

Frontiers of Regulation.

Assessing Scholarly Debates and Policy Challenges

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**Regulatory Reform in the Australian Rail Sector and the
New Interorganisational Complexity. The Challenge of
Balancing Economic Interests and Safety in a Complex
Regulatory Environment.**

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Part One – Rail Reform

Introduction

Since the early 1990s the Australian rail sector has undergone substantial organisational change and has been subject to a range of micro economic reform initiatives. This process of change has resulted in a highly complex and diverse rail sector where the state is now one among many players involved in the governance process. A number of participants now influence and shape public policy and the regulatory frameworks that govern rail. Whilst the objectives of running a rail business have remained relatively constant (i.e., to safely move passengers and goods in the most cost effective way) the process of governing has become an increasingly complex and challenging task. The demands placed on regulators and their staff are changing and frequently bring them into unexplored areas that require new and specialised skills.

A key aspect of this complexity is the emergence of two relatively distinct and at times, opposing regulatory regimes. Economic regulation and safety regulation tend to represent policy domains that offer different and often contradictory approaches in progressing the interests of the state. The current debate in Australia around the constraints that safety regulation places on the economic efficiency of the rail sector demonstrates the ongoing challenge the state faces in balancing competing interests. Neo liberal interests in maximising opportunities for improvements in efficiency are pitted against social and political attitudes that place increasing pressure on regulatory bodies to act and regulate to eliminate risk; a phenomenon that a recent report to the Prime Minister identified as “... a growing and unsustainable aversion to risk...” (Regulation Task Force, 2006, Forward).

As a starting point this paper examines the recent history of reform in the Australian rail sector and looks at the emerging complexity of regulatory and organisational arrangements with reference to the situation in New South Wales. An examination of regulatory reform in the Australian rail sector highlights the growing complexity of ‘inter-organisational governance’. As the state moves to contract out and establish purchase provider relationships the regulatory function becomes one of governance, managing complex forms of inter-group relations (Steane, P. & Carroll, P. 2001).

Discussion will then examine the emergence of safety regulation and the challenges that this presents for regulators. As safety regulation has progressed so have calls

from business interests that the complexity of the sector has become an impediment to further improvements in economic efficiency. Governments have responded to this pressure and at its February 2006 meeting the Council of Australian Governments (COAG)¹ committed to a new national reform agenda which included a focus on simplifying rail regulatory regimes.

Within the complex environment of rail regulation there has emerged evident tension between the objectives of economic regulation and safety regulation. In the process of analysing this phenomenon this paper also seeks to address three key issues raised by Jordana and Levi-Faur in their work *The politics of regulation in the age of governance* (2004). Specifically:

- Is public sector reform in rail driven by neo liberal politics?
- Have the structural changes and increasing complexity of the policy environment in rail diminished the states capacity to govern? And
- What role has trust played in shaping the nature of regulation in the Australian rail sector?

Development of Rail Systems in Australia

The historical development of Australian railways has contributed to the policy and regulatory complexity governments and rail operators now face. Rail systems developed as independent localised services in each Australian colony. They were government owned and integrated both vertically and horizontally with a single government authority controlling all the activities of the network in each state. (PC, 1999, p.92) This differs to railways in the United Kingdom and the United states where the private sector played a major role in their original development (Stevenson, 1987, p.4).

Australia has a federal system of government with separate as well as shared responsibilities between the state and Commonwealth governments. Under the Australian Constitution responsibility for transport remains with the states. This differs to most other nations where rail is generally regulated at the national level (Stevenson 1987). However, Australia's federal structure has seen the development of an interwoven network of involvement of each level of government in most sectors. Thus, over time the national government has been actively involved in the development of

¹.COAG consists of the Prime Minister, Premiers and Chief Ministers of each State Territory. They generally meet twice a year to consider policy issues of national significance. COAG was instrumental in progressing National Competition Policy reforms during the 1990s.

Australian rail policy and infrastructure, particularly in terms of developing a national track network.

