

Standing Committee on Transport (SCOT) Rail Group

Industry
Reference
Group

Dr Derek Scrafton
Associate Commissioner
Productivity Commission
Locked Bag 2
Collins Street East Post Office
Melbourne Vic 8003

Dear Dr Scrafton

I am writing to you as Chair of the Industry Reference Group (IRG) to express members' views (attached) on the draft Productivity Commission report titled 'Progress in Rail Reform'.

The IRG was established by the Standing Committee on Transport (SCOT) Rail Group in July 1998 to develop nationally uniform operational requirements and rail standards as identified in the Rail Uniformity Report (Maunsell). The IRG comprises industry representatives nominated by the Australasian Railway Association (ARA). Members were selected on the basis of their rail industry expertise, as distinct from any organisations which they might otherwise represent.

The uniformity tasks being progressed by the IRG are focussed on three key areas, namely:

- Codes of Practice;
- Communication and Information Systems; and
- Train Operating Standards.

The work is progressing well and it is anticipated that the draft codes and standards will be completed by July 1999, subject to a legal review in August 1999 and made available for widespread industry comment in September 1999. On ground implementation is expected to commence in early 2000 and at the recent Australian Transport Council (ATC) meeting in Adelaide (April 30 1999), Ministers agreed on the development of an Intergovernmental Agreement (IGA) to facilitate implementation of this uniformity work.

The IRG is also involved in the development of uniform pricing and access arrangements. The IRG's role in this area is one of facilitation and the group is working with interstate track owners to identify and resolve rail access uniformity issues.

I look forward to appearing before the Commission on Tuesday 25 May 1999 to provide any comment on the attached submission.

Yours sincerely

Standing Committee on Transport (SCOT) Rail Group

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John Hearsch
Chair, Industry Reference Group.

May 1999.

Industry Reference Group Submission:

Productivity Commission Draft Report on 'Progress in Rail Reform'

Introduction

The Industry Reference Group (IRG) was established by the Standing Committee on Transport (SCOT) Rail Group in July 1998 to develop nationally uniform operational requirements and rail standards as identified in the Rail Uniformity Report (Maunsell). The IRG comprises industry representatives nominated by the Australasian Railway Association (ARA). Members were selected on the basis of their rail industry expertise, as distinct from any organisations which they might otherwise represent.

The IRG is currently working on a range of codes of practice, standards and protocols which will provide the basis for operational uniformity on the interstate network. It is anticipated that the draft codes and standards will be completed by July 1999. These draft documents will then be subject to a legal review in August 1999 and made available for industry comment (over a three month period) in September 1999. On ground implementation of the uniformity work is expected to commence in early 2000.

General Comments

Perspective

The operational uniformity work being developed by the Industry Reference Group (IRG) is strongly supported by governments and the rail industry and the IRG believes that the Commission should take a more positive view on this issue. The IRG work is a joint government and industry initiative aimed at improving operational efficiency on the interstate rail network. Although work has been previously undertaken on the development of uniform operational requirements, it is the first time that governments and industry have worked together and jointly allocated financial (\$650,000) and human resources to address operational uniformity issues.

Australian Transport Minister's have also indicated their strong support for the operational uniformity work. At the recent Australian Transport Council (ATC) meeting in Adelaide (30 April 1999), Ministers endorsed the development of an Intergovernmental Agreement (IGA) to provide for interim implementation arrangements to facilitate implementation of the IRG's operational uniformity work. Ministers agreed that the IGA (to be completed by the November 1999 ATC meeting) should contain the following elements:

- Government commitment to a nationally consistent implementation mechanism to ensure timely adoption of uniform operational requirements;
- Establishment of a non-statutory unit attached to the Commonwealth Department of Transport and Regional Services to facilitate and coordinate implementation arrangements; and

- Establishment of Commonwealth custodianship arrangements to provide for ownership of intellectual property and an entity for legal liability issues.

