relating to safety accreditation and mutual recognition processes. These included:

- processes which were complex, costly and time consuming;
- additional requirements imposed by regulators; and
- fees which were too high, duplicated across jurisdictions and which failed to reflect the service provided.

Many of these concerns are now being addressed.¹⁰ Some of them are illustrated in box 9.2.

Complexity

A number of participants raised concerns about the lack of consistency, complexity and cost of the accreditation and mutual recognition processes. In particular, participants commented that accreditation processes were complicated for new entrants to the rail industry and were an issue not just for operators wishing to gain accreditation for the interstate network but also for those wishing to operate on intrastate tracks in other States.

⁹ Interim accreditation refers to approval given to an applicant to operate, subject to certain conditions, prior to final accreditation approval.

¹⁰ Other issues related to varying auditing requirements and a lack of clarity about the role and responsibilities of the regulator and the track owner.

Box 9.2 Participants' comments on accreditation and mutual recognition processes

The present lack of consistency creates an unnecessary and costly burden on interstate operators and a barrier to entry and competition. (Toll Rail sub. 2, p. 2)

... significant barriers still exist for entry of new rail operators in the Hunter Valley region for the carriage of coal, due partly to the excessive time costs of attaining accreditation as a Rail Operator under the RSA [Rail Safety Act]. (NSW Minerals Council 1998, p. 5)

... we had to submit to Queensland a document of some 60 or 70 pages - 60 pages, dealing with the differences between Queensland and New South Wales ... some of those were quite legitimate differences ... but I suppose our view would be that in essence mutual recognition of accreditation should be just that. At the moment ... the exceptions far outweigh the non-exceptions and it makes it very cumbersome ... We have the resources to address these issues. Some smaller operations do not have the resources ... (NRC trans., p. 309)

Although a national agreement covering mutual recognition ... has been in place for some years, its effectiveness has been eroded by additional State requirements outside the agreement. (National Competition Council sub. 79, p. 12)

The auditing requirements are quite different [between States] ... there needs to be an understanding of what this is costing the operators and the inefficiencies that this results in ... We would like to see the overall process simplified with some standards set on a national level or at least by agreement among all the States and have one very minor fee that we would pay. (Australia Southern Railroad trans., p. 37)

Patrick stressed the difficulties facing a new entrant to the rail industry:

In seeking accreditation in several States, there is different legislation in each State and different fee scales. The process of documentation, audit reviews and incident reporting requires an ongoing input from the rail operator and ongoing cost. (sub. 87, p.2)

Patrick responded to the Australian Rail Safety Accreditation Authorities (ARSAA) submission (DR106), commenting:

[The ARSAA] seem to believe that ALL organisations seeking accreditation are age old operators in the rail industry, no doubt steeped in tradition and documentation regarding the nuts and bolts of railway operation and safety ... [The ARSAA] has little understanding of the difficulties and time required for a NEW entrant to embark on a rail venture commencing three years ago.

To seek accreditation under the regimes of the last two years, Patrick Rail, [if it were an] *established railway* [government or ex government], would be able to trot out reams of rail safety procedures, using its excess clerical staff to dig out every bit of information to meet the requirements of the accreditation authorities. However, reality is that at the sharp end of the commercial world, to start up and operate a profitable railway, these procedures have to be established with minimal resources and to high quality and safety standards ... (sub. DR116, pp. 1, 2)

Patrick provided the Commission with a detailed timetable of its accreditation/mutual recognition processes which commenced in 1996 (sub. 87). The key milestones appear in box 9.3.

Similarly, GNRS pointed out the impact of the mutual recognition process on small operators:

It may be that instead of putting in the whole documentation you only have to put in a part of that documentation but it still takes time and it costs money and to a smaller operator such as ourselves it becomes a significant decision whether you go for that particular job or that particular task or whether you let it go and go in a different business direction. (trans., p. 980)

Additional requirements

Several participants, including the National Competition Council, commented on 'additional requirements' imposed by various jurisdictions for accreditation. The Maunsell report (1998) noted additional accreditation requirements as one of the key differences between jurisdictions. In 1997 national guidelines for rail safety accreditation applications listed different additional requirements for each jurisdiction. Those for New South Wales were two pages in length covering areas such as the right to operate a railway, railway performance details and a description of rollingstock (RSIAWG 1997).

Yet the ARSAA stated in respect of additional requirements that 'There are none and never have been and this is one of the great myths that some railway operators continue to push ...' (sub. DR106, p. 7).

The revised national guidelines (April 1999) do not refer to any additional requirements.

Accreditation fees

Each jurisdiction charges fees for safety accreditation and for mutual recognition. Operators generally pay only one application fee,¹¹ but pay an annual accreditation fee in the jurisdiction of their principal activities and another full annual fee in the jurisdiction in which mutual recognition is granted.

¹¹ Charged for accreditation but not for mutual recognition.

