



Enquiries: M Mohan Tel (08) 9212 2500  
Our ref: AccessReview230305

Mr. Lyndon Rowe  
Chairman  
Economic Regulation Authority  
6<sup>th</sup> Floor, Governor Stirling Tower  
197 St Georges Terrace  
PERTH WA 6000

24 March 2005

Dear Sir

### **ACCESS CODE REVIEW**

We refer to the review of the Railways (Access) Code 2000 (Code) being undertaken by the Economic Regulation Authority (ERA) in accordance with section 12 part 2 of the Railways (Access) Act 1998. We also refer to the Issues Paper dated 23 February 2005.

Australian Railroad Group Pty Ltd (ARG) responds to the following issues on behalf of ARG, Australia Western Railroad Pty Ltd (AWR) and AWR Holdings WA Pty Ltd (and reserves the right to make further comments once the Draft Report is released by the ERA).

#### **Costing Principles (Item 4.3.1 and 6.7)**

In item 4.3.1 of the Issues Paper, reference is made to a recent submission by ARG to the review of the Victorian Rail Access Regime in August 2004 and a comment to the following effect:

*To the extent that there are external contributions to these costs, such as the State Government providing contributions to upgrades, the ceiling should be adjusted downwards to the extent of that contribution.*

*The balance of the quote was that "[P]ricing ... must encourage use of the facility ..and must allow the track manager to recover costs and make an acceptable return on the investment. If the latter is not achieved the infrastructure cannot be maintained and replaced...[P]ricing should be based on the track owner/manager being able to recover all legitimate costs including sunk costs...ARG believes that this is the best position in that it is essential that the track manager can recover costs and have an incentive to invest and maintain the facility over time."*

The suggestion is made in the Issues Paper that this comment is inconsistent with the current treatment of, in particular, Main Roads subsidies by WNR in the application of the Overpayment Rules (where certain subsidies are treated as access revenue).

ARG respectfully disagrees with this suggestion. ARG accepts that the treatment by WNR of the Main Roads subsidies in issue is specifically directed at meeting the above criteria, namely, to enable the track manager to recover costs in the light of the uncertain nature of the subsidies and to ensure the ceiling is not set so as to act as a disincentive to investment and maintenance. If the subsidy is withdrawn, WNR still bears the maintenance and operational cost of keeping that infrastructure in its original condition until the expiration of the track lease. ARG agrees that this is both appropriate and necessary in the long term interests of the network and the ability of operators to haul freight on the network (and therefore, in customers' interests in the longer term).

The submission made by ARG in the Victorian context related to a substantial "one-off" investment (over \$100m) in upgrading Victorian infrastructure. This is quite a different scenario to the Main Roads example in Western Australia for the following reasons:

- The proposed Government investment was partly in respect of the upgrade of a key intermodal facility with the benefit thereof likely to flow to above rail operators competing with the track lessor rather than the track lessor directly; and
- The Victorian rail infrastructure has a maintenance deficit that is proposed to be overcome with a 'one off' contribution from the Victorian Government.

ARG respectfully suggests that the analysis should always be directed to the underlying economic drivers and principles in determining whether any modification should be made to the Code or the regulatory instruments established under it.

### **Investment**

ARG in principle supports positions taken by WNR in relation to the structure of the Code in relation to investment. In particular, ARG is concerned to ensure that no changes are made to the Code that would discourage investment (through impacting economic returns to the track owner or otherwise). The Code is presently neutral in its impact on investment through an appropriately set ceiling and subsequent application of the Overpayment Rules.

ARG would not support any changes to the Code that would have a negative impact on investment. Further, ARG is of the view that the Code is not the appropriate mechanism to encourage investment. The Code should be neutral in its impact to ensure that economic factors drive freight volumes and returns (which in turn will encourage investment).

Terms and conditions for access should always take into account, amongst other things, the owner's legitimate business interests and investment in the facility (CPA clause 6(4)(i)(i)). The Code is presently structured to do so.

## **Above Rail Competition**

ARG is of the view that competition in the Western Australian market is increasing. AWR is increasingly participating in tender processes to procure or maintain contracted freight tasks for customers with a consequential downward pressure on pricing to the benefit of customers.

In the period since the business was acquired in December 2000 ARG's average revenue per net tonne kilometre (NTK) has declined. Such decline is predominantly attributed to competition from both road and other above rail operators, with both particularly manifest when major above rail (rail haulage) contracts have expired and gone to open tender.

ARG would welcome the opportunity to provide the ERA with further information to support this assertion on a confidential basis.

## **Coverage of Services (Item 6.3)**

Access to yards, private sidings and terminals are generally not included in access regimes because they are not considered to be facilities exhibiting monopoly characteristics. ARG's position is that there is no yard, private siding or terminal owned by the ARG Group in Western Australia and not already included within the regime which exhibits such characteristics. Further, ARG is not aware of any assertion to the effect that such a facility ought be declared or included in the access regime.

This issue is in any event beyond the scope of the Code review and should not be considered further by the ERA in the context of this review.

## **Role of the Regulator**

Generally, ARG is of the view that Code is effective and that the role of the Regulator is limited to recommending changes where the Code is ineffective.

Further, ARG is also of the view that greater intervention by the Regulator would run counter to the principles and intent of the Competition Principles Agreement and would have a real potential to adversely impact upon investment.

With respect to you and all copied.

Yours faithfully,



Mike Mohan  
**Chief Executive Officer**

cc Russell Dumas (Director- Gas & Rail Access)  
cc Mike Jansen (Manager Projects)