

# **PRODUCTIVITY COMMISSION INQUIRY INTO PROGRESS IN RAIL REFORM**

## **SUBMISSION BY THE BROKEN HILL PROPRIETARY COMPANY LIMITED (BHP)** **MAY 1999**

### **1. Introduction**

BHP has a vital interest in rail on many levels:

- As a significant user, the largest customer of National Rail and of Queensland Rail
- As Australia's largest private railway owner and operator
- As a major provider of steel products and a range of engineering, technical and logistics services to infrastructure projects.

Given the scope and size of BHP's interest in rail, we have provided information and comments to many inquiries and taskforces, including, most recently, the 1997/98 inquiry into the role of rail by the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform (the "Neville Report") and the Rail Projects Taskforce commissioned by the Prime Minister in mid 1998.

We have read with interest the draft report on Progress in Rail Reform issued on 29 March 1999, and welcome the Productivity Commission's interest in rail issues.

In this Submission, we wish to focus on a number of issues relating to safety regulation and operating standards. This area has been addressed in Chapters 3 and, in particular, Chapter 8 of the Commission's draft report.

### **2. Progress in Achieving Uniformity in Safety Regulation**

BHP is generally supportive of the views expressed by the Commission in its draft report on safety regulation matters.

At pages 43-4 the draft report summarises key initiatives established by Australian governments to address the lack of uniformity in safety standards between Australian jurisdictions, and in particular:

- From around 1995, the combined efforts of a government/industry taskforce and a committee with broad representation, in conjunction with Standards Australia, working on the development of various rail standards to form parts of the Australian Standards on Railway Safety Management (AS 4292)
- The Intergovernmental Agreement signed in July 1996, which set out guidelines for the establishment of a safety accreditation system for interstate operations, and contained a requirement for the standards to form a basis for accreditation
- Following an Australian Transport Council meeting in April 1998, the Rail Safety Committee of Australia, comprising the Commonwealth, States, the Northern Territory and industry representation, was formed specifically to address safety issues - and an Industry Reference Group, reporting to a Uniformity Task Group, was established to develop nationally consistent standards and operational requirements, with one of the Reference Group's tasks being to develop codes of practice to provide a means by which operators can comply with AS 4292

The Committee's draft report highlights (at page 53 and throughout Chapter 8) that inconsistencies in the way in which each Australian jurisdiction has developed safety accreditation and operating standards are an impediment to efficient interstate rail operations, and that progress to reduce inconsistent regulation has been slow. BHP notes these observations, and makes the following general comments on the current position:

- Particular problems which remain lie within the legislative differences between the States, eg. in the area of differing reporting obligations from State to State.
- In our view, the principal remaining impediments to progress are within the organisations which own the rail tracks, ie. embedded within the culture and operational approaches of those organisations. It is these organisations, rather than regulators, which set the prevailing standards.

We would support the imposition of standard procedures/practices on owners and operators on those points where uniformity is critical on safety and interchangeability grounds. Apart from these critical areas, it is less important that

industry participants find uniformity, than that they have performance incentives to align with each other within jurisdictions to achieve the most productive outcomes.

### **3. The Need for Regulatory Impact Statements**

BHP strongly supports the following draft Recommendations which the Commission sets out in Chapter 8 of the draft report:

- “Changes to safety accreditation and mutual recognition processes for the rail industry should apply the principles of best practice regulation, including Regulatory Impact Statements” (Draft Recommendation 8.2, at p.175)
- “In developing codes of practice for the rail industry, best practice regulation should be adopted” (Draft Recommendation 8.3, at p.177)

As described in the draft report, the advisory structures which support regulatory initiatives in the rail industry are complex and multi-layered, consisting as they do of a range of sub-committees and mechanisms. 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. We note that the Commission’s draft report does not provide any details of the manner in which Regulatory Impact Statements would be applied in practice.

