



11th February 2011

Mr Lyndon Rowe
Chairman
Economic Regulation Authority
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By email: publicsubmissions@erawa.com.au

Dear Lyndon

Draft Report on the Review of the Railways (Access) Code 2000

The Association of Mining and Exploration Companies (AMEC) is the peak national industry representative body for mineral exploration and mining companies within Australia, many of which are small and emerging companies in Western Australia.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that AMEC provides the following comments on the Consultation Paper relating to the Draft Report on the Review of the Railways (Access) Code 2000.

In its previous correspondence to the Authority dated 18th January 2010 AMEC expressed concern that the main objective of the Railways (Access) Act and the Code does not appear to be being achieved, as the neither the Act or the Code appear to be serving any practical purpose in assisting third party industry participants that are seeking access to private rail networks. AMEC remains of that opinion particularly as railway owners are generally unwilling to provide access to third parties.

Furthermore, AMEC remains disappointment with the limited scope of this Review.

AMEC notes that the WA Department of Treasury and Finance (DTF) is also seeking comment on a Consultation Paper relating to Amendments to the Railways (Access) Code 2000, and is accordingly making a submission to DTF.

In the meantime, AMEC provides the following comments on the recommendations contained in the Draft Report, as follows:

Recommendation 1 - AMEC supports the proposal to publish required information on the railway owner's website.

In addition, AMEC notes that concerns previously expressed by the North West Iron Ore Alliance (NWIOA) relating to the articulation of relevant running information such as departure and arrival times do not appear to have been included in the proposed amendments. AMEC considers that such additional information would provide prospective access seekers a better understanding of the railway network characteristics.

Recommendation 2 – AMEC supports the additional sub section noting that any capacity information provided by the railway owner must be compiled on a reasonable basis consistent with the railway owner’s obligation.

AMEC considers that information regarding capacity of the network, likely access charges and cost allocation methodologies should be publicly available to improve transparency and allow business modelling to be undertaken to assess project viability in a more efficient manner.

Recommendation 3 – AMEC supports the widening of the definition of ‘dispute’ to include all information provision and negotiation obligations on railway owners.

Recommendation 4 – AMEC supports:

- Revision of section 42 to only require public consultation for variations to segregation arrangements considered by the Authority to constitute a material change;
- Expansion of Part 5 of the Code relating to the inclusion of costing principals and overpayment rules; and
- Periodic reviews of Part 5 instruments.

Recommendation 5 – AMEC supports removal of irrelevant transitional provisions.

Recommendation 6 – AMEC supports the proposed amendments to Schedule 4 as they are considered reasonable and allow recovery of legitimate upfront capital and operating costs in the acquisition of interests in land and the development of relevant railways.

It is noted that these amendments are consistent with those proposed by DTF.

Thank you for the opportunity of making comment on the Draft Report.

In the meantime, AMEC is in the process of convening an industry roundtable meeting in order to discuss the specific concerns and identify potential remedies and strategies that may deliver appropriate third party access and haulage rights to private rail networks.

I will advise you further when that task has been completed.

Yours faithfully

Simon Bennison
Chief Executive Officer