

COMMONWEALTH DEPARTMENT OF  
**TRANSPORT AND  
REGIONAL SERVICES**

*Our Reference: L99/179 Your Reference: Contact:*

Ms H Owens  
Commissioner  
Productivity Commission

Dear Ms Owens

I refer to your letter of 1 June 1999 in which you sought comments on the BHP submission to the Commission, in particular the criticism of the consultation process relating to the Report on Independent Investigation and Open Reporting of Rail Occurrences".

A reading of the BHP submission and the transcript of the Commission's meeting with the BHP representatives suggest that a number of other issues should be addressed in our response. These are..

- Powers of an investigator in relation to a Coroner.'
- The letter on behalf of the Investigation Task Group to Mr Mitchell of 3 May 1999 in response to his comments on the draft Report Independent Investigation and Open Reporting of Rail Occurrences".  
and
- The need for a Regulation Impact Statement in relation to the Report.

The attached response has been circulated to all Task Group members, to check on its accuracy and to ensure that there is common agreement to the views expressed in it.

The response has a considerable number of attachments. It is felt that this is necessary so that the Commission can see the extent to which the Task Group sought the views of industry on its draft report and to assess the consultation process.

Yours sincerely

Daniel Owen  
A/g Assistant Secretary  
Rail  
June 1999

**Response to the BHP Submission to the Productivity Commission of 20 May 1999 by  
the Task Group which prepared the report "Independent Investigation and Open  
Reporting of Rail Occurrences"**

**Purpose**

The purpose of this response is to address and comment on the following issues raised in the BHP Submission:

- The consultation process adopted by the Task Group preparing the report "Independent Investigation and Open Reporting of Rail Occurrences" (the Report)
- Power of an investigator in relation to a Coroner
- The letter on behalf of the Task Group to Mr Mitchell of 3 May 1999
- The need for a Regulation Impact Statement in relation to the Report.

A copy of the final report endorsed by Ministers at the 30 April Australian Transport Council meeting is at Attachment A.

**Background**

Ministers at the Rail Summit of 10 September 1997 indicated " accident investigations should become a more open process, including public reports of the kind published by the Bureau of Air Safety Investigation (BASI)."

This request by Ministers lead to the Standing Committee on Transport's Rail Group establishing the Rail Accident and Investigation Task Group to carry out:

"A review of the current system of rail accident and incident investigation and reporting in Australia, recommending how existing systems could be modified to achieve a more uniform and open accident and incident investigation and reporting process, including an examination of the legal issues involved and the processes and features of the BASI and other similar models."

A copy of the terms of reference of the Task Group are at Appendix 1: Terms of Reference, to the Report.

The approach of the Task Group is set out in the "Foreword" to the Report.

The members appointed to the Task Group were:

- Rob Burrows                 Director, Office of Rail Safety, Department of Transport,  
  Western Australia
- Brian Busch                 Safety Manager, Australian Rail Track Corporation Ltd
- David Edwards             Rail Safety Manager, National Rail Corporation Ltd
- Tony Moleta                Commonwealth Department of Transport and Regional  
  Services (to October 1998)
- Jon Bailey                 Commonwealth Department of Transport and Regional  
  Services (from October 1998)
- Bryan Stott                Air Safety Investigator, Bureau of Air Safety Investigation.

The Task Group was also assisted by Helga Johnson, (General Counsel to the Department of Transport and Regional Services) Australian Government Solicitor.

The inclusion of Brian Busch and David Edwards on the Task Group was intended to ensure a strong rail industry representation and input to the Report.

### **The Consultation Process**

It was recognised by the Task Group that there would be a need for industry consultation if a robust report was to be prepared. Consequently, as the final drafts of the report were prepared in November 1998 comments were sought from three groups which had a direct interest in the Report. These were:

**Rail Safety Committee of Australia** comprising, the Commonwealth, all State rail regulators, Westrail, Queensland Rail, National Rail and the Australasian Railway Association. The Rail Safety Committee is responsible for advising SCOT Rail Group on rail safety matters.

**Industry Reference Group** established by the Rail Group to achieve uniformity in rail through the development of common codes, practices and procedures.

