



20 June 2025

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Dear Ms O'Connor

### **Rail Operators Group – Submission on Arc Infrastructure's Standard Access Provisions**

I refer to the Economic Regulation Authority's (**ERA**) request for submissions regarding Arc Infrastructure's proposed Standard Access Provisions (**Proposed SAP**), submitted to the ERA in accordance with clause 47A of the Railways (Access) Code 2000 (**Code**).

The Rail Operators Group (**ROG**) was formed in 2018 for the purpose of facilitating collective negotiation with Transport for New South Wales (TfNSW) on the Standard Track Access Agreement to apply to two NSW rail networks: the Metropolitan Rail Network (MRN) and the Country Regional Network (CRN). The ACCC granted authorisation to the ROG for this purpose until October 2023.

On 1 February 2024 the ACCC granted authorisation to the ROG in respect of discussions and collective negotiations with all mainland Australian rail infrastructure managers (**RIMs**) in respect of access arrangements, including broad pricing principles. This authorisation is valid until October 2033.

Members of the ROG operate rail freight haulage services across Australia, including on Arc's network. Some ROG members also provide integrated supply chain services, including rail and road transportation, port services and material handling for a range of mining, metal, industrial and agricultural customers. This submission is made on behalf of the following ROG members (being all rail operators running services on Arc's network): Pacific National (**PN**), Aurizon Operations (**AO**), Watco Australia (**Watco**) and SCT Logistics (**SCT**). These operators run rail services, and hold access rights, across rail networks in Queensland, New South Wales, Victoria, South Australia and Western Australia.

The ROG welcomes the opportunity to provide a submission to the ERA in relation to Arc's Proposed SAP. The Proposed SAP shows the standard terms and conditions that Arc wants to be included in any access agreement.

The terms and conditions upon which access are provided are critical to a rail operator's business performance, with suitable access being a fundamental business requirement, and access charges often constituting more than half of the total service cost. In many cases, we compete directly with road hauliers in providing transport services, with access costs and the associated terms and conditions being critical to our competitiveness in these markets.

In this submission, we have sought to identify and address issues of common concern to commercial rail operators using the Arc network. Our issues of concern fall into five broad categories:

1. Performance transparency and accountability
2. Reasonable financial risk allocation
3. Balanced and reasonable terms
4. Supporting efficient supply chains
5. Transparency and clarity of obligations

A general explanation of these categories of concern is provided below, with our detailed comments on the Proposed SAP provided at Attachment A. In preparing our comments, we have focused on the Track Access Agreement (**TAA**) form of contract, as this is the structure typically used by rail operators. We have also reviewed the Commercial Track Access Agreement (**CTAA**) and have cross-referenced our comments across both formats.

## 1. Performance transparency and accountability

A critical role of the access agreement is to clearly establish the service being provided by the RIM, and to create a framework to hold the RIM accountable in providing that service. This includes creating transparency around the performance of both the RIM (in providing the service) and the rail operator (in how it uses the service).

The ROG considers that, while Arc's Proposed SAP will establish a strong definition of the service being provided (defined in Schedule 2 with reference to scheduled departure and arrival times, permitted axle loads and permitted train lengths), they are seriously deficient in terms of achieving performance transparency and accountability. The most notable examples are:

- Arc's proposed maintenance standard commitment is to maintain the network either to the standard existing at the commencement of the agreement or to the minimum standard required to maintain its accreditation. We consider that Arc's obligation should instead be to maintain the Network to the standard required to provide the services contracted under the agreement, with Arc then being responsible for assessing the network condition required to achieve this. The rail operator should not be required to accept the risk that the contracted services cannot be delivered as anticipated, because Arc's network standard is insufficient at the commencement date. A commitment to maintain the network to the standard required to provide the contracted service is the normal approach adopted in other regulator endorsed standard access agreements, including for Queensland Rail and ARTC (Interstate).

