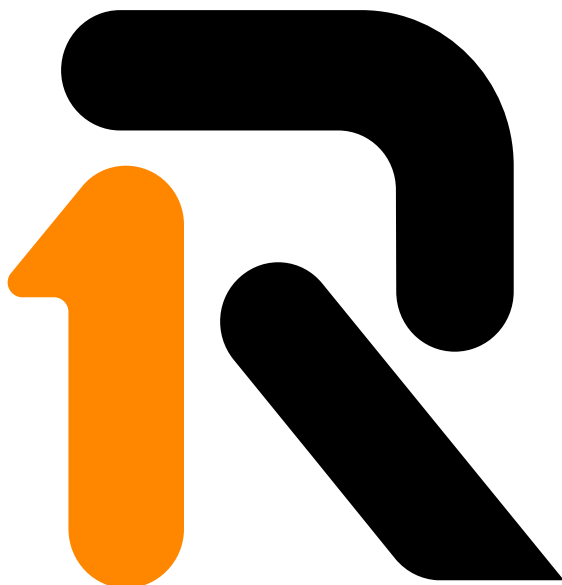


ESCOSA - Tarcoola to Darwin Railway

5-Year Review of Revenues 2013-14 to 2017-18

One Rail Australia (North) Submission



26 November 2021

Commercial In Confidence

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1 INTRODUCTION

1.1 BACKGROUND

Access to the Tarcoola to Darwin Railway (“TDR”) is provided for under the AustralAsia Railway (‘Third Party Access’) Code (“the Code”). The Code – which was certified as an effective state-based regime until December 2030 - principally establishes the framework for the rights and responsibilities of above and below rail operators on the Railway. Under Clause 50(4) of the Code, the Essential Services Commission of South Australia (ESCOSA) – the appointed regulator – is required, on a five-year basis to review below-rail freight revenues where no sustainable competitive prices exist on a retrospective basis. The purpose of these reviews is to determine whether such revenues are excessive, having regard to the factors outlined in the Code.

In October 2021, ESCOSA released a Draft Decision on revenues for the Tarcoola to Darwin Railway over the period, 2013-14 to 2017-18. ESCOSA’s draft findings are that excessive revenues have not been earned over the period. ESCOSA have tested the veracity of their conclusion by considering several alternative testing approaches in performing their review. ESCOSA is seeking stakeholder views on the Draft Report to which this document addresses on behalf of One Rail Australia.

1.2 SUMMARY POSITION OF ONE RAIL AUSTRALIA NORTH (ORAN OR ORA)

In general, ORAN concur with the conclusion that excessive revenues have not been earned over the evaluation period.

However, we have fundamental concerns about aspects of this Review, largely relating to the alternative approaches contemplated by ESCOSA. One of these approaches calculated a very minimal amount of revenue headroom, a concerning outcome to ORAN given the significant reduction in mining activity on the Railway during the review period.

The approach taken by ESCOSA in the Draft Report also represents a significant deviation from the previous review in 2015 without providing commentary or reasoning for the changes.

We appreciate ESCOSA may have used these alternative approaches to test the veracity of its conclusion given some parts of the Code which are arguable unclear. That said, the introduction of such alternatives creates uncertainty about how the regime will be reviewed in future periods, particularly given the review is a retrospective test. Such uncertainty is highly undesirable given that access regimes require predictability and clarity to be effective and efficient for both access providers and access seekers. This is particularly the case for a long-term asset with a volatile customer base and revenues like the TDR.

ORA’s concerns are addressed in detail in the following sections and reflect our views that:

- The weighted-average cost of capital (WACC) employed by ESCOSA in this review of 2.44% (applied to average existing asset values) is unrealistically low and well below comparable asset WACC's.
- The cost allocation method used under Option 2 does not reflect how the Railway operates and results in abnormally low revenue headroom in a period of lower volumes.
- We also note that while ESCOSA has used the depreciated optimised replacement cost (DORC) asset value approach in this review, it is open to considering alternative approaches as part of a future issues paper. ORAN's view is that a change from a DORC basis is not allowed under the Code before 2030 at the earliest.

In finalising its Review ORAN requests that ESCOSA provide as much clarity and discussion as possible about how it will undertake its reviews in the future, given its vastly different approach between the current and previous review.

