

30 July 2021

Independent Pricing and Regulatory Tribunal

Attention: Melanie Mitchell  
melanie\_mitchell@ipart.nsw.gov.au

Dear Ms Mitchell,

## **IPART review of third-party access to rail infrastructure in NSW – draft terms of reference**

I write on behalf of the Hunter Rail Access Taskforce (**HRATF**) in relation to the draft terms of reference for IPART's review of the NSW rail access regime.

The HRATF is the unincorporated user group for the Hunter Valley Coal Network (**HVCN**). The HRATF comprises nine coal producers that each operate coal mines which utilise the HVCN. The HRATF was formed in 2009 and has led industry engagement with Australian Rail Track Corporation (**ARTC**) and the Australian Competition Consumer Commission (**ACCC**) in relation to access regulation (including voluntary undertaking processes) for the HVCN over the past decade.

The HRATF wishes to thank IPART for the opportunity to comment on the draft terms of reference for its review of the NSW rail access regime. We support this review and consider that the terms of reference are generally appropriate.

To assist IPART, we note that a key concern for the HRATF is to ensure that the NSW rail access regime provides an adequate alternative for regulation of access to the HVCN, if the current voluntary Part IIIA access undertaking lapses. This could occur within relatively limited timeframe, given that it would most likely be triggered by ARTC refusing to renew its access undertaking and the framework governing rail infrastructure for the NSW coal sector therefore automatically resetting to the NSW rail access undertaking.

We note that the current terms of reference refer to:

*“Transitional arrangements that should apply when rail infrastructure owners submit a voluntary undertaking to the ACCC and when a voluntary undertaking lapses.”*

A critical focus for HRATF will be to ensure that any such “transition” from the ARTC voluntary undertaking, currently in place under Part IIIA, to the state-based regime can occur in a manner that:

- can occur quickly, without substantial delay associated with consultation and development of new or transitional arrangements; and
- maintains the stability and commercial certainty around access arrangements that currently exist under the ARTC access undertaking (and associated access agreements) and that have been refined over the last decade. That is to say, industry would seek continuation of substantial parts of the existing regime – which has been developed with specific regard to the context of the coal industry and the associated network – rather than ‘transitioning’ to a form of the standard NSW access undertaking, which has not been developed with our industry context in mind.

We understand from the draft terms of reference that this issue is already intended to be addressed by IPART (as noted above). However, we note that our concern may extend beyond “transitional arrangements” to a wider concern to ensure that the NSW regulatory framework remains ‘fit for purpose’

as back stop regime for the coal network and one that is capable of immediately supporting commercial certainty and continuity, if required, following the expiration or termination of a voluntary Part IIIA access undertaking. We certainly do not anticipate any appetite from users of the HVCN to 'transition' to an access framework based on the NSW access undertaking, in its existing form.

We look forward to participating constructively in the IPART review process.

Please contact me at [Frank.Coldwell@glencore.com](mailto:Frank.Coldwell@glencore.com) if you would like to discuss this matter.

Yours sincerely,



Frank Coldwell  
Glencore  
Chairman - Hunter Rail Access Task Force