Box 9.3 Patrick: accreditation and mutual recognition processes

<i>Dates</i>	<i>Key Milestones</i>
<i>1996</i>	
March-June	Initial discussions on requirements for accreditation.
June	Written application to Victorian authority.
July-Nov	Prepare insurances and documentation for initial interview.
December	Interview by Victorian and SA authorities to gather initial accreditation material from Patrick.
1996 costs	Estimated costs in preparing submissions, attending meetings and interviews approximately \$10 000.
<i>1997</i>	
Jan-April	Further written submissions providing additional information, arrange insurances, update training procedures to incorporate rail operations under accreditation.
April	Interim accreditation in Victoria. Patrick operates first train Adelaide to Melbourne.
May-Oct	Further documentation and meetings re final accreditation.
November	Audit of procedures at Patrick Melbourne terminal.
1997 costs	Estimated costs in preparing submissions, attending meetings and audits approximately \$18 000.
<i>1998</i>	
Jan-May	Provide additional documentation, review rail procedures and submit regular safety reports.
June	Final audit of Patrick rail terminal. Apply for mutual recognition to operate in South Australia.
September	Letter received advising that accreditation granted. Scale of fees also received.
1998 costs	Estimated costs in preparing submissions, attending meetings and audits approximately \$11 000.
<i>1999</i>	
January	Certificate of accreditation received for Victoria. Scale of fees indicates \$5000 application fee, \$5000 annual fee.
February	Meeting with Victorian authority to provide additional information for mutual recognition.
May-June	Full audit.
June	Final approval given for mutual recognition to operate in South Australia.
1999 costs	To date: fees \$10 000 (annual fees for South Australia not yet known), salaries \$3500.

Sources: Patrick sub. 87; Patrick, pers. comm., 15 July 1999.

Participants expressed a number of related concerns about these fees. First, many complained that the cost of the fees to the operator was too high. The ARA noted:

... interstate operators face substantial costs in complying with different State requirements including accreditation fees that must be paid to each State jurisdiction irrespective of mutual recognition. (sub. 51, p. 11)

Second, some argued that the annual fees are excessive because they do not reflect the cost of provision of that service. The ARA commented:

If they [accreditation agencies] charge it for the work they did that would be fine but they don't do it that way. They charge it on size ... It's like a de facto access fee because it has a very similar base for determining what those fees ought to be. (trans., p. 463)

And GNRS argued:

Perhaps [accreditation] fees should be based on services provided, not an arbitrary fee calculated to cover costs of an ever expanding bureaucracy with no accountability to the industry it is supposed to serve. (sub. 46, p. 9)

Third, some argued that the fees vary substantially between States as do the fee formulae, which are complex. The formulae are based on a variety of measures, such as quantities of freight or passengers carried, length of track used and/or size of locomotives.

The Independent Pricing and Regulatory Tribunal (IPART) report on rail safety accreditation costs (1999b), while relating specifically to New South Wales, also detailed the different accreditation fee structures and formulae in other States and assessed the basis for charging fees. It noted that full cost recovery for safety accreditation was justified but that there were various options in respect of cost recovery mechanisms. Fees could be calculated on the basis of:

- costs incurred by the accreditation authority;
- an assessment of the benefits received by the participant;
- access fees; and
- risk exposure of the participant based on either observable risk indicators, insurance premiums, forward looking risk assessment or incident based reporting (see IPART (1999b) pp. 21-28 for a detailed discussion).

IPART concluded that:

... the cost recovery mechanisms already in place in NSW and other Australian States are not clearly based on one or a number of these rationales, and are, to a greater or lesser extent, arbitrary. (IPART 1999b, p. 1)

It recommended that initial application fees should be charged on a fee for service basis but that annual fees be charged according to a risk based charging methodology. However, in supporting a national approach to safety accreditation, IPART recommended that New South Wales adopt a new charging mechanism only if it is adopted nationally.

Finally, annual fees are duplicated across States, being payable in the jurisdiction of principal activities as well as in other jurisdictions in which mutual recognition has been granted. Specialized Container Transport, for example, has received advice that in addition to a possible annual accreditation fee of approximately \$5000 in Victoria, it will also have to pay an annual accreditation fee for mutual recognition in each other State — possibly \$20 000 in South Australia and \$7000 in New South Wales (Specialized Container Transport, pers. comm., 2 February 1999).

However, the NSW Government argued that levying another full accreditation fee for mutual recognition in a jurisdiction was justified on the grounds that there was no evidence that barriers to entry were imposed, the majority of benefits were captured by the applicants, and unique geographic and historical conditions resulted in more ‘onerous’ regulation in New South Wales and hence higher costs (sub. DR128).

Although fees for mutual recognition may not have resulted in barriers to entry for larger operators, they can be costly for small operators and accentuate other barriers to entry identified by participants.

Neither the level of fees or their duplication across jurisdictions should be justified by the level of benefits derived by applicants. If New South Wales is indeed imposing rigorous regulation based on unique conditions, it would appear the revised national guidelines are not being adopted fully. If New South Wales is incurring additional costs they should not be passed on to the industry.