**Standards Australia Committee ME/79** responsible for developing the Railway Safety Management Standard AS 4292.

**Accreditation Authorities** the State and Territory Accreditation Authorities meet as the "Accreditation Authorities Group" on a regular basis to discuss issues relating to rail safety administration.

The composition of these groups is shown at Attachment B.

The reason for using these groups in the consultation process was because they offered an almost complete coverage of the rail industry. It should be noted the some individuals are represented on all three bodies. Mr Mitchell for example.

### **Consultation with the Rail Safety Committee of Australia (RSCA)**

There has been a continuing liaison with the RSCA and its predecessor the Intergovernmental Agreement (IGA) Working Group during the development of the Report and in seeking comments on its final drafts. The following is the history of this liaison:

- **12 May 1998** - IGA Working Group meeting - a paper proposed for forwarding to the Task Group on a process for accident investigation (Extract from the minutes of the IGA Working group meeting of 12 May 1998 is at Attachment C I)
- **16 July 1998** - Ist Rail Safety Committee of Australia meeting - decision to forward paper on accident and incident reporting to Task Group - also request to forward to Rob Burrows (principal author of the Report) what events should trigger an investigation by 20 August 1998 (Extract from minutes is at Attachment C2).
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- **17 September 1998** - 2'd RSCA meeting - Rob Burrows provided report on work of the Task Group (Extract from minutes at Attachment C3).

**19 November 1998** - 31-d RSCA meeting - draft report circulated and comments requested by 17 December - progress report and timetable for completion of the Report presented to RSCA. The Commission may wish to note the actions following the presentation of Rob Burrows' report. These are set out under the "Action" item at page 4 of the minutes. (Extract from minutes at Attachment C4).

**1 December 1998** - Reminder fax sent to all RSCA members and an extension of the dead line for comments to 14 January 1999 (Copy of fax at Attachment C5).

**14 January 1999** - A further reminder tax was sent to all members of the RSCA. (Copy of fax at Attachment C6).

**15 January** - Mr Mitchell's comments received. (The Commission has a copy of Mr Mitchell's comments which are attached to the BHP submission of 20 May 1999)

**15 February 1999** - a sub-committee of the Task Group comprising Rob Burrows, David Edwards and Jon Bailey considered the comments received on the Report. Each comment was considered individually and decisions made on the appropriate action in relation to each. Prior to this meeting all members of the Task Group had been sent copies of the comments received. At this meeting Jon Bailey was delegated to draft a letter to Mr Mitchell. The letter was circulated to members of the sub-committee for clearance.

**4 March 1999** - RSCA advised that the Report had been finalised and considered by Rail Group on 1 March with a view to it being considered by SCOT on 23 March and ATC on 30 April. (Report and extract from minute is at Attachment C7)

**12 March 1999** - Mr Bailey rang Mr Mitchell to advise him that a formal reply was being prepared on his comments.

#### Consultation with the Industry Reference Group (IRG)

At a teleconference to revise the Report on 27 November 1998 it was decided to circulate the revised draft to the Industry Reference Group on 3 December to get a wider industry view. This was done and David Edwards gave a report on the current draft at to the IRG on 3 December 1998. Formal comments on the Report were requested from the IRG by 15 January.

The IRG was specifically requested to provide comments to the Task Group so that they could be considered prior to submission of the Report to Rail Group. (An extract from the IRG minutes is at Attachment DO. Verbal comments were received from the Chair of the IRG which were generally supportive of the Report although he indicated that there was a need for legislative change to protect witnesses. He later took this issue up with the Bureau of Air Safety Investigation (BASI).

## Consultation with Standards Australia Committee ME/79

On 7 December 1998 Ms Robyn Beetham as Chair of the Railway Safety Committee of Australia wrote to the Secretary of Committee ME/79 drawing his attention to the finalisation of the Report on -Independent Investigation and Open Reporting of Rail Occurrences- and the need to co-ordinate the development of the proposed new part of the Rail Safety Standard (Incident Investigation AS 4292.7 with the consideration of the Report by Rail Group, SCOT and ATC. (A copy of Mrs Beetham's letter is at [Attachment D2](#)).

