Special Commission of Inquiry Into the Glenbrook Rail Accident

Second Interim Report

November 2000

The Honourable Peter Aloysius McInerney

Special Commission of Inquiry into the Glenbrook Rail Accident

1 November 2000

His Excellency the Honourable Gordon Samuels A.C., C.V.O.
Governor of the State of New South Wales
Office of the Governor
Macquarie Street
SYDNEY NSW 2000

Your Excellency,

I was appointed by Letters Patent issued on 9 December 1999, and varied by Letters Patent issued on 14 April 2000 and 23 August 2000, under the authority of the Special Commissions of Inquiry Act 1983 to inquire into and report to Your Excellency on the following matters:

1. The causes of the railway accident at Glenbrook on 2 December 1999 and the factors which contributed to it;

2. The adequacy of risk management procedures applicable to the circumstances of the railway accident; and

3. Any safety improvements to rail operations (including any relevant structural changes) which the Commissioner considers necessary as a result of his findings under matters 1 and 2 and as a result of consideration of the reports of the rail safety investigations and any coronial report into railway accidents at:

    - Redfern on 6 April 2000
    - Hornsby on 9 July 1999 and 11 January 2000
    - Olympic Park on 2 September 1999 and 14 November 1999
    - Waverton on 20 December 1999
    - Kerrabee on 18 August 1998 and
    - Bell on 15 October 1998.

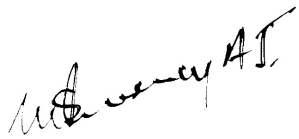
By the said Letters Patent it was declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission the subject of Your Excellency's Letters Patent.

The Letters Patent, as so varied, stated "AND OUR further will and pleasure is that you do deliver any interim reports and your final report in writing of the results of your inquiry as expeditiously as possible, but in any case on or before 31 December 2000, to the office of Our Governor in Sydney".

I have not completed my inquiries, however, I have prepared a second interim report in relation to the issue of structural change to the rail industry.

I present my second interim report on that matter for Your Excellency's consideration.

Yours faithfully,



The Honourable Mr Acting Justice Peter Aloysius McInerney

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1. Procedural History

By Letters Patent issued on 9 December 1999 and varied by Letters Patent issued on 14 April and 23 August 2000, I was appointed as a Commissioner under the Special Commissions of Inquiry Act, 1983, to inquire into and report to the Governor on the following matters:

1. The causes of the railway accident at Glenbrook on 2 December 1999 and the factors which contributed to it;

2. The adequacy of the risk management procedures applicable to the circumstances of the railway accident; and

3. Any safety improvements to rail operations (including any relevant structural changes) which the Commissioner considers necessary as a result of his findings under matters 1 and 2 and as a result of consideration of the reports of the rail safety investigations and any coronial report into railway accidents at:

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The Letters Patent, as so varied, stated "AND OUR further will and pleasure is that you do deliver any interim report and your final report in writing of the results of your inquiry as expeditiously as possible, but in any case on or before 31 December 2000, to the office of Our Governor in Sydney".

The interim report dealing with the first matter referred to in the Letters Patent as varied was delivered to the Governor on 6 June 2000. That interim report dealt with the causes of the railway accident at Glenbrook and the factors which contributed to it.

On 8 June 2000, directions were given for the future conduct of the Inquiry. In order to formally consider the adequacy of the risk management procedures in force at the time of the Glenbrook rail accident, I directed each of the rail entities and the Director General of the Department of Transport to prepare and deliver detailed reports relating to the procedures that were in place and their respective assessments of the adequacy of those procedures.

I also invited each of the rail entities to include proposals that each had for the improvement of the safety of rail operations, and any other material which each thought may assist in relation to the second and third matters that I am required to inquire into and report on by the Letters Patent as varied.

At the request of the rail entities I subsequently extended the time for delivery of those reports, and eventually each of those parties complied with the direction for detailed reports dealing with those matters. The reports by the rail entities were each received on

10 July 2000. They were responded to by the Director General of the Department of Transport on 11 August 2000.

It was apparent to me from an early time that for me to adequately inform myself about the safety improvements to rail operations, including any relevant structural changes, that could be undertaken I would need to inform myself from sources other than the rail entities within New South Wales or the Department of Transport.

Accordingly, with Counsel Assisting, I conducted extensive investigations into the structures of railways and the rail safety and risk management systems in existence in Great Britain, France and Norway. Counsel Assisting also conducted extensive investigations into the said structures and systems in existence in the Netherlands, Germany and Canada. All of these investigations were conducted in June and July 2000.

The materials obtained in the course of overseas investigations and reports by the parties to the Inquiry in relation to risk management and the improvement of the safety of rail operations exceeded 11,000 pages. Needless to say, these materials needed to be properly examined and analysed over a considerable period.

Subsequently, I received a letter dated 16 August 2000 from the Premier, requesting a second interim report "by 31 October 2000 which would outline any important measures that may require legislation". The Premier stated in his letter that this interim report would give the Parliament an opportunity to consider the interim report and its response before the end of the Spring Sittings of Parliament this year.

In September 2000, Counsel Assisting conducted extensive investigations on behalf of the Special Commission of Inquiry in Queensland, Victoria and South Australia. Once again, further materials were obtained in the course of those investigations, which materials needed to be properly examined and analysed.

No public hearings were held between 1 September and 9 October 2000, at the request of the rail entities who were supported by the Department of Transport, because of the Olympic Games and the demands they made on their respective resources. Their application in this regard was not opposed by Senior Counsel for the families of the deceased and the injured persons.

Following the placement of advertisements and the sending of letters to interested parties the public hearings of the Special Commission of Inquiry recommenced on 10 October 2000 and continued until 12 October 2000 when I adjourned for the purpose of preparing this interim report. I later sat on 14 October 2000 to correct an erroneous newspaper report and on 20 October 2000 to take the evidence of Mr Hill, a former Chief Executive Officer of the State Rail Authority. These hearings were concerned with the structure of the Government railways.

Leave to appear in the second stage of this Inquiry was given to Rail Access Corporation, the State Rail Authority of New South Wales, the Director General of the Department of Transport, Rail Services Australia, the Legal Representation Office on behalf of the relatives of the deceased and the injured passengers and the Australian Rail, Tram and Bus Industry Union, New South Wales Branch, and the members of the trade union. Leave to appear was also given to the Co-ordinator General of Rail, Mr Christie, limited

to the period of his evidence and the evidence of the Acting Director General of the Department of Transport and Mr Hill.

An alphabetical list of the witnesses who gave evidence in the second stage of this Inquiry is annexure A to this interim report. A list of the legal representatives of the parties who appeared in the second stage of this Inquiry is annexure B to this interim report.

In order for me to accede to the request for a second interim report by the Premier in the time available, it has not been possible for me to do more than outline matters of a structural nature that may require legislation. However, the issue of structural change to the rail industry is the most important matter requiring legislative change and it is with this that this second interim report is concerned.

2. History of New South Wales Railway Administration Prior to 1996

I am conscious of the fact that the matters upon which I am required to report involve a consideration of the structure of the Government railways which were substantially restructured four years ago. However, in the case of New South Wales Government railways, their history is one of significant reorganisation from time to time for social, economic and political reasons. In this area of Government activity frequent change is not novel. It is unavoidable because railway operations are so closely linked to demographic changes and economic development.

To understand the way in which railways have been structured since the early days of the Colony, it is necessary to observe that, except for a short period, railways in New South Wales have been Government owned and controlled. This has created a stark contrast to the situation in England where railways were financed privately and this led, historically, to a different system of regulation of railways. It also produced the result that political considerations featured prominently in the reasons for change and the way in which it was effected. An understanding of the history of the New South Wales Government railways is necessary to put the 1996 reforms in context and to enable a better understanding of my reasons for the model which I propose.

The history of the structure of the rail industry in New South Wales commences in 1848 with the creation of a select committee of the Legislative Council. This select committee was chaired by Charles Cowper and its report led the Legislative Council to pass a series of resolutions to the effect that railways were desirable and that the Government should offer certain inducements to encourage private enterprise to establish railways. The type of inducements included grants of land, a guarantee of interest on part of the capital subscribed and the investment of money in any company that may be formed.

The Sydney Tramroad and Railway Company was incorporated on 10 October 1848 for the purpose of constructing a railway from Sydney to Parramatta and Liverpool, with possible future extension to Goulburn and Bathurst. Construction of the line from Sydney to Parramatta commenced in 1850 with Government assistance in the form of a guarantee of interest and a grant of land for the Sydney terminal. Cowper was, at various times, both a director and the chairman of the Sydney company.

The Sydney company experienced difficulties, both in raising further capital and in keeping its employees who were attracted by the goldfields. It also lacked technical and managerial competence. The Government assisted the company once again, this time by direct investments and by bringing 500 railway labourers from England. In January 1853 the Government appointed three of the company's six directors, including the chairman, who were to be directly responsible to the Governor. The Auditor-General F.L.S. Merewether became chairman of the company.

The Hunter River Railway Company was incorporated on 10 October 1853 for the purpose of building a railway from Newcastle to Maitland.

With both companies facing difficulties in 1854, another select committee of the Legislative Council was appointed to consider measures for the continuation and extension of the railways. Once again, Cowper was chairman. The committee reported that "private companies cannot succeed in constructing Railways without Government

upon a scale which ought not to be conceded" and recommended that "these important works should be undertaken by the Government". The select committee recommended that the properties of both companies be purchased by the Government and the Railways Act 1854, gave the Government power to purchase this property. The companies passed the necessary resolutions and the property of the Hunter River Railway Company was transferred on 30 July 1855 and that of the Sydney Railway Company on 3 September 1855. From these dates, the railways became Government property. They have remained so under different administrative structures to the present day.

The Railways Act 1854, provided for three Commissioners for Railways, one of whom was to be the Chief Commissioner, to constitute a body corporate known as The Commissioners for Railways. Only the Chief Commissioner drew a salary, the others serving in an honorary capacity. In January 1855 three Commissioners were appointed.

On 26 September 1855 the Sydney to Parramatta railway, which was the first railway in New South Wales, was opened. This was just 25 years after the first railway in England, from Liverpool to Manchester, was opened on 16 September 1830. The railway between Newcastle and East Maitland was opened on 11 April 1857.

The first attempt at safeworking units or operating rules was made, according to *The Railways of New South Wales 1855-1955* by Leonie Paddison, at the time that the first train was put in service between Sydney and Parramatta. The circumstances of a meeting on the evening before the first train was due to run in New South Wales concerning rules and regulations which were to cover the operation of the line, were described as follows:

> The whole party subsequently adjourned to an hotel, and there in the bar was held the first railway conference in this State. A policeman took the chair and gave instructions for the rules and regulations to be read aloud. These regulations were drawn up from those of the Eastern Counties Railway of England, a copy of which was supplied by Mr Herald. He had previously been in the goods department of Eastern Counties Railway and was the only one of the six stationmasters appointed at that time who had any practical knowledge of railway traffic operation.

In July 1857 Captain B.H. Martindale arrived in Sydney from England to take up an appointment as Chief Commissioner of Railways. The Government Railways Act 1858 substituted for the three Commissioners a single Commissioner for Railways and provided that the latter was to be a corporation sole known as The Commissioner for Railways. The Act commenced on 1 December 1858 and Captain Martindale became the first such Commissioner. The relevant legislation subjected him to "such regulations as shall from time to time be made by the Governor, with the advice of the [Executive] Council". For the next three decades railways were controlled by a single Commissioner for Railways.

In addition to the office of Chief Commissioner for Railways, Captain Martindale performed the duties of Commissioner for Roads and Superintendent of Electric Telegraphs and, in early 1859, the three positions were consolidated into one with the title Commissioner for Internal Communication.

Later, when the Department of Lands and Public Works was divided in October 1859, Captain Martindale became Under-Secretary for Public Works and the office of Commissioner for Internal Communication was abolished. He continued as Commissioner for Railways, which office carried no separate remuneration, and the railways became located in the Department of Public Works, which was not to Captain Martindale's liking. He resigned by letter dated 20 October 1860, but remained in both offices until January 1861 when he returned to England.

Mr Charles Goodchap was appointed Commissioner for Railways in January 1878 when the offices of Under-Secretary for Public Works and Commissioner for Railways were separated. From *The History of Railways in New South Wales 1855-1955*, it appears that the next very significant reforms in the structure of the management of the rail network which occurred in 1888 were precipitated by the events during the previous decade:

> It had become obvious during the administration of Mr Goodchap that politics were playing too dominant a part in the management of the railways. Goodchap, who had succeeded Rae as commissioner in 1878, was baulked at every turn by political interference. The ordinary necessities of railway maintenance were denied him by irresponsible and incapable politicians, and it had become the practice to make alterations in the rates and train running times on political grounds rather than to meet legitimate traffic requirements. Any attempts at administrative reforms were thwarted by lack of finance and it was only too clear that there was urgent need for drastic overhaul of the Department.
>
> This untenable situation was recognised by Mr William Lyne, the Secretary for Public Works, who in August 1886 introduced a Bill in the Legislative Assembly providing for the appointment of three independent Railway Commissioners. However, he was accused by several Members of aspiring to the position of Chief Commissioner himself and he withdrew the Bill.
>
> Then, in January 1887, there was a change in the Government and the Premier, Sir Henry Parkes, fully recognised that unless the railway administration were made safe from political interference the whole system would collapse.
>
> Parkes was tired of the importunate demands of politicians soliciting jobs on the railways for relatives, and attempts to secure political interference with every petty act of administration. He realised that the problem could only be met if the Railway Commissioners enjoyed some measure of independence from interference in day-to-day management.
>
> He therefore introduced a Railway Bill which, after lengthy debates, was passed by both Houses of Parliament and came into operation on 22 October 1888.

The Government Railways Act 1888 established a new Department of Railways independent of the Department of Public Works. The office of Commissioner was abolished and three Commissioners were appointed for a term of seven years, one of whom was the Chief Commissioner. Together, they constituted a body corporate known

as The Railway Commissioners of New South Wales. Whilst responsibility for repair and maintenance of all tracks and all decisions on the position, character and "suitableness" of all stations, station platforms, gate-houses, station-yards, sheds, piers, wharves and jetties was vested in the said Commissioners, the survey and construction of all new lines remained the responsibility of the Department of Public Works. This divided responsibility continued until January 1917 when these functions were transferred to the Department of Railways. The Government Railways (Amendment) Act 1916, provided that the Commissioners were to be the Constructing Authority, within the meaning of the Public Works Act 1912, for all railway lines.

Mr E.M.G. Eddy held the office of Chief Commissioner from 1888 until his death at the age of 46 in 1897. Early in that period, the Government increased its investment in the railways. The Government granted the Commissioners the sum of £1,000,000 to be repaid in yearly instalments of £75,000 each, to enable them to carry out proposals for the reduction of gradients, the strengthening of the permanent way generally, the improvement of the rolling stock and the replacement of timber bridges by more permanent structures of steel, iron or brick.

Following the death of Mr Eddy and the appointment of one of his Assistant Commissioners as Chief Commissioner, relations between the three Commissioners deteriorated and a Royal Commission was established in 1905 to investigate and report. The report of the Royal Commission led to the Railways Commissioners' Appointment Act 1906 which concentrated the authority to administer the railways in the Chief Commissioner, who was to be a body corporate with the name Chief Commissioner for Railways and Tramways. The Assistant Commissioner for Railways was to assist, and be under the control of, the Chief Commissioner.