ORAN would be pleased to meet with ESCOSA to discuss its submission further.

2 MAJOR MATTERS

2.1 APPROPRIATENESS OF PROPOSED WACC

Overall, ORAN considers that the weighted-average cost of capital (WACC) employed by ESCOSA in this review, a real pre-tax rate of return of 2.44%, is unrealistically low. This unrealistic result is due to a combination of how ESCOSA has limited the range of information it has considered, the specific parameter values assumed and the timing of market observations.

2.1.1 OVERALL APPROACH

ESCOSA's overall approach is determined under Clause 50(5)(c) of the Code, which ESCOSA summarises as having regard to: an appropriate risk premium based on the expected risks prevailing at the time of the commencement of construction of the rail infrastructure by the access provider, and the relevant financial market rates (including the risk-free rate for return on investments and the rate of inflation) prevailing at the time of the regulator's review.

Within this framing ESCOSA then considers a combination of parameters based on previous regulatory decisions for the Tarcoola to Darwin Railway as well as observations of market conditions. The values from previous regulatory decisions are based on those in the Tarcoola-Darwin Railway: Regulated Rates of Return, Provisional Determination from 2003 and are used to establish a risk premium of 2.6%. The observed market conditions are based on those prevailing in June 2021 and are used to establish the nominal risk-free rate and the inflation rate.

Further, in determining whether the relevant revenues are excessive ESCOSA must also, under Clause 50(5) have consideration for an appropriate commercial return on the required railway infrastructure. It is the view of ORAN that 2.44% is not an appropriate commercial return, particularly, when compared to recent decisions by other regulators including:

- Queensland Competition Authority – DBCTM DAU decision – post-tax nominal WACC of 5.84%¹
- Economic Regulation Authority – Pilbara Railways determination - post-tax real WACC of 5.91%²

¹ QCA (2019), Estimating a cost of capital for DBCTM - https://www.qca.org.au/wp-content/uploads/2019/05/30056_DBCTUG_Schedule-3-DBCT-WACC-report-20151124-2-1.pdf

² ERA (2020), 2020 Weighted Average Cost of Capital for the Freight and Urban Rail networks and for Pilbara Railways - <https://www.erawa.com.au/cproot/21399/2/2020-Weighted-Average-Cost-of-Capital-for-the-Freight-and-Urban-Rail-Networks-and-for-Pilbara-Railways.PDF>

- Queensland Competition Authority - Aurizon UT5 decision – Approved WACC of 5.7% – 5.9%³
- ARTC Coal Network ACCC decision June 2021 (pre-tax real WACC of 4.6%)⁴

In ORAN's view these decisions provide current reference rates which should be considered when determining the TDR's WACC, recognising that the TDR is a materially different operation with greater volatility and lower volumes than the comparable assets.

ORAN's view is consistent with the one adopted by ESCOSA in its previous report Tarcoola-Darwin Railway: 10-Year Review of Revenues (2015). This approach indicated a range of around 5.25% to 13.3% for the real pre-tax WACC. ESCOSA then note that, "when contemplating the risks of the Railway at its inception ...it is reasonable to expect that, should a specific WACC have been required, it would have been at or beyond the upper end of this range."

ORAN consider that ESCOSA's approach in the 2015 decision is more appropriate and in line with the requirements of Clause 50(5)(c) of the Code which instructs ESCOSA to have regard to a range of factors when establishing the appropriate commercial return. It is the view of ORAN that the approach employed in this current review, does not appropriately consider all elements of Clause 50(5).

2.1.2 SPECIFIC PARAMETER VALUES

2.1.2.1 RISK PREMIUM

ORAN considers that the use of figures from the *Tarcoola-Darwin Railway: Regulated Rates of Return, Provisional Determination* from 2003 is not appropriate for establishing the risk premium. This is for two reasons:

- The adoption of a risk premium of 2.6% results in a real pre-tax rate of return of 2.44% which is well below the range established in the 2015 review. This contradicts ESCOSA's previous statements that the WACC at the time of construction would have been at the upper end (or beyond) of the range seen in other regulatory decisions (i.e., at least 13.3%).
- ORAN notes that the opening paragraph of the overview section of the 2003 report states that the rates of return determined "relates only to certain rates of return to be applied by an arbitrator in the event of an access dispute" (pg. 3) and further clarifies that the matters addressed in the determination are restricted to section 2(7) and 2(8) of the Pricing Schedule and Clause 21(1)(b) of the Code as well as that "it is ESCOSA's view that the 'commercial' return on railway infrastructure that is appropriate for use in revenue reviews should be determined by the regulator at the time of such reviews.