Achieving consistency and uniformity in operational and infrastructure standards has been a major challenge for Australian railways. Most notable has been the challenge to develop a national standard gauge rail network. A number of states adopted a different gauge when constructing their rail networks. NSW adopted the standard gauge (1,435mm) consistent with that used in the UK. Victoria adopted a wide gauge (1,600mm), and South Australia and Queensland a narrow gauge (1,067mm) (Stevenson, 1987, p. 14). A long term objective of the Commonwealth's involvement in rail has been to achieve a network of standard gauge connecting the capital cities of all jurisdictions. This was only achieved for freight and passenger services in the mid 1990s and not until 1998, with the establishment of the Australian Rail Track Corporation (ARTC), was there a comprehensive national network under one management framework.

The gauge issue is indicative of a raft of other inconsistent matters that exist across Australia's rail networks. This includes incompatible rolling stock and equipment, varying standards of infrastructure, different operating rules and procedures, and different industrial awards (Stevenson, 1987, p.29).

Drivers for Reform and National Competition Policy

By the late 1980s significant pressures had developed forcing governments across Australia to improve the performance of their rail sector. The economic pressures of globalization and the growing need to move passengers and goods across jurisdictions increased demands that rail be reformed to make it easier to operate within a national and international trading context. Key factors driving reform included;

- Increasing fiscal pressure on state government budgets forcing them to look more critically at the substantial deficits of rail agencies with a view to reduce costs and make savings.
- Pressure on railways from expanding industries such as coal for more efficient services.
- Improvements in road transport and road infrastructure meant increasing intermodal competition and downward pressure on freight rates.
- Implementation of the National Competition Policy by all Australian Governments in 1995 which introduced a stronger policy framework encouraging competition in

government utilities and nationally significant infrastructure such as rail (PC, 1999 and Owens, 2003).

In responding to the above pressures a number of national reviews were undertaken during the 1990s. A major government report released in 1991 recommended changes across all aspects of rail operations with a view to introduce more competition and increase the efficiency of the sector (Industry Commission, 1991). It argued for the commercialization of railways, more contracting and competitive tendering, the removal of restrictive policy constraints on the management of labor and the structural separation of discrete operational units to support funder provider arrangements.

This report was soon followed by the introduction of National Competition Policy (NCP) in 1995 which established access regimes for significant infrastructure as a way of introducing competition. The notion of access regimes was based on an argument that savings could be achieved by separating the role of the infrastructure operator from that of the incumbent operator (Everett, 2005, p. 93). This policy change drove further structural change in rail encouraging the vertical separation of the above rail and below rail components. Some level of competition resulted between freight operators and it encouraged pricing signals that related the cost of track maintenance and development with service utilisation.

In 1998 a second national review was commissioned to assess the progress of reform. This report argued that a stronger commercial focus was still needed. The efficiency of the sector was still below international comparisons and more contracting out, franchising and privatization were supported in an effort to reduce costs and increase productivity. States were encouraged to introduce greater commercial discipline through ownership and structural reform (PC, 1999, p.XXXII). Recommended approaches to structural reform included;

- Structural separation – businesses separated into discrete legal entities
- Horizontal separation – product (i.e. freight and passenger) are separated
- Vertical separation – functional levels are separated (track infrastructure and train operations) (PC, 1999, p. 92).

The approach to rail reform in Australia is similar to that adopted throughout the world. Various approaches to structural separation and the use of access regimes can be observed in the majority of OECD countries. The extent to which this model of reform

has been successful in introducing competition is varied and still under review (Biggar D, 2004). Structural separation does impose costs and creates complexities in coordination and pricing and increases the cost of regulation (PC, 1999, p.98). In some instances, in Australia and the UK, structural separation and excessive fragmentation of the rail system has been blamed for impeding the safety performance of the system and the cause of major incidents (Glenbrook and Waterfall in NSW and Hatfield in the UK, McInerney, 2000 & 2005 and Owens, 2003).