The Government Railways (Amendment) Act 1916 provided for a Chief Railway Commissioner and three Assistant Railway Commissioners and for authority to administer the railways to be vested in all the Commissioners as a body corporate which was known as The Railway Commissioners for New South Wales and not in the Chief Commissioner alone. The Act also provided for the appointment of one of the Assistant Railway Commissioners as Deputy Chief Railway Commissioner. Whilst four Commissioners, including a Deputy Chief Railway Commissioner, were appointed in January 1917, when the person holding the office of Deputy Chief Railway Commissioner died in August 1918, the vacancy was not filled and three Commissioners continued to control the railways.

On 26 May 1924, Sir Sam Fay and Sir Vincent Raven were appointed pursuant to the provisions of the Royal Commissions Act 1923 "to inquire into the management, equipment, and general working including the finance, administration, control and economy of the Railway and Tramway Services in New South Wales, and more particularly:

> The organisation and running of the passenger and goods traffic, the services rendered, the scales of fares and freights operating, and the financial returns.
>
> Matters appertaining to the organisation and conduct of the Mechanical Section of the system in relation to the respective types of locomotives and

rolling-stock adopted, cost, economy of life and use, equipment, renewal, and maintenance charges.

Matters relating to the construction, renewal and maintenance of the permanent way, including station equipment and the systems of signalling and interlocking adopted.

The appointment of the Royal Commission was announced by the then Premier on 22 December 1923, as the result of discussions in the Legislative Assembly on railway administration generally, including the re-appointment or otherwise of the then Railway Commissioners. The Royal Commission recommended that there be a Chief Railway Commissioner, a Financial Assistant Commissioner, a Power Assistant Commissioner, a Tramway Assistant Commissioner and three Area Assistant Commissioners.

Following the report of the Fay-Raven Royal Commission, the Government Railways (Amendment) Act 1924, provided for the appointment of a Chief Railway Commissioner for New South Wales, two Assistant Railway Commissioners for New South Wales and four Area Commissioners. The Chief Commissioner and the two Assistant Commissioners were to be appointed by the Governor for a term of seven years. This form of administration commenced on 1 January 1925.

The Government Railways and Main Roads (Amendment) Act 1931 provided that from 1 January 1932, the office of Assistant Commissioner was deemed to have been abolished and that the authority of the Railway Commissioners to administer the railways was to be exercised by the Chief Railway Commissioner for New South Wales.

This form of administration lasted only three months. The Ministry of Transport Act 1932 created the office of Minister of Transport and also created a Department of Transport. The Act provided for the division of the Department into nine branches, including the Railway and Tramway Transportation Branch. The Act constituted a Board of Commissioners, being a body corporate named The Transport Commissioners of New South Wales comprising a Chief Transport Commissioner and seven Transport Commissioners. Each branch of the Department of Transport was headed by a Transport Commissioner. One of them was in charge of the Railway and Tramway Transportation Branch and responsible to the Chief Transport Commissioner.

The Railway and Tramway Transportation Branch controlled traffic operations of railways and tramways. The Power and Mechanical Branch controlled locomotive power, rolling stock, workshops, electrical, steam and other power operations. The Way and Works Branch controlled construction and maintenance of, among other things, railways, signalling equipment and buildings. The Commercial Branch controlled freight and passenger traffic, real estate interests and the sale of spirituous and other liquors. There were also Finance, Staff and Legal Branches and the Secretary to the Board of Commissioners who controlled, among other things, advertising, publicity and investigations.

This form of administration lasted only nine months. It was abolished by the Transport (Division of Functions) Act 1932 which created a Ministry of Transport, divided into three Departments, including the Department of Railways administered by the Commissioner for Railways. The Commissioner for Railways was a body corporate and

was appointed by the Governor to hold office for a period of seven years. The Act also contained power to appoint an Assistant Commissioner for Railways.

The next major structural change occurred some 40 years later when the Public Transport Commission Act 1972 constituted the Public Transport Commission of New South Wales as a corporation and dissolved the body corporate constituted under the name of the Commissioner for Railways. Five Commissioners were to be appointed by the Governor, two of whom were to be appointed on the nomination of the Minister. One of the full-time Commissioners was to be appointed as Chief Commissioner. The full-time Commissioners were to hold office for a term not exceeding seven years and the nominated Commissioners were to hold office for a term not exceeding three years. The Act also provided that the Public Transport Commission was subject to the control and direction of the Minister.

The Transport Authorities Act 1980 constituted as corporations the State Rail Authority of New South Wales, the Urban Transport Authority of New South Wales (with functions relating to omnibus and ferry services, taxi-cabs and private hire cars) and the Railway Workshops Board of New South Wales and dissolved the Public Transport Commission of New South Wales. The State Rail Authority of New South Wales was constituted as a corporation consisting of seven members, four of whom were to be ex officio members and three of whom were to be appointed. The ex officio members were to be the Chief Executive of the State Rail Authority, the two Deputy Chief Executives of the State Rail Authority and the Managing Director of the Urban Transport Authority. One of the Deputy Chief Executives was to be appointed Deputy Chief Executive (Industrial Relations). The appointed members were to be appointed by the Minister and of them, one was to be appointed as Chairman of the State Rail Authority, one was to be elected as prescribed and one was to be appointed from a panel of not less than three persons nominated by the Labor Council of New South Wales.

The State Rail Authority had and could exercise the functions conferred or imposed on it by or under the Transport Authorities Act 1980, the Government Railways Act 1912 and any other Act. It also had and could exercise the functions other than ferry services, previously exercisable by the Public Transport Commission, except those conferred or imposed on the new Urban Transport Authority, created by the Transport Authorities Act 1980.

The Transport Administration Act 1988 reconstituted the State Rail Authority of New South Wales as a corporation to operate both railway passenger services and freight railway services. The Act constituted a State Rail Authority Board consisting of the Chief Executive of the State Rail Authority and not less than four and not more than seven members appointed by the Minister. The Minister was authorised to give the State Rail Authority Board written directions in relation to the exercise of its functions. The State Rail Authority was to supply the Minister with information relating to its activities as required by the Minister and to keep the Minister informed of the general conduct of its activities and of any significant development in its activities. Finally, the State Rail Authority was required to prepare and deliver to the Minister a draft corporate plan for each financial year and to consider the Minister's comments thereon.

The Rail Safety Act 1993, was the first attempt in any Australian jurisdiction to legislate comprehensively in relation to rail safety. Prior to this, the State Rail Authority had a

general statutory duty under the Transport Administration Act for the safety of the rail network. The Rail Safety Act provided for the safe construction, operation and maintenance of railways by at least three means. First, the Act provided for the establishment of a scheme for the accreditation of owners and operators of railways and for the certification of the competency of railway employees performing railway safety work. Secondly, the Act provided for the development and monitoring of safety performance standards for and with respect to the safe construction, operation and maintenance of railways. Thirdly, the Act provided for the carrying out of regular safety compliance inspections, the reporting of notifiable occurrences, the holding of inquiries into railway accidents and other incidents and the adoption of other measures aimed at securing rail safety.

The above history of legislative and administrative changes reflects, in part, the rapid expansion which occurred in terms of rail infrastructure and patronage. When the railway first opened in 1855, there were 14 miles of track and 98,864 passenger journeys in the first year. In the first decade after it was opened, 129 miles of track were built, in the second decade 294 miles of track were built and in the third decade a staggering 1,295 miles of track construction took place. By 1905 there were 3,280 miles of track and the railway was carrying 35,158,150 passengers a year. By 1924, the mileage had increased to 5,523 miles.

By this time, many of the lines operated by the railways were unprofitable but were maintained by the Government as a public utility. Consequently, an amendment was made to the Government Railways Act in 1928 to establish a Government Railways and Tramway Fund and sums of money were paid each year as compensation to the Government railway for the operation of unprofitable lines.

By 1954, the length of track stood at 6,101 miles which carried 278,904,236 passengers a year. The amount paid by way of compensation to the railways in the same year was £1,000,000, an amount which the author of *The Railways of New South Wales 1855-1955* says was far short of the actual losses involved. It is also worth noting that, according to that author, between 1926 and 1948 there was not a single instance of death to a passenger due to a train accident.

Currently, the New South Wales rail network covers 8,500 kilometres of track of which 1,700 kilometres is electrified. There are 2,521 passenger and freight train movements daily, accounting for more than 800,000 passenger journeys and approximately 220,000 tonnes of freight respectively per day. The Government still pays the railways for unprofitable services in excess of $650,000,000 per annum.

Both Mr Christie, the Co-ordinator General of Rail, and Mr Hill, a former Chief Executive Officer of the State Rail Authority, gave evidence about the complexity of the Sydney metropolitan rail network. Mr Christie stated:

> I believe by many standards of an urban rail system it is complex, in the sense that it generally doesn't operate as individual systems. Many of the overseas metropolitan railways are so constructed that individual lines can be operated separately.

> The effect of that is that problems in one area don't spread necessarily to another area. That is not the case in Sydney, where unfortunately we are victims of history and the system has been built as a radial system and lots of connections have been built between those systems. For example, the Quay railway was built in the 1950s which connected two old systems together. They were independent at St James and Wynyard and more of those independent connections have been built over the years. The only part of the system that operates in a simply autonomous way is the Illawarra system and it seems to me that separates it from other problems…
>
> Most other developed countries, their rail systems have alternative routes that can be used while one route is shut down. That doesn't happen in the Sydney system. We have long stretches of double track that, if they are to be maintained, have to be maintained with some inconvenience on occasions to the travelling public…

Mr Hill stated in relation to the 1996 disaggregation:

> People failed to recognise, and I think still do, in looking at the management of the New South Wales railways, the electric network, just how complex it is. It is carrying nearly one million passengers on a work day, but the infrastructure is very complicated…The Sydney electric network has about 3,000 sets of points that are used every peak hour. This is because trains on different lines and different sectors have to share tracks with others, and every time you get a set of points, it has a motor that drives it. It is moving bits of steel rail. If something jams, if there is some problem with the detection, it will fail on you, if the motor fails. Each one is protected with signals around it to stop trains coming in the wrong direction, warning signals behind it. They can tend to fail. It is very, very complex by world standards and I think the management structure should take that into account.

With the extent of public ownership and usage of the rail network and the complexity of its infrastructure and operations, the decision to disaggregate its components was one that required a thorough knowledge of the way the Government rail system had developed and careful consideration of the effect of disaggregation upon a complex interconnected system.

It does not appear that these matters were given sufficient consideration in the 1996 reforms. I have the impression, rightly or wrongly, that the changes in 1996 were driven more by ideological considerations based upon supposed competition theory than on how a very heavily patronised public utility could best be managed in the interests of efficiency and safety.

3. Disaggregation and Restructuring of the Railways in 1996

Prior to 1 July 1996, the State Rail Authority was a vertically integrated rail organisation within one statutory authority that was divided into four divisions, all of which reported to a single Chief Executive Officer and Board. The divisions of the organisation were CityRail, CountryLink, FreightRail and a Property Division.

CityRail operated the suburban and intercity passenger train services throughout Sydney, as well as in Wollongong, Newcastle, the Southern Highlands and west across the Blue Mountains as far as Lithgow. It maintained 1,700 kilometres of electrified track and its associated infrastructure and 60 kilometres of non-electrified track. It was responsible for train control and signalling functions covering the metropolitan area.

CountryLink operated long distance passenger services to intrastate and interstate destinations. FreightRail operated freight services. It maintained 7,469 kilometres of track and infrastructure outside the metropolitan area, as well as major freight terminals in metropolitan and country centres. FreightRail also managed the train control and signalling functions outside the metropolitan area.

The property division managed all property owned by the State Rail Authority. Safety responsibilities were undertaken by the different divisions but were still subject to centralised management and co-ordination.

On 11 April 1995, the New South Wales Government became a signatory to the National Competition Policy Agreement which was designed to implement the recommendations of the Hilmer Report on microeconomic reform. Subsequently, New South Wales enacted the Competition Policy Reform (New South Wales) Act 1995 which, among other things, applied certain laws of the Commonwealth relating to competition policy as laws of New South Wales.

Two elements of National Competition Policy Agreement are of direct relevance to the restructure of the New South Wales Government railways. First, it required that public monopolies be stripped of any regulatory functions prior to being exposed to competition. Secondly, that a regime be established to enable third party access to significant Government owned infrastructure facilities.

The first of these requirements had already been addressed in New South Wales by the passage of the Rail Safety Act 1993. This Act removed the general power of the State Rail Authority to regulate the safety of other operators on its track and established a safety regulatory regime administered by the Director General of the Department of Transport.

It was the second requirement of the Competition Policy Agreement that provided the impetus for the major restructure of the State Rail Authority which was effected by the Transport Administration Amendment (Rail Restructuring and Corporatisation) Act 1996. In his second reading speech when introducing this Bill into Parliament, the then Minister for Transport, the Hon B Langton said:

> Our reforms are the fullest response yet by an Australian State Government to the Competition Principles Agreement between the Commonwealth and the States.

The second reading speech and subsequent debate in the Legislative Assembly when the Transport Administration Amendment (Rail Restructuring and Corporatisation) Bill was introduced demonstrate that both the Government and the Opposition supported the restructure and provides an insight into the expectations that both sides of the Parliament had for the outcome.

The then Minister for Transport, the Hon B Langton, commenced his second reading speech for the Bill with the following words:

> This Bill represents the most profound reform to rail system management ever undertaken in Australia. Indeed, it establishes principles which are the equal, and possibly in advance, of railway management practices anywhere in the world.

In his concluding remarks, Mr Langton said:

> In summary, this Bill introduces reforms which will revolutionise the service quality and the cost effectiveness of the New South Wales rail industry. Separating train operations from infrastructure management will dramatically improve the services of the State's passenger and freight operations, and put the management of the track on a fully commercial footing aimed at ensuring that rail infrastructure facilities meet the users' needs…
>
> This Bill will meet all of New South Wales' obligations in respect of the Competition Principles Agreement and will ensure a rail regime that is superior to other states on all counts.

There was bipartisan support for the Bill during the second reading debate. Mr M Photios, the then Shadow Minister for Transport, spoke on behalf of the Opposition in the Legislative Assembly and made this clear in the following statement:

> There is bipartisan support in this State for this important legislative framework, which will facilitate better business practices, a commercialised approach to the provision of transport services and greater specialisation.

Mr Photios also made it clear that he considered the Bill to be a product of the policies of both sides of the Parliament. He stated:

> The Opposition generally supports the principles and the thrust of the Transport Administration Amendment (Rail Corporatisation and Restructuring) Bill. The Bill goes some way towards achieving the objectives of the former coalition Government and follows much of the work achieved by the previous Minister, Bruce Baird, the previous board of the State Rail Authority and government agencies generally.

He also later stated:

> In effect, the Baird-Egan model - a unique marriage from one government to the next - has come to pass in this Bill….
>
> Essentially the Bill will bring together coalition policy on a continuing basis, implemented by the current Government.

Neither the Government's nor the Opposition's expectations for a significantly improved railway industry was realised.

Under sections 19C and 19D of the Transport Administration Amendment (Rail Restructuring and Corporatisation) Act 1996, Rail Access Corporation (hereafter referred to as RAC) was constituted as a State owned corporation under the State Owned Corporations Act 1989 with power to hold, manage and establish efficient, safe and reliable infrastructure facilities, and to promote and facilitate access to the New South Wales rail network in accordance with the New South Wales Rail Access Regime. Rail infrastructure facilities were defined under section 19A(1)(a) to include railway track, associated track structures, cuttings, drainage works, track support earthworks, tunnels, bridges, level crossings, signalling systems, train control systems, communications systems and overhead power supplying systems.

FreightRail Corporation was constituted by section 19G as a State owned corporation. One of its principal objects under section 19H(1) was to operate efficient, safe and reliable freight rail services. It is not necessary for me to discuss freight operations in this second interim report. I note that the Government has recently announced its intention to privatise FreightCorp.