- The Proposed SAP does not include any form of performance reporting. Rail operators consider it critical that the access agreement provides for reporting of performance through an established set of key performance indicators (**KPIs**). This can allow performance to be assessed, performance trends monitored, and mechanisms put in place to address performance concerns. Performance reporting is a feature of all other regulator endorsed access agreements, and in some cases extensive performance reporting frameworks have been agreed (eg Aurizon Network, ARTC (Hunter Valley)). Further, rail operators are seeking a consistent suite of KPIs to be applied across Australia's RIMs. Our proposed KPI suite is provided at Attachment B. Improving coordination between rail networks, including through alignment of performance measures, is a recommended action in the *Delivering Freight Policy Reform in New South Wales* report<sup>1</sup>, accepted by the New South Wales Government this month.
- The Proposed SAP has no consequences on Arc for not providing the committed service, even providing that access charges will continue to be payable regardless of whether the service is provided. This doesn't reflect a fair commercial position for rail operators and is discussed further below.

## 2. Reasonable financial risk allocation

Rail operators do not consider that the Proposed SAP provides for a reasonable allocation of financial risk. The most critical examples of this relate to when paths are not provided by Arc:

- To the extent that Arc does not provide the train paths as agreed for reasons that are within its control, rail operators must not be required to pay access charges (including fixed charges) for those paths. Where, as proposed by Arc, it receives fixed access charges regardless of whether it provides access to the contracted paths, there is no accountability on Arc to deliver those paths as agreed. Instead, Arc's incentive will be to minimise its costs of providing and maintaining the network, regardless of the impact that this has on the quality of service provided to operators. In order to ensure that a railway manager is accountable in delivering contracted services, it is essential that it does not receive access charges where that service is not delivered. This is the approach taken by all other railway managers, including in the regulator approved standard access agreements for ARTC Interstate, Aurizon Network, Queensland Rail and ARTC Hunter Valley.
- Operators consider that a balanced allocation of risk would also require that they are not charged access charges where train paths are not provided due to a force majeure event. This is the position typically adopted in access agreements, with the regulator approved standard access agreements for Queensland Rail, Aurizon Network and ARTC Interstate all providing that fixed access charges are not applied during the period of a railway owner's force majeure.
- In addition, operators consider that the Arc fixed access charges should be excused when operators are unable to run their services because of a force majeure event affecting another network used for their journey.

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<sup>1</sup> See Transport for New South Wales, *Delivering Freight Policy Reform in New South Wales*, June 2025, page 70.

This is primarily an issue for east-west freighter services, which are run by multiple operators. These services are operated on a multi-user basis, and revenue generation is dependent on the freight consigned to each service (rather than bulk services which may have a capacity charge applied on a take or pay basis). Where services are unable to be operated due to any network unavailability (and therefore no revenue can be generated), a requirement to pay fixed access charges in addition to the operator's own fixed costs is a major cost impost on an operator. This is a risk that is not applicable to the competing road freight providers, as fixed road access charges do not apply. A balanced approach, where both the railway owner and the railway operator accept the loss of revenue during any network force majeure event, will better reflect the nature of this market.

### 3. Balanced and reasonable terms

The regulator endorsed standard access provisions must establish balanced and reasonable terms and conditions for access. Rail operators consider that there are number of instances where the terms of the Proposed SAP do not provide for a balanced outcome between Arc and rail operators. The clearest examples of this are:

- The confidentiality obligations in the Proposed SAP do not permit an operator to disclose access pricing information to its customers. As noted above, access charges are often a large component of the total cost of providing a rail haulage service. To be able to provide transparency to customers when negotiating rail haulage agreements, operators consider that the standard access provisions should enable operators to disclose access charge information to their customers as part of a negotiation, or when explaining the reasons for changes in costs through the course of an agreement, if this is under a duty of confidence.
- The Proposed SAP provides a trigger for Arc to terminate an access agreement where it no longer holds the Network Lease. The provision of train paths is a fundamental obligation under this agreement, and operators believe that if Arc is no longer able to provide the agreed train paths for any reason, this should be a breach of agreement. The Network Lease is an agreement between PTA (on behalf of the WA Government) and Arc, and operators believe that maintaining continuity of rail-based supply chains should be an essential consideration of the WA Government. Therefore, any issues arising from Arc no longer holding the Network Lease are most appropriately managed through the agreement's assignment provisions. The Queensland Rail Standard Access Agreement includes a clause that provides an example process for this scenario.
- The indemnities provisions of the Proposed SAP require an operator to accept responsibility for all acts of its customer and indemnifies Arc for all claims by a customer. Operators do not consider this to be a reasonable requirement and consider that its customers should be treated in the same way as other third parties.

### 4. Supporting efficient rail supply chains

A significant number of the freight services operating across Arc's Eastern Goldfields Route (**EGR**) are interstate services operating between Perth and east coast capital cities.

Where an operator seeks access from Arc to operate interstate services, this is as a component of an access solution for its entire journey, however the Arc Proposed SAP provides for these services to be contracted in the same way as for intra-state services which operate wholly on the Arc network, with no recognition of the co-ordination required between the adjoining network owners in order to provide a path of value to an operator.

Arc is a signatory to the Memorandum of Cooperation for Interoperability to support National Rail System Interoperability for future major rail investments (the **Memo**). It endorses a vision where passengers and freight will move seamlessly and safely between major cities and regions and recognises that this requires a national network view of interoperability and consideration of key interfaces. Arc's Proposed SAP can contribute to this objective.

For example, for inter-city containerised freight services, premium paths have an efficient transit time (from origin to destination) with desirable departure (late evening) and arrival (early morning) times.

In this market, access to premium paths is critical both to enable efficient train operations and to provide a service suitable to the largest possible customer base. But the scheduling of a premium path requires effective co-ordination and connection between the adjoining networks - there is no value for an operator in a fast transit across ARTC's network if it then incurs significant delays connecting to a path on the adjoining network.

There is currently no efficient process for creating optimised pathing for new or varied services across the broader interstate network. In all cases, an operator needs to work separately with each RIM to identify how paths can be scheduled around that RIM's existing Master Train Plan, with no co-ordinated process for schedule modification or optimisation.

Given this, operators consider that the Proposed SAP requires amendment to:

- Strengthen the mechanisms in the Proposed SAP to allow pathing to be optimised from origin to destination (i.e. including adjoining networks). This will require that Arc's rights under the Proposed SAP to modify schedules (including cancellation for under-utilisation or review of paths based on actual operator performance) should recognise that the Arc's paths are one segment in a complete path, and schedule optimisation must be co-ordinated with corresponding processes for adjoining RIMs.
- Enable the future incorporation of a Standing Offer, where this is developed in accordance with clause 7G of the Code. This allows the ERA to require a railway owner to develop a Standing Offer where there are multiple entities carrying out similar rail operations on a route. Operators consider that interstate containerised freight services are a strong candidate for developing a standing offer. Operators further consider that there is opportunity for that standing offer arrangement to provide for differentiated terms and charges according to path quality, with non-premium paths charged at a discount to the high value premium paths. Such an approach would ideally be developed in co-ordination with ARTC. Where Arc

develops a Standing Offer for a service, operators consider that there should be an option for that Standing Offer to be incorporated into the access agreement.

## 5. Transparency and clarity of obligations

Finally, rail operators consider it important that the access agreement provides transparency and clarity of the obligations on each party. The ROG believes that several drafting amendments should be adopted to improve the transparency and clarity of the Proposed SAPs. These are detailed in Attachment A.

If you would like any additional information on any of the matters raised in this submission, please do not hesitate to contact Fiona Emery on 0455 312 377. In addition, the ROG would welcome the opportunity to meet with the ERA to discuss and provide further context to the issues addressed in this submission.

Yours sincerely



**JOHN McARTHUR**

Chairman, Rail Operators Group