

28 February 2013

The Project Manager
Rail Access Review
Transport for NSW
Level 6, 18 Lee Street
Chippendale, NSW, 2008

Contact Fiona Towers
T (02) 9290 8420
E fiona_towers@ipart.nsw.gov.au

Under the NSW Rail Access Undertaking (NSW RAU), IPART has a number of responsibilities in relation to pricing and compliance. IPART determines the compliance of rail infrastructure owners with:

- ▼ the Asset Valuation Roll Forward Principles, and
- ▼ the ceiling test, having regard to the operation of the 'unders and overs' Account.

IPART is also the arbitrator of disputes under the negotiate-arbitrate model.

We welcome the opportunity to make a submission to the Review of the NSW Rail Access Regime (NSW RAR). Our comments are primarily focussed on Railcorp's Hunter Valley coal network (HVCN) sectors and the Country Regional Network (CRN) as well as our role as arbitrator. In summary, we consider that:

Arbitration

- ▼ Overall, the negotiate-arbitrate model of rail access appears to work well. There has been one matter escalated to arbitration under the NSW RAU¹.

RailCorp's HVCN sectors

- ▼ RailCorp's HVCN sectors should continue to be subject to some form of price regulation. Railcorp is a monopoly provider of rail access and has access revenue that has exceeded the 80% threshold of full economic costs.
- ▼ The RAU should be revised to require the regulator only to assess compliance with the ceiling test and compliance with the Asset Valuation Roll Forward Principles. The regulator would determine the amount to be added to [or subtracted from] the balance of the unders and overs account each year. However, the unders and overs account

¹ A second application for arbitration was made and subsequently withdrawn.

should be managed by the rail infrastructure owner. Any disputes over the account would be subject to arbitration under the NSW RAU.

- ▼ The RAU should require infrastructure owners to submit requested information not later than 14 days upon the receipt of IPART's request or such later date as agreed to by IPART. Often IPART requests additional information from infrastructure owners to clarify or substantiate compliance issues. Although the RAU specifies the due date (31 October following the end of the compliance year) for the principal compliance report, no timeframe is set for submission of additional information requested by IPART.

Revised arrangements for metropolitan and CRN networks

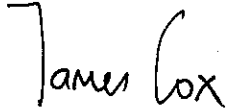
- ▼ In line with our recommendations in the Review of Access Pricing on the NSW Grain Line Network (2012):
 - We support a single, variable, published access price on the CRN for all grain and non-grain traffic.
 - An industry coordination forum would facilitate greater coordination of operations and investment in the network. The forum could advise on maintenance priorities, investment decisions and funding contributions.
- ▼ Where actual access revenue from the relevant assets is significantly less than full economic costs, the RAU should require infrastructure owners to submit ceiling test information every 5 years. In other years they should confirm that there have been no material changes to the rail infrastructure owner's assets' revenue and cost base that would cause their revenue to approach the 80% threshold of full economic costs.
 - For assets outside the HVCN, the RAU currently requires that the infrastructure owner demonstrate to the reasonable satisfaction of IPART that access revenue does not exceed 80% of full economic costs. For many of the sectors, access revenues have been significantly below the 80% threshold.
- ▼ Where revenue from the relevant assets is approaching the 80% threshold due to strong growth in traffic or other changes, the RAU should require infrastructure owners to submit detailed ceiling information annually.

In general, we consider that the drafting of schedule 3 ('pricing principles') of the RAU could be improved to ensure that the language:

- is clear and unambiguous; and
- accurately reflects the policy goals that are sought to be achieved in regulating the returns made by rail infrastructure owners.

We welcome the opportunity to provide specific drafting suggestions as part of the consultation process on the revised RAU.

Yours sincerely

A handwritten signature in black ink that reads "James Cox". The signature is written in a cursive style with a large initial 'J'.

James Cox
Chief Executive officer and
Full Time Tribunal Member