

**TO: Essential Services Commission of South Australia**

**RE: Review of South Australian Rail Access Code**

22 April 2020

## Introduction

AMEC appreciates the opportunity to be consulted on this review and is grateful that the Essential Services Commission of South Australia (ESCOSA) has granted AMEC an extension in order to comment and articulate the real and potential issues that arise for our Industry with regards to rail access in South Australia.

## About AMEC

The Association of Mining and Exploration Companies (AMEC) is the national peak industry body representing over 275 mining and mineral exploration companies across Australia, with 19 member companies actively exploring, mining and developing projects in South Australia.

The mining and exploration industry make a critical contribution to the Australian economy, employing over 255,000 people. In 2017/18, these companies collectively payed over \$31 billion in royalties and taxation, invested \$36.1 billion in new capital and generated more than \$250 billion in mineral exports.

In 2017/18 Australian mining and exploration companies invested \$1.97 billion to discover the mines of the future.

## Comments

### Continue the South Australia Rail Access Regime

The ESCOCA must continue the existing Rail Access Regime rather than allow it to lapse and should proceed to seek the necessary national recertification. It has been observed by most in Industry that the Australian Rail Track Corporation (ARTC) on the Defined Interstate Rail Network is a declared rail infrastructure service that could operate in absence of the regime.

However, the precedent of such a revocation would have a negative effect on other lines that it is the strong view of Industry definitely cannot operate without the rail access regime.

Rail is a natural monopoly that is difficult and costly to replace. The ability to affordably access rail can determine a mines feasibility, particularly in the case of bulk commodities which are generally very remote and heavily reliant on rail freight.

For many current and potential future users, there is no other viable transport options other than rail.

Encouraging the greater use of rail also reduces the number of trucks on roads which improves safety for other road users and reduces the wear and tear on road infrastructure. There are also consequential benefits for residents in suburbia and near Ports by reducing noise, dust and traffic.

Rail pricing, process and restrictions of access to intermodal facilities have all contributed to companies that can afford to do so favouring road.

### **Concern with natural monopoly**

Table 1 on page 3 of the Discussion Paper neatly summarises the under-utilisation of rail assets in South Australia. Four of the eight railways covered by the access regime have zero users.

Rail is a natural monopoly, costly to build, difficult to replicate and enjoys significant economies of scale. In the past, the falling demand has been used as a proof of the lack of market power being applied.

According to PWC, South Australia has the 'lightest touch' regime in Australia<sup>1</sup>, and the PWC report goes on to state that there is a lack of transparency of publicly available information of the cost to access the railway. This mirrors AMEC's experience attempting to draft this response and the lack of transparency around pricing should be viewed as a barrier to entry. Requiring a potential customer to apply for an information brochure rather than freely and anonymously access the information as is the current process leads to a reduction in the transparency of the process.

It is our understanding that customers are yet to apply for assistance from ESCOSA under the arbitration model. This statistic is creating a 'false positive' of the success of the regime. The disruption and delay, not to mention the potential damage to an essential relationship, that a company would face at a crucial stage of their project development means many projects that rely on rail cannot readily or commercially consider going to arbitration.

The negotiation of rail access generally occurs once a mineral deposit is deemed economic and the company is well advanced in its approvals. This negotiation is pressured by a company's need to time the start of their project, so it neatly aligns with opportunities in the international financial and commodity cycle. Most companies do not have the deep pockets required to wait out the potentially multi-year arbitration process if a window on the financial and commodity cycle is missed.

A rule of thumb is that most mines for bulk commodities are unlikely to be feasible without rail if they are in excess of 100km from a port.

Unfortunately, and understandably, AMEC is unable to provide examples to support this observation due to commercial confidentiality. Given the very small number of South Australian railway users, and potential users, any example will be easily identifiable. The natural monopoly of the railway, and the limited alternatives, make providing an example a substantial risk.

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<sup>1</sup> Figure 3, PWC, Review of Rail Access (2018) available at;  
<https://www.infrastructure.gov.au/rail/publications/files/Review-of-Rail-Access-Regimes.pdf>

Given the small number of industrial rail users in South Australia, AMEC assumes that ESCOSA has independently contacted them to consult upon a confidential basis. If this has not been done, AMEC can look to facilitate such consultation.