The issue raised by Ms Beetham became the major item on the agenda. Most members of the ME/79 Committee had copies of the draft Report and those who did not received copies following the meeting. At the meeting a request was made for comments on the draft Report by 17 December (later extended to 14 January).

Arrangements were made for Brian Busch and Bryan Stott to attend the ME/79 meeting so that all members of the Task Group were available to brief ME/79 members on the recommendations of the report. This was done and detailed discussion of the Report took place. (The minutes of ME/79 of 8 December 1998 are at [Attachment D3](#)).

## Consultation with Accreditation Authorities

Early drafts of this Report were provided to this Group and discussed on 15 July 1998 and 12 November 1998. This was in addition to telephone calls from the principal author, Mr Rob Burrows, to individual accrediters. (Extracts from the minutes of 15 July and 12 November are at [Attachment D4](#) and [D5](#)).

## **Summary**

It is the view of the Task Group that there was considerable opportunity for the rail industry to input to the Report. This opportunity was provided:

- during the drafting of the Report commencing on 12 May 1998 and continuing through until the finalisation of the Report in February 1999 as evidenced by the minutes of the RSCA. The RSCA being the group with the greatest interest in the Report and which is constituted to provide industry input on rail safety matters. Throughout this period the rail industry had three representatives on the RSCA - Mr Mitchell (ARA), Mr Kingsley Martin (NR) and Mr Tim Ryan (Westrail).
- by seeking as wide as possible circulation of the draft Report through the RSCA, the Industry Reference Group and the Standards Australia Committee ME/79.
- by seeking detailed comments from the Accreditation Authorities Group who have the responsibility for administering investigation in their jurisdictions.
- during the detailed briefing and discussion of the draft Report which took place at the Standards Australia Committee ME/79 meeting of 8 December 1999.
- by the invitation to all of the above groups to comment on the Report.

It was recognised by the Task Group that considerably more work would have to be done on the legal issues raised in the report and that the acceptance of its recommendations would depend on political, legal and administrative policies which will be influenced by issues outside the scope of the Report. In this context the Commission's attention is drawn to the "Foreword" to the Report.

The Commission may wish to note that the report from SCOT to Ministers at the ATC meeting of 30 April indicated that the recommendations of the Report would require careful consideration in particular the legislative changes required to give effect to the report's recommendations

The Commission may also wish to note the relative importance of the possible power of an investigator to exclude a Coroner from an investigation site in the context of the total Report and if the power was given to an investigator the limited likelihood of it being exercised.

### **Letter to Mr Mitchell of 3 May 1999**

As outlined above the letter to Mr Mitchell, while prepared by Jon Bailey was circulated to members of the Task Group for comment and clearance and as such represents the views of the Task Group.

It is the view of the Task Group that the letter of 3 May 1999 was not dismissive but was appropriate given the nature of Mr Mitchell's submission.

The delay in replying to Mr Mitchell is regrettable but the letter had to be circulated to all Task Group members. The area responsible for the preparation of the letter was under considerable pressure during March and April having carriage of four major issues at a special SCOT and ordinary SCOT meetings and at ATC.

There was no hidden agenda in relation to Mr Mitchell receiving the response to his comments after ATC had made its decision on the Report. It had always been intended to seek ministerial endorsement of the Report recommendations, as this was required by the Task group's Term of Reference. (See Appendix 1 to the Report at page 37). The reasons for the delay in replying to Mr Mitchell are given above.

### **Need for a Regulation Impact Statement**

The Task Group does not have a view on this issue. The Report as it stands is just that - a Report - although endorsed by Commonwealth State and Territory Ministers. The process which individual States and Territories adopt in implementing its recommendations is a matter for them to decide in accordance with their legislative and administrative processes.

The Task Group would like to thank the Commission for the opportunity to comment on the BHP submission.

The Task Group would also be pleased to give the Commission a more detailed briefing on the substantive issues in the Report as, in the opinion of the Task Group, the Report offers a blue print for major reform in rail safety investigation and reporting.