There is no such duplication of fees in the road transport industry where, in general, one annual fee is paid to enable operations across all jurisdictions (chapter 10). CRT Group, when discussing mutual recognition, noted:

In the second jurisdiction in which minimal costs are involved full rate schedules are charged. Operators therefore pay in all jurisdictions as distinct for road where the registration fee virtually covers access anywhere in Australia, is payable once in any State or Territory. (sub. 20, p. 8)

Progress to date

The issue of consistent rail safety regulation was raised as long ago as the early 1990s (appendix G) and more recently by Maunsell¹², yet has still not been fully resolved. The Rail Projects Taskforce noted:

Governments have been working together over many years endeavouring to achieve mutual recognition of safety regulation. However this work has been slow, tedious and not delivered the results that industry could reasonably expect. (RPT 1999, p. 42)

Concerns about accreditation and mutual recognition processes have been widely accepted over the past couple of years by the industry and Commonwealth and State authorities as having validity. Consequently, there has been progress, particularly during 1999, towards making these processes more efficient and effective. For example, as noted earlier, the most recent national guidelines do not include additional requirements. Such progress should particularly advantage new entrants and small operators.

The Rail Safety Committee of Australia (RSCA), chaired by the Commonwealth, and comprising State and Territory accreditation authorities and industry representatives, is addressing these concerns. It is developing processes to streamline the accreditation process, including simplification of the application process, eliminating duplication, and reducing the time taken to gain accreditation (RSCA 1998). Its work in this area is intended to be finalised in August 1999.

The ARSAA commented that there will no longer be any problems because a common set of national guidelines for accreditation is being implemented by all jurisdictions, together with consistent processes (trans., p. 986):

... the accreditation authorities, in conjunction with the Rail Safety Committee of Australia, said not only do we need to produce national guidelines to help industry know what the accreditation process is, but to make sure that we do things consistently in various jurisdictions — that we actually have to have some processes for ourselves that we each follow so that there aren't differences ... (trans., p. 986)

The ARSAA also noted:

Whilst there may have been some problems initially with accreditation and mutual recognition these issues have now been resolved with the introduction of the national guidelines and uniform processes being developed by the accreditation authorities in consultation with industry. (sub. DR106, p. 10)

¹² Maunsell (1998) noted the substantial differences between States in safety accreditation processes and recommended that the process should be streamlined and overlaps between safety regulators and track owners reduced, for example, in duplication of auditing.

In New South Wales, the *Rail Safety Act 1993* (NSW) is under review, and the Rail Access Corporation, NSW Transport Safety Bureau and operators have agreed, in principle, to streamlining the auditing process. The IPART recommendations on the full recovery of accreditation costs will be taken into account in the review of the Act.

Participants commented on the progress in 1999. BHP stated:

As far as I know it's [mutual recognition] certainly improving ... there's a greater responsiveness amongst the regulatory authorities ... (trans., pp. 1078, 1079)

GNRS commented in respect of mutual recognition:

... as we said in our original submission, our experience with the PTSD [Victorian Public Transport Safety Directorate] has not always been positive, however it's changed for the better over recent times. (trans., p. 975)

Some participants, such as GNRS and NRC, noted that progress which has occurred, particularly in auditing processes, can be attributed to operators pushing for change.

It is important that any progress is not jeopardised by jurisdictions legislating to introduce more prescriptive clauses into the accreditation parts of their rail safety/transport acts when they are subject to review, possibly re-creating other inconsistencies.

It is too early to ascertain whether all of the concerns raised above have now been resolved, as the ARSAA indicates. Until outcomes are visible, that is, operators have gained accreditation and mutual recognition under the new national guidelines, it is not possible to ascertain the extent of progress.

The introduction of national guidelines does not guarantee the resolution of operators' concerns as much will depend on how jurisdictions implement them. Different interpretations of the guidelines could result in a continuation of inconsistencies. Specialized Container Transport noted in reference to different State accreditation authorities that:

... it's a non-prescriptive area, the accreditation, so therefore every different person in every different State puts a different interpretation on it ... so therefore the more bodies you're dealing with the more variations there are. (trans., p. 1090)

Even if their interpretations were consistent, there is no guarantee that mutual recognition will occur to the satisfaction of operators, that the revised auditing system will work, or that time delays will be reduced.

As long as so many accreditation authorities exist there is a possibility that inconsistent processes will remain.

There has been progress in reducing inconsistent safety regulation between jurisdictions but it could have been faster and outcomes are still uncertain.

One area of concern which has yet to be resolved relates to accreditation fees. This has been acknowledged by the accreditation authorities (trans., p. 988) and the RSCA which is examining a nationally consistent approach to setting accreditation fees (RSCA 1998). Its work is still in progress and will take into account the NSW IPART views on accreditation fees (1999b).

Whatever national charging mechanism is ultimately selected, it should be transparent, equitable between rail accreditation applicants, predictable and as simple as possible.

The fees charged for accreditation and mutual recognition are inconsistent between jurisdictions. Annual fees are currently duplicated across jurisdictions.

RECOMMENDATION 9.1

A national approach should be developed for charging rail safety accreditation fees, with a single annual fee for accreditation and mutual recognition.

As long as separate jurisdictions remain, this fee should be paid in the jurisdiction of principal activities.

Rail safety review

Ministers at the April 1999 Australian Transport Council (ATC) meeting agreed to the establishment of an independent review of rail safety arrangements by the Standing Committee on Transport, to be completed for the ATC meeting in November 1999. A steering committee has been established to oversee a review by a consultant. The establishment of such a review provides an indirect indication that there may be some unresolved issues in the area of safety regulation (other than fees).

While the RSCA has been considering ways to improve existing rail safety regulation, the independent rail safety review is taking a wider strategic approach. The review will advise on the appropriate focus, structure, accountability, responsibilities and arrangements for safety regulation.