The Rail Services Authority (hereafter referred to as RSA) was constituted by section 19U. The principal objectives of RSA included to be an efficient, safe and reliable supplier of goods and provider of services to the rail industry in New South Wales. The RSA was later made a State owned corporation pursuant to the State Owned Corporations Act 1989 by the Transport Administration Amendment (Rail Services Authority Corporatisation) Act 1998.

Section 4 of the 1996 Act constituted the State Rail Authority (hereafter referred to as SRA) and its principal objectives included to operate efficient, safe and reliable railway passenger services. Under section 7A of the 1996 Act, the operation of the railway service by the SRA was made subject to the requirements of the Rail Safety Act 1993.

The effect of the 1996 restructure was to alter the structure of the Government rail industry from a single vertically integrated statutory authority, into a horizontal structure with the following features. First, RAC became the owner of the rail infrastructure with the objectives and functions above stated. Secondly, the former State Rail Authority was reconstituted as a passenger service organisation by vesting the infrastructure assets previously owned by the former State Rail Authority in RAC and by transferring the maintenance responsibilities in respect of the track previously owned by the former State Rail Authority to RSA.

In other words, the first of the 1996 reforms was to create two State owned corporations new corporations, RAC and FreightCorp and two statutory authorities, SRA and RSA. With the subsequent corporatisation of RSA in 1998, the SRA was the only part of the railway which was not corporatised.

In outlining the anticipated benefits to be derived from the restructure in the second reading speech, the Hon B Langton stated:

> The State Rail Authority will retain its identity but will shed its infrastructure management, track maintenance and freight activities. It will become a specialist passenger train operator through its CityRail and CountryLink divisions. This means that the State Rail Authority will be able to concentrate on the delivery of high quality, efficient and value-for-money passenger services without having to concern itself with track maintenance, infrastructure, project management and other related issues. These will be matters for the Rail Access Corporation and the Railway Services Authority. From July, the State Rail Authority will be free to press for improvements to the system as a customer, rather than as an infrastructure provider which also has an obligation to run trains.

In relation to RAC the Minister said:

> To perform its functions effectively, the Rail Access Corporation will develop and maintain an informed customer capability: it will understand and specify its needs and verify that they are being adequately provided by its suppliers, but it will not undertake such works itself-to do so would be to distract the management of the corporation from the more important task of administering the open access regime.

Competition was to be introduced into the maintenance of the rail infrastructure. Initially, RSA would provide exclusive maintenance services and subsequently it would have to compete with other contractors for the work of maintaining the rail infrastructure. In the words of the then Minister for Transport:

> The Railway Services Authority will be made up of the State Rail Authority's existing railway services group, which operates rolling stock maintenance workshops as well as specialist trackwork services, together with track maintenance divisions of CityRail and Freight Rail, and the capital works project management group from the State Rail Authority's head office. It will commence operations with contracts for the main part of the Rail Access Corporation's infrastructure maintenance and construction work as well as a range of rolling stock overhaul and repair work for the State Rail Authority and the Freight Rail Corporation. Over a four year period, this business will progressively be made contestable. Railway services will carry out such work as it is contracted to do by its clients. For the Railway Services Authority to compete on an equal basis with the private sector, it will need the same freedom to pursue work beyond the New South Wales rail sector. Thus it will also be allowed to bid for work from outside New South Wales and from outside the rail industry.

None of the intended outcomes of the restructure eventuated for RAC, RSA or SRA.

4. The Experience of Disaggregation

The concept of disaggregation, as opposed to an integrated railway system, is frequently sourced to a 1991 Directive of the Council of Ministers of the European Economic Community known as Directive 91/440.

The Directive stipulates that member States must do at least four things. First, to manage railway undertakings (train operators) in such a way that those undertakings understand the need for competitiveness and sound financial management. Secondly, to make railway undertakings independent by giving them a budget and system of accounts which are separate from those of the state. Thirdly, on specific terms, to guarantee rights of access for rail transport operators in other member States to international passenger, freight and combined transport services. Fourthly, to have separate accounting for railway infrastructure (track, track side fencing, signalling, electrification systems, operational buildings, tunnels, viaducts, bridges and railway stations) and the operation of railway transport services as such.

There was a clear focus in the Directive on the provision of greater transparency in the use of public funds as well as improved ability in measuring the actual performance of infrastructure and operations.

There are a number of elements of article 1 of the Directive which are of particular relevance. First, the aim of the Directive was to facilitate the adoption by the railways of the European Union of the needs of the single market economy and to increase their efficiency by, among other things, separating the management of railway operation infrastructure from the provision of railway transport services. Secondly, only the separation of accounts was compulsory, while the organisational or institutional separation was entirely optional. Thirdly, article 1 states that an increase in the efficiency of the European Union railways was to be brought about by ensuring the independence of the management of railway undertakings.

It is also worth noting that article 2 expressly permitted member States to exclude from the scope of the Directive those railway undertakings whose activity was limited solely to the provision of urban, suburban or regional services.

Article 6 provided in part that "aid paid to one of these areas of activity may not be transferred to the other". Not only was the separation of accounts compulsory but article 8 provided that the manager of the infrastructure was to charge railway undertakings and international groupings using that infrastructure.

The first feature of the 1996 reforms that a comparison with the requirements of the Directive demonstrates is that the 1996 reforms went further than what would have been required by this precursor to the Hilmer Report.

The second feature of the restructuring in 1996 was that it was implemented without any arrangements to enable a smooth transition from the old structure to the new structure and problems implementing the requirements of the legislation developed from the outset.

I quoted in the previous chapter the then Minister for Transport when he stated that the reason why RAC would not undertake maintenance work on its own track was that to do

so would be to distract its management from the more important task of administering an open access regime. To my observation, the emphasis upon administering an open access regime has been to the detriment of the infrastructure. I have based this observation and many of the observations that follow upon material contained in risk management reports provided by SRA, RAC and RSA. As I noted in Chapter 1, the allegations made in these reports are not in dispute.

When disaggregation occurred RAC, as was the intention, did not have staff to enable it to conduct maintenance and construction of infrastructure facilities, obliging it to engage independent contractors. The scheme contemplated competition between maintenance contractors for work on the infrastructure.

In accordance with the intention of the reforms on 19 July 1996 RAC entered into thirteen deeds of agreement with RSA under which RSA was to provide capital works, major periodic maintenance and routine maintenance and to provide certain project management services.

The experience of four years of contracting out has highlighted a number of areas that require specific attention particularly in relation to safety management, cost control, works planning and delivery.

At the time of disaggregation it was intended that all contracts for infrastructure construction or maintenance should be contested in accordance with the contestability policies of the New South Wales Government. Four were put out to tender, RSA was awarded one in its own name; Rail Infrastructure Alliance, being a joint venture between RSA and Theiss Contractors, obtained the contract for the Blacktown to Richmond line; Fluor Daniel obtained the contract for the East Hills and the Waterfall to Bombaderry lines; and RSA obtained the remaining bundles of contract work.

The policy of contestability did not survive. On 11 May 1998, the Minister for Transport, for what reason is not clear, issued a direction to the Board of RAC requiring it immediately to suspend its program of contestability of all rail maintenance contracts until 1 July 1999 and to negotiate with RSA to amend existing contracts between RAC and RSA to facilitate RSA performing rail infrastructure maintenance for RAC during the suspension period.

It follows that one of the cornerstones of the disaggregation in 1996, namely contestability for the maintenance contracts of the infrastructure owner, has ceased to be operative.

Another illustration of the problems associated with the 1996 reforms is in relation to network control. Network control is concerned with the day to day management of the movements of trains through the rail network and includes the work performed by train controllers and signallers. It also includes train monitoring, train timetabling, incident management, track possession management and the preparation of operating statistics.

Under the 1996 reforms network control was to be the responsibility of RAC as infrastructure owner. However, RAC was not provided under the restructure with the expertise in terms of staff, intellectual property and equipment to undertake all aspects of network control directly, and it thus had to contract that function to the SRA. Once again

this contract was negotiated in a tight time frame and required the parties to anticipate how the railway system would function after disaggregation. There were also problems in determining whether some services should be classified as network control and therefore an RAC responsibility, or as an activity inherent in the provision of passenger services and therefore a responsibility of SRA. It was then decided that the agreement should include a mechanism whereby the terms and conditions could be reviewed as understanding of the requirements for network control services developed, but this has not occurred. The agreement was due to expire on 29 June 2000 but this term has been extended to allow RAC and SRA to finalise negotiations. It is not clear what has happened, if anything, in this regard.

The arrangement by which network control services were subcontracted by RAC to SRA has created difficulties within SRA. Under the legislation SRA was to be exclusively a train and station operating organisation. Otherwise SRA could potentially monopolise network control services at the expense of other operators.

The response to this was to create restrictions on communication between network control and the remainder of SRA, which was by far the largest user of the rail network. SRA employees, contracted to RAC as controllers and signallers working in network control are therefore expected to operate with a notional barrier between them and other SRA employees engaged in the rail system. This is obviously an artificial and unsatisfactory state of affairs.

The unsatisfactory nature of that arrangement was illustrated by an experience that Mr Hill related in his evidence. Mr Hill was Chief Executive of the State Rail Authority from 1980 to 1986 and from April to October of 1997. He stated:

> When I arrived in 1997 I tried to ascertain how the railways, with 140 years of experience, could introduce a timetable that couldn't work…I went to Network Control and I thought I owned them. I said: 'Look, you own timetabling, how come we introduced a timetable that couldn't work'. They said: 'No, no, we got a specification from CityRail down the other end of the corridor. They told us what they wanted. We simply drew a timetable to meet their specifications. It is there'.
>
> So I went to CityRail and said: 'It is yours'. They said: 'No, no, we simply surveyed our passengers and gave them the passenger loading numbers and the generic shape of what we wanted. They designed it'.
>
> So I abolished them both. And there were good people running them…It was the next day I was told that what I had done was illegal, that the SRA did not own [Network Control] even though we employed the people, it was under contract to the RAC.

On another level, National Rail Corporation Limited has complained in a written submission that it has an access agreement with RAC, but because RAC does not even manage network control functions, the latter cannot effectively influence day to day train access decisions.

A further illustration of the way in which the restructuring of the industry has failed to work in practice relates to the carrying out of infrastructure projects which have as their purpose, the enhancing of the network. The SRA, under the access agreement, was entitled to make submissions to RAC for the carrying out of maintenance, upgrading and development of work on the network in order for it to satisfactorily carry out its responsibilities as a train operator. In practice much of the work consisted of projects in progress under the former SRA capital works program. RAC assumed an owner control focus rather than an approach based upon mutual interdependence between itself and the SRA. It tended to act without consultation with, or regard to, SRA in developing the detail and the priorities for works to be carried out.

When disaggregation took place an access agreement between SRA and RAC was signed. This agreement had as its purpose access to RAC owned track by SRA for the conduct of train services. It was a ten year agreement and it expires on 30 June 2006. Under the agreement RAC was to maintain the rail infrastructure facilities, for the first twelve months of operation or until otherwise agreed, in the condition that they were in at the time of the agreement. Schedule N to the access agreement was a draft network assessment management plan which listed the works designed to maintain the current network in average condition and to improve it in some areas. SRA has complained that this has not occurred and that deterioration in the level of maintenance has disrupted train services for which its customers hold them responsible.

Similar problems arose when new capital works were being considered. SRA had proposals based on its customer needs. RAC had its own priorities for capital works based on its asset management and access control functions.

Once these difficulties presented themselves attempts were made to overcome the problems that had developed. The SRA requested RAC to comment on future projects proposed by SRA and meetings between representatives of the two organisations were held. Meetings were held every fortnight but later, for some unexplained reason they became irregular. These meetings dealt with strategic issues and monitored progress of capital works together with future planning and development. Committees considered such matters as a new signal box at Blacktown, Hornsby signalling arrangements and development of the Sydney yard. In addition there were specific project meetings to discuss major projects which were in the course of being carried out. It is said that this was necessary to ensure that SRA had detailed input into projects.

But despite these consultations RAC continued in some respects to proceed in its own way. One example was a consideration by RAC of electrification of the railway to Kiama. Plans and specifications were prepared without consultation with SRA. They had fundamental faults in them so far as SRA was concerned. For example, it appears some of the sidings proposed were not long enough for electric trains and RAC had considered the use of alternating current because of apparent cost advantages. If that had gone ahead SRA would have had to provide compatible rolling stock.

One unintended consequence of the way in which the arrangements between SRA and RAC have failed to work harmoniously is that SRA began initiating and funding projects for the development of the rail network and infrastructure to ensure that it provided for the needs of customers using its services, particularly in the metropolitan areas. It started to do this because of the unsatisfactory way in which the infrastructure had been

maintained from the SRA's perspective. It had a capital budget from which the projects were funded. The SRA funds approximately 90 per cent of projects in the metropolitan areas. This was not an intended consequence of the disaggregation that was put in place in 1996. The SRA was intended to be a train and station operator and RAC was intended to provide a suitable track upon which it would operate.

The reason why SRA began funding some of its own infrastructure work was illustrated during the evidence of Mr Hill about an experience that he had in 1997 with delays caused by a set of points at Glenfield southwest of Sydney. His evidence was:

> It occurred to us that this set of points had failed on a number of occasions before, so I phoned the Rail Access Corporation to find out if we can do something to fix these points. And Rail Access, of course, didn't know a great deal about it,…so I then phoned the engineer in that division, who I knew from my previous days at the SRA, who gave me an education about this set of points and the motor and the problems of its foundations and its subsidence and I said, 'What you have explained is we need to replace this motor, fix the foundations and put in a back-up, because we don't want this happening again and if it does this is going to knock around tens of thousands of people'. To which he said: 'David, I am only the contractor. You have to go to the Rail Access Corporation if you want that fixed. They said: 'Well, you can pay for it but we already have a ranking of priorities and this is not on the A1 priority list for fixing.'
>
> I understand that that set of points has failed on a number of occasions since.

This, and other experiences, led Mr Hill to express the view to the Inquiry that SRA should have some "directional management control over maintenance, maintenance planning and upgrading of the infrastructure in the electric network". He stated that he believed this could be achieved within a system under which SRA and the infrastructure owner and maintainer were separated.

The 1996 reforms did not contemplate that SRA would require a track asset, planning and development function. Fortunately, it appears that this has been retained. As stated above, it appears that SRA develops projects, does the conceptual work, costs the projects, obtains Board approval for the expenditure and RAC carries out the project at the expense of SRA.

A further way in which it is demonstrable that the present structural arrangements are unsatisfactory is by briefly examining arrangements that were put in place to deal with particular areas of track.

Under the access agreement between SRA and RAC the latter is required to develop line management plans after extensive consultation with SRA. These are to set RAC's plans on an annual basis for infrastructure investment over a five to ten year period for each network line. They are intended to deal with signalling, train control, telecommunications and electric power systems and SRA is of the view that such line management plans would provide a useful overview of the development which may affect SRA operations. However, according to SRA there are significant shortcomings in

the information provided in the line management plans. It is said that they are general and superficial and that this limits SRA's ability to comment usefully and to have the necessary information for its own planning. The SRA states that there is no formal document setting out RAC's long term vision or setting out formal processes for consultation between SRA and RAC about long term strategic planning.

The SRA pays an annual fee of $300,000,000 to RAC to use the rail network. This is based largely on the costs of maintaining the rail infrastructure necessary for SRA's operations. The lack of detail in the information provided to SRA leaves it unable to satisfy itself whether the access fees that it pays are fully utilised in the maintenance of infrastructure or to satisfy itself that the infrastructure is not being allowed to deteriorate. Furthermore, SRA lacks information as to whether the scope of the work being performed by RAC is consistent with SRA's current and future needs.