### **Cost of access and the choice between road and rail**

The lack of use of rail is in part because of the costs of access both monetary and commercially. The Tarcoola- Alice Springs line is the most expensive in South Australia at \$7.581 per Gross Tonne per Kilometre (GTKm), whereas the Tarcoola to Port Adelaide line is half that price at \$4.044 GTKm<sup>2</sup>. Both segments are on the same rail corridor needed by mining companies to move product from the mineral rich Gawler Craton through the Port of Darwin, Port Adelaide, Whyalla Port and/or the proposed reopening of Port Playford (formerly known as Port Paterson) . The two lines have different owners, one private, OneRail Australia, and the other ARTC, a Government owned statutory corporation.

The rationalisation for such a price differential is unclear.

Given the commercial confidentiality of the associated access agreements, AMEC is unable to comment on the other access costs. However, we are led to believe by Industry that the difficulties encountered around access are of greater concern than the price issue, which are a barrier themselves.

The preference of companies for the *AustralAsia Railway (Third Party Access) Code* rather than the access regime set out in the *Railways (Operations and Access) Act 1997 (SA)* because it does not allow for commercial exclusivity is telling.

As the regulator, ESCOSA needs to have oversight and insight into these figures and access conditions. It is understood the jurisdiction of ESCOSA is limited to certain railways. However, the current hands- off, reliance on the arbitration process is too light a regulatory approach. Consideration needs to be given to increasing transparency. The commerciality of companies accessing the rail needs to be given due consideration similar to ensuring the rail operators receive economic return.

### **Spur lines, sidings & intermodal facilities**

The conditions, methods, capacities and pricing of access to access seekers are not published for the private terminal facilities in South Australia. The lack of transparency at Whyalla is particularly concerning as it reduces certainty for mining companies that seek to access the only bulk ore rail connection to large vessels in South Australia. More broadly the vital terminals in the supply chain that are unregulated including Flinders Ports rail terminal and the Kerry Intermodal rail terminal and the new Port Paterson rail terminal.

It is in the interest of growing South Australian mining for companies to be able to connect private lines with the inter-State rail connections such as the Alice Springs -Tarcoola line.

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<sup>2</sup> <https://www.artc.com.au/uploads/Access-Charges-effective-1-July-2019.pdf>

AMEC's understanding is that despite being explicitly stated in the South Australian Gazette<sup>3</sup>, there has been a lack of clarity around the scope of *AustralAsia Railway (Third Party Access) Code* to govern access to sidings and other intermodal facilities. As discussed, the freedom of third-party access as provided by the Australasian Railway (Third party access) Code is preferential for mining and mineral exploration companies.

On behalf of Industry we ask ESCOSA to implement the legislation as it reads and include rail infrastructure within the rail corridor under the declaration of lines and thus apply the Third Party Access code.

### **Post-pandemic economic recovery and the 3% growth state agenda**

In finalising the review, ESCOSA must clearly weigh the role of affordable and accessible railway in supporting South Australia achieving the targeted 3% growth rate announced in the Joyce Review in 2019<sup>4</sup>.

The negative economic impact of COVID-19 has increased the need for South Australia to reduce the cost of doing business. Making rail access in South Australia, easier, cheaper and more transparent are three ways that this review could support the growth of the State into the future.

ESCOSA has a clear role to facilitate the greater use of South Australia's rail assets.

### **Further comment**

AMEC appreciates the opportunity to consult on this rail access code and can be contacted below to provide further comment.

### **For further information contact:**

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<sup>3</sup> South Australian Government Gazette, 8 January 2004, Clause 2 reads:

*“whole of the railway between the southern point near Tarcoola and the northern point in Darwin (including any associated sidings and crossing loops and including the railway within any terminal, or any intermodal, cargo handling or port facility, between those 2 points).”*

<sup>4</sup> Review of the South Australian Government's International and Interstate Engagement Bodies and Functions by Hon Stephen Joyce,  
[https://www.dpc.sa.gov.au/\\_data/assets/pdf\\_file/0007/47887/South-Australian-Government-International-and-Interstate-Engagement-Bodies-and-Functions-Review.pdf](https://www.dpc.sa.gov.au/_data/assets/pdf_file/0007/47887/South-Australian-Government-International-and-Interstate-Engagement-Bodies-and-Functions-Review.pdf)