9.2 Operating procedures and standards

Operators wishing to run trains on the interstate network or parts of the intrastate networks in other States must not only gain accreditation but must also comply with the operating procedures and standards of the track owner.

Operating procedures and standards can relate to safeworking systems, communications, management information systems, rollingstock design, axle loads and train length (Maunsell 1998).

Standards set out the detail of train operations, such as the phonetic alphabet for radio communication, whereas the procedures set out the process for implementing that detail, for example, how and when the phonetic alphabet should be used.

Different operating procedures and standards have developed over time as State government-owned railways installed rail infrastructure, such as signalling systems, independently of that installed in other States. This was not an issue prior to national standardisation of the gauge which allowed trains to cross State borders. However, gauge standardisation and the opening up of rail to competition have highlighted differences in operating procedures and standards between States as an issue.

According to Safeworking Services, State government-owned railways had considerable power:

The fact is that railways were the biggest and best technology in town, they had the biggest and best workforces and so forth, and so they became authorities. They became law. Railways could do anything ... There [have] been a number of reform movements to try and standardise things but at the end of the day, the fact that railways have been authorities in the past and have virtually absolute power in this area has impeded rail reform greatly. (trans., pp. 1057-1058)

In the mid-1990s most State government-owned railways were either commercialised, corporatised or privatised. The weight of responsibility for operations and maintenance shifted away from State governments to their track owners, such as Rail Access Corporation, Queensland Rail and Westrail, and the commercial focus was increased. Thus operating procedures and standards remain largely State-based, resulting in inconsistencies between States.

Track owners must ensure that their operations comply with safety regulations, but their commercial focus may result in the development of different operating procedures and standards for different parts of the network to ensure efficiency. This, in turn, may differ across States.

Costs of inconsistencies

Rail operators have commented that inconsistencies in track owners' operating procedures and standards are affecting their efficiency by creating barriers to entry to interstate operations and increasing costs. Some of these inconsistencies have been highlighted by participants (boxes 9.4–9.6).

Box 9.4 **Example 1: Radio communications**

Radio communication is used in most communication based safeworking systems. It is also important for communication with company train management, maintenance gangs, terminal operators and other trains. Two radio facilities are required on the interstate network — a 'control' facility and a 'local' facility. The 'control' facility is of prime importance for radio-based safeworking systems.

Variations between track owners and within their jurisdictions include different radio frequencies for both control and local communications, different radio equipment and different operating procedures (for technical examples see Deveney in NRC sub. 53).

Source: NRC sub. 53.

Box 9.5 **Example 2: Axle loads and speed restrictions**

Axle load and speed restrictions are set by track owners. They are determined by the condition and type of track and by other factors, such as gradient, curvature and condition of bridges.

For a given speed restriction and rail weight there are substantial variations in axle load requirements over the interstate network. For example, given a rail weight of 47 kg/m and a speed limit of 80 km/hr, 23, 21 and 20 tonne axle loads are permitted by three different owners. (Maunsell 1998)

Maunsell (1998) noted that some of the differences in the relationship between axle loads and speed restrictions do not appear to be justified on the grounds of variations in track conditions etc.

Source: Maunsell 1998.

Box 9.6 **Example 3: Safeworking systems**

Safeworking systems may be defined as follows:

... the safeworking system provides the means by which trains are detected and signal indications activated, and the detailed rules for train operation. (NRC, sub. 53, p. 24)

Safeworking systems are designed to avoid conflict between trains and between trains and track maintenance. Although there is a safety principle underlying these systems, operating procedures and standards relate to how to undertake operations most efficiently, such as how to communicate, display signals and undertake maintenance work in the most efficient manner.

There are three main types of safeworking systems:

- track circuit systems based on visual signals beside the track activated by an electric current in the track;
- communication based systems delivered by voice or data to an in-cab console; and
- token systems which rely on the physical sighting or moving of a 'token' (metal rod). This was the most commonly used system in the past and is still in use today, even on some main lines.

Each of these systems has its advantages and disadvantages (Maunsell 1998).

Within these three systems there are variations in the technology, and the procedures which apply. Consequently, many participants argued that there are in effect over twenty systems in operation.

NRC noted that there are 24 safeworking codes and their respective systems in total across the interstate network on which it operates (sub. 53). Crew based at the Junee depot have to use ten safeworking systems over the route sectors in which they operate. Crew based in Melbourne, Dimboola and Sydney have to work across eight or nine systems. To further illustrate the problem, NRC commented:

... on route sector RN19 (Chullora-Junee) there are three safeworking systems in operation: SWN1 (shunting), SWN2 (electric staff) and SWN7 (track block and automatic). Within the area of SWN3, there are four changes of signalling systems. First, drivers must respond to double colour light signals for several kilometres, then single colour light signals, then back to double, then to upper quadrant semaphore signals (wig-wags), and then lower quadrant semaphore signals, and finally for the remainder of the sector, single aspect colour signals. Each of these has a different system for indicating stop, go and caution. (sub. 53, p. 24)

To complicate the situation further, in New South Wales a green over green signal indicates 'full clear', but in Victoria 'full clear' is indicated by a green over red signal — which means 'caution' in New South Wales.

Sources: NRC sub. 53; Maunsell 1998.