The Freight Task and Competition with Road Transport

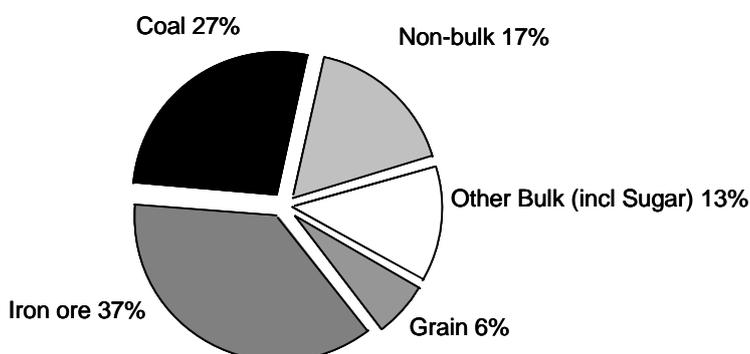
Similar to the experience in the UK there has been a general delay in the progress of microeconomic reform in the rail sector in comparison to other government owned utilities. As observed by Lodge (2005) this reflects the general political reluctance of governments to deal with unions, the political sensitivity of withdrawing substantial levels of subsidies and to some extent the complexity of the industry (p. 69). Despite this reluctance significant change has been progressed. For example, in terms of staff the NSW freight sector was reduced by around 60%, going from 16,300 in 1989 to 7,000 in 1996 and further reduced to 2,500 by 2002. Similar staff reductions were achieved in other jurisdictions. Queensland Rail reduced its staff by almost half from approximately 24,000 in 1990 to around 14,000 in 2002 (Everett, 2005, p. 92).

By 2002 all above rail freight services in Australian had been fully privatized except for Queensland Rail which operates as a government owned, corporatised entity. Private and government corporations operate passenger services whilst infrastructure is predominately owned by corporatised government entities with some private ownership in a number of States (Western Australia, Victoria and South Australia).

Whilst the reform of rail has reflected the wider contemporary debates regarding the appropriate relationship between the state and the national economy, a key strategic driver for change in Australia has been the need to see rail increase its share of the national freight task. Rail carries around one third of Australia's freight, however this is predominantly bulk freight – specifically coal, iron ore and grain. The following chart illustrates this in terms of the proportion of freight carried per net tonne-kilometres.

Between 1971 and 1990 non bulk interstate freight traffic more than doubled, however the non bulk interstate rail task experienced little growth. In effect, rail has been losing market share to road transport since the late 1960s. (BTRE, 2003, p. 56). In Australia

Railway freight task, 2000/01 (net tonne-kilometres) (%)



Source: National Transport Commission, 2003, *The Australian Rail Industry: Overview and Issues*, p.6.

the land transport task continues to grow and is expected to double by 2020 from 2000 levels (NTC, Facts on Freight Growth, 2006). These forecasts in freight growth and rail's historical failure to increase its share in non bulk freight have placed great pressure on governments to see the efficiency of the sector improve. At a minimum, there is an expectation for rail to hold its share of the freight task to help manage the exceptional growth predicted over the next two decades. Community attitudes are such that transport planners consider it unacceptable to allow the future growth in freight transport to manifest as excessive road congestion and accelerated infrastructure deterioration from a rapidly expanding fleet of heavy vehicles (NTC, 2006).

Structural Reform and Rail Safety Regulation

A concern that accompanied the continuous restructure of the rail industry since the early 1990s has been the adequacy of rail safety arrangements and their potential capacity to constrain industry efficiency (Booze Allen, 1999, p. I-4). Compared to other transport modes rail is very safe. Rail fatalities represent 2% of transport deaths in Australia. National fatalities in rail are around the 40 per annum compared to around 1500 for road. On a per capita basis this represents 0.2 per 100,000 population for rail whilst for road this translates to around 8 per 100,000 population (ATSB, 2006). The safety performance of the Australian rail system is consistent with the OECD average, which also has a death rate of 0.2 per 100,000 population (ATSB, 2004).

Until recently, the independent regulation of rail safety was not seen as necessary given

that ownership and provision were dominated by government. This approach could not be sustained as structural change and private ownership was introduced. The first rail safety legislation introduced in Australia was passed in NSW in 1993. The NSW legislation became the model for legislation progressively introduced by other states.

