Review of the

Western Australian Rail Access Regime

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1.0 About WALGA

The Western Australian Local Government Association (WALGA) is the united voice of Local Government in Western Australia. The Association is an independent, membership-based organisation representing and supporting the work and interests of 138 mainland Local Governments in WA, plus the Indian Ocean territories of Christmas Island and Cocos (Keeling) Islands.

The Association provides an essential voice for over 1,200 elected members, some 14,500 Local Government employees, as well as over 2.6 million residents of Western Australia. WALGA also provides professional advice and services that provide benefits to Local Governments and the communities they serve.

Due to timing, the comments and recommendations contained in this submission have not yet been considered or endorsed by WALGA's State Council, which will next meet on 6 December 2017. This is an interim submission and as such the Association reserves the right to modify or withdraw any element of this submission as directed by State Council.

2.0 Introduction

Local Governments in Western Australia are neither an access seeker nor provider of railway facilities. However, the sector continues to be active in seeking to ensure the on-going provision of efficient and sustainable freight rail in Western Australia, due to:

- the adverse impacts on Local Governments, communities and industry of increased reliance on road freight, where rail freight is either not competitive or not available; and
- the adverse impact on regional economic development, where freight intensive, export oriented industries are denied efficient, globally competitive supply chains.

The sector has adopted as a policy position that freight should be transported by rail where this is economically viable, and where a freight task is to move from rail to Local Government controlled roads, that new funding is provided to ensure that the designated roads are upgraded and maintained with road safety considerations paramount (WALGA State Council Resolution 34.2/2010, April 2010). The Local Government experience in the past four years has seen a reduction in grant funding for road maintenance and renewal.

It is noted that the Western Australian rail access regime, established by the Railways (Access) Act 1998 and the Railways (Access) Code 2000, have been in operation for over 15 years. During this period, key issues have been associated with the reduction of rail services in the Wheatbelt region and the development of iron ore mining operations in the Mid-West region.

In the past decade, five year average grain production in Western Australia has increased by 20%, and the size of the average load delivered to the largest grain handler, CBH, has increased 37% to 45.5 tonnes and the rate at which grain is moved from country storage to port increased significantly adding demands to the rail and road freight infrastructure.

The rail regime requires full cost recovery on each route including a commercial rate of return to the asset manager. This is competing against a flexible, road freight industry which does not necessarily cover the full cost of its impact on each segment of the road network.[1]

3.0 Objectives of the WA Rail Access Regime

Above rail services are just one component of an integrated and complex supply chain that enables goods to be provided where and when required. Consequently it is important that any wide ranging review of the rail access regime, as is being undertaken by this enquiry, is done so within this broader context and takes account of the implications for freight movement broadly. Road transport is in many cases a contestable alternative to rail. The reasons for and benefits from efficient use of railway facilities are greater than the industry development and efficient resource allocation outcomes. Inefficient use of railway facilities and failure to invest in existing and required infrastructure has negative impacts on roads, road safety, amenity and the environment.

Local Governments support the overall intent of the rail access regime, to establish and maintain a contestable market for rail operations. However, the Association has concerns that the regime is not operating effectively given that during its period of operation, the rail access regime in Western Australia has not facilitated the maintenance of the existing railway facilities. Over 500 kilometres of rail line, previously servicing an average of 750,000 tonnes per annum of freight has been removed from service.

The stated objective of the regime is "….to encourage the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations."

There is no reference to sustainability of the railway facilities to ensure on-going access and that there is an appropriate allocation of costs between present and future users. Historically access agreements either did not accurately reflect the cost of sustained maintenance of the facilities, or did not require these revenues to be applied to maintaining the more financially marginal routes. Consequently when facing significant cyclic investment, these routes were determined by the rail infrastructure manager to be non-economic, without due consideration to whether historical revenues had been applied to maintaining service levels on these lines.

The underlying demand for freight, from grain produced, has increased over the past 15 years, although the competitive threat from road transport means that freight on rail has not grown correspondingly in all areas. There are significant quantities of other bulk materials including woodchip, hay, lime, fertilisers and other minerals that are moved in the areas served by existing rail infrastructure that in practice are not served by rail. This remains a missed opportunity for better utilisation of rail infrastructure.

The rail access regime should be structured to encourage investment in both new and existing railway facilities to ensure that, where there is on-going demand, future users are not faced with meeting life-cycle costs that would have appropriately received contributions from past

[1] Road User Charges determined by the National Transport Commission and recovered through Fuel Excise are based on national averages and are un-related to the funding provided for or applied to each route.

and current users. Access arrangements negotiated inside or outside the Railways (Access) Code 2000 must recognise these costs and importantly ensure that the asset is not run down over time to the extent that it becomes uneconomic to continue to offer access.