Inconsistencies are a particular problem where there are interconnecting systems, as on the interstate network and at the interface between different networks, such as

the urban and interstate networks. Train crews operating on interstate tracks must have a detailed understanding of each system.

The impact on the rail industry of inconsistencies in operating procedures and standards, such as those illustrated above, are varied. First, the effectiveness of standards and procedures is reduced and the probability of accidents increased.

Second, costs are incurred which reduce the ability of rail to compete with other modes of transport. For example, lower than necessary axle load limits reduce the quantity (by weight) of goods which can be carried by rail through various interstate corridors. The need for operators to install more than one radio system in the cab because they are not compatible adds to the cost. GNRS noted:

Cost, availability and logistics of fitting equipment are onerous to all operators, but in particular to smaller regional and short haul operators whose viability is threatened by the impost of such 'hidden' costs. (sub. 46, p. 12)

Barriers to entry to interstate operations can occur if costs are substantial or the availability of required equipment is restricted. GNRS commented that of two communication devices authorised for a particular section of the Victorian interstate network, one is domestically developed by a railway operator in conjunction with a manufacturer, and is not available on the open market. The alternative is an American system which would cost \$25 000 per unit for GNRS to purchase. Although GNRS ultimately managed to purchase less expensive second hand units and refurbish them, it noted that 'these situations underpin the extra "hidden costs" for operators entering the market and can create a monopolistic situation and restrict, in real terms, an operator entering particular segments of the network' (sub. 46, p. 12). The Australian Rail Track Corporation made a similar comment:

Communications equipment also presents a barrier. In Victoria in particular, the fact that the base communications system is a proprietary system is affecting new entrants' ability to compete in that market. New system components necessary for new operators to comply with safeworking are generally unavailable ... (sub. 74, p. 9)

Progress to date

In 1991 the Industry Commission discussed the issue of inconsistencies, arguing that 'there is an urgent need to encourage greater harmonisation where operational efficiency will be enhanced' (IC 1991b).

European countries and Canada are experiencing similar difficulties and do not appear to be any further advanced (appendix G). In Canada, reviews have stressed the need for regulatory change but implementation is still in progress. In Europe, inconsistencies are greater than in Australia.

Maunsell (1998) recommended a variety of priority actions to address inconsistent operating procedures and standards in Australia, such as introducing performance-based standards for braking distances and train size, and agreeing on and implementing compatibility standards for radio voice and data systems.

The IRG is addressing inconsistent operating procedures and standards. The Commonwealth Department of Transport and Regional Services (DTRS) noted that: ‘It is the first time that governments and industry have worked together and jointly allocated financial and human resources to address operational uniformity issues’ (sub. DR125, p.2). The IRG has developed action plans and timelines to address the tasks identified in the Maunsell report relating to the development of harmonised or uniform operating procedures and standards. The major mechanism for progressing these tasks is through the development of codes of practice.

There has been less progress in reducing inconsistent operating procedures and standards than for safety regulation. Progress could have been faster and outcomes are still uncertain.

9.3 Codes of practice

Codes of practice are a common set of rules which organisations may apply to their operating procedures and standards. They are a form of self-regulation, being developed by industry with facilitation from government.¹³ According to the IRG the main reason for developing the codes of practice is ‘the need to facilitate more efficient interstate train operations’. The IRG explained:

Safety is a key element of train operations and safety concerns should not be compromised for the sake of improved efficiency. However, in many cases jurisdiction difference in safe operating practices can impact on efficiency and the uniformity work is designed to address this issue. (sub. DR109, p. 4)

The codes of practice may also assist industry to comply with the relevant parts of AS 4292.

The IRG is currently working on four national codes of practice relating to:

- rollingstock;
- rail infrastructure and track;

¹³ If the mandatory elements of the codes are eventually enforced by government providing legislative backing, then a coregulation approach would apply, as it does currently in the safety area. For an explanation see ORR (1998).

-
- train operations; and
 - transmission based signalling systems. (sub. DR109, p. 8)¹⁴

These codes are currently in draft form and are close to finalisation. It is intended that they will then be subject to legal review and industry consultation, endorsed by industry, and implemented in 2000.

In the development of the codes it is intended that only a small component of the codes will be prescriptive or mandatory, to be confined to 'those aspects of railway activity where prescriptive/mandatory requirements are essential to ensure interoperability and provide for an adequate level of [operational] safety' (IRG 1999).

Mandatory elements of the codes are intended for operations on the interstate network. Codes of practice will be recommended, but not mandatory, for areas of interface between the interstate network and other networks. The codes are intended as a guide for stand-alone rail systems. They are not intended to replace an organisation's operating procedures and standards. Where they are not mandatory the decision on whether to use the codes will be left to individual organisations (IRG 1999).

Issues relating to levels of prescriptiveness and mandatory requirements are likely to be subject to considerable debate when the IRG releases the codes for wider industry consultation. There are several issues which the Commission considers will require resolution prior to final implementation (box 9.7).

Ministers at the April 1999 ATC meeting agreed to the development of a framework for an IGA which would include the establishment of an interim non-statutory unit, attached to the DTRS, to facilitate and coordinate implementation of the codes of practice developed by the IRG. This body, to operate with industry representation, will develop a strategic approach for implementation and facilitate a consistent approach on the interstate network (ATC 1999).