The safety regulation of railways across Australian is based on a co-regulatory model. That is, the rules and systems are developed and owned by the industry. State regulators then assess the rules as part of the accreditation process to judge whether they are adequate to ensure safety. In comparison to other countries Australia is relatively unique with its states based co-regulatory model. (Booz Allen, 1999).

In an effort to avoid inconsistencies in safety regulations governments committed to an intergovernmental agreement (IGA) on rail safety in 1996. The rail safety IGA aimed to introduce nationally consistent safety regulations that took account of the economic reforms underway (Booze Allen, 1999, p.11-7). Despite these early efforts to achieve uniformity in rail safety regulation, the Productivity Commission's 1999 national review identified safety regulation and operating standards as key areas of concern impacting on the progress of any further economic reforms (PC, 1999, p.162).

A national review of safety regulation and progress made against the commitments contained in the 1996 IGA on rail safety was undertaken in 1999. The 1999 review of safety was only one of four separate national inquiries into rail operations conducted during the late 1990s that raised criticisms about the inconsistency of rail safety operations across jurisdictions². Despite recommending a stronger national presence for rail safety regulation little institutional change occurred until 2003 with the establishment of the National Transport Commission (NTC). This agency was given responsibility for the development of uniform and nationally consistent approaches to rail safety regulations.

The Regulation of Rail Safety in NSW

In NSW the regulation of rail safety incrementally progressed from a function within the

² House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform 1998, *Tracking Australia. An Inquiry into the Role of Rail in the National Transport Network*, Commonwealth Parliament, Canberra.

Maunsell 1998, *Study of Rail Standards and Operational Requirements, Final Report*, prepared by Maunsell Pty Ltd for the Australian Transport Council, Canberra.

Productivity Commission 1999, *Progress in Rail Reform*, Report No. 6, Ausinfo, Canberra.

Rail Projects Taskforce 1999, *Revitalising Rail – The Private Sector Solution*, Rail Branch, Department of Transport and Regional Services, Canberra

Department of Transport to the core responsibility of an independent transport safety regulator. The first rail safety legislation introduced in 1993 established the regulatory framework for accreditation and safety investigations. A Transport Safety Bureau was established within the Department of Transport to fulfill these functions. Following a major safety incident in 1999 (Glenbrook³) a special inquiry recommended strengthening the regulatory function and the NSW rail safety legislation was substantially amended with the introduction of the Rail Safety Act 2002.

In January 2003 there was another major rail incident (Waterfall) in Sydney and a further inquiry reviewed the management and regulation of rail safety⁴. In anticipation of the inquiry's report the NSW Government moved to further strengthen regulation and enforcement powers and amended the rail safety legislation. The commitment of resources was increased and in 2004 the government established the Independent Transport Safety and Reliability Regulator (ITSRR). Whilst its primary function is the regulation of rail safety, ITSRR also regulates the safety of bus and ferry passenger services in NSW.

Current Situation in Australia

State rail systems are now complex arrangements of public, corporatised and privatised operations. Rail operators must deal with multiple access providers in each state as well as the manager of the national network (ARTC). Rail operators deal with separate regulators and different operating systems in each state.

In NSW the structure of the rail sector has transformed from a fully integrated state owned railway service in the early 1990s to a segmented sector that now involves;

- Government owned rail passenger services (RailCorp is the parent of City Rail and CountryLink as well as the owner of the metropolitan track),
- A privately owned interstate passenger service (Great Southern Railway),
- A number of private rail freight operators, though two majors dominate the market (Pacific National and Queensland Rail),
- Three corporatised government track owners (Rail Infrastructure Corporation, RailCorp and ARTC), and

³. McInerney, P. (2000), *Second Interim Report of the Special Commission of Inquiry into the Glenbrook Rail Accident*, The State of New South Wales, Sydney,

⁴ McInerney, P (2005), *Special Commission of Enquiry into the Waterfall Rail Accident, Final Report Volumes 1 & 2*, The State of New South Wales, Sydney

- An independent safety regulator (Independent Transport Safety and Reliability Regulator).

In addition to the above, passenger fares are set by an independent government pricing regulator that also arbitrates disagreements among parties over track access (Independent Pricing and Regulatory Tribunal). Commonwealth regulations may also influence track access through the Australian Competition and Consumer Commission (ACCC).