4.0 Coverage of Marginal Routes

It is the Association's view that any consideration to amend the scope of the railway access regime to give special consideration to marginal routes or those routes where access is no longer currently available must be linked to changes in the lease agreements under which the rail manager operates.

If the rail manager is to be relieved of obligations to maintain lines as fit for purpose, then there needs to be opportunity for others to do so if they believe that this is economically viable. If this does not occur, the situation will arise where a railway manager retains exclusive control of the facilities without obligations under the Code, a situation that the Code is intended to avoid.

The existing rail regime does not provide effective mechanisms for State (and potentially Federal) Governments to formally engage with access seekers and railway managers. This requirement may exist in the case of marginal routes, where the cost impact on Government arising as a result of a freight task being moved from rail to road is greater than the incremental investment that is required to provide a cost competitive rail service. The regime should include a mechanism for either the access seeker or rail manager to call in the State Government, and define the role of the State in this context.

5.0 Pricing Mechanisms

Under the existing regime, the potentially very wide range between the floor and ceiling price within which the railway owner and access seeker are to negotiate an access price, provides little support or guidance to either party. In the case of the marginal routes referred to previously, the capital value of the asset is significantly different from the efficient cost to replace existing infrastructure with modern equivalent assets. The access seeker generally has limited information about the actual cost of providing services on a particular route or group of routes. Although it has been argued that the access seeker has more information about the value of a particular rail service, this is not necessarily the case, particularly where road transport is a competitive alternative. The cost of road transport can be reasonably easily established by both parties, and potentially pricing established to be just competitive, rather than reflecting the cost to provide access.

Road transport contributes the marginal cost of its impact on the road network, with the remaining costs shared across all road users (through fuel excise and registration), ratepayers and taxpayers. The full cost of providing the infrastructure (including the cost of capital and return on assets) is not collected from the freight carrier, as is the case with rail.

It is the Association's view that pricing bands, associated with different levels of service should be provided by the Regulator in order to more effectively facilitate negotiation between the parties.

Little information is available to Local Government regarding rail access pricing. Published information relating to the period 2013 – 2014 indicated that the average rail line access cost (Net c/t/km) in Western Australia was more than double and in some cases four times higher than in other jurisdictions Table 1). It is unclear to what extent this difference is due to differences in the rail access regime or many other factors. However, this is worth exploring further.

Table 1: Summary of grain freight infrastructure costs

	NSW	Qld	SA	Vic	WA
Average rail line access cost (Net c/t/km)	0.7	0.78	1.1	1.1	2.88
Median bin distance to port (km)	412	303	130	273	207
Mode Share Rail to Port (%)	85	46	50	53	60

Source: Australian Export Grains Innovation Centre 2014, The Cost of Australia's Bulk Grains Export Supply Chains. Accessed at: https://aegic.org.au/wp-content/uploads/2016/04/The-cost-of-Australias-bulk-grain-export-supply-chains-Full-Report.pdf

6.0 Cost of Network Expansion

Rail facilities are long-lived assets. The pricing principle is that "prices should allow the railway owner to recover, over the economic life of the infrastructure, the costs of any extension or expansion required to accommodate the operator."[2] It is unclear to what extent this principle has been applied in considering investments to maintain existing services and the assumptions that have been made about economic life. The regime and Code need to provide additional guidance in this area.

7.0 Agreements Outside the Code

It is noted that to date all agreements in relation to access to rail facilities covered by the regime have been outside of the Code. While this may be seen as a positive outcome from some perspectives, the primary reasons for the existence of the Code within the regime, including asymmetry of information and unbalanced power in negotiations remain with agreements reached outside of the Code. Consequently the regime should be amended to enable a negotiation outside the Code that is in dispute to be brought within the Code. Further consideration should be given to requiring those aspects of Part 5 instruments that, if not applied, contribute to unbalanced power in negotiations to apply to agreements outside the Code

It is recommended that Treasury commission specific work to identify why access seekers and the railway manager prefer to negotiate outside of the Code.

[2] Railways (Access) Code 2000, Schedule 4, clause 13

8.0 Transparency and Information

The current regime does not provide adequate, public on-going information flow between the railway manager and current or future access seekers in regard to the state of the asset, and planned investment in maintaining or improving (or slowing the rate of decline) the level of service provided by the asset. The lack of information means that access pricing is based on information provided at a point in time, despite the access agreement being for a (significant) period of time.

The operation of the lease agreement covering rail assets within the context of the Code and the regime needs to be clear and addressed. Lack of transparency in relation to the lease agreement contributes further to asymmetry of information between participants seeking to agree access arrangements. Furthermore it would seem that the ability to implement some changes to the rail access regime is dependent on agreeing changes to the lease agreement.

It is likely that changes to the regime or the Code will have little impact without corresponding or related changes to the rail lease agreement. The review of the regime must be address both the regime and the lease agreement.