¹⁴ The titles of these codes of practice differ from those listed in IRG (1999).

Box 9.7 Codes of practice: issues for resolution

There are a number of issues to be considered in assessing the extent to which inconsistent operating procedures and standards should be harmonised or made uniform through codes of practice.

- Greater harmonisation or uniformity should not be imposed just for the sake of it because the impact of such change will vary across the industry.
 - Operators may gain but net efficiency gains for the track owners will depend on whether benefits outweigh the costs incurred in the changeover, for example, if signalling infrastructure has to be replaced.
- There is a trade-off between flexibility and greater harmonisation or uniformity. Greater flexibility resulting from less prescriptive or non-mandatory regulation is likely to result in more inconsistency between track owners' operating procedures and standards and vice versa.
- Similarly, there is a trade-off between the extent of prescriptiveness of regulation and the degree of harmonisation or uniformity. As long as regulation is not prescriptive, track owners could implement different operating procedures and standards.
- The benefits and costs to the industry will vary between networks.
 - For isolated railways, such as BHP Mt Newman in the Pilbara, and many regional networks, the cost to the track owner of changing its rail infrastructure to a nationally uniform standard is likely to outweigh substantially any potential gains to the industry.
 - On the interstate network where operators currently run trains across track with several different operating procedures and standards, the benefits of harmonisation or uniformity are likely to outweigh the costs.
 - This may also be the case for some parts of intrastate networks, particularly at the interface with the interstate network.
- Local conditions may necessitate track owners maintaining different operating procedures and standards within their jurisdictions with which operators must comply. As Maunsell (1998) and the ARSAA (trans., p. 928) noted, there are particular local conditions relating to, for example, geographic features, which require particular operating procedures and standards. This is reasonable as long as they reflect these conditions and are not imposed on operators as a barrier to competition. Maunsell was of the opinion that some differences in operating procedures and standards were not justified by particular conditions (box 9.5).

In the process of developing the codes of practice to date, the IRG has incorporated some elements of best practice regulation. Best practice regulation was endorsed by the Council of Australian Governments (COAG) in 1995.¹⁵ Its main features include specification of regulatory objectives, consultation, an assessment of the benefits and costs of options, and an implementation and review strategy. These are usually incorporated into a Regulatory Impact Statement (RIS) (appendix G).¹⁶

The IRG has a clearly specified objective, to minimise prescriptive and mandatory codes, and intends to consult widely with industry prior to recommending the codes for implementation (IRG 1999). However, the draft codes have been developed without any systematic assessment of the benefits and costs to the industry.

The DTRS supported the concept of best practice regulation, commenting that:

The Department endorses the adoption of best practice regulation for activities which may have a significant impact on business. (sub. DR125, p.2)

BHP also supported the application of best practice regulation through a rigorous RIS process:

We think it is desirable and necessary to have a regulatory impact statement process. It's important that those who are pushing reforms are able to clearly say why they're necessary. (trans., p. 1068)

BHP also noted:

... the advisory structures which support regulatory initiatives in the rail industry are complex and multi-layered ... The processes by which the input of industry representatives and other affected parties into proposed regulatory initiatives is made can be somewhat ad hoc, and vary from issue to issue. Risks exist that new regulatory initiatives may impose substantial financial and time costs on operators. A well-constructed process requiring Regulatory Impact Statements to be completed prior to the implementation of major safety regulation initiatives would greatly assist in the management of these risks. (sub. DR110, p. 2)

BHP provided an example of where, in its opinion, failure to apply best practice regulation resulted in proposed regulations that were not 'seen by those affected until they are well on the way to completion or implementation, then some sort of effort is required to resolve the matters' (trans., p. 1067) (box 9.8).

¹⁵ In 1995 COAG endorsed guidelines which set out the best process to follow in determining whether standards, laws and regulations are appropriate. The guidelines were amended in November 1997 (COAG 1997).

¹⁶ A guide to assist organisations to undertake best practice regulation has been developed by the Office of Regulation Review (ORR 1998).

Box 9.8 BHP example of a lack of best practice regulation

In 1998 BHP became aware of the draft code of practice on rollingstock, and that the majority of its operations would not comply. In particular, BHP's Pilbara railways would need to be restructured (even though they complied with North American standards).

BHP raised its difficulties at an early stage and was able to resolve the situation. However, BHP is not sure that processes are currently in place to enable similar issues to be satisfactorily resolved in the future. BHP stated:

... the current processes do not contain systematic safeguards, such as might be built into a Regulatory Impact Statement procedure, to ensure similar problems arising in the future can be adequately dealt with. (sub. DR110, p. 2)

Sources: BHP sub. DR110; BHP trans.

The IRG, on the other hand, commented that a RIS should not be undertaken on two main grounds. First, a RIS is not required by the ATC:

The Commonwealth's current role is solely one of facilitation and the Commission's statement that a RIS is mandatory for Commonwealth regulation is not relevant to the IRG uniformity work ... The IRG questions whether a RIS needs to be undertaken on work developed by the industry for the industry ... Given that the uniformity work is not to be endorsed by the ATC ... the IRG questions the Commission's [Draft Report] recommendation for a RIS. (sub. DR109, pp. 2, 3)

Second, there has already been 'extensive industry participation', and it is intended that further industry consultation will take place (through the IRG) and an implementation strategy developed (by the proposed unit) (sub. DR109, p. 2).