Similar divisions of ownership and structural separation of functions exist in other states. Overlaying this institutional landscape at the state level are a range of national forums and agencies that work to facilitate uniform and nationally consistent regulatory decision making across all jurisdictions. As noted earlier a key player in this process is the National Transport Commission (NTC) which reports to a national forum of Transport Ministers, the Australian Transport Council (ACT). A key function of the NTC is to present model safety regulation for the rail sector to the ministerial council (ATC). If approved by Commonwealth and State Transport Ministers there is an expectation that states will adopt the regulations into their local legislative framework and thus facilitate the achievement of consistency across all jurisdictions.

The National Regulatory Reform Agenda

The need to continue to progress reform in the regulation of safety has now become a major focus for all governments. Rail safety reform has been incorporated into a broader national reform agenda targeting regulation across all sectors. At its February 2006 meeting, the Council of Australian Governments (COAG) agreed to commit to a new national reform agenda that consists of three streams;

- human capital,
- competition and
- regulatory reform.

The overall focus of the reform agenda is on improving the productive capacity of the Australian economy. Health and education are the primary focus of the human capital stream and competition reform is aimed at improving pricing and investment signals to help establish competitive markets in the energy, transport and export orientated infrastructure sectors.

The third stream of the national reform agenda, is concerned with regulatory reform and reducing the regulatory burden imposed by governments. This is concerned with best practice regulation making, initiating targeted reviews of regulation, efforts to enhance regulatory consistency across jurisdictions and regulatory reduction aimed at specific regulation “hotspots”. COAG identified six priority hotspots “...where overlapping and inconsistent regulatory regimes are impeding economic activity” (COAG Communiqué, February 2006, p.8). Rail safety regulation was top of this list and governments committed to the commencement of new national model legislation and regulations in all jurisdictions by 31 December 2006. This work is being managed through the National Transport Commission.

The Australian approach to regulatory reform is consistent with OECD analysis that argues governments need to continue to work to address regulatory complexity and uncertainty (OECD, 2002). The COAG commitment sends a strong message from the most senior levels of Australian governments and intensifies the pressure on rail and transport agencies to reform their rail safety regulation.

Pressure has been mounting for some time in Australia for a broad ranging review and rethink of regulatory approaches across all policy sectors (Regulation Taskforce, 2006). Representatives of Australian business have lobbied heavily for government to reduce the regulatory burden imposed on businesses (Business Council of Australia, 2005). A number of key drivers are seen to be fueling the growth of regulation and the national taskforce on Rethinking Regulation (2006) argues this includes;

- increasing risk aversion in many spheres of life. In times of crises governments respond to popular criticism with more regulation.
- Regulations tend to be developed in policy silos and the potential overlap or inconsistencies with other portfolios is not given much consideration
- The incentives of some regulators to minimise risk results in the excessive production of regulation (Regulation Taskforce, 2006, p. 15).

Banks (2005) the head of the Australian Productivity Commission, tends to support these observations. He argues that the introduction of competition reforms has actually resulted in re-regulation rather than de-regulation. Regulation is the most ‘tangible expression of government action’ and at the political level can be designed to generate attention and represent responsive action (Banks, 2005, p. 5). In addition there has been a proliferation of regulatory agencies across all levels of government

and this has added to the complexity of regulation. In this case study it has been the growth of new regulation and the introduction of new agencies into rail safety regulation such as ITSRR and the NTC that have added to the complexity.

Part Two - Analysis

Since the late 1980s governments around the world have embraced principles and practices from the private sector to help improve the efficiency and responsiveness of public sector agencies. New Public Management (NPM) represented a revised approach to public administration that sought to replace rule bound bureaucratic structures with market mechanisms and introduce competition to improve service quality, efficiency and responsiveness to clients. Emphasis was placed on the need to run government services like a business (Denhardt & Denhardt, 2003, p. 13). Reform of the Australian rail sector has reflected the whole hearted adoption of NPM ideals. These reforms were part of a broader response from governments to budgetary pressures and the desire to see services restructure in a manner that improved accountability to customers. In rail this meant a move away from direct service delivery towards regulating the framework within which private and corporatised providers compete and operate. This so called move from 'rowing' to 'steering' however, raised new challenges for governments and their public sector agencies.