The reason for the lack of detail in the information provided by RAC to SRA may be gleaned from the evidence given by Mr Christie, the Co-ordinator General of Rail. I will return to Mr Christie's evidence in detail later in this interim report. However, at this stage it is sufficient to observe that one of the problems of disaggregation that Mr Christie has observed is that RAC is not an informed owner and manager of the asset. This is because it does not have the knowledge or expertise itself to determine what needs to be done in the maintenance of the asset. If it does not know what infrastructure work needs to be done to properly maintain the asset on a long term basis, it is hardly surprising that it cannot, and does not, convey the detailed information to SRA which the latter organisation needs to assess the line management plan information provided to it.

As I observed in the previous chapter RSA is a State owned corporation with its own commercial objectives. At face value, within its own organisation it does have programs for a systematic analysis of the ways in which the infrastructure may fail and the ways in which this could be managed. According to RSA it is able to determine how frequently asset maintenance work needs to be done in relation to particular parts of the infrastructure. It prepares technical maintenance plans to manage system failures. It has set up an integrated asset engineering group to create systems to manage the assets. It estimates when maintenance of various systems will be required.

RSA maintains that there are two types of failures of assets, conditional and functional. Assets are regularly inspected. If an asset fails to meet set conditions and standards it is rated as conditional. A functional failure on the other hand is when the item stops working and affects the working of the system. For example, when a signal goes to red without apparent reason.

According to the RSA management model, random failures can be managed by a maintenance program. Once a random failure occurs an investigation is conducted and conclusions are made about the required maintenance task, the time for such task to be performed and the responsibility of the person required to undertake the work. Individual management plans are being developed for civil, electrical and signal branches.

The various elements of the maintenance management system are set out as maintenance policies and in manuals. RSA has developed information management systems which are designed to assist maintenance staff to identify work which needs to be done and to undertake infrastructure maintenance.

RSA has and maintains an asset register with a full register of equipment. Each piece of equipment has its own maintenance regime and/or inspection schedule. Staff can identify what is due for inspection and periodic maintenance and repair. Maintenance schedules, information records of work done are all collected as data. In addition, there is data on the costs of equipment. All this data can give rise to optimal maintenance policies.

In addition, RSA has a technical maintenance plan for each of the civil, electrical and signalling disciplines. These identify when the items are to be maintained, how they are to be maintained and by whom they are to be maintained.

RSA has also developed a number of software systems which record and report on infrastructure information and the software is used to make appropriate maintenance decisions and develop maintenance plans and procedures.

These arrangements appear impressive but it is necessary to make some observations about them, each relevant to the outcome of disaggregation.

The first is that this detailed information appears to be the exclusive domain of RSA. Not sharing it with RAC means that RAC does not have the technical information that it needs to make decisions about the management of the infrastructure asset for which it is responsible.

Secondly, at face value the systems in place look to be comprehensive however, on the evidence before me doubt must exist as to whether the maintenance systems are as satisfactory as is suggested. For example, Mr Christie stated that when he examined the effect of infrastructure on reliability for the month of January 2000 he identified something in the order of 35 incidents where infrastructure had failed, causing the delay of approximately nine services which each in turn delayed about 11,000 passengers up to an average of 15 minutes.

Thirdly, in its risk management report SRA has stated that it has observed a decline in the standard of maintenance generally and, as a result, reliability had diminished. It stated that this has increased delays and that infrastructure failures have caused speed restrictions to be placed on trains and that delays caused by speed restrictions increased dramatically this year. This level of failure of the infrastructure is inconsistent with a proper maintenance regime.

A further consequence of disaggregation, according to the report received from the Rail, Bus and Tram Industry Union is that it had an adverse effect upon rail safety because of the fragmentation of personnel. Each of the organisations has its own safety personnel and the corporate knowledge of the operation of the network is divided between different organisations. There is no central repository of knowledge, no place where information in relation to safety matters is recorded and no opportunity to exchange ideas in relation to the safety of the system.

The Secretary of the New South Wales Branch of the Rail Bus and Tram Industry Union, Mr Nick Lewocki gave evidence dealing with the safety implications of disaggregation in so far as it effected the members of his union. He said:

> We think that the break up of the safeworking culture that developed over a long period of time in the State Rail Authority was broken up when the agencies broke up and instead of having a central safeworking section, each of the business agencies had their own because they were required to do that, and some of that intellectual knowledge was scattered right across the agency and we were concerned there were decisions being made which weren't co-ordinated. In fact, we had instructions coming out in the past on the same issues from two different agencies which could be misconstrued.

He was asked to give an example and said:

> The Rail Access Corporation put out a safety bulletin following - I am not sure whether it was a fatality or near miss in regards to how maintenance workers and train crews should approach work sites and network control also put out … an instruction and whilst they were similar, our signallers, who were charged with the responsibility queried those and said: 'They are not the same. We can't have instructions dealing with the same subject matter where the emphasis is even slightly different'.

Mr Hill, who was at the opposite end of the industrial spectrum, being the Chief Executive of SRA in 1997, stated in evidence that he agreed with Mr Lewocki's opinion that disaggregation had resulted in a decline in the culture of safety after disaggregation.

In two of the additional eight accidents which have been referred to me by the Letters Patent as varied, trackside workers were killed at Kerrabee and Bell. I shall deal in detail with the circumstances of those two accidents in the final report. It is, however, necessary to observe in this interim report that in a matter where the safety of persons working on or near the track is critical, there cannot, and should not, be any deterioration in the safeworking culture, nor can, or should, there be any ambiguity or inconsistency in relation to the procedures that should be followed. To the extent that disaggregation has produced either or both of those two outcomes, it is undesirable.

As I have indicated, the deficiencies in the disaggregated model were apparent from the outset. Time has demonstrated their unworkability. In recent times the problems that had beset the rail industry led the Government to establish, pursuant to the Public Sector Management Act 1988, the Office of Co-ordinator General of Rail as a department of the Public Service responsible to the Minister for Transport and to appoint Mr Christie on 7 June 2000 to the position of Co-ordinator General of Rail.

Mr Christie's views of the deficiencies in the system were of assistance to me. He is a person of considerable ability and experience. He has the degree of Bachelor of Engineering from the University of New South Wales, is a Fellow of both the Institution of Engineers, Australia and the Australian Institute of Management. From 1980 to 1986 he was Deputy Chief Executive, under Mr Hill, of the former State Rail Authority of New South Wales and therefore he has direct knowledge of the operation of the system. From then until 1995 he was the Director General of the Department of Works and Services in

New South Wales and in October 1995 was appointed Chief Executive of the New South Wales Roads and Traffic Authority.

In 1997 he was appointed as the Chief Executive of the Olympic Roads and Traffic Authority (known as ORTA). He stated that the purposes of his appointment were first, to co-ordinate the activities of the three rail entities and secondly, to look at their preparations for the Olympic Games in particular, and to address some of the reliability issues that had become apparent over the previous twelve months.

In order to familiarise himself with the problems of the rail network he visited many areas. He had regard to the ability of the system to respond to emergencies particularly in relation to its ability to provide emergency measures in the event of the failure of the signalling system and other infrastructure failures. He sought to discover the reasons for the level of infrastructure failures which were causing significant delays to the rail system.

He concluded that concentration was necessary on the long standing causes of infrastructure failure. He stated that in his opinion these occurred because of lack of action over a period of time in the vicinity of three to four years. It was his belief that one of the reasons for the infrastructure failures was that inspections of equipment were time based rather than usage based. He then introduced targets that, in the short term rather than the long term, were reasonably able to be achieved in the run up to the Olympic Games.

In addition, he examined trends in rolling stock failures and arranged for plans to be introduced to increase the level of inspections on trains.

Mr Christie considered station management and the level of service that station management was able to provide to the public. He formed the view that by increasing the number of staff on stations, and in particular those with safeworking training who could manage trains through the system in the event of any unplanned incident occurring, this would reduce delays and improve the efficiency of operations.

Mr Christie also identified a problem with the crewing of trains. He stated that SRA had needed to employ and train approximately 250 extra drivers and guards in order to cope with the demands on the system during the Olympic Games period and that many of them did not have sufficient experience, particularly in the area of route knowledge.

In addition to addressing these specific problems Mr Christie established a rail co-ordination centre. This was a significant change because it demonstrated that the rail system could operate efficiently if there were appropriate levels of co-ordination between the different areas comprised within it. Mr Christie said that the rail co-ordination centre was an operational centre that combined the knowledge and the operational expertise of people from RAC, RSA and from SRA. Personnel from the passenger information area of the SRA were required to ensure that guards and station staff were properly informed about incidents and to make sure that the passengers were appropriately advised about the alternatives that may be available to them.

The rail co-ordination centre was equipped with the technology to enable trains and passengers to be monitored. A train describer system enabled those persons in the centre

to identify the location of any individual train on the rail network. The centre was also equipped with facilities to obtain images from 1,800 cameras located throughout the rail network. These were able to show the movement of trains and passengers on all the stations and on the approaches to all the stations, to enable crowd movements to be coordinated.

It is a matter of public record, for which all of the persons involved in the operation of the rail system during the Olympic Games period are to be congratulated, that the system functioned efficiently and well given the special and abnormal demands upon it. According to Mr Christie, 30,000,000 passenger journeys took place during the two week Olympic period, including approximately 1,900,000 passenger journeys on Friday 22 September 2000 and approximately 1,800,000 passenger journeys on Saturday 23 September 2000.

The use of the rail co-ordination centre led Mr Christie to express this view about the way in which the rail system had been operating and of the advantages of continuing the rail co-ordination centre: "In my view the rail system had not been co-ordinated in that way over the recent few years and I think it is a benefit that is worthy of continuing."

Mr Christie was asked a number of questions about the reasons why the system had been performing unsatisfactorily. He stated, as earlier observed in Chapter 2, that the system was a technically complex operation. Being complex, it required for its successful operation, people with knowledge who knew how the infrastructure should operate and who knew how it did operate. Mr Christie thought that one problem in the organisation of the rail network was that the owner, RAC, which was responsible for the maintenance of the system, did not have the necessary knowledge to maintain it.

In Mr Christie's view, this was because RAC has concentrated on its commercial results. As I have previously observed, this was because that was the way in which it had been established, as the quotation from the Minister for Transport's second reading speech, to which I have earlier referred, demonstrated.

The lack of knowledge in RAC about the way in which the infrastructure operated meant that it was not fully informed about its condition at all times and about the needs and requirements of the infrastructure in the future. It therefore was not in a position to make those needs known to relevant maintainers or to the Government, to whom it would have to turn for any substantial injection of capital needed for the running of the system.

Mr Christie thought that this had come about in part because the primary maintainer of the system, RSA, was not only permitted, but encouraged, to engage in activities outside New South Wales. His view was that the maintenance of the New South Wales system should be the main reason for its existence and, only if it had spare resources, should it attempt to contract out its services elsewhere.

When asked whether RSA in fact had the additional capacity to contract out, he could not answer in his experience. Whether it had such additional capacity or not, he believed that the New South Wales system should be its first priority. I should add, that if RSA has any additional expertise available, I see no reason why it should not contract out its expertise to outside organisations provided it does not reduce its maintenance of, and obligations to, the New South Wales rail system. In doing so, it may gain knowledge as

to how other systems work and may be able to use that knowledge to the advantage of the New South Wales rail system.

Mr Christie also identified a further problem in the division between RAC and RSA, namely that it was difficult to locate responsibility. For example, if one asks who is responsible for the integrity of the signalling system, one does not get a clear answer. The fact is that RAC has the responsibility for all infrastructure, including the signalling system, but does not have the expertise to carry out the necessary work and relies upon RSA for that purpose.

Mr Christie pointed out that the Minister had directed that all maintenance work should be carried out by RSA for RAC to the exclusion of private contractors. No reason has been provided for this direction.

Mr Christie proposed a model for the restructuring of the rail industry which had, as its objective, the elimination of the problems that he has identified. I will deal with the merits of Mr Christie's proposals in a later chapter. However, by the Letters Patent as varied, I have been asked to consider not only the Glenbrook rail accident but reports into eight further rail accidents when considering recommendations, including structural change, for the improvement of the safety of rail operations.

The Glenbrook rail accident and these other rail accidents, with the other material to which I have referred, together illustrate the way in which disaggregation has been unsuccessful and has created an inefficient and unsafe rail network. I will illustrate that by reference to a number of the accidents that have been referred to me. I will deal with each of the eight accidents in more detail in the final report.

The first of those accidents occurred at Kerrabee on 18 August 1998, when two RSA employees were hit by a freight train in circumstances where the driver of the freight train did not know of their presence on the track and they had believed that the track was clear. The report by the Department of Transport in relation to this accident records:

> The difficult circumstances faced by the managements of Rail Services and the other railways with the break up of the old State Rail monopoly are appreciated, in particular the imperative to reduce operational costs. However, the attaining of commercial objectives must be consistent with safety.
>
> What is apparent is a reduction in the margin of safety. The systems relating to work site protection and communications were created for a rail monopoly with abundant manpower. This situation no longer exists. As cost cutting continues, there will be less experienced workers on the tracks and more contractors, many of whom have minimal or no experience of railway working conditions.

In the rail accident which occurred on 9 July 1999 at Hornsby, there were fortunately no serious injuries. This is remarkable since the train proceeded off the end of the down loop siding track and travelled a distance of approximately 80 metres before stopping.

In the Department of Transport report in relation to that accident, the following is recorded:

> The investigation has shown that there is a lack of clear understanding of the responsibilities and duties under the various instrumentalities that govern the actions of the organisations involved, namely, SRA, RAC and RSA.

The report also includes the observation:

> There seemed to be a lack of clarity of roles and responsibilities that was countered to some extent by the people involved who were familiar with the former integrated operation. In this context the ability to review total operations and assess risks is difficult, if not impossible.

The driver of that train did not know that his train was on a loop line and not on the down main line proceeding in a northerly direction from Hornsby station. Lack of route knowledge by the drivers of trains and inadequate training were two of the main causes of the derailments which occurred at Waverton on 29 December 1999 and Redfern on 6 April 2000. These were drivers who had been certified by the Department of Transport as competent to undertake the driving tasks that they were performing when these derailments occurred. However, the fact that these accidents occurred and the way in which they occurred demonstrate that the system of training and assessment by SRA does not ensure the safety of train crews and travelling members of the public.

One illustration of the confusion about safety responsibilities following disaggregation is that it was necessary for the Department of Transport to write to RAC on 9 July 1996 advising it that RAC had no responsibility for regulating safety and that the Department of Transport was the sole regulator of safety. It further advised RAC that RAC had no legal power to refuse access to the rail network to any train operator which had been accredited by the Department of Transport.

Under the statutory regime this was undoubtedly correct. Nevertheless at common law, RAC as occupier had a duty to take reasonable care. The statutory mechanism caused the Department of Transport to instruct RAC not to interfere. These difficulties arose to a large extent because of the way in which the organisations had been established. It is unsatisfactory for there to be any confusion about responsibilities and accountabilities in relation to the regulation of rail safety between the organisations involved in the rail network.

It is possible to make many more criticisms of the deficiencies in the administration of the rail industry since disaggregation in 1996, but I have included enough detail to demonstrate that it is necessary to replace the present structure with another structure which adequately addresses the deficiencies in the safe and efficient operation of the rail system manifested in the Glenbrook rail accident and these other rail accidents.

I shall now consider various structural models used elsewhere.