³ QCA (2019), Aurizon Network's 2017 access undertaking (UT5) - <https://www.qca.org.au/project/aurizon-network/2017-access-undertaking-ut5/ut5-daau/>

⁴ March 2021 variation of the 2011 Hunter Valley Coal Network Access Undertaking - [Final decision | ACCC](#)

This rate would be expected to live somewhere between the minimum and ceiling rates of return applying at the time” (pg. 11).

As such, ORAN does not consider that the use of a value for the risk premium drawn from the *Tarcoola-Darwin Railway: Regulated Rates of Return, Provisional Determination* from 2003 relevant for the purposes of establishing the risk premium under Clause 50(5)(c).

2.1.2.2 RISK-FREE RATE

The yield on the nominal risk-free rate was calculated as 1.57%. This is the 40-day average of daily observations on 10-year Commonwealth Government Securities over the period to 30 June 2021). From this, the real risk-free rate was calculated to be **negative** 0.47% based on an inflation rate expectation of 2.04%.

On face value, ORAN considers that applying a negative real risk-free rate is not a sound basis on which to identify an appropriate commercial rate of return, as is required by Clause 50(5)(c) of the Code. From a practical point of view this finding indicates that ORAN would need to pay a financial institution to hold money on ORAN’s behalf, a finding which does not reflect practical market outcomes.

The inappropriately low real risk-free rate is essentially determined by the fact that inflation expectations were estimated at 2.04 percent (June quarter, 2021). Whilst this is acknowledged by ESCOSA (pg. 25), it is important to note that the June Quarter of 2021 displayed uncharacteristically high inflation rates around 3.8%.⁵ This is linked to the COVID-19 recovery and associated supply chain disruptions.

The abnormally high inflation rate for June quarter 2021 can also be compared to historical CPI inflation rates which have averaged around 1.78% a year for the four-year period from June 2017 to June 2021. This is almost 13% lower than the inflation rate estimated by ESCOSA.

As a result, ORAN considers that the real risk-free rate of **negative** 0.47% does not reflect an appropriate component of a commercial rate of return, as is required by Clause 50(5)(c) of the Code.

2.1.3 TIMING OF MARKET OBSERVATIONS

ORAN considers that calculating a WACC based on observations from 2021 market conditions and applying it to determine whether excess revenue was earned for a period which started in 2013-14 is problematic.

ORAN recognises that Clause 50(5)(c)(ii) refers to the “time of the regulators review” but also considers that clause 50(4) prescribes the time at which the review must be conducted (being the end of the relevant 5-year period). Further, good practice dictates the review occurring closer to the end of the review period. It would create an obvious distortion if the regulator held some form of discretion as to when to conduct a review and then apply a financial market

⁵ RBA (2021), Economic Outlook - <https://www.rba.gov.au/publications/smp/2021/aug/economic-outlook.html>

rate prevailing at that time. ORAN considers that the review should have been completed in 2018 or 2019, using the relevant financial market rate prevailing at the end of the relevant 5-year period, namely 30 June 2018.

If the review had been completed in 2018 or 2019 then, even applying the same approach, the WACC would have been materially different to that found in 2021. ESCOSA note this as “the rate of return may differ compared with the rates at the commencement of the period in question, or those observed at the end of the period” (pg. 21).

ESCOSA notes that the real risk-free rate would be around 1 percentage point higher in July 2018 (pg. 21) and acknowledges the material potential implications of selecting an alternate point-in-time for estimating the real risk-free rate and other components of WACC. Given the revenue test is retrospective, an alternative approach would be to use the actual, observed risk free rate for each year of the review period.