The IRG believes that this commitment from Australian Transport Ministers and the strong support for the uniformity work being shown by the Australasian Railway Association (ARA) and the rail industry in general, should be reflected in the Commission's report. The IRG work is a positive initiative and, although it may not be considered by the Commission to be a major reform issue, it will provide for safe and more efficient interstate rail operations.

Best practice regulation

The IRG supports best practice regulation for activities which may have a significant impact on the rail industry. However, the IRG questions the Commission's assertion that a Regulatory Impact Statement (RIS) should be undertaken on the uniformity work.

- The Commission indicates that the Commonwealth has made the preparation of a RIS mandatory for proposed new regulation. However, it is important to note that the Commonwealth has no regulatory responsibility for rail operations. In relation to the uniformity work there has been no decision made for the Commonwealth to regulate for implementation or industry adoption. 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.
- Transport Ministers have agreed that the IGA commit governments to a nationally consistent implementation mechanism to ensure timely adoption of the uniform operational requirements. However, no decision has yet been made on the implementation mechanism to be used to give effect to the uniformity work and the IRG questions the Commission's recommendation for a RIS given that the implementation mechanism is still unclear. If the uniformity work is to be given effect through state / territory legislation then it will be up to them (not the Commonwealth) to determine the need for a RIS. If the uniformity work is to be given effect through track access agreements (as opposed to regulation) then there may be no requirement for a RIS. The IRG therefore believes that the Commission's recommendation for a RIS is somewhat premature.
- A RIS is usually required when government develops regulation which will or has the potential to impact on business. However, the uniformity work is being developed by the industry (involving wide industry representation) for the industry. Government is not involved in the development or content of the IRG uniformity work. The IRG questions whether a RIS needs to be undertaken on work developed by the industry for the industry.
- The uniformity work being undertaken by the IRG is to be subject to a legal review followed by three months of intensive industry consultation. This industry consultation is to be managed by the Australasian Railways Association (ARA). Furthermore, the actual development of the uniformity work has involved wide industry participation. Apart from industry representation on the IRG, each of the working groups involved in developing specific elements of the uniformity work comprise a large number of additional industry representatives. The commission notes that one of the key elements of a RIS is the need for industry consultation. Given the legal review, intended industry consultation and extensive industry participation in the development of the uniformity work, the IRG questions whether a RIS would still be required.

- The uniformity work is not intended to be retrospective. Any proposed changes included in the uniformity work are to be introduced as part of a coordinated industry implementation strategy or as part of the normal life cycle of equipment, maintenance and upgrading regimes. As such, every effort is being made to minimise the impact of the uniformity work on industry. To this end, ATC has agreed that the IGA establish a non-statutory unit (attached to the Commonwealth Department of Transport & Regional Services) to facilitate and coordinate implementation arrangements. Given the efforts to minimise the impact of the uniformity work on the rail industry, including a non-retrospective phased-in approach and a coordinated industry implementation strategy, the IRG questions the Commission's recommendation for a RIS.
- The Commission makes reference to a COAG agreement about the need for Ministerial Councils to certify that the regulatory impact assessment process has been adequately completed before agreeing to regulatory action or the adoption of a standard. Contrary to previous advice provided to the Commission, it is no longer proposed that ATC endorse the uniformity work. The intent is to have the uniformity work endorsed by the rail industry, and once this occurs, the means of giving effect to the work will be developed (in consultation with the rail industry). Accreditation authorities will have to approve the uniformity work (as part of the normal / existing rail safety accreditation process) if a rail organisation decides to use the uniformity work to comply with existing state and territory rail safety legislation. Given that the uniformity work is not to be endorsed by ATC (but rather the rail industry), the IRG questions the Commission's recommendation for a RIS.
- The uniformity work is being developed for application on the interstate network. If a RIS is to be undertaken and assuming that the uniformity work could ultimately be given effect through regulation, the IRG questions whether or not a RIS would only need to cover interstate activities.
- The uniformity work is being structured to include mandatory requirements, recommended practices and guidance material. The mandatory requirements in the uniformity work will only comprise a small element of the entire work (most elements of the uniformity work will be recommended practices and guidance only material). These mandatory requirements have been deemed necessary for safety and interface coordination on the interstate network. Given the reasoning behind the inclusion of the mandatory requirements, the IRG questions the Commission's recommendation for a RIS. Furthermore, if a RIS is to be under-taken and assuming that the uniformity work could ultimately be given effect through regulation, the IRG questions whether or not a RIS would only need to apply to the mandatory elements.

