



WAFarmers Comment on the Draft Report: Review of the *Railways (Access) Code 2000*

Prepared For

Economic Regulation Authority

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The Western Australian Farmers Federation (Inc.) (WAFarmers) welcomes the opportunity to comment on the Review of the *Railways (Access) Code 2000* Draft Report.

As background, WAFarmers is the state's largest and most influential rural advocacy and service organisation. WAFarmers represents around 3,000 Western Australian farmers from primary industries, with the majority being grain growers. As the largest WA rural advocacy group, our grains members are responsible for approximately 35% of the overall grain production in WA.

Following the release of the Draft Review of the *Railway (Access) Code 2000*, WAFarmers would like to reiterate its comments which state that the Economic Regulation Authority (ERA) has the authority to ensure fair and transparent negotiations for railway access.

While the Draft Review acknowledges statements that the WA rail access regime is 'light-handed', WAFarmers is disappointed that no recommendations were made in an attempt to rectify this issue. WAFarmers has strongly recommended against a light-handed regulator, and would prefer the ERA to enforce regulations as opposed to guidelines for access negotiations (Paragraph 23).

WAFarmers is concerned that the ERA is incapable of objectively assessing Code effectiveness, particularly given that the current 2015 review is the third one since the Code became effective on 1 September 2001. The role of the ERA is to oversee access to WA rail infrastructure under the access Code. However, parties currently seeking access under the Code have found the process to be extremely challenging.

WAFarmers welcomes the announcement that the *WA Railway (Access) Code 2000* will lapse in certification in 11 February 2016. Once the Certification lapses, the National Competition Council can be asked to have the lines declared under part IIIA of the *Competition and Consumer Act 2010*. Once the lines are declared, the ACCC can intervene to facilitate access for the lines, either through setting up terms and conditions, or approving an agreement similar to the Australian Rail Track Corporation (ARTC).

The lapse in certification may allow the current below-rail lease holder to become more accountable for the access provision process, as well as provide the Western Australian community with greater transparency as to the operations of a key infrastructure monopoly.

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WAFarmers encourages the transition of the Western Australian rail network and infrastructure to become managed under a nationally regulated regime. Key logistic and supply chain infrastructure in the Australian economy, such as railways and ports, should have federally regulated access schemes. The importance of the infrastructure to the economy cannot be overstated and it cannot be left to self-regulate. Federal regulation will provide a greater transparency and reduce the undue influence of monopolistic behaviour on industry, particularly agriculture.

WAFarmers welcome the ERA recommendation that the WA East-West line move from State regulation under the WA Railway (Access) Code 2000 to ACCC national regulation, similar to that of ARTC (Recommendation 1). The line connecting Kwinana to Kalgoorlie and interstate is of high quality and standard. Therefore, access price negotiations occur close to the ERA ceiling price. The line being transferred to ACCC control will alleviate potential for fees between access seekers for access to the line. The ERA recommendation to implement the 2006 Competition and Infrastructure Reform Agreement (CIRA) is welcome in creating fair and more prescriptive access across the network.

Clarification on Section 16 and the 'unfairly discriminate' term would be welcomed by WAFarmers. Changes to the Code and its enforcement would provide access seekers with an indication of defined inappropriate behaviour and examples would ensure greater consistency in railway access issues (Paragraph 81 and 87).

WAFarmers would like to thank the Economic Regulation Authority for the opportunity to comment on the Draft Report, especially given the role the review has in recertification of the *Railway (Access) Code 2000*. WAFarmers remains a strong advocate for the voice of Western Australian agriculture and we encourage you to consider the broader implications for agriculture and the wider economy if the Code is allowed to remain in its current state.