Industry consultation and the development of an implementation strategy are important components of best practice regulation but they are not sufficient. It is also important that the benefits and costs of implementing the codes of practice are adequately assessed, taking into account the issues raised in box 9.7. Implementation of the codes will be difficult without industry support, which is less likely to be forthcoming if the processes are not, and/or are not seen to be, rigorous, transparent and fair.

Moreover, a RIS may be required under COAG guidelines if legislation was required to bring any mandatory elements of the codes into effect (COAG 1997).

Even if a RIS is not compulsory, it would still be desirable to apply best practice regulation to the remainder of the process to final implementation. This approach would maximise acceptance of changes within the industry and ensure that best outcomes are achieved.

The principles of best practice regulation, as endorsed by the Council of Australian Governments, should be applied to the development and implementation of railway codes of practice.

9.4 Advancing regulatory reform

The preceding discussion, and evidence in appendices D and G, indicate that regulatory reform has occurred but progress could have been faster and outcomes are still uncertain. Unless the pace of reform is increased, continuing uncertainty about the regulatory environment may impede investment in the industry and affect its commercial viability. In the area of safety regulation, it is too early to ascertain whether outcomes of changes to the accreditation and mutual recognition processes will be successful. The review of rail safety regulation, although a positive step, creates further uncertainty. In regard to operating procedures and standards, outcomes are also uncertain because the major mechanism for change, the codes of practice, have not yet been implemented.

Safety regulation

The rail safety review is examining current regulatory arrangements but it may not be in a position to assess adequately the outcomes of the implementation of the revised national guidelines before its report to the ATC in November 1999. It is unlikely that a sufficient number of operators will have applied for mutual recognition under these guidelines to draw any definitive conclusions.

If this is the case it may be desirable to set up a process within 12 months to review progress in the application of mutual recognition under the guidelines.

If it was found that mutual recognition is not working, or is unlikely to work in the future, then consideration could be given to alternative regulatory approaches. These include:

- the establishment of a single national safety regulator covering all rail systems in Australia, with responsibility for the development and enforcement of national regulation (the Civil Aviation Safety Authority Australia (CASA) model);
- the establishment of a single national safety regulator covering all rail systems in Australia, with the States maintaining responsibility for legislation and enforcement (National Road Transport Commission (NRTC) model); or

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- a national safety regulator covering the interstate network only.

A number of participants commented that safety regulation could be progressed by a single national rail safety regulator:

Patrick, in highlighting the cost of safety accreditation, stated:

Patrick still maintains that establishment of a single Rail Safety organisation would provide uniform requirements and fee scales and would provide more sensible direction to interstate rail operators. (sub. 87, p. 2)

And the Australian Rail Track Corporation commented:

Standard safety levels should apply on a national basis with an operator required to demonstrate adequacy to a single body much like the Civil Aviation Authority (CASA) in the aviation industry. (sub. 74, pp. 6, 7)

The Rail Projects Taskforce in its recent report stated:

The Taskforce supports the call for a single rail safety regulatory body. This could be modelled on the Civil Aviation Safety Authority that regulates international and interstate aviation safety ... (RPT 1999, p. 42)

IPART (1999b) noted that a national accreditation regime would reduce the overall costs of safety accreditation.

In the aviation industry, safety regulation is developed, implemented and enforced by a single national agency — CASA. This approach ensures that inconsistent regulations between jurisdictions are not an issue (box 9.9).

Box 9.9 The Civil Aviation Safety Authority Australia

In 1995 the *Civil Aviation Act 1988* (Cwlth) was amended to establish CASA, an independent statutory authority. It is controlled by a board which reports to the Commonwealth Minister for Transport and Regional Services. CASA's main responsibility is to 'maintain, enhance and promote the safety of civil aviation ... through effective safety regulation and by encouraging greater acceptance by industry of its obligations to maintain high safety standards' (CASA 1998, p. 2).

Prior to 1965 the States and Territories regulated aviation safety. However, they ceded power to the Commonwealth following decisions in the High Court which determined that intrastate aviation could affect interstate and international aviation.

CASA develops aviation standards and procedures and also maintains a compliance and enforcement role. Aircraft incident and accident investigation is handled by a separate authority — the Bureau of Air Safety Investigation.

Source: CASA 1998.

The NRTC adopted a different approach. The NRTC is responsible for safety as well as developing uniform national standards, but leaves implementation and enforcement to the States. It was viewed by participants as generally successful in progressing regulatory reform in road transport. Although the pace of change has perhaps been slower than anticipated, more appears to have been achieved in road transport regulatory reform than has occurred in rail (box 9.10 and chapter 10).

It could be argued that regulatory reform in the road transport industry has been more successful than for rail because it was given priority by COAG and the decision-making process is deliberative rather than consensual. The Ministerial Council on Road Transport votes on issues, and although this process may involve compromise, it is more conducive to progressing reform than the requirement to obtain the agreement of all parties in the ATC. Moreover, the NRTC has adopted processes which facilitate best practice regulation and effective implementation of regulations.

