



Media Statement

23/09/2015

ERA releases report on WA Railway Access Code Review

A draft report on the review of the *Railways (Access) Code 2000* was released today by the Economic Regulation Authority (ERA).

The draft report recommends the light-handed approach of the current regime be continued, except for certain routes where a more prescriptive approach would encourage negotiations to happen quicker.

ERA Chairman Dr Stephen King said on routes where there are complex negotiable elements, such as the condition of the track, or where there are different types of freight tasks, it is appropriate for the parties, with recourse to an arbitrator if needed, to arrive at a fair price which takes into account all the variables. In these circumstances, it is appropriate for the regulator to play a limited role, such as by establishing cost boundaries between which the parties can negotiate a price.

“However, where it is relatively straightforward to arrive at a fair price for a standard service, the regulator can be more involved in setting the price to minimise the potential for delays in the negotiation process. Accordingly, the ERA has recommended that the Code should not apply to The Pilbara Infrastructure railway and Brookfield Rail’s interstate freight route. Instead, these railways could be regulated through undertakings with the ACCC,” Dr King said.

He said the recommendations in the draft report have been informed by two recent access proposals. The ERA understands that the progress of these access proposals has been delayed by the parties failing to provide all the required information, and by legal disputes between the parties.

“There are a number of recent news reports which have given the impression that the ERA has a hand in the conduct of negotiations or the resolution of disputes associated with negotiations. On the contrary, the ERA’s role in setting cost boundaries for negotiation finishes before the negotiations start, and it is up to the

parties to ensure that negotiations get pushed along as quickly as commercial requirements and good faith allow.

“In the case of the current negotiation between CBH and Brookfield Rail, the negotiation period laid out in the Code finished sometime in July without the parties coming to an agreement. If the parties wanted to have this impasse resolved by arbitration, then that process could have started in July, but to date arbitration has not been called for.

“In the absence of unnecessary delays, the provisions of the Code allow negotiations to be concluded within a timeframe comparable with normal commercial negotiations. The ERA has not been provided with any evidence that the Code necessarily hinders the timely progression of negotiations.

“The draft report makes other recommendations relating to capacity expansions and information requirements of railway owners and access seekers.”

Dr King said the report makes recommendations which aim to improve the operation of the Code by removing unnecessary clauses which have delayed previous proposals and by addressing timing issues and information requirements in consideration of recent experiences.

The ERA has published all submissions received to date, related issues papers and previous Code review reports on its website. The public comment period closes on Friday, 23 October 2015, and the final report will be provided to the Treasurer by the end of the year.

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