5. Structural Models

The administration of railways can be structured in many different ways. However, one characteristic of the New South Wales railways, as Chapter 2 demonstrates, is that the railways have almost entirely been a State owned and state run network. The history of the New South Wales system, to that extent, differs from other countries. When describing features of other rail systems it is necessary to observe that these are the product of the historical, geographical and socio-economic features of their respective countries. Each is different in varying degrees from the others. I shall later draw upon those features which I believe would improve the safety of rail operations in New South Wales in making recommendations. One feature of the New South Wales railway system is that the New South Wales Government still owns and can therefore determine and alter the structure of its railways at any time.

I have not assumed that the Government will do otherwise than continue its ownership of the public asset comprised in the New South Wales rail system. At present, according to the evidence of Mr Christie, the Government provides approximately $800,000,000 per year to subsidise the services provided by SRA.

It is, of course, possible to privatise the rail system. If it were sold, a purchaser who ran it as a going concern could increase the fares and use land on or near railway stations for commercial purposes and the system could not only be self-funding, but a profit could be made. This may also involve rationalisation of the operation, including staffing levels in many areas, and the discontinuation of unprofitable services in rural or other areas or a reduction in the number of services.

It might also involve an increase in the quality of services or differential prices being charged depending upon the time at which the passengers travel and the destinations to which they travel. I have not considered privatisation of the New South Wales Government railways as a possible alternative as this is a question fundamentally of ownership rather than structure.

In the course of my investigations, I travelled extensively on the British rail system. By comparison with the cost of fares on the privatised British rail system, fares for travelling the same distances in New South Wales are remarkably cheap. Accordingly, in considering the various models, I have assumed that for reasons of Government policy, subject to its recent decision to privatise FreightCorp, the Government will retain ownership and control over the rail system.

It is, of course, a matter for Government to decide which structure, if any, is to replace the present structure. What I have said in Chapter 4 demonstrates the need for some attention to be given to the restructure of the rail industry.

My task is to consider the material before me as to other possible structures to enable me to critically examine and consider the only alternative structural model about which evidence was given, namely that proposed by Mr Christie, and express my views about its desirability and suitability. In so doing, I again emphasise that these are matters for Government, as they necessarily involve issues of policy. My focus in respect of structure is, as required by the Letters Patent as varied, safety improvements to rail operations.

When considering various models for restructuring, I have also assumed that there is to be no change to the present Government policy regarding open access to the rail system. I have so assumed for two reasons. First the policy arose from the Hilmer Report and the subsequent National Competition Policy Agreement, to which New South Wales is a signatory. Secondly, because it is a continuing worldwide trend for train operations to be separated from infrastructure management to provide for open access to the track.

My investigations have revealed that there are, in broad terms, three models for the structure of the rail industry currently used worldwide which I have labelled the integrated model, the separated model and the disaggregated model. I shall deal with the major elements of each of these models in turn before turning my attention to the structural models which exist for the regulation of safety.

The Integrated Model

The integrated model involves all the functions associated with the operation of a railway being discharged by a single corporate entity. This is effectively the model on which the former State Rail Authority was based prior to its disaggregation in 1996. It is a model which still operates in some areas where open access exists, such as Queensland and Canada.

In 1998 Queensland Rail established within its corporate structure a Network Access Group. This Group's responsibilities include management of the infrastructure assets, negotiating access contracts with train operators, and train control. The remaining activities of Queensland Rail are divided into divisions including a coal and mainline freight division which covers coal, minerals and primarily train-loaded freight; a metropolitan and regional services division which provides passenger and freight services to metropolitan and regional areas; a technical services group which provides engineering and technical skill, advice and services to the other groups; a long distance and tourist train division; a maintenance and manufacturing support division which manages rolling stock; and an administrative division concerned with financial matters, employee relations, information systems and telecommunications, and legal and property functions. Queensland Rail also has a National Development Unit which is responsible for Queensland Rail's national expansion.

In Canada, there are two major operators, both of which are freight carriers. Each of those two operators, Canadian Pacific and Canadian National, has a vertically integrated structure. Each is privately owned and competes other railways. The major passenger operator is ViaRail and it uses some of the freight track owned by Canadian Pacific and Canadian National under access agreements for its intercity services. It too is vertically integrated.

In the Canadian Pacific structure there are six major divisions, namely, operations, commercial, financial, information services, human resources, industrial relations and legal services. The major functions fall within the operations and commercial divisions of the company, with the operations division handling the customer service, field operations, logistics, mechanical services and engineering services.

Canadian National has four major divisions being corporate, marketing, network operations and five geographic divisions. The corporate division provides a centralised management function for the geographic divisions as well as strategic planning, financial, information technology and legal functions.

Both the Queensland and Canadian models are vertically integrated but have different internal structures. Both are successful railway operations, in terms of both safety and reliability.

The Separation Model

As discussed in Chapter 3 the European Union Directive 91/440 required all member States to separate track ownership from operations, and to allow free and open access to all carriers of international freight over the rail network. The majority of railways in Europe which have implemented this Directive have done so using what I would call the separation model. In essence this means that the Government owned vertically integrated railway has been separated into two components, one being an infrastructure owner and the other being a train operating company.

In some cases, this involves maintaining the existing over-arching corporate identity and establishing separate divisions or subsidiary companies within that organisation to discharge the responsibilities of infrastructure ownership and access, and the operation of trains. In other cases, two separate corporations have been established to own the infrastructure and to operate the trains respectively. However, ownership of both the infrastructure and the train operations has generally been retained by the Government.

I have examined and considered the structure and safety management systems in place in France, Norway, the Netherlands and Germany.

In France the main railway is French National Railways (SNCF). It engages in a wide range of activities from passenger and rail freight through to housing and power generation. It is divided into five businesses, being long distance passenger services, regional passenger services, Paris region passenger services, freight services and a small freight consignment business. In addition, it has an infrastructure department, which was created in order to fulfil the requirements of European Union Directive 91/440.

In Norway, at about the same time as restructuring occurred in New South Wales, the Norwegian railway was divided into two corporations. The first is called Jernbaneverket (JBV) which owned and managed the infrastructure. The operation of trains was assigned to Norges Statsbaner BA (NSB). Originally, when these two entities were established on 1 December 1996, they shared a Chief Executive and partially overlapping Boards. However, following difficulties experienced by the Chief Executive and Boards in endeavouring to manage two different organisations, the Norwegian Government fully separated the two organisations on 1 July 1999. Nevertheless, both JBV and NSB remain fully owned by the Government of Norway and report to the Minister for Transport.

Within each organisation there are several divisions. JBV has 17 separate divisions dealing with areas such as operational management in four regions, infrastructure

construction, infrastructure maintenance, electrical power supply and telecommunications services.

The NSB has a structure which is based upon the different type of train services it operates. Five divisions deal with different types of train operations, namely, passenger short distance, passenger intermediate distance, passenger long distance, passenger diesel trains and freight trains. It also has an operations and technical division which is responsible for technical standards and maintenance programs, a service division which discharges administrative functions and a rolling stock acquisition and renewal division. NSB also has five subsidiary companies which are responsible for the airport express train, a travel bureau with 33 agencies, road transport services for bus and freight road transport, commercial property and rolling stock maintenance.

In the Netherlands, the railway is structured through a holding company which reports to the Minister for Transport. The holding company has four separate divisions dealing with passenger transportation, real estate, train operation and infrastructure owner which is also responsible for traffic control.

In Germany, the rail system was fundamentally restructured on 5 January 1994 when Deutsche Bahn Aktiengesellschaft (DB AG) merged the railways of the former East and West Germany respectively into a new national railway. The sole shareholder in the company is the Government of Germany and the legislation stipulates that the Government may not sell more than 49.9 per cent of its shares. No shares have been traded to date. A key component of the reform was to open up the rail network to outside companies.

The German approach was to provide for a five year transition period to enable the reorganisation of its railway to occur. Subsequently, on 1 June 1999 the restructure of the railway was formalised when five companies were incorporated. Each has its own budget and is responsible for its own financial performance. The five companies, which are subsidiaries of the parent DB AG deal with long distance traffic, local traffic, freight traffic, track infrastructure and passenger stations.

Utilising what I have referred to as the separation model, it can be seen that there are different ways in which, even under that model, a Government railway enterprise can be structured.

The Disaggregated Model

From the rail systems which I have examined it appears that only New South Wales and the United Kingdom have adopted what I call the disaggregated model, and in the United Kingdom the disaggregation involved full privatisation. This model involves the total separation of the various components of an operating railway into discrete and separate organisations.

In 1993 British Rail was split into 98 different companies and these included the infrastructure owner, train operating companies, station operating companies, infrastructure maintenance companies and rolling stock maintenance companies.

Currently in Great Britain the infrastructure is owned and managed by the listed public company, Railtrack PLC. Railtrack provides access to the network, manages the allocation of train paths, plans and coordinates train movements and produces a working timetable. While most of the approximately 2,500 train stations owned by it are leased to train operating companies, Railtrack continues to manage 14 major stations. In so far as it provides, owns and manages infrastructure Railtrack has no competition. Most of the infrastructure, maintenance and development work on the infrastructure owned by Railtrack is undertaken by other private sector companies.

This work includes major investment projects, such as construction and civil engineering, signalling and electrification. It also includes infrastructure maintenance services, such as inspection and maintenance of track and track works, signalling, electrification and telecommunications.

There are in excess of 25 privately owned train operating companies providing passenger services on the British network. These companies have seven year franchises to operate particular routes. There is one major freight operating company which carries approximately 90 per cent of rail freight. The train operating companies do not necessarily own the rolling stock they operate, but lease it from other concerns. They also contract out maintenance of the rolling stock.

I have not described the internal structures of the British companies as the system's complete disaggregation and privatisation means that each has a different internal structure. The relationships between the various entities in the British system is dictated by the regulatory environment in which they operate.

Safety Regulation

As with railway structures, there appear to be three broad approaches to safety regulation structures currently being used in the world. The first, is the cascade system, the second involves centralised regulation by a Government department and the third separates the safety regulation function from the accident investigation function. As I have done above with railway structures, I shall deal with each of these approaches in turn.

The Cascade System

This is the approach which has been adopted in Great Britain. The safety regulator for railways in Britain is the Health and Safety Executive (HSE), which includes a body known as Her Majesty's Railway Inspectorate (HMRI). The system is based around what is called a "safety case" which a railway must have accepted externally before it is permitted to undertake rail activities.

Briefly, without going into the complexities of the matter, the cascade system involved Railtrack's own safety case including a process whereby it would assess and accept the safety cases of other companies which operated on its infrastructure. Once this had been accepted by HSE, it then became Railtrack's responsibility to assess and accept the safety cases of the train operating companies. Furthermore, Railtrack is responsible for monitoring and auditing the train operating companies' compliance with their safety cases. Railtrack itself is subject to monitoring and auditing by HMRI, which also has the power to inspect any operating railway.

Two fundamental difficulties exist with the nature of the cascade system in Great Britain. First, Railtrack has no power to enforce compliance with a safety case. Thus, while it undertakes audits and monitoring activity of the train operating companies, it is unable to apply any sanctions to ensure the train operating companies take remedial action to address identified weaknesses in their safety systems. The second issue relates to the perceived conflict of interest that arises when an organisation which has the commercial objective of generating profit from the sale of access to the infrastructure is also the organisation which is responsible for approving the safety cases of the companies which purchase access.

Railtrack endeavoured to address this issue by establishing the Safety and Standards Directorate (SSD) as a separate and distinct division within its organisation, and ensuring that the Director of SSD reports directly to the Chairman of the Board of Railtrack, rather than to the Chief Executive Officer. Nevertheless, in the aftermath of the Ladbroke Grove accident, the Deputy Prime Minister, Mr Prescott, announced that Railtrack would lose its role in the approval of safety cases and that HMRI would assume the approval or acceptance role completely.

Subsequent to Mr Prescott's announcement, the proposal was altered and it is now proposed that a separate subsidiary corporation will be constituted by Railtrack to perform the functions of SSD. Furthermore, this subsidiary will be responsible for providing advice to HMRI as to whether a train operating company's safety case is acceptable, but HMRI is still to be assigned the responsibility for accepting the safety case.

Additionally, in Great Britain there is an Office of the Rail Regulator, which is separate to the safety function. The role of the Office of the Rail Regulator includes the promotion of the interests of passengers, including the setting of service delivery performance targets and the promotion of the development of rail freight. The Rail Regulator also has the duty to ensure that regulated access contracts and licenses operate, develop and improve in a manner which promote the interests of passengers and freight users; and to ensure that Railtrack acts as a responsible and efficient steward of the national rail network by operating, maintaining, renewing and developing the network. To enable him to discharge the obligation of non-discriminatory pricing, the Rail Regulator evaluates prices based upon published criteria.

The Shadow Strategic Rail Authority operates in a shadow form, pending the passing of legislation to constitute the Strategic Rail Authority, which legislation was introduced into Parliament in November 1999. The Shadow Strategic Rail Authority provides a focus and strategic direction for Britain's railways and manages the passenger rail franchises. The Shadow Strategic Rail Authority's activities include the functions of the Office of Passenger Rail Franchising which was established in 1993 to monitor and manage the 25 passenger train franchises operating on the national railway network in Great Britain and to protect passengers' interests. Where train operating companies do not meet their obligations under their individual franchise agreements, the Railways Act 1993 permits the Franchising Director to issue formal orders requiring them to comply and to impose financial penalties if they do not.

There is also a Railway Directorate within the Department of the Environment, Transport and the Regions which develops and implements policy for both the domestic railway and internationally. The Directorate's responsibilities include delivering the Government's objective of winning more passengers and freight, establishing a new Strategic Rail Authority and making regulation more effective and accountable.

The Netherlands operates a variation on this theme whereby the infrastructure owner is responsible for regulating the safety of the operations of train operators. While it is the responsibility of the Minister for Transport, Public Works and Water Management to provide the strategy for achieving the desired level of safety in the railway network, the railway safety department of Railned determines the framework and standards that are to be observed in the rail transport system in consultation with the companies concerned. Railned is also responsible for issuing safety certificates to train operators, which is a prerequisite to a train operator being permitted to run trains on the network. Railned conducts audits and inspections of train operators to ensure that they are complying with their safety certificate and the standards which apply to the rail network.

Regulation by a Government Department

This is the regulatory structure which is used throughout Australia, in some European countries, such as Norway and Germany, and in Canada. Basically it involves the establishment of a regulatory body within a Government department which has statutory powers to approve, audit, investigate and enforce safety requirements. This is applied equally to the infrastructure owners and train operators.

Common elements of the regulation by a Government department are that the safety regulator reports to the relevant Minister for Transport; has enforcement powers including the capacity to close a railway on safety related grounds; approves the safety management system for a railway organisation prior to the organisation being permitted to undertake rail operations; undertakes audits and inspections of railways to ensure that they are complying with the terms of their approval to operate; and provides advice to the relevant Minister on rail safety matters.

All these models of Government regulation have the common feature that the responsibility for the safety of rail operations is with the organisation conducting the operation and that the regulator, by permitting, auditing and certifying such an organisation does not absolve the organisation from instituting and maintaining its own safe system and practices. The corollary is that it is no answer to a criticism of the way in which any organisation involved in rail operations conducted itself that it had been approved by the Rail Regulator or audited and inspected. Auditing and inspecting is just one safety precaution. It is by no means the only means whereby the safety of rail operations is ensured.

The extent to which these Government departments become directly involved in the matters relating to the day to day running of the railways varies from country to country. The system operating in Australia is generally non-intrusive and non-interventionist with the aim being to promote safety through co-operation and consultation between the regulator and the rail entities. The Australian regulators conduct audits of railways, but these are usually high level system audits designed to ensure that the rail organisation being audited has the appropriate systems in place to monitor and control its own safety.