The restructuring of the rail sector has required rail safety regulators to undertake new tasks, including the accreditation of operators and their safety management systems and the imposition of sanctions and penalties for unsafe practices. These tasks had not previously been carried out by those public sector agencies traditionally involved in rail. Problems emerged as these function were sorted out. Accreditors were generally located in other state owned transport agencies and it was not clear how they would sanction and penalize other state owned rail operators. New organisations had to be created such as ITSRR in NSW and new approaches to regulation and managing relations with industry had to be developed.

When examining best practice approaches to rail safety regulation Gunningham (2004) notes the huge impact that privatisation, corporatisation and the general disaggregation of rail systems have had on the safety culture of the sector (p.4). Over the past 25 years rail safety regulation has moved "... from a prescriptive 'command and control' style of regulation, to a 'meta-regulatory' approach using less direct and process-based

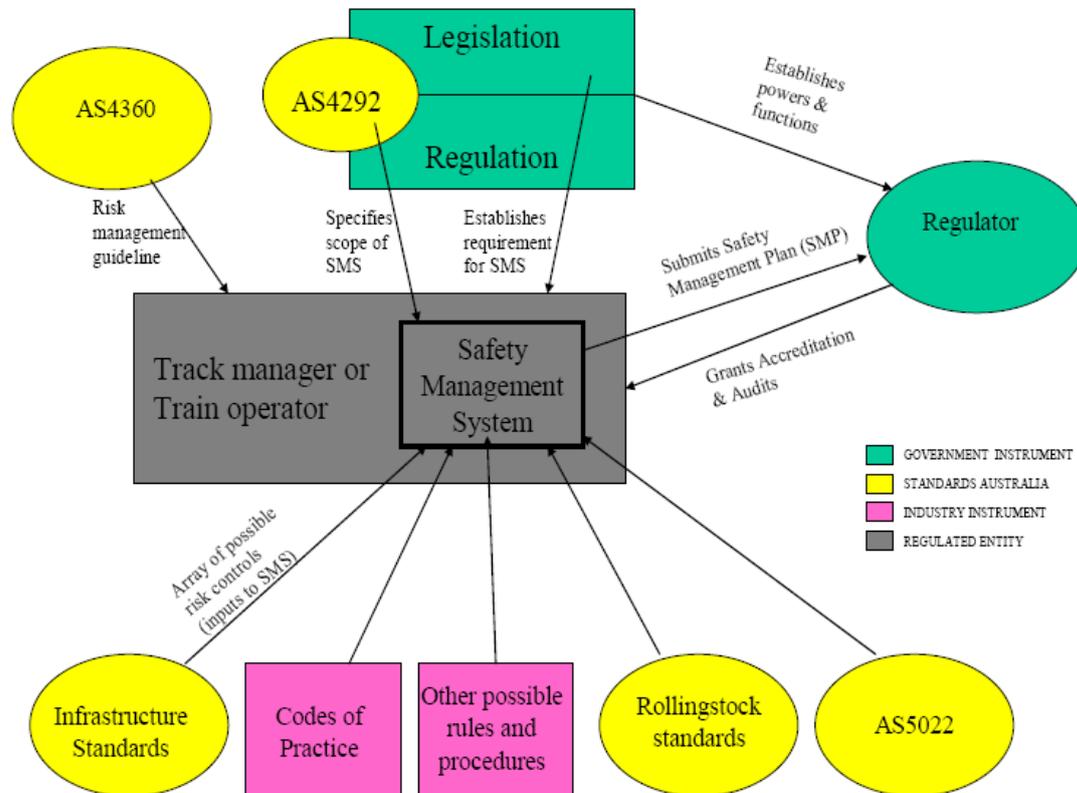
means to achieve broad safety goals.” (Gunningham, 2004, p. 23). This process involves the state regulator using means to influence the systems of internal regulation of participating enterprises.