Distinction between safety regulation and operational uniformity

The IRG believes that the Commission needs to make a clear distinction between rail safety regulation and operational uniformity. Rail safety regulation is about ensuring that rail organisations manage and undertake their activities in a safe manner (the 'what you need to do'). Operational uniformity is about establishing a common set of national standards and procedures which will allow rail organisations to conduct their operations in a safe and efficient manner (the 'how' taking into account the need to remove jurisdictional differences and improve efficiency).

The Commission's comments infer that the codes of practice being developed by the IRG have been prepared in direct response to Australian Standard (AS) 4292 on Rail Safety

Management. This is not the case. The codes address a range of operational uniformity issues many of which relate to safe operating practices and, consequentially, the codes will provide rail organisations with a means with which to comply with the relevant parts of AS 4292. However, the codes are about more than just safety and were not developed as a form of safety regulation.

The main driver behind the development of the codes is the need to facilitate more efficient interstate train operations. Accordingly, the codes aim to remove or minimise jurisdictional specific operational requirements which hinder efficient train operations. 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. The key objective of the IRG is the development of uniform operating requirements and rail standards. These requirements and standards, incorporated into industry codes of practice, will address both safety and efficiency issues. However, the key objective is still operational uniformity.

The IRG believes that the Commission's discussion on the codes of practice under the heading of 'Australian Standard and codes of practice' in Section 8.1 'Safety regulation and accreditation' is not appropriate. As previously indicated, discussion on the codes of practice in the same sub-section as AS 4292 creates the impression that the primary focus of the codes is on safety as opposed to operational uniformity. Therefore, the correct section for discussion on the uniformity work, including the codes of practice, is Section 8.2 'Operating standards and procedures'. The IRG believes that the discussion on AS 4292 should remain in section 8.1 but should not elaborate on the codes of practice other than to indicate that are being developed to improve operational uniformity and may assist industry to comply with the relevant parts of AS 4292.

Implementation

At the recent Australian Transport Council (ATC) meeting in Adelaide (April 30 1999) Ministers agreed on the development of an Intergovernmental Agreement (IGA) to facilitate interim implementation arrangements for the uniformity work. This IGA will commit jurisdictions to adopt a common implementation mechanism and will result in the establishment of a new non-statutory unit, attached to the Commonwealth Department of Transport and Regional Services, to facilitate the implementation process (see previous comments under *Perspective*).

Implementation is a critical issue for the uniformity work and the IRG believes that the Commission should include a sub-section on 'implementation' in Section 8.2 'Operating standards and procedures' (the IRG notes that the Commission would not have been aware of the ATC decision when the draft report was being prepared).

The ATC decision provides for interim implementation arrangements for the uniformity work pending the development of a more permanent mechanism. The interim arrangements were developed to allow for implementation in early 2000, recognising that a more permanent mechanism (such as legislation) would take up to 18 months to finalise.

The IRG believes that a permanent implementation mechanism is absolutely essential to ensure that the uniformity work is sustained into the future. As such, the Commission should consider including a recommendation that 'Governments should work towards the development of a permanent implementation mechanism to address operational uniformity issues to ensure that the current work in this area is sustained into the future'.

