Review of Railways (Access) Code 2000

Submission to Economic Regulation Authority

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Submission by Michael Carmody.

Our Family Company farms east of Kulin and currently crops approximately 4,300 hectares. Grains grown in 2014 were Wheat, Barley, Canola, Lupins, Peas and Oats.

Of our 2014 deliveries to CBH 84.63% was delivered to our two closest bins, 13.49% to other inland bins for various reasons and only 1.88% to the Metro Grains Centre to give our local transport operator loads for back-loading fertilizer. There was also a small tonnage sold outside of the CBH system which had to be delivered to Perth.

To my knowledge most farmers deliver the majority of their harvest to local bins as it is quite impossible to keep the grain away from the headers if the hauling distance is too long. There has however been a recent shift to on farm storage in some cases due to the almost 11% increase in freight charges for grain delivered to the Kulin site in the last year. The increase was largely due to the fact that Kulin grain is no longer transported on rail (the line has been placed into care and maintenance) and as of last harvest is trucked to Brookton and then railed to port. This increase in freight rates cost our company $18,819 extra freight over and above what it would have cost if the same tonnage was delivered to Kulin the year before.

It appears to me that the use of the GRV methodology combined with the monopoly power of the railway owner is producing outcomes whereby the owner can not only write their own ticket to excess profits but also cherry pick the more profitable lines and close others by pricing users out of the market.

The recent forced removal of CBH trains from the network is a stark example of the extreme pricing power the monopoly confers upon the owner. The fact it was done during a busy shipping schedule reminds me of union stoppages during concrete pours.

It is not in the national interest for public assets to be allowed to run down in deference to a trans-national company's bottom line.

Access seekers are extremely disadvantaged under the current negotiation regime. It is a bit like putting a fox in the chook-pen and asking the parties to come to a mutually agreeable outcome.

I would support a move to the DORC methodology combined with more transparency in actual costings and a more prescriptive regime for access.

The excerpts below are from the issues paper.

48. In addition, the NCC noted that interface issues would continue to exist for national rail transportation due to inconsistency between the GRV approach, as adopted by Western Australia, and the asset valuation method used in other rail jurisdictions. In its Final Review, the NCC stated (at paragraph 9.22):
The WA Rail Access Regime is the only regulated industry to adopt GRV, as depreciated optimised replacement cost (DORC) is the widely accepted

asset valuation methodology for regulation in Australia,

49. The NCC considered that, having regard to the consistency limb of the objects of Part IIIA, the WA rail access regime could not be certified as an effective access regime. Part IIIA requires that there be a consistency of approach to access regulation where it is applied through a State access regime.

50. The NCC concluded that, although the WA rail regime satisfied or reasonably conformed to the principles it must address in order to be certified as an effective access regime, it did not provide for a consistent approach to regulation of third party access to railways in Western Australia. On this basis, the NCC recommended that the Commonwealth Minister should not certify the WA Rail Access Regime as effective. Nevertheless, the Commonwealth Minister certified the WA Rail Access Regime as effective for a period of five years from 11 February 2011.15 In his press release accompanying the decision, Mr. David Bradbury said:

Even though my decision is different to the NCC's final recommendation, I share some of their concerns about the way the WARAR is applied to new railways. I encourage the Western Australian Government to consider how greater certainty could be achieved, and the next review of the regime in 2014 is an appropriate opportunity for this to occur.

My understanding of the above is that the minister certified the rail regime not only with it having an inconsistent approach to regulation of third party access but also with an inconsistency in the valuation methods from other states (whilst the owner has a powerful monopoly) thus putting Western Australia's rail users and particularly grain growers at a competitive disadvantage to other states. How does this sit with section 99 of the Australian constitution?

The 2014/15 freight rate from Merredin to Kwinana is listed at $19.61 of which $7.92 was below rail access fees (before the recent interim agreement) How can it be that 40% of the freight rate is comprised of an access fee? I have been informed that access fees in other states are up to 20% of freight rates. A train has large running and depreciation costs whereas a rail line has a very long lifespan.

With regard to the tracks in care and maintenance I believe that if the lessee is not willing to operate them they should be taken back by the government at no cost, repaired and leased to an entity that is prepared to operate them. If the government is not prepared to repair them then they should be leased with a discount to account for the new lessee having to bring them back into operational standard.

The photo below is of a section of the track between Kulin and Kondinin. It is unclear whether this section is closed or under care and maintenance.

Although the following is outside of the scope of the review, decisions made have consequences.

Recently my wife was travelling towards Kulin from Corrigin and moved over to the left as a road train was fast approaching. Her car hit a bogged out section of road similar but not as bad as the one pictured below. The car was thrown to the right in the direction of the oncoming truck. Fortunately they did not collide but this shows how dangerous the roads have become within a short time of the railways being closed. Mostly we are discussing money in this debate but what price do you put on a life.

The photo above is of a section of road between Kulin and Corrigin. This has occurred since the closure of the rail line to Kulin. These damaged areas present multiple dangers to traffic, particularly cars that are not high clearance four wheel drives. If a car is forced to the left by an oncoming wide load the uplifted bitumen would contact the sump of the engine and could conceivably send the car off the road. Another scenario is the car’s left wheels hitting the raised section and being thrown to the right to collide with the oncoming vehicle. Yet another danger is posed after rain when a driver could lose control due to the car aquaplaning.

The progressive closure of the rail network is directly responsible for serious deterioration of the road network and the state government is either unwilling or unable to repair and upgrade the roads fast enough to cope with the increased tonnages of grain being carted on roads. The plain truth is that rail is very efficient at moving bulk commodities and road is not.

No government could keep up with the maintenance required on roads caused by the closure of rail.

The rail network is a very important state asset and to allow it to deteriorate to the point of disuse due to the granting of a monopoly to a trans-national company combined with a poorly drafted lease agreement and flawed methodology is in my opinion nothing short of economic treason.

Michael Carmody.

[redacted]

8th June 2015.