A threshold step is lacking from much of the activity that occurs in rail safety regulation - the step of asking which areas are in need of (or have the highest priority need for) prescriptive guidelines. Ideally, a needs analysis step should be systematically built into the approach to rail safety regulation, prior to substantial detailed work occurring. Much of the committee activity, including in the area of developing codes of practice, which has occurred in recent years involves a carrying forward of work commenced earlier this decade within State rail systems, under more prescriptive “command and control” regulatory regimes, to develop detailed codes.

### **4. Developing Codes of Practice**

We note, and agree with, the Commission’s preference for a less prescriptive output (performance) based approach to regulation, which only prescribes where absolutely necessary to facilitate more efficient and cost effective operations. (See draft report, at p.176)

Under such an approach, care needs to be taken that the development of codes of practice “to provide a means by which operators can comply with AS 4292” does not have the result that excessively prescriptive codes are developed with which existing, demonstrably safe, rail systems are not able to comply.

For example, when BHP first became aware in 1998 of the draft code of practice which had been developed for rolling stock, it was apparent that the bulk of the company’s operations would not comply. None of the operating standards in our Pilbara railways were covered, meaning that had those drafts been adopted without modification, the whole of our Pilbara operations would have had to be restructured. (Generally, BHP’s Pilbara rail operations comply with proven North American standards.)

In this particular instance, BHP was in a position to highlight the issues which were created by the initial draft code of practice at a relatively early stage, as a result of our representation on the Industry Reference Group, and difficulties were avoided. However, 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.

Overall, it is not clear whether and where codes of practice will contribute to safer and more efficient outcomes than would be achieved with appropriate application of other existing tools. It seems to us broadly preferable to rely on a combination of:

- Regulation of critical areas (to be developed in a consultative process, and including Regulatory Impact Statements for major initiatives)
- Standards, particularly AS4292
- Management systems set up by operators, which are accredited and audited.

## **5. Current Processes for Industry Input into Regulatory Initiatives**

We strongly support the Productivity Commission's recommendations regarding the importance of applying "the principles of best practice regulation" to the processes leading to the development of codes of practice and safety accreditation practices in the rail industry. This should include a requirement for Regulatory Impact Statements.

One recent experience illustrates areas for improvement - we raise this not to make specific criticisms but as an example of problems that can arise with the existing process for safety regulation. Attached to this Submission are a series of documents (listed below as Appendices A-D) which detail our organisation's input into, and comments upon, a proposed ATC initiative - the adoption of a Report on "Independent Investigation and Open Reporting of Rail Occurrences".

These Appendices illustrate a process where departmental officers have a broad discretion to determine the extent to which industry views should be sought on proposed regulatory initiatives (including on matters intended to influence development of important Australian Standards) and to reject or disregard views received. There is also apparently no "due diligence" process whereby Ministers receive assurance as to the extent and nature of industry views on proposed initiatives, or systematic advice as to the cost implications of measures.

Once initiatives have received the imprimatur of Ministers at the ATC they attain a status and momentum which disaffected industry members may find difficult, and costly, to unwind.

In BHP's view, the current process creates uncertainty and needs to be addressed, to improve the sense of direction and potential for timely reform in the industry.

Appendix A is the draft report on Independent Investigation and Open Reporting of Rail Occurrences prepared by the Rail Accident and Incident Investigation Task Group for the Rail Group in October 1998.

Appendix B is an email sent to the Department of Transport and Regional Services ("DTRS") on 15 January 1999 by Ross Mitchell of BHP Engineering, who is a member of the Rail Safety Committee of Australia, in response to a request to selected industry members for comments on the draft report. This email details a number of significant concerns about the Report.

Appendix C is a copy of the Communique issued by the Australian Transport Council on 30 April 1999 which announced, inter alia, that at their meeting that day, "Ministers endorsed adoption of the Report on Independent Investigation and Open Reporting of Rail Occurrences and requested that further development of the Australian Standard AS 4292,7 "Railway Occurrence Investigation" be consistent with its content".

Appendix D is the letter response sent by Mr Jon Bailey, Director of Urban Systems and Rail Safety within DTRS on 3 May 1999 containing dismissive and, from our perspective, unsatisfactory responses to the issues which had been raised in BHP's email of 15 January 1999. Significantly, this letter was sent after the issue of the Communique.