In Norway, on the other hand, the Norwegian Railway Inspectorate appears by comparison to have a fairly intrusive role. For example, it is responsible for issuing formal permits for the commissioning of rolling stock and infrastructure routes.

An even more rigorous approach has been adopted in Germany, where the fundamental requirements for the safety of railways have been embedded in Government regulations administered by the Federal Railway Office. The Federal Railway Office issues a safety certificate to a railway if the standards of the railway company are in full compliance with the safety regulations.

The Federal Railway Office approves new technology; renewals of the signalling system; introduction of plant; monitors selection and training of staff; hours of work of staff; and the application and observance of operational rules.

Separation of Regulation and Investigation

The Canadian and New Zealand approach to safety has been to separate the regulatory and investigatory functions. While their general safety regulatory approach is similar to that adopted in Australia, the separation of the investigatory function is different. Briefly, the regulatory environment in Canada is based on four fundamental principles which aim at placing the responsibility for safety firmly in the hands of the railways. The first of these is to promote and provide for the safety of the public and railway employees and for the protection of property and the environment in the operation of railways. The second is to encourage the collaboration and participation of interested parties in improving railway safety. The third is to ensure that railway companies recognise the responsibility of safety in their operations. The fourth is to facilitate a modern, flexible and efficient regulatory scheme that will ensure the continuing safe and efficient operation of the railway.

Additionally, Canada benefits from having a strong and effective industry association, the Railway Association of Canada, which plays a significant role in developing industry safety standards and new strategies to enhance safety.

While the regulatory body, Transport Canada, reports to the Minister for Transport, there is a separate investigatory body, the Transportation Safety Board of Canada (TSBC), which is responsible for investigating accidents in a range of transportation modes, including rail accidents. The TSBC reports directly to Parliament, through the President of the Queen's Privy Council for Canada, a traditional title for the president of Cabinet who has no direct responsibility for any department.

In practical terms, TSBC's independence enables it to investigate objectively any accident and to comment on the role that all participants, including the regulatory body, had in the factors contributing to an incident. At the same time, the TSBC has no power to enforce a railway operator to implement remedial action to deal with the findings of one of its investigations, this role falling more to the regulatory body, Transport Canada, and the railway organisation itself. However, the fact that all TSBC accident reports are public documents acts as an incentive and accountability mechanism to ensure that action is properly taken to deal with any perceived weaknesses in a railway's safety.

In New Zealand, the Land Transport Safety Authority is the regulatory body responsible to the Minister for Transport and it enforces regulations concerning safety on the railway. In addition, there is a Transport Accident Investigation Commission which also reports to the Minister for Transport.

An examination of the models for the structuring of railways and the safety regulatory regime of different countries reveals that, although it is possible to identify features in common, no two models are the same. This is because each rail organisation has features which would make one model appropriate in one jurisdiction but entirely inappropriate in another.

The proper management of safety on a rail system depends upon determining a model which best suits the demands of the particular railway system which in turn are the product of the history, user needs and Government policy considerations affecting the particular railway system.

It is in this context that I shall consider the only proposed model placed before me for my consideration in relation to the structuring of the New South Wales Government railways and the regulation of rail safety within it. In so doing, I again emphasise that the acceptance of any model is a matter for Government as it involves an issue of policy. I also emphasise that my focus, as required by the Letters Patent as varied is safety improvements to rail operations.

6. Model Proposed by the Co-ordinator General of Rail

Position Adopted by the Rail Entities

When the Special Commission of Inquiry sat on 10 October 2000, Senior Counsel Assisting referred to the request by the Premier for a second interim report by 31 October 2000 which would outline any important measures that may require legislation. In his opening remarks he said:

> I understand there to be some measure of agreement between the rail organisations about the way in which the industry could be restructured to improve the efficiency and the safety of its operation.

Mr Barry said that the evidence in relation to those matters would be given by Mr Ronald David Christie, the Co-ordinator General of Rail for New South Wales.

It was therefore my understanding that there had been some measure of agreement between the rail entities. After Mr Christie had given his evidence, Counsel for each of the three rail entities indicated they did not wish to ask any questions of Mr Christie and later indicated they did not wish to make any submissions. Further, it was not stated by any of them that their respective clients agreed or disagreed with Mr Christie's proposals. It appears clear that the views which Mr Christie expressed were his own views as to how the rail industry should be restructured and that he was not giving the agreed view of all rail entities.

I subsequently sat on 12 October 2000 in order to correct some inaccurate newspaper reports and to seek to establish the precise attitude of each of the three rail entities to Mr Christie's proposals. I asked Mr Garling SC for SRA, the following question and obtained the following answer:

> Question: Mr Garling, can I call on you? Does your client expressly agree with each aspect of Mr Christie's proposed model?
>
> Answer: My instructions, your Honour, don't permit me to indicate whether it agrees or disagrees.

When I then stated that did not assist me, Mr Garling said:

> Your Honour, on the issue of the structure of the industry, as opposed to the other matters that your Honour is dealing with under the terms of reference, my instructions are that my client does not wish to put any submissions to your Honour on that issue.

I infer from this that what Mr Christie described in his evidence was not an agreed approach to the issue of restructure of the rail industry.

I then called upon Mr West QC for RAC to inform me of his client's attitude. His answer was:

> The position of my client was and remains that it has nothing further to add to what was put by Mr Christie in evidence. Indeed, my learned friend Mr Barry prefaced the calling of Mr Christie by indicating that he expected there would be likely to be a large area of agreement.

I should indicate that the words "a large area of agreement" do not embrace accepting the whole of the proposed restructure about which Mr Christie gave evidence. I should also point out that Mr West misquoted Mr Barry who in fact said that he understood there to be "some measure of agreement", not "a large measure of agreement".

Mr West then proceeded to state that "in the light of what we heard, which was conveyed to our client, our instructions are that we have nothing further to add to what was put to Mr Christie". I then asked:

> You leave it to me to conclude whether your client agrees or disagrees with what Mr Christie has to say?

To that Mr West replied:

> Your Honour I have no instructions on any matter that we disagree on.

Mr Gleeson QC for RSA made his position quite clear when I asked him whether he had any questions to ask of Mr Christie after Mr Barry had concluded his examination of Mr Christie. Mr Gleeson said:

> No questions and no submissions.

Mr Gleeson was not present on 12 October 2000, and of course no criticism can be directed at him for that, but his client was represented by Ms Bissel from Freehills, Solicitors. She said she was appearing because Mr Gleeson and Mr Shume, his Junior Counsel, could not attend and she said:

> I have no instructions in relation to the question, therefore cannot make any comment.

I can only conclude from this that some or all of the Government rail entities do not support, in whole or in part, the proposals that Mr Christie has put forward for the restructure of the rail industry. I should emphasise that I thought initially that Mr Christie's proposals resulted from a measure of agreement between the rail entities and that there had been discussion between each of them and Mr Christie. I simply do not know what view each of the rail entities has in relation to Mr Christie's proposals.

I would have welcomed, and been greatly assisted by, submissions from the rail entities whose experience in the operation of the rail system after it was restructured in 1996 must be superior to that of Mr Christie who, after all, was only appointed to the Office of the

Co-ordinator General of Rail on 7 June 2000 after an absence from the rail industry of around 14 years. This lack of assistance is disappointing.

Fortunately, I did have the other material from the rail entities contained in their risk management reports and the trade union's submissions. I also had a submission from National Rail Corporation Limited which dealt in part with restructure. I had some assistance from the evidence of Mr Ian Robinson, Acting Director General of the Department of Transport, the two Secretaries of the relevant trade unions and from Mr David Hill.

In addition, the Government had approved overseas travel to enable me, with Counsel Assisting, to investigate overseas models for the structure of railway industries and systems for the regulation of rail safety. This, together with an examination of the content of Mr Christie's evidence, has enabled me to evaluate the strengths and weaknesses of what he proposes and to form my own views about what I should recommend in relation to the restructuring of the rail industry.

Mr Christie's Proposal to Merge RAC and RSA

Mr Christie was of the view that there were clear inadequacies in the system as it was restructured in 1996. For the reasons that I have previously stated, I agree with his conclusions in this regard. His first proposal for restructure of the rail industry is to amend the legislation effecting the division between RAC and RSA so that one organisation would be constituted which would own the infrastructure, would control access to the infrastructure, and have all the expertise needed to properly maintain the infrastructure. Mr Christie expressed the view that the combined RAC and RSA should not be constituted under the State Owned Corporations Act 1989. This was because, he said, under that Act the Minister for Transport could not issue directions to a State owned corporation without consultation and agreement with the relevant shareholder Minister.

Pursuant to section 20P(1) of the Act the portfolio minister, in this case the Minister for Transport, with the approval of the Treasurer may give the Board of a State owned corporation a written direction in relation to that organisation if he is satisfied that because of exceptional circumstances it is necessary to give a direction in the public interest. In doing so pursuant to section 20P(3) he must consult with the Board and request the Board to advise the portfolio Minister whether in its opinion complying with the direction would be in the best interests of the corporation or any of its subsidiaries. Under section 20P(5) the portfolio Minister is required to cause a notice to be published in the Government Gazette setting out the reasons why a direction was given under this section and why it is in the public interest that the direction be given.

It will be seen from this brief examination of some of the provisions of the State Owned Corporations Act 1989 that the Minister responsible must comply with certain formalities if he is to give a direction to a State owned corporation.

Mr Christie was of the view that that was not an appropriate way for the rail industry in New South Wales to be accountable to the Government and to the responsible Minister. He said that in the public's mind, the Minister for Transport is accountable for the performance of the rail industry and speaking generally, that appears to be the case. He believed therefore that the combination of RSA and RAC should be by means of a

statutory authority under the control and direction of the Minister for Transport. He said that this was desirable because the Minister who was responsible should have adequate powers to direct the appropriate statutory body. He said that such a body had worked satisfactorily in the case of the Roads and Traffic Authority and the Waterways Authority.

It seems to me logical that if the Minister for Transport, in a democratic system of government, is held accountable to the electorate for the way in which the railway industry operates then the Minister ought not to have to work with the cumbersome procedures and the restraints created by the State Owned Corporations Act 1989. In my opinion Mr Christie's proposals to merge RAC and RSA into a single statutory authority seem sensible, but whether they are accepted or rejected is ultimately a matter for the Government and the Parliament.

Mr Christie's Proposal for SRA

The next matter about which Mr Christie expressed a view was in relation to SRA. It was Mr Christie's view that because the operation of SRA was subsidised by public funds to the extent of $800,000,000 per year, the Government should have adequate control over how those monies are expended in the operation of the network. As with the restructuring of RAC and RSA into one statutory authority, I agree with the logic of what Mr Christie has proposed in relation to the SRA becoming a statutory authority under the control and direction of the Minister for Transport and I can see no objection to his proposal.

The next issue upon which Mr Christie was asked to express a view was whether there should be two statutory authorities. Mr Christie stated that SRA should remain a separate authority and should be the train operator. It was the employer of the train control and signalling, the train crews and the station staff. It was his view that by SRA remaining separate from the combined RAC and RSA (hereafter referred to as the Rail Infrastructure Authority), it could be separately monitored and held accountable for its actions. His view was that if there were only one organisation it would be more difficult to maintain accountability. His view was that by keeping the Rail Infrastructure Authority separate from SRA it would be possible direct specific attention to the performance of the infrastructure owner in respect of the maintenance of the infrastructure. In addition, it would be possible to direct specific attention to the performance of the train operator SRA as to how efficiently it was operating the trains.

Mr Hill stated that he agreed with Mr Christie's proposal to combine RAC and RSA into one statutory authority and he also supported Mr Christie's proposal for the establishment of an Office of the Rail Regulator. However, Mr Hill had two specific concerns. First, that the responsibilities of each of the organisations in any restructure of the Government railways should be very clearly delineated. Secondly, because SRA was the main train operator and undertook approximately 2,100 train movements daily on the electrified rail system, it should have a means of directing management control over infrastructure construction and maintenance.

Mr Christie declined to express a view about what should happen to the network control functions in such a bifurcated structure because he had only held his position for a short time. Mr Hill, however, was firmly of the view that SRA should control network

operations for the electrified system and that train operations outside that system should be controlled by the infrastructure owner.

Whilst minds may reasonably differ about where the network control functions and responsibilities should reside, the present arrangement to my mind is not satisfactory. At present RAC has responsibility for Network Control but contracts this out to SRA whose employees are restricted from discussing the work they do with other SRA employees. RAC does not have the expertise or staff to carry out network control operations.

On the other hand, the management of the rail infrastructure necessarily involves managing the train movements on it. The infrastructure owner is obliged to permit access to the network by other operators and, if network control is given to the major train operator, then that train operator may abuse its position when allocating train paths and times for the movement of trains belonging to other train operators in contravention of the open access policy to which the Government has subscribed.

A decision has to be made on this difficult issue. To my mind, since SRA is by far the largest user of the rail network in the metropolitan areas and it carries up to 1,000,000 passengers per day, it should manage the network control functions for the metropolitan or CityRail network. In rural areas of New South Wales it does not seem to matter very much whether SRA also controls the rail network or whether there is a division of control once trains leave the metropolitan system. However since there will be more freight movements than passenger movements and more diversity among train operators outside the metropolitan area, a new Rail Infrastructure Authority, to which I shall later refer in detail, should manage train control functions outside of the electrified system.

I did not receive any assistance from the rail entities in relation to the way in which network control functions should be managed, save for the fact that RAC, in its risk management report, identified a tension within Network Control between its responsibilities for timetabling all train operators and ensuring on-time running, and safety functions such as train control and signalling. RAC stated that these responsibilities should be divided in some way, whether structurally or by function.

I am aware of the concern that SRA could abuse its control of network operations to advantage its trains to the detriment of other train operators. This could be addressed by providing to the new entity that Mr Christie recommended, namely an Office of the Rail Regulator, responsibility to ensure that train operators other than SRA have open and fair access to the infrastructure. Mr Hill expressed the view that ensuring fair and reasonable access is provided to the electrified rail network could be one of the responsibilities of the Rail Regulator.

Whilst Mr Christie did not refer to it, I am aware that the Productivity Commission recommended in its Report *Progress in Rail Reform* that urban rail networks should be vertically integrated and horizontally separated from other rail networks. In the Productivity Commission report horizontal separation is defined as being either by product (freight and passenger services) or by geographical area (interstate, regional and urban railways). In so recommending, the Productivity Commission noted that most urban rail networks, with the exception of those in New South Wales, are vertically integrated. This has no doubt been achieved in the other States of Australia by reason of the less complex nature of their particular metropolitan rail networks and the fact that

those States have not disaggregated their Government railways, if at all, to the same extent that New South Wales did in 1996.

Mr Christie's Proposal for an Office of the Rail Regulator

The Office of the Rail Regulator was a new office which Mr Christie thought was desirable. He has himself occupied a position which included some of the functions which he said a Rail Regulator would perform.

As I have demonstrated in earlier chapters of this interim report the difficulties that have existed in the safe and reliable operation of the rail system have depended, to a large extent, upon the lack of co-operation and the lack of communication between the rail entities. Under the new system of two rail authorities the functions of a Rail Regulator would include overcoming that lack of communication and co-ordination.

As Mr Christie has demonstrated during the period of the Olympic Games, by the use of a rail co-ordination centre and by the Office of the Co-ordinator General of Rail, the rail system can work safely and efficiently.

Under Mr Christie's proposal, the Rail Regulator would not only exercise a co-ordinating function, he would also set standards of performance in the areas of train operations and safety which would meet public expectations in relation to punctuality, cleanliness and safety.