A substantial drawback of both the NRTC and existing rail approaches is that as long as there are several jurisdictions involved in implementing and enforcing regulation, no matter how substantive the goodwill, there is a likelihood that a particular jurisdiction will interpret the regulation differently, thus diluting national consistency. In the CASA approach, enforcement is undertaken by the national regulator, thereby ensuring consistency.

An alternative approach, supported by Safeworking Services (sub. DR101), would be for the national regulator to be responsible for the interstate track only. The House of Representatives report, *Tracking Australia, an Inquiry into the Role of Rail in the National Transport Network*, recommended that a rail safety authority be established for the interstate network (HORSCCTMR 1998b).¹⁷

Advantages of this approach would include:

- a one stop shop for safety accreditation would be provided for operators on the interstate network;
- there would be the potential for reforms to flow on to state accreditation authorities; and
- this may be potentially easier (and faster) to achieve than a single national regulator because State accreditation authorities would not have to cede all of their safety accreditation responsibilities.

¹⁷ It should be noted that this report did not discuss the issue of whether a national safety regulator should cover only the interstate network because the report focused on the interstate network (referred to as the 'national track').

Box 9.10 **The National Road Transport Commission**

In the early 1990s the road transport industry faced a similar situation to rail — regulations relating to driver and vehicle operations and standards, weights and dimensions differed between jurisdictions, creating unnecessary costs for interstate road transport users and regulatory authorities.

To address this issue, in 1991 Heads of Government agreed to the establishment of the NRTC as a joint Commonwealth/State/Territory body with a high degree of independence reporting to the Ministerial Council on Road Transport.¹⁸ A key objective was to introduce nationally uniform or consistent transport policies, laws and standards. Reforms which have been implemented to date include:

- national uniform charges for heavy vehicles (see chapter 10 for details);
- national heavy vehicle registration scheme and standards; and
- national heavy vehicle pre-registration standards and roadworthiness standards.

Features of the NRTC reform process which are particularly pertinent to rail are:

- in effect, the NRTC develops national standards but implementation and enforcement is undertaken by individual governments;
- development of a strategic plan to systematically progress additional reforms on a module basis (rather than all at once) through to the year 2000-2001;
- RISs are routinely prepared as a requirement of the legislation/regulation making process and submitted to the Ministerial Council for Road Transport. They are prepared in consultation with interested parties and include a benefit–cost evaluation;
- a mutual recognition type process, in effect, has been used as a vehicle for implementation. For example, once a heavy vehicle is licensed in one jurisdiction and pays the one registration fee, that vehicle can then be operated across all jurisdictions — a very different situation to rail; and
- implementation of legislative proposals through a template legislation process whereby the Commonwealth Parliament passes legislation on behalf of the ACT.¹⁹ Other jurisdictions then pass this legislation by adopting that of the ACT. Implementation has proven to be a time-consuming process.

Sources: NRTC 1996; NRTC 1998a.

¹⁸ Comprising Commonwealth, State and Territory Ministers with road and/or transport responsibilities.

¹⁹ See IC (1995c) for a discussion of the advantages and disadvantages of template legislation. The NRTC also uses other implementation processes, such as national model legislation.

Although a national approach is important for an interconnecting system, such as the interstate network (Forsyth and Trace, sub. 88), it is also important that national regulation applies to intrastate tracks that may be used by operators, particularly at the interface with the interstate network. One set of regulations for the interstate network and different State-based regulations for other tracks add another layer of complexity for operators. Rather than six accreditation authorities, there would be seven. As the Rail Projects Taskforce noted:

Without a national body covering both national and state track, rail operators would still require accreditation in each State it operated in resulting in the need to support multiple bureaucracies. (RPT 1999, p. 42)

The establishment of a single national safety regulator would be preferable to a seventh regulator. Consistency would be improved further if State accreditation authorities ceded all their safety accreditation responsibilities to this regulator (the CASA approach). Such a regulator could maintain a coregulation approach, rather than a ‘command and control’ approach, and would preferably be an independent statutory agency. This approach would ensure a less costly and time consuming accreditation process, removing the need for mutual recognition processes and duplication of accreditation fee across jurisdictions.

However, alternative regulatory arrangements should only be progressed if it is clear that mutual recognition is not working.

Operating procedures and standards

As in other countries, issues relating to inconsistent operating procedures and standards in Australia will not be resolved in the short term. Approaches to progressing the harmonisation or uniformity of operating procedures and standards include:

- extending the functions of a single national safety regulator; or
- establishing a separate body.

The NRTC addresses both the issues of safety and inconsistent operating procedures and standards. Such an approach would be feasible for the rail industry. However, as these issues are essentially separate and have been treated as such by the rail industry, a body to address only inconsistent operating procedures and standards could also be effective.

The latter approach has been adopted by the industry. As noted above, an interim unit is to be established to facilitate and coordinate implementation of more consistent operating procedures and standards. This unit could be converted to a

permanent national body, with industry representation, to progress work in this area in the longer term. The DTRS noted that a permanent mechanism, such as legislation, may take up to 18 months to finalise, but was important to ensure that work in this area continues (sub. DR125).

RECOMMENDATION 9.3

The Commonwealth Government should establish a permanent mechanism to ensure the ongoing harmonisation or uniformity of railway operating procedures and standards.