Specific Comments

Page 44 3rd paragraph 2nd sentence

The Commission may want to consider modifying the sentence as follows:

The Standing Committee on Transport (SCOT), as the main advisory body to ATC, established a Rail Group to facilitate rail reform and advance uniformity of regulations and operational requirements. The SCOT Rail Group, in turn, established a number of specific Task Groups to address the rail reform tasks nominated by Ministers at the National Rail Summit (September 1997).

Page 44 4th paragraph 3rd sentence

The Commission may want to consider modifying the sentence as follows:

The SCOT Rail Group established a number of Working Groups to address the action priority tasks identified in the Maunsell report.

Page 44 5th paragraph 1st sentence

The Uniformity Task Group no longer exists and the IRG now reports directly to the SCOT Rail Group. Accordingly, the Commission may want to consider modifying the sentence as follows:

An Industry Reference Group (IRG), comprising representatives nominated by the Australasian Railway Association (ARA), was established.....

Page 45 1st paragraph 1st sentence

The Maunsell report, not these Working Groups, identified uniformity priority tasks. The Working Groups (IRG and RSCA) were established to address these tasks and have not recently prioritised issues to be addressed. What the two Groups did, when established last year, was develop action plans, including specific tasks and timelines.

The Commission may want to consider modifying the sentence as follows:

Both of these Working Groups report directly to the SCOT Rail Group on a regular basis and, when established in mid 1998, developed action plans, including specific tasks and timelines to address the relevant uniformity action priority tasks identified in the Maunsell report.

Page 45 1st paragraph 3rd sentence

The Commission may need to consider differentiating between rail safety regulation and operational uniformity. The IRG intends to finalise draft uniform operational requirements and standards (in the form of industry codes of practice) by July 1999, undertake a legal review in August 1999 and undertake three months of industry consultation from September 1999. Implementation is expected to commence in early 2000. This timing is consistent with that originally planned and there is no evidence to suggest that the IRG will not meet this schedule. As such, the comment that “although this looks unlikely” should be justified by the Commission if it is to continue to apply to the IRG operational uniformity work.

Page 45 2nd paragraph

The Commission may again need to consider differentiating between rail safety regulation and operational uniformity. The IRG was established in July 1998 and it is the first time that government and industry have jointly committed resources to address operational uniformity on the interstate network. It could be argued that the development of a truly national approach to operational uniformity issues only commenced with the establishment of the IRG in 1998 not 1993. In relation to specific uniformity tasks, the Commission’s comment that the issues have not been resolved would appear to be somewhat premature given that the originally scheduled implementation date for the uniformity work is early 2000. As such, the Commission may wish to reconsider this sentence as it relates to the IRG uniformity work.

Page 175 Sub-section titled ‘Australian Standard and codes of practice’

As indicated in the ‘General comments’ the IRG believes that the comments in this Sub-section relating to the codes of practice should be moved into Section 8.2 ‘Operating standards and procedures’ (the comments could be incorporated into Section 8.2 after the 2nd paragraph on page 181.)

Page 176 1st paragraph

The paragraph infers that the codes of practice are being developed as a safety initiative in direct response to AS 4292. As previously indicated in the ‘General comments’ this is not the case. The codes of practice, standards and protocols being developed by the IRG are designed to promote operational uniformity on the interstate network as it relates to both safety and efficiency.

The IRG work on existing codes / manuals is more than just a review, with substantial drafting, structural and reformatting changes having been made. To refer to this work as a review might be somewhat misleading.

Page 176 2nd paragraph 1st sentence

As previously indicated, the codes of practice are all about operational uniformity. The two key elements of operational uniformity are safety and efficiency and in many instances these two elements are inextricably linked.

Page 176 2nd paragraph 2nd sentence

The commission may wish to consider defining what is meant by local operating instructions. In relation to the operational uniformity work, local operating instructions are local (company specific) policies, procedures and operating instructions developed by individual rail organisations for application within their own system. These instructions detail specific requirements which are applicable to the operational and safety systems of individual rail organisations. It is important to note that the operation uniformity work is not intended to replace a rail organisation's local operating instructions. Decisions relating to local operations and activities are to be the sole responsibility of individual organisations. Organisations may consider utilising elements of the uniformity work to ensure that all operations are covered, however, this decision will be left to individual organisations.