The co-regulatory model applied in Australia requires organisations to develop and document safety management systems. Rail organisations are required to assess and identify safety risks and document the controls they have put in place to manage these risks. Some controls applied for the management of risk may be nationally agreed standards and in other cases the organisation may need to develop a control unique to their operating circumstances. These safety management systems are then assessed by the regulator as part of the accreditation process which if approved, results in consent to operate.

The following diagram illustrates the complexities of this regulatory framework. It also highlights how in the Australian co-regulatory environment safety regulators are now dependent on the provision of operational information from a mixture of private, corporatised and public rail organisations. Relying on information from a broad array of organisations reinforces the perception that the state is one of many players in a complex process of governance (Steane and Carroll, 2001). The value of the information participants bring to the policy making process influences the strength of their role and capacity to influence outcomes. The determination of policy becomes a negotiated process drawing on the expertise and authority of private and public sector organisations.

This approach to regulation involves government agencies in the assessment of risks on the basis of the information supplied by rail operators. As Gunningham notes, “Under this approach, the role of the inspectorate shifts in emphasis from that of conventional inspection of premises and plant (which relies heavily on observations of site conditions) to that of audit of the management system, raising new challenges in terms of the requisite inspectoral skills and capabilities..” (p. 24). The impact of the changing regulatory environment on skill sets required of staff and the total resources regulatory agencies need to commit to carry out their functions has emerged as a key concern for the ongoing effective regulation of rail safety (NTC, 2004, p. 42).

AUSTRALIAN RAIL SAFETY REGULATION FRAMEWORK



Source: National Transport Commission, 2004, *Improving the Regulatory Framework for Rail Safety in Australia, Discussion Paper*, p.14.

Analysts across a number of policy sectors have raised similar concerns about the challenges facing policy makers in developing competent and independent regulatory controls in sectors where privatization and the introduction of competition reforms has occurred (Sands, 2004 and OECD, 2002, p.95).

In this case study the shaping of public policy and influencing policy goals has become a much more complex, multilayered process for organisations, individuals and politicians. This complexity confirms the observation by some analysts that there is an increasing web of governance that influences and shapes policy across particular sectors (Davis & Keating, 2000 and Considine, 2005). The distribution of responsibilities and the nature of power structures within a policy sector become more complex and dependent on inter-relationships both within and outside government. The transformation of rail from a single, state owned entity in the 1990s to a multi organisational arena with public and private participants subject to independent

regulatory oversight a decade later demonstrates the emerging complexity of policy sectors. In this environment the state plays a less intrusive role, fostering competition and integration with the global economy (Steane and Carroll, 2001, p.42). The renewed push to ensure safety regulation does not inhibit further efforts to increase the efficiency of the sector demonstrates the continued focus on competition and integration with the wider economy.

The steering of the Australian rail sector has occurred within two broad frameworks that tend to challenge the achievement and maximization of the objectives in each. On the one hand economic regulation of rail has emerged as a new regulatory framework designed to assist the efficient operation of rail services. This represents the new understanding of regulation as legitimate action that promotes competition (Jordana & Levi-Fraur, 2004). Track access regimes and the structural separation of operational units into corporatised entities have been pursued to drive efficiencies across the sector. On the other hand, a new regulatory regime of safety regulation has emerged with its own institutional structures and approaches for achieving compliance from rail organisations. Approaches for maximising safety outcomes are now shaped outside and separate to the owners of rail operations.

The trade-offs that managers may have faced when developing safety systems within a state owned rail organisation have been externalized and represent challenges that are debated between public and private rail organisations and economic regulators in newly established forums such as the consultative mechanisms established by the National Transport Commission. A wider range of economic interests have been able to enter the debate and elevate it to forums such as COAG where a broader range of pressures bear on the determination of appropriate regulatory goals and outcomes. At one level this represents a more explicit and transparent process, but it also brings with it new challenges for regulators.

