

Our reference: 19/148

28 June 2019

Michael Brennan
Chair
National Transport Regulatory Reform
Productivity Commission
LB2 Collins Street East
Melbourne VIC 8003

Dear Mr Brennan,

**SUBMISSION TO NATIONAL TRANSPORT REGULATORY REFORM ISSUES PAPER:
OPPORTUNITIES TO PROVIDE GREATER INTEGRATION OF RAIL ACCESS**

Thank you for the opportunity to make a submission to the Productivity Commission's Inquiry into National Transport Regulatory Reform. The Tribunal has asked me to write to you on their behalf. Our submission concerns opportunities to harmonise the national rail freight market through streamlining rail access regulation.

In our recent review of the rate of return and remaining mine life for RailCorp's Hunter Valley Coal Network, we identified some concerns with the operation of the NSW rail access regime, and its interface with the national rail access regime. In particular, submitters to our Draft Report raised concerns that the current regimes:

- ▼ Create unnecessary duplication of regulatory effort and are not effective in addressing interface issues, inhibiting industry productivity
- ▼ Involve additional costs for access seekers where multiple access regimes apply to a single network, such as in NSW's Hunter Valley
- ▼ Allow rail infrastructure owners to choose between regimes, reducing the efficacy of access regulation. We have received submissions stating that rail infrastructure owners have used the regulatory uncertainty created by their ability to switch between regimes to negotiate access conditions in their favour.

We have received complaints about, and support for a review of, the current regulatory arrangements from rail infrastructure owners, rail access seekers and other regulators. This is a strong indication that there are systemic problems with the current regime.

We would like to draw your attention to the issues raised with us and in particular, to those issues that can only be addressed through a whole of system review of the rail access regime. Copies of these submissions are available from our website: www.ipart.nsw.gov.au.

We support a review of rail access regulation to address concerns raised by our stakeholders

In our Draft Report, we recommended that the NSW Government should ask us to review the NSW Rail Access Undertaking, which has not been reviewed since it commenced in 1999. However, we agree with submissions made to us that some of these issues can only be resolved through a review of the regime as a whole. As such, we consider that it may be timely for a national review of rail access regulation.

We note that in its 2013 Inquiry into the National Access Regime, the Commission acknowledged that differences in rail access regulation between jurisdictions may increase compliance costs for rail operators, but that there would be considerable time and effort involved in developing a national approach, and that principles are deliberately flexible in order to take account of differing characteristics of jurisdictions.¹

We also note that the National Transport and Infrastructure Council had a work program to review the costs and benefits of having multiple access regimes for rail operators and customer by early 2017, and develop possible options for a national/harmonised rail access regime by the end of 2017. However, this work does not appear to have been completed.

We accept that consistency between regimes comes at a cost. However, there are also costs involved with the current duplication and overlap. We consider that there is a need to re-examine the costs and benefits of a nationally consistent rail access regime, and until governments address inconsistencies and overlaps in rail access regulation, it will hold back further productivity and innovation in the rail freight industry.

CONTEXT

IPART monitors compliance with the NSW Rail Access Undertaking (the Undertaking). The Undertaking provides for third party access to the rail network in NSW, under a negotiate-arbitrate regime, between a floor and ceiling price. Every five years, we determine the rate of return and remaining life of mines that use the Hunter Valley Coal Network sectors subject to the Undertaking, which are inputs into the price ceiling calculation.

The *Transport Administration Act 1988* (NSW) (TAA) allows for voluntary written undertakings to be made by a rail infrastructure owner to the Australian Competition and Consumer Commission (ACCC) for the provision of access to the owner's part of the NSW rail network, under section 44ZZA of the *Competition and Consumer Act 2010* of the Commonwealth.

Currently, the ARTC has undertakings with the ACCC for its Hunter Valley Coal Network in NSW and the National Interstate Rail Network, which passes through multiple states. However, following lengthy negotiations to replace ARTC's 2011 Hunter Valley Access Undertaking, industry faced the possibility that the undertaking would expire and regulation would revert to the NSW regime by default. Submissions to our review expressed concern that if this occurred, rail access seekers would lose a number of provisions incorporated to promote efficiency across the Hunter Valley coal supply chain, aligning operations between mines, rail operators and ports.

¹ Productivity Commission, *Inquiry into National Access Regimes*, Final Report, February 2014, p 191.

IPART's contact officer for this matter is Melanie Mitchell, Principal Analyst

Yours sincerely

Fiona Towers
Acting CEO