It is important to observe that under Mr Christie's proposed model, the Rail Regulator would set standards but the responsibility for the safety of the operations being performed by either the proposed rail infrastructure authority or SRA would, at all times, remain with the persons carrying out the activity.

It would be part of the Rail Regulator's function to audit the two authorities and to publish results in relation to their performance, thereby giving transparency to the operation. These results should be made public. Financial sanctions in the form of penalties should apply if standards are not met. Bonuses should be paid to all staff if performance standards are exceeded.

It was put to Mr Christie that members of the public might be concerned that the Minister, being an elected public official to whom the Rail Regulator would report, might be concerned about publishing material critical of the operation of the two authorities for which the public held the Minister responsible. Mr Christie was asked how he would seek to ensure the independence of the Rail Regulator to ensure in turn that the public received accurate and reliable information. His answer was somewhat ambiguous. He said that the regulator would be responding to the needs of the Government for a satisfactory system, that is, via the Minister for Transport. He believed that a regulator should be independent and report directly to Parliament through the Minister, but not be subject to directions by the Minister.

I do not see any reason why the Rail Regulator should not be accountable to the Minister for Transport for the way in which he carries out his activities. Under Mr Christie's proposed model the regulator was to be independent of the Minister. In view of my proposal for separate safety regulation and accident investigation functions, I do not think

that it is necessary for the Rail Regulator to be independent of the Minister for Transport. I have indicated my view that performance results should be made public.

The next issue that needs to be addressed is rail safety. Of concern is the risk that there may be a temptation to compromise safety to avoid performance statistics showing delay and unreliability.

Under Mr Christie's proposals the Rail Regulator would be responsible for managing rail safety and rail accident investigation. Mr Christie stated that, in his view, safety was the number one consideration for a rail system. I agree with that statement. One of the issues that concerned Mr Christie, and I must say concerns me, is the present apparent concentration on rules and regulations, rather than looking at the risks of the system as a whole and deciding to what extent a risk management framework can be used for rail regulation in the future.

Mr Christie acknowledged that reliance upon safe working units, although necessary for the routine operations of the rail system, could not be sufficient. He believed there must be a safety management system which involved an assessment of risk and a determination of what constituted a tolerable risk in railway operations.

I agree with Mr Christie's view that the existence of a safety regulator would not absolve the train operators and the owner of the infrastructure from their own respective responsibilities for the safe management of their activities. His view was that the Rail Regulator should be required to set standards following a risk management approach. In turn, he should require authorities such as the owner of the infrastructure and train operators to present their risk management and safety plans for auditing by the regulator. The regulator should have a function in the accreditation of those authorities in their day-to-day duties. He did not, however, believe that it should be part of a regulator's duty to "tick off whether a rule has been observed", or in fact make the rules, but rather to ensure that there is a culture of safety consciousness in the industry. In other words, the infrastructure owner and train operators are responsible to ensure that the work, which they are carrying out, is done safely.

He was then asked what should be put in place to enable the Rail Regulator to ensure compliance with the appropriate standards and safety performance. Mr Christie replied that some of the problems that have arisen are the result of the present system where there is a monopoly train operator in CityRail and a monopoly infrastructure owner who are required to meet contractual agreements about services and about the satisfactory standard of those services. He believed that, in those circumstances, there is a great temptation in the present system for those agreements to be struck on the basis of the lowest common denominator, rather than a set standard.

One would foresee, in the case of a Government operated system, the regulator, if necessary, imposing penalties and sanctions in relation to the satisfactory operation of those services. In my view, that is an essential way in which to enforce compliance with appropriate standards.

Mr Christie said that a system of imposing penalties and sanctions is not unique and that in Victoria the system applies to the various private train operators in the metropolitan area. He believed that poor performance in the provision of services to customers is an

area that also ought to be subject to a system of penalties or incentives for good performance, once again, a system operated in Victoria. He envisaged that customer service can be measured and set against a benchmark or standard that everyone understands is going to be met by the train operator. He concluded that it is essential to have sanctions.

Mr Christie expressed the view that there must be a culture and atmosphere of safety consciousness and that the regulator needs to ensure that this emerges from the changes that he proposes. He indicated the view that, historically, when the Australian Standards are considered, they often produce the lowest common denominator that all parties can agree on and that ensuring safety should not be a matter of the lowest common denominator.

Mr Barry QC then asked Mr Christie about his views in relation to the way accident investigations should be conducted. Mr Christie was not in favour of the Department of Transport, through its Transport Safety Bureau, continuing to have the rail accident investigation function. His view was that there should be a section within the Office of the Rail Regulator with the expertise to look at the causes of accidents, analyse the reasons for, and what actions lie behind, these accidents and to report on the result of those investigations. The level of the investigation would depend upon the nature of the accident. It would still be open to the Government to appoint a Special Commission of Inquiry such as the one that I am conducting, in the case of very serious accidents.

Mr Christie's view was that the preoccupation with apportioning blame in respect to accidents or incidents is not necessarily conducive to getting a result in finding out what actually caused the incident. On the other hand, he agreed that there are cases where accountability has to be identified wherever it lies otherwise there will not be any improvement in the particular situation that gave rise to the accident. He expressed the view that it is essential in setting up the Rail Regulator that he should be vested with powers to get to the truth of what occurred.

In addition to the existence of the two statutory authorities as described above, he also thought that the Minister should have an Advisory Board, with representatives from wide areas within the community, to assist the Minister to weigh up the advice that is received from either or both of the two authorities and to help him to resolve any issues of policy that arise when the authorities cannot agree.

Mr Christie's own office and the success of the Olympic Games demonstrate the importance of having a person who has responsibility for coordinating the operations of the two authorities that he proposes and which I support. I also see merit in the proposal of the Rail Regulator also being a consumer representative so that the interests of commuters and other members of the travelling public are served. However I cannot accept that his proposals are sufficient for ensuring that the Rail Regulator does not find himself in a conflict of interest. There are inherent conflicts of interest in the proposed Office of the Rail Regulator which need to be addressed.

That situation would be even worse where incidents, near misses or actual accidents were to be investigated by the Office of the Rail Regulator. On the one hand, his duty is to regulate and to ensure compliance with standards of performance and standards of safety and, on the other hand, to investigate and to report, in effect, upon whether or not the Rail

Regulator has set and maintained adequate standards of performance and taken the necessary enforcement action to ensure that railways were properly adhering to those standards. In the area of the safe operation of railways, I do not think it is satisfactory for there to be even the potential for such a conflict of interest to arise.

There needs to be a strengthening of Mr Christie's model to better ensure that safety has the very highest priority which it should receive in the operation of a rail system. The travelling public and those who work on the railways deserve no less.

Accordingly, I am prepared to endorse most of Mr Christie's proposed model. However, I propose that two additional safety bodies be established in order to place beyond doubt the potential for any conflict of interest between the regulation of safety and punctuality, functions which are combined in Mr Christie's proposed model for the Office of the Rail Regulator.

7. Model Proposed by the Special Commission of Inquiry

In addition to the material earlier identified in this interim report, I received from the Department of Transport a report dated July 2000 on risk management by Dr Sally Leivesley, together with a statement by the former Director General of the Department of Transport. These were in response to the risk management reports by the rail entities.

Dr Leivesley suggests a means by which the safety of rail operations can be improved by the appointment of an independent safety regulator who reports directly to the Minister and with transparent reporting of the information to the public. She also recommended an integrated system of risk management across all rail bodies that is based upon agreed set minimum risk standards for design safety and operational risk management procedures.

The Rail Bus and Tram Industry Union has provided some material by way of a submission which it believes would improve the safety of rail operations. The trade union has submitted that the present Transport Safety Bureau, within the Department of Transport, should compile standard rail safety indicators for all rail operators and maintainers, and publish regular reports of performance, using Australia wide benchmarks, related to international benchmarks. The trade union has also submitted that the Transport Safety Bureau should be removed from the Department of Transport and transformed into a Rail Safety Commission. In its submission, the Commission should have its own charter and an adequate budget to take a strong prescriptive role in supervising RAC, train operators and infrastructure maintainers, using national competency standards.

The trade union has also submitted that there should be a National Rail Safety Agency, with both broad expertise and a capacity to prosecute. It also submits that an independent National Rail Accident Investigation Agency should be created. In the trade union's submission, the Transport Safety Bureau, strengthened and independent from the Department of Transport, should have overall control of rail safety in New South Wales until such time as there is a national safety regime and national safety regulator. The trade union's submission is that there should be a separate independent rail accident investigation agency in New South Wales, ultimately to be merged with the national body when created.

National Rail Corporation Limited has dealt with the same subject matter in its written submission:

> …[I]n relation to the investigation of major rail safety accidents and/or incidents, the rail industry in New South Wales (and the rest of Australia) would benefit from a centralised and coordinated approach similar to that historically available in the aviation industry. The Commonwealth and the States have commenced initiatives in this area which should be fully supported and encouraged.

Whether the States would agree to such a proposal is a matter about which I cannot comment. I am of the view that there is a role to play for both a separate and independent Rail Safety Inspectorate and a separate and independent Rail Accident Investigation Board. Both of these instrumentalities would reflect the reasoning behind the material

provided by the Department of Transport in the form of Dr Leivesley's report and the Rail Bus and Tram Industry Union and National Rail Corporation Limited submissions and would enhance the safety of rail operations within New South Wales.

For the reasons contained in Chapter 6 the present structure of Government railways does not work satisfactorily. I am not convinced continued separation of the train operator from the infrastructure owner, rather than an integrated model, would necessarily be more efficient or safe. However, there are difficulties with whichever of these two models is proposed. The efficiency and safety of any model depends upon the quality of the organisations' management. One model may look ideal in theory, but will fail in practice if the operations and activities are not properly managed.

In a metropolitan railway system, where approximately 95 per cent of the train movements are conducted by one operator, there may well be strong argument for providing that operator with control of the infrastructure, rolling stock and train operations.

However, the merits of these two competing models, the vertically integrated model or the separated model, were not the subject of evidence or submissions before me. In these circumstances I have no objection to a separated model as proposed by Mr Christie. I positively favour merger of the infrastructure maintainer and the infrastructure owner as he has suggested. Whether there was a vertically integrated model or a vertically separated model, the infrastructure owner and the infrastructure maintainer should not be separated as exists at present.

My proposal is that the Rail Infrastructure Authority should own, manage and maintain the track and it would negotiate access to the track in metropolitan and rural areas with train operators. It is logical that it be the organisation which should be responsible for the promulgation of operational rules, whether they are known as safeworking units or some other name, provided that these rules have been approved by a separate and independent safety regulator. Obviously, for the safeworking of the rail system, any train operator who brings a train onto the track must agree to comply, and must in fact comply, with the operational rules.

Mr Christie expressed the view that the combined function should be performed by a statutory authority rather than a State owned corporation. I agree that, since the Government rail system is a public utility, the commercial imperatives of a State owned corporation are inconsistent with the nature of a public utility activity. Accordingly, the merged organisation should be a statutory authority.

I support the proposal that SRA continue as a separate authority, primarily responsible for the operation of trains. I would envisage that that authority would own, control and manage all infrastructure on the rail network including track, signalling, equipment, electrification systems, level crossings, operational buildings, tunnels, viaducts, bridges, cuttings and embankments. The SRA would continue to own, operate and maintain the railway stations, rolling stock, and employ the necessary staff.

Office of the Rail Regulator

I support the establishment of an Office of the Rail Regulator but, in my view, the monitoring and auditing of safety management should not form part of the functions of the Rail Regulator. I see the role of the Rail Regulator as being primarily to ensure the delivery of efficient and reliable train services by the two authorities and to co-ordinate their activities and to resolve any disputes between them. Provided safety regulation is separated from the Rail Regulator I have no objection to the Rail Regulator being answerable to the Minister for Transport for the efficiency and reliability of train services.

I also support the principle that the Rail Regulator should be a customer advocate. I have had difficulty in understanding the competition theory which was said to underlie the 1996 reforms. The passengers who use the railways rarely have choices about their use them. If they want to catch a train, the only trains operated in the metropolitan area for transporting passengers to and from work or on social or recreational activities, are those operated by SRA. That was the position before 1996 and it remains the position. There is no other train operator in competition with SRA. Nor has there ever been. Nor does it appear that there was ever intended to be any other train operator in competition with SRA. Accordingly, another train operator, real or potential, cannot have been the intended source of competition.

The competition theory said to have underlaid the disaggregation in 1996 has little to commend it in relation to commuter rail services. On the other hand, because so many customers of SRA have no real choice, I regard the consumer advocacy role of the proposed Rail Regulator as being desirable. As such, the Rail Regulator would impose standards on the sole commuter train operator, SRA, for the punctual running of trains and for the cleanliness and proper maintenance of those trains.

In a similar way, the Rail Regulator would set standards which the Rail Infrastructure Authority must comply with in relation to the standard of the track at different locations, the regularity of its maintenance so it does not deteriorate or cause disruption and the myriad other parts of the functioning of the rail network. The Rail Infrastructure Authority should be responsible for providing a safe and reliable track upon which SRA could operate its train services. The Rail Regulator should set standards to ensure that this occurs. If it does not occur SRA should be able to complain to the Rail Regulator about the performance of the Rail Infrastructure Authority and penalties should be imposed for poor performance.

The existence and function of a Rail Regulator would not in any way detract from the responsibility of the Rail Infrastructure Authority or SRA to conduct their activities efficiently and safely. The model that I propose does not envisage that the responsibility for these matters should rest with anyone other than the organisation that undertakes them.

The Rail Regulator, Rail Infrastructure Authority and SRA should each be responsible to the Minister for Transport. The public holds the Minister for Transport responsible for efficient and timely running of train services. The Minister should have the ability to more easily exercise control in relation to the reliability of the rail system.

Mr Christie has suggested that the Minister have an Advisory Board. This is a matter for Government. I do not see why an Advisory Board would be necessary if the Rail Regulator is performing his functions in accordance with the model which I have endorsed.

I have indicated that I support the proposal for a Rail Regulator if there is to be a separated model. I have indicated that I disagree with two features of Mr Christie's proposals in relation to the Rail Regulator. The first is that in Mr Christie's model the Rail Regulator is independent of the Minister for Transport. In my opinion, the Rail Regulator should be accountable to the responsible Minister for the efficiency, reliability and quality of train services.

The second area where I disagree with Mr Christie's proposals is in the area of safety regulation. In my opinion, Mr Christie's model does not adequately protect the safety of the travelling public or rail workers. In the area of safety for those using or working on the rail system or network, there is no room for compromise. Rail safety should be the subject of a robust and independent system of administration. Accordingly, the optimal safety system that I can formulate must constitute my recommendation in the area of structural change.

The model that I propose for rail safety has a number of checks and balances built into it which I shall explain.

Rail Safety Inspectorate

The rail safety regulatory function should be performed by a Rail Safety Inspectorate. The Inspectorate should report directly to Parliament and not to a Minister. This is because the Rail Safety Inspectorate has a single focus being the safety of rail operations. There may be competing demands between, for example punctuality of trains and the safety of their operations. By reporting directly to Parliament, the independence of the Rail Safety Inspectorate would be ensured.

One of the primary functions of the Rail Safety Inspectorate should be to accredit the infrastructure managers and any train operators who wish to operate on the New South Wales rail system.