This brings us to the question raised by Jordana and Levi-Faur (2004) regarding the role of neo-liberalism in public sector reform. In the Australian rail sector micro economic reform has been a key influence shaping the priorities of regulatory reform. Whilst safety regulation is an emerging area of activity for governments, the recent COAG commitments to reform rail safety regulation with a view to deliver efficiencies for industry demonstrates the dominance of neo-liberalism. The demands to reform

safety regulation reflect the old understanding of regulation as a barrier to competition and unnecessary red tape.

It is clear that all Australian jurisdictions have approached rail reform with a view to reduce costs, increase competition and the efficiency of the sector. Rail is a very expensive sector for governments to maintain, it is highly unionised and consistently perceived to be inefficient. Competition policy has been a key policy tool used by governments to reduce the growth of their outlays in rail and to improve the competitive position of the sector. Public assets and services have been privatized, corporatised and functions contracted out as part of an effort to reduce the direct costs to government and deliver efficiencies for industry and the economy. These actions are consistent with neo-liberal views about the reform of public sector utilities. Yet as the state has moved along these lines new forms of economic and safety regulation have emerged. This has resulted in contradictory outcomes. At one level the state has reduced its involvement following a neo-liberal agenda of privatisation and greater competition and at another level it has increased its involvement by pursuing further regulation and strengthening its role in safety. These forces tend to both constrain and encourage neo-liberal reforms.

This then leads to the question of whether changes in the Australian rail sector over the past 15 years have diminished the state's capacity to govern. The evidence from this case study suggests reform and organisational change has reflected an emerging separation of the state's key interests. Historically the rail sector has been about nation building and economic development. Now the state's interests concern creating a competitive rail sector and safe rail services. Developing regulations that effectively balance these interests is a key challenge for regulators. The increased investment of government resources in public sector rail regulators demonstrates an interest and commitment to stay involved and govern well. The challenge is acquiring and developing the skills to do this well under the new organisational and institutional arrangements. If legislation and regulations are any measure of involvement, it is clear the state has extended its involvement in governing the sector whilst it has moved to divest and distance itself from ownership in the sector. Rule making and standard setting reflect the preferred mode of state intervention over ownership and service provision.

Can changes in the regulatory role of the state in rail be attributed to public distrust of

major political and social institutions? The NSW experience suggests that establishing a visible safety regulator reflects community demand for evidence that government still retains a credible presence ensuring rail operators meet minimum standards and deliver good safety outcomes. The establishment of ITSRR can be seen as a response to concerns that the fragmentation of the sector has allowed operators to be less accountable.

Whilst safety regulation was initially introduced in response to the changing structure of the sector this function has been strengthened after each major rail incident. This tends to reflect the community's desire for effective regulation and the general lack of trust in markets to protect broader public interests. Regulators have emerged as a line of defence for governments. Establishing rail safety regulations is one act by governments aimed at rebuilding community trust in the co-regulatory framework for rail and perhaps is illustrative of a shift in community trust from politicians to regulators (Levi-Faur, 2006, p. 19).

It is interesting to note that those pushing for regulatory reduction express concern about the community's growing aversion to risk (Regulation Task Force 2006). Could this aversion to risk be a manifestation of diminishing levels of trust in prevailing arrangements that aim to mitigate the negative impact of markets? If this is the case then all participants in regulated sectors, including Governments need to more effectively demonstrate to communities the public value of the secure and efficient arrangements they have in place to manage and deliver services.

Conclusion

The Australian rail sector is under increasing pressure to achieve ongoing efficiencies. This presents major challenges for safety regulators as they are pressured to progress change that delivers greater uniformity in regulation across all Australian jurisdictions with minimal impact on efficiency. It may be possible to view the current tensions that exist between the objectives of safety regulation and economic regulation as a debate focussed on defining *how* the state should govern rather than one concerned with the *extent* to which the state should govern.

This debate highlights the contradictory outcomes that derive from a neo-liberal reform agenda. Privatisation and structural changes aimed at promoting greater competition have generated the need to manage competition and ensure safety. Complexity in the

rail sector has grown and increased safety risks. Safety regulators have become the trusted agents responsible for moderating the progress of economic interests. However, the extent to which they continue in this role depends on the progress of the current national regulatory reform agenda and is a subject that needs further research.

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