2.2 ALLOCATION OF COSTS ACROSS SEGMENTS OF THE RAIL INFRASTRUCTURE

In determining the cost allocation approach ESCOSA explores two options:

1. A 'whole of line' approach that allocates cost on the basis that the rail line is a contiguous network and reflects the view that cost items are incurred by ORAN across the entire line (rather than segments).
2. An approach that allocates costs only for the rail line considered directly relevant to the movement of goods to the nearest port (which is calculated as 48%) reflecting an assumption that mineral ore businesses transport on the shortest route.

ORAN disagrees with the cost allocation method employed for Option 2 as outlined in the ESCOSA Draft Report in section 4.2.2, p. 16. This approach calculates costs only for the physical component of the rail line directly relevant to the movement of goods to the nearest port, relying on the assumption that mineral ore will always be transported to the nearest port rather than ever using the entire line.

ORAN has significant concerns with this approach. It is conceptually flawed, may produce variability across years, is inconsistent with approaches for other rail regimes nationally and in the view of ORAN, will fail to deliver the consistency and certainty required for a well-functioning regime. It may also act as a deterrent to future investment to expand capacity across the network.

Clearly, for the "required railway infrastructure" to operate, account must be taken of the operation of the whole of the railway. The "required railway infrastructure" cannot operate in isolation, and its costs of operation must be assessed having regard to the costs of operation of the whole of the Railway.

2.2.1 OPERATIONALLY MISALIGNED

Fundamentally, it is not possible to 'operate half a line.' In practice, ORAN's market offering must make available the entire railway for access seekers, not just those segments currently used. Technically, it is not possible for ORAN to segment the network into portions, once a path is used by an operator in a certain segment the capacity is reduced for the full line, not just that segment. These operational fundamentals mean that costs can be incurred across one segment of the railway which are a necessary condition for the operation of another segment of the rail line.

In addition, the assumptions applied by ESCOSA in Option 2 which assumes that bulks only operate on 48% of the line are flawed. ORAN currently has, and did, during the period under review, have bulk ore movements between Wirrida and Tennant Creek – covering the only section of rail line that is currently excluded by the calculation in Option 2.

Further, it is also not necessarily correct that the most efficient choice for a rail user is to transport to the nearest port as implied in ESCOSA's draft finding. Efficiency requires consideration of the customers full supply chain (including port and sea costs) and broader

considerations beyond the transportation of the product i.e. mining costs etc. The decisions of rail users over which port to send freight is a function of what is most efficient for their entire supply chain at any given point in time. It can also be a function of unforeseen circumstance, port capacity or other third-party impacts. ORAN has seen users (such as OZ Minerals and Southern Iron) switch between north-bound and south-bound paths at different times to suit operating conditions. The ability to switch route between different ports also creates competitive pressure that is critical for achieving efficiency in transport overall. This is an important consideration as, under the current approach, user paths could change between reviews resulting in a different cost allocation outcome despite volumes remaining consistent.

2.2.2 CALCULATION METHOD

In determining whether the relevant revenues are excessive under the Code, s50(5)(a) states that ESCOSA must measure against the “costs associated with the required railway infrastructure required by the relevant access holders including an appropriate commercial return on the required railway infrastructure used by the relevant access holders.” It is therefore not the 48% of physical rail infrastructure that is relevant, but the costs associated with that 48%. This distinction is important as it should take account of the fixed costs attributable to the services provided by the infrastructure. Further, consistent with ORAN’s earlier expressed views, allocation of costs to specific customers is not aligned to a ‘whole of line’ view.

In the case of rail infrastructure there are significant costs that are fixed regardless of the distance of track operated. In contrast, in ESCOSA’s calculation of the maximum revenue limit, a key assumption is that all operating expenses are avoidable. This is fundamentally not the case as much of the cost base is fixed. With a whole of line view there are a range of costs which are clearly fixed regardless of the length of line operated:

- Transport control – there is a fixed cost pool required to cover the Tarcoola to Darwin Railway irrespective of volumes
- Annual maintenance expenses – a large share of these costs is fixed reflecting the obligations of ORAN to maintain the whole line, including employee & contractor labour, vegetation control, AK Test Train / Ultra Sonic testing of the track, materials, plant and equipment and track site irrespective of volumes
- Insurances – are a fixed cost covering the whole network irrespective of volumes or train paths.
- Other overhead expenses, such as corporate charges relating to labour, professional and regulatory expenses.