Page 176 2nd paragraph 3rd sentence

At this stage, the IRG is working on the development of four industry codes of practice which will address the following operational activities:

- rolling stock;
- rail infrastructure and track;
- train operations; and
- transmission based signalling systems.

No code of practice is being developed to specifically address electrical engineering issues. However, key electrical interface issues will be addressed in the 'rail infrastructure and track' code of practice.

Page 176 4th & 5th paragraph

The IRG strongly supports a performance based approach to the development of the industry codes of practice. Accordingly, when developing the codes every attempt has been made to reduce the level of prescription and focus on a more performance based approach. However, some level of prescription is required to address fundamental safety and interface coordination issues on the interstate network. The codes are to be subject to a three month industry consultation period, during which time any areas of over prescription should be identified and modified.

Page 176 5th paragraph 4th & 5th sentence

At this stage, the IRG does not intend to develop a code of practice for conventional signalling systems. The Commission is correct in noting that the original draft signalling code was very prescriptive. However, it is important to note that this draft code preceded the development of the IRG operational uniformity work and, at this stage, there is no intention for the IRG to develop or review the draft conventional signalling code. The 5th sentence might suggest to readers that the IRG is reviewing the signalling code, which is incorrect.

Page 177 1st paragraph 1st dot point

The codes of practice are intended for application on the interstate network. The codes are being structured to include mandatory requirements, recommended practices and guidance material. The mandatory requirements in the uniformity work will only comprise a small element of the entire work (most elements of the uniformity work will be recommended practices and guidance only material). As previously indicated, these mandatory requirements have been deemed necessary to address rail safety and interface coordination issues. The Commission may therefore need to clarify the statement in the first dot point that it is proposed that the codes be mandatory for the interstate network. Whilst this statement is strictly correct it may also be misleading.

Page 177 1st paragraph 2nd dot point

As previously indicated in the 'General comments', the Australian Transport Council (ATC) recently endorsed (April 30 1999) the development of an Intergovernmental Agreement (IGA) to provide for interim implementation arrangements for the uniformity work. This IGA will cover a range of implementation issues including ownership of intellectual property and legal liability.

Page 177 2nd, 3rd, 4th & 5th paragraphs

Please refer to 'General comments' and the issues dealing with 'best practice regulation'.

Page 178 3rd paragraph

The Maunsell report recommended the development of a performance based standard for braking distances and a more uniform approach to axle loads. Both these uniformity tasks are being addressed by the IRG. The Commission's comment that 'changing standards will not address the underlying causes of the differences' is not altogether correct in relation to braking distances and axle loads if the reason behind the differences relate to a track owners operational procedures as opposed to the physical capabilities of the infrastructure. This is why the standards vary between jurisdictions even when the physical infrastructure is similar. The IRG is therefore dealing with these two issues (braking distances and axle loads) as part of its operational uniformity work (which includes technical standards for rolling stock and infrastructure).

The Commission actually contradicts itself by supporting this position on page 180 (Box 8.5). Having indicated that regulatory reform is not an appropriate mechanism to address axle loads and speed limits (pg 178, 3rd para, 2nd sentence) the commission then refers to examples of operating standards more suited to regulatory reform (pg 178, 3rd para, last 2 sentences). These examples include axle loads and speed restrictions (Box 8.5 pg 180).

Page 181

The commission should consider incorporating comments on the codes of practice into the text after the 2nd paragraph which refers to the work of the IRG.

Page 181 4th paragraph

The IRG strongly supports the notion that uniformity should not be progressed for the sake of uniformity. Accordingly, the operational uniformity work being developed by the IRG has been targeted at those operational areas where uniformity is deemed essential. Furthermore, considerable effort has been made to ensure that much of the IRG uniformity work is performance based as opposed to being overly prescriptive.