I do not envisage that the Rail Safety Inspectorate should be involved in certifying the competency of individuals as is now done by the Department of Transport. In my view, the responsibility for ensuring that train drivers, guards and other employees can perform the tasks that they are required to perform competently and safely is and must always be the responsibility, of the relevant employer. The role of the Rail Safety Inspectorate, insofar as rail workers are concerned, should be to ensure that rail organisations have proper safety management systems in place to ensure that the staff are competent and skilled in the tasks that they are employed to perform, and that they are aware of the need for safety in the performance of their tasks. In, for example, the case of the drivers, the function of the Rail Safety Inspectorate should be to ensure that there are proper safety management systems which in turn ensure that drivers have been selected and properly assessed for aptitude; and that they have the necessary operational skills in relation to all features of the driving of trains and the routes over which they are required to drive.

It may be necessary to expand a little further on what I have contemplated by the expression "safety management system" insofar as it relates to the Rail Safety Inspectorate monitoring the safety management systems that the rail infrastructure owner or train operators have in practice. I envisage that the Rail Safety Inspectorate would require any railway in New South Wales to set out in detail the nature and extent of all its operations. Each railway should also satisfy the Rail Safety Inspectorate that it has identified all the risks or hazards associated with its operations, that it has procedures or arrangements to control those risks and that there is a system in place for controlling those risks.

The Rail Safety Inspectorate should also be required to satisfy itself that each railway has a system in place for monitoring the effectiveness of those controls and for adjusting the priorities accorded to different risks. The Rail Safety Inspectorate should also monitor the way in which a rail entity responds to any trends developing in its operations to ensure that the rail entity is taking appropriate action to address any weaknesses in its safety performance.

The Rail Safety Inspectorate should pay particular attention to risks which may have catastrophic consequences. These include collisions between passenger trains and between passenger trains and freight trains, train derailments and fires on trains. These are risks which the train operators would need to have a comprehensive and effective safety management system in place to control and monitor.

The Rail Safety Inspectorate would need to be satisfied that there is a proper safety management system in place to control the risk for example, of injury or death to persons on or near railway stations, arising from fire, passengers slipping or falling on railway stations, passengers trying to board moving trains, passengers trying to alight from moving trains, movement of plant or equipment on railway stations, overcrowding on railway stations or passengers seeking to cross the track at stations. This is not an exhaustive list but it identifies the areas where there are risks that need to be properly managed. The safety management system would identify not only the controls, for example, procedures for inspection and cleaning of the station, competence and training in train dispatching, but also precisely which employees are responsible for the performance of these tasks and what the systems for auditing and monitoring are to ensure that they perform their tasks.

In addition to the accreditation of organisations on the rail network, the Rail Safety Inspectorate should also be able to make mandatory recommendations to the organisations in relation to any areas where it thought there was any compromise to safety and should follow up on those recommendations to ensure that they were effectively implemented. It should also have officers carry out random inspections and should have the power to shut down the operation of the rail network, or any part of it, if it became unsafe.

The Rail Safety Inspectorate should also have responsibility to approve any new classes of equipment and any new routes on which trains would travel and should have a responsibility to ensure that there were safe systems in place in relation to the design, installation and testing of any new routes before they became operative. It would not be the function of the Rail Safety Inspectorate itself to inspect each and every piece of equipment, but rather to ensure that there were adequate systems in place by which the

particular railway organisation concerned conducted such inspections to satisfy itself about the safety of the equipment or of the new route.

When considering any alteration to working procedures or the introduction of any new equipment, the principle that should guide the Rail Safety Inspectorate is that no change in procedure or equipment should be approved if either alone or in context it reduces the level of safety of rail operations.

I envisage that the Rail Safety Inspectorate should conduct annual reviews of the safety management systems of the rail organisations and thus ensure that rail safety management is regarded as an essential part of the management of the railway. By this I mean that the issue of safety is not treated as an issue only for frontline staff but that the management of safety from the level of Chief Executive down to the cleaner on the railway station is regarded as being an ongoing priority in the operation of the rail system.

I also envisage that any report from the Rail Accident Investigation Board with which I will deal shortly should be sent to the Rail Safety Inspectorate and the latter should follow up on any recommendations that have been made to ensure that the operator, or operators, have put systems in place for controlling any risk that may be identified.

Rail Accident Investigation Board

As I previously indicated, in my opinion, there should be a Rail Accident Investigation Board, this Board should also report directly to Parliament and not to the Minister. Its reports should be made public. The reason why I support the Board reporting directly to Parliament is that it removes the possibility or suggestion that there has been any interference in the content of the reports or the timing of their delivery. Similar separate accident investigation bodies exist in New Zealand, Canada and the United States of America.

The Rail Accident Investigation Board should have a different function and purpose from the Rail Safety Inspectorate. The Rail Safety Inspectorate should be an operational organisation which accredits and monitors safety on an ongoing basis. The Board should be responsible for accident investigation and be a specialist investigatory body. Its investigations would provide a check or balance which would demonstrate whether the Rail Safety Inspectorate is performing its functions properly and whether the train operators, the Rail Infrastructure Authority and the Rail Regulator are performing their functions properly and safely.

The Board should meet regularly and review the reports provided to it by its investigators in relation to accidents. The Board may have its own investigators or it may retain investigators into rail accidents from elsewhere. Its rail investigations should concentrate on obtaining the fullest information and reports in relation to any particular incident or accident. The function of the investigatory reports should not be to find someone to blame but to identify weaknesses in individuals, systems of training, systems of supervision, technical equipment or otherwise that may have caused, directly or indirectly, the accident or incident in question.

To be able to discharge that function, the investigators used by the Rail Accident Investigation Board should have the necessary skills to undertake that type of investigation. They would also need to be armed with necessary powers to enter property and compel answers to questions. In addition to compelling answers to questions, it should be an offence for persons to decline a request to provide information from an investigator in relation to a rail accident. It should also be an offence to provide false or misleading information to an investigator. Under the Rail Safety Act 1993 there is no sanction for a person providing false or misleading information to an investigator in relation to an accident. There was material in the eight accidents referred to me in the Letters Patent as varied which suggested to me that investigators may have been provided with false or misleading information. There is not much advantage in having a system for compulsory answering of questions if there is no sanction for providing false or misleading answers.

To balance the protection of the rights of any citizens who provide information, the legislation creating the Rail Accident Investigation Board and dealing with investigators' powers should provide that any documents or information provided to investigators cannot later be used in any civil or criminal proceedings.

In addition to investigating specific accidents or incidents, the Board should collect any accident and incident data from the Rail Regulator, Rail Infrastructure Authority, SRA and Rail Safety Inspectorate and should collate and analyse that data. It should not only collect and analyse data from New South Wales but should obtain data from interstate and overseas because this may indicate risks or trends which had not previously been identified but which could be the subject of a report to the Rail Safety Inspectorate to ensure that any new risk identified, interstate or overseas, is being properly addressed.

In my opinion, the Rail Accident Investigation Board should also have a system for confidential, anonymous reporting to it of any matter which may give rise to a risk to safety. The purpose of anonymous and confidential reporting is to enable the Board to become aware of trends or near misses and other matters which may give rise to a risk to safety. The reasons why it is the Board which should have power to receive anonymous and confidential reports are that it is the investigatory body and the anonymous and confidential reporting will provide a mechanism by which the competency of the Rail Safety Inspectorate can be monitored. Finally, the Rail Accident Investigation Board, in my opinion, should itself determine which accidents, incidents or other matters, it is to investigate. Common sense suggests that any accident which involved substantial public disquiet or concern would be investigated but there may also be a series of minor accidents which demonstrate a trend which has the potential to lead to a catastrophic accident. The Board should investigate those as well. The Board should report to Parliament on an annual basis. The existence of the Board should not prevent the Government from deciding to appoint some other form of inquiry into a rail accident or incident including, if necessary, a Special Commission of Inquiry.

It is apparent from what I have said that the Department of Transport would cease to have a role to play in rail safety or rail accident investigation after the creation of the Rail Safety Inspectorate and the Rail Accident Investigation Board. However, that does not mean that it would not have a role to play in areas which affect rail operations. Strategic planning for transportation services for different geographical areas of Sydney to meet changing needs is an obvious area where the Department of Transport should have a role.

It should have a continuing role in relation to the co-ordination of rail, bus and road transport in the Sydney metropolitan area and rural New South Wales.

I note some similarities between what I now propose and the amendments to the Rail Safety Bill foreshadowed on 8 September 1993 in the Legislative Assembly by Mr Langton, the then Shadow Minister for Transport when he said:

> The opposition will move to strengthen the Bill by adding a new Part 4 to establish a Railway Accident Investigation and Safety Bureau, which would be a small, high powered group with the authority of the Crown. Its task will be to conduct inquiries into major railway accidents, as defined in the Bill, and report its findings and recommendations directly to Parliament…

The Shadow Minister also stated:

> The ultimate value of the Bureau will be to ensure that in any case of serious accident or malpractice, the system – if you like – would not be seen to be investigating itself….This is certainly not meant as any direct or indirect disrespect or attack on either the director-general or the department, but I believe an independent arbiter would show New South Wales travellers and freight forwarders that the Government is setting the highest possible standards in safety and operating practices.

These foreshadowed amendments were not accepted by Parliament at the time.

I shall now summarise the recommendations requiring legislation. In doing so I should indicate that, in the limited time available to me to prepare this second interim report, it has not been possible to include the detail of the composition, powers, functions and duties of the Rail Accident Investigation Board. Similarly, with the Rail Safety Inspectorate, I have indicated only in broad terms the nature of the functions that it would perform. The detailed specification of its composition, powers, functions and duties and those of the Rail Accident Investigation Board will be published in the final report.

I have previously stated that the transition from the vertically integrated structure that existed prior to 1996 to the disaggregated structure that was then put in place, did not involve sufficient consideration of the consequences of those changes to the operation of the rail system. It is essential that mechanisms are established to properly manage the transition from the existing arrangements to any new structure to ensure that there is no deterioration in the management of safety on the rail system.

The experience in and following 1996 provides a valuable lesson in this regard. The failure to properly identify, plan for and manage the restructure in 1996 led to deficiencies which have been identified in Chapter 4 of this interim report. These have included lack of clarity in the role of Network Control, the fragmentation of safety personnel and the differing priorities between SRA and RAC regarding infrastructure maintenance and development.

This clearly demonstrates that prior to any major structural change there must be an examination and assessment of the potential ramifications of the intended changes at all levels of the operation of the rail network to ensure that the level of safety is not

decreased. Following this, strategies must be developed to manage the change so that in the transition from the present arrangements to the new structure no aspect of the safety management of the rail system is neglected or omitted thereby reducing safety.

I consider that the planning and management of the transition from the present to any new structure to ensure that there is no adverse effect on safety should be done by formalising the role and function of the Co-ordinator General of Rail and including among his powers and functions the power to transfer staff and prepare for the implementation of a new legislative and structural regime.

I further consider that the Office of the Co-ordinator General of Rail should continue to perform this function for a minimum period of twelve months from the formal establishment of the Rail Infrastructure Authority and the Office of the Rail Regulator to ensure that any post restructure complications are dealt with in a co-ordinated and strategic fashion.

I am not opposed to the enactment of legislation to create the Office of the Rail Regulator or to merge RAC and RSA proceeding forthwith. However, the Office of the Rail Regulator should not be responsible for either rail safety or the investigation of rail accidents or incidents. These latter functions should remain with the Department of Transport until the detail of my recommendations in relation to a separate Rail Safety Inspectorate and a separate Rail Accident Investigation Board are published in the final report of this Special Commission of Inquiry.

8. Recommendations for Structural Change

In accordance with the request from the Premier that I "outline any important measures that may require legislation", I make the recommendations set out below. In the limited time available to me in which to prepare this interim report it has not been possible to do more than that which I was requested to do. I had hoped to give more than just the outline that was requested by the Premier, however this has not proved to be possible. I intend in the final report to include the detail of these recommendations.

I recommend that legislation, where necessary, be enacted to achieve the following:

1. That the infrastructure owner RAC and the infrastructure maintainer RSA cease to be State owned corporations and that their property and functions be merged into a single statutory authority, to be known as the Rail Infrastructure Authority, responsible to the Minister for Transport.

2. That savings and transitional provisions be included in the legislation to ensure that any existing contractual obligations of either RAC or RSA be performed.

3. That SRA be responsible for the control and management of timetabling and train movements and other functions of network control within the area of operation of the present CityRail network.

4. That the Rail Infrastructure Authority be responsible for network control in all areas of New South Wales other than those controlled by SRA.

5. To establish an Office of the Rail Regulator.

6. That if the Minister has an Advisory Board it have a membership consisting of a range of representatives from users of the rail network, including passenger and freight operator representatives, to advise the Minister in relation to transitional issues and the efficiency and reliability of the rail system.

7. To formally establish the Office of the Co-ordinator General of Rail and to enable the Co-ordinator General of Rail to carry out the following functions:

   (i) examine and assess the ramifications of any structural change for all levels of operation of the New South Wales railways prior to any change being implemented and to manage those changes so that the level of safety is not reduced;
   (ii) manage required organisational changes to SRA to facilitate a proper customer focus; and
   (iii) manage the merger of RAC and RSA into the Rail Infrastructure Authority to facilitate improved asset management.

8. That the Office of the Co-ordinator General of Rail cease to exist at the end of transitional period identified in recommendation 7 above and any relevant functions concerning the ongoing regulation of rail be transferred to the Office of the Rail Regulator, the Rail Safety Inspectorate and the Rail Accident Investigation Board respectively.

9. To establish a Rail Safety Inspectorate.

10. That responsibility for safety regulation in the rail industry be transferred from the Transport Safety Bureau within the Department of Transport to a Rail Safety Inspectorate.

11. To establish a Rail Accident Investigation Board.

12. That responsibility for rail accident investigation be transferred from the Transport Safety Bureau within the Department of Transport to a Rail Accident Investigation Board.

13. That the Department of Transport retain its function of transport policy development, co-ordination of public transport services of rail, bus and road transport and other functions related to ensuring that transportation needs meet the growing and changing needs of different geographical areas within New South Wales.

14. That pending the delivery of the final report of the Special Commission of Inquiry into the Glenbrook Rail Accident, the safety regulatory function and accident investigation function should continue to be the responsibility of the Transport Safety Bureau within the Department of Transport.

15. That development of the legislation dealing with the establishment of a Rail Safety Inspectorate and a Rail Accident Investigation Board not be commenced until after the delivery of the final report of the Special Commission of Inquiry into the Glenbrook Rail Accident.

ANNEXURE A

ALPHABETICAL LIST OF WITNESSES

Christie, Ronald David – Co-ordinator General of Rail

Hill, David – Former Chief Executive Officer, State Rail Authority of New South Wales

Lewocki, Nick – Secretary, Rail Train and Bus Industry Union, New South Wales Branch

Panigiris, George – Assistant Secretary, Australian Services Union, New South Wales Branch

Robinson, Ian Richard – Acting Director General, Department of Transport

ANNEXURE B

LIST OF PARTIES AND THEIR REPRESENTATION

Counsel Assisting
Mr Christopher Thomas Barry QC and Mr David Cowan instructed by Christine Johnpulle

Australian Rail, Bus and Tram Industry Union, NSW Branch and its members
Mr Harold Bauer instructed by McClellands

Rail Access Corporation
Mr John West QC and Mr Ian Neil instructed by Allen Allen & Hemsley

State Rail Authority of New South Wales
Mr Peter Garling SC and Mr Simon White instructed by Mallesons Stephen Jaques

Director General, Department of Transport
Mr Michael Finnane QC and Mr Patrick Saidi instructed by the Crown Solicitor

Rail Services Australia
Mr John Gleeson QC and Mr Martin Shume instructed by Freehills

Relatives of the deceased and injured passengers
Mr Peter Bodor QC and Mr Michael King instructed by the Legal Representation Office

Co-ordinator General of Rail
Mr Bruce Collins QC instructed by Blake Dawson Waldron.