As almost all of these operating cost components are fixed it is not appropriate for these to be considered avoidable.

Further, the allocation method employed by ESCOSA assumes both operating and capital expenditure (some of which is required under the concession e.g., ballasting etc.) are incurred

proportionately across the railway. In practice this is not the case, with certain segments requiring greater investment to maintain and operate than others.

It is also not clear why non-mining revenues used in Option 2 are not pro-rated to only include revenues earned over the 48% of the asset for which Option 2 is assessing (pg. 24) consistent with the treatment of expenses, this has resulted in a distorted outcome.

Currently, the approach appears to include revenue earned from Intermodal traffic across the entire line which when adjusted in a similar fashion to costs produces a materially different result for the maximum revenue limit (refer Table 2.1).

TABLE 2.1 MATERIALITY OF IMPACT ON SCOPE OF REVENUES DEFINITION BETWEEN OPTIONS

	Option 1 (\$m)	Option 2 (\$m)	Option 2 (\$m) reworked
Avoidable costs for all other access holders	60.4	26.1	26.1
Total revenues earned from all other access holders	142.8	142.8	73.9
R(maximum contribution to fixed costs from all other access holders)	82.4	116.7	47.8
Total fixed costs from existing assets	443.7	213.6	213.6
Contribution to fixed costs from non-sustainable below-rail services	361.4	96.9	165.8
Avoidable costs for non-sustainable below-rail services	25.9	15.5	15.5
Contribution to fixed costs from non-sustainable below-rail services	361.4	96.9	165.8
Maximum revenue limit	387.3	112.3	181.3
Actual revenues	106.2	106.2	106.2
Extent of under-recovery	-281.1	-6.1	-75.1

Source: Deloitte Access Economics

Notes: The 'reworked' option 2 is a representative apportionment of non-bulk revenues at a rate of 48% in-line with the 'part of line' cost allocation framework adopted under option 2. This indicative calculation highlights the sensitivity of the maximum revenue limit to this component being apportioned over the railway in a fashion that is intended to be similar to the cost apportionment. This calculation does not serve as an endorsement of this approach.

2.2.3 CONSISTENCY

The suggested cost allocation method employed in Option 2 is likely to produce inconsistent results across review periods as mine mix changes. Bulk customers, by their nature, are volatile and have a finite life. The location and timing of mines operating over the corridor changes over time and are based on a variety of factors, mostly relating to price and demand for the product. These operational decisions can have significant implications for the future volumes transported on the Tarcoola to Darwin Railway. Looking at ORAN's pipeline, in 5-

years' time this cost allocation might look substantially different with additional mines in the Alice Springs to Tennant Creek segment potentially coming online.

This feature is of concern to ORAN as long-term consistency in regulatory approaches are an important factor for regulatory reviews to stimulate investment and to avoid increasing commercial risks associated with the investment.

2.3 PROPOSED REVIEW OF ASSET VALUATION

At multiple points within the Draft Decision, ESCOSA uses wording which indicates that it has decided to adopt the DORC asset value for the purpose of the review, for example "The Commission's draft finding in this review is to: adopt the Depreciated Optimised Replacement Cost (DORC) value" (pg. 17). Further ESCOSA has also flagged it intends to review the asset valuation approach in the future with the purpose to "explore arguments and evidence for various asset valuation methodologies" (pg. 2).

These statements suggest that it is within the functions and powers of ESCOSA to review the capital asset valuation methodology to be applied under the Code and, potentially, to apply a different capital asset valuation methodology.

ORAN considers that any departure from DORC is not consistent with the Code (including the schedule). It is not within the functions and powers of ESCOSA under the Code to deviate from the application of DORC for the purposes of a review under clause 50(4) of the Code.

There is a clear link from clause 50(4) of the Code which requires the revenue review and Section 3(4)(a) of the pricing principles, which require the use of DORC:

- Clause 50(4) of the Code requires ESCOSA to review certain revenues to determine if they are excessive.
- Clause 50(5) then requires ESCOSA to have regard to certain matters in doing so including a comparison of revenues and costs as part of 50(5)(a).
- Clause 50(5)(d) then clarifies how