In relation to the radio procedures, the IRG is working on the development of uniform data and communication protocols. The underlying premise of this work is to ensure that systems can effectively communicate with each other. The IRG work in this area is not concerned with specifying what systems or communication equipment rail organisations should or should not use. The key focus of the IRG work is on ensuring that the signal or data format / protocol is uniform so that the information can be used and interpreted, where appropriate for security and confidentiality reasons, by any system or communication equipment.

Page 182 2nd paragraph

During the development of the uniformity work, every attempt has been made to reduce the level of prescription and focus on a performance based approach. The IRG is aware that the uniformity work will have an impact on rail activities on the interstate network. However, considerable effort has gone into minimising this impact especially in relation to the possible imposition of any costs. The development of the uniformity work has involved extensive industry participation on the various Working Groups and drafting Committees. This work is further reviewed by the IRG which is solely comprised of industry representatives. Given this level of industry scrutiny, the IRG does not believe that the uniformity work will impose significant costs on industry and would therefore question the need to undertake benefit cost analyses on the various codes, standards and protocols.

The uniformity work is also to be subjected to a three month industry consultation period managed by the Australasian Railway Association (ARA). This industry consultation period will provide an opportunity for further industry scrutiny. If during this process issues are identified which impose costs on industry that cannot be readily justified in terms of safety or improved efficiency, then consideration will be given to undertaking a benefit cost analysis on the specific issue.

It is also important to note that the uniformity work is not intended to be retrospective (see comments below relating to page 182, 4th paragraph) and implementation will be based on a coordinated / managed industry implementation strategy. The two factors will also reduce the cost impact of the uniformity work on industry.

Page 182 3rd paragraph

The IRG supports this approach and considerable effort has gone into ensuring that the codes, standards and protocols are developed to suit specific operational uniformity objectives.

Page 182 4th paragraph

The uniformity work is not intended to be retrospective. Any proposed changes included in the uniformity work are to be introduced as part of a coordinated industry implementation strategy or as part of the normal life cycle of equipment, maintenance and upgrading regimes. As such, every effort is being made to minimise the impact of the uniformity work on industry through a coordinated phased-in approach to implementation. To this end, ATC has agreed that the IGA establish a non-statutory unit (attached to the Commonwealth Department of Transport & Regional Services) to facilitate and coordinate implementation arrangements.

This is not to say that the uniformity work will take years before it is implemented. Those aspects of the operational uniformity work dealing with procedural operational changes can be implemented immediately and every effort will be made to facilitate this process. Other aspects of the uniformity work dealing with changes to infrastructure or rolling stock may take many years to implement.

Page 182 5th paragraph

The uniformity work is being structured to include mandatory requirements, recommended practices and guidance material. The mandatory requirements in the uniformity work will only comprise a small element of the entire work (most elements of the uniformity work will be recommended practices and guidance only material). As previously mentioned, these mandatory requirements have been deemed necessary for safety and interface coordination on the interstate network.

For rail organisations with physical access to the defined interstate network (intrastate operations) the uniformity work would be recommended but not mandatory. The adoption of the uniformity work would be left to the discretion of individual rail organisations. This decision would be based on an organisation's operational requirements, commercial imperatives, open access requirements and level of inter-working with the defined interstate network. If a rail organisation intended to expand their operations to utilise elements of the defined interstate network then adoption of the uniformity work would need to be considered. Similarly, if a particular organisation, under open access conditions, was to grant access to an operator entering their network from the defined interstate network, then consideration would again need to be given to adoption of the uniformity work to ensure uniform application of relevant operational / engineering system components.

The uniformity work will not apply to separate stand-alone systems. Such rail systems would be able to adopt whatever standards and safety management systems were deemed necessary for their particular needs. The codes are targeted at operations on the defined interstate network and the IRG recognises that the mandatory application of a stand-alone system would do little to promote interstate uniformity and may result in unnecessary operational and financial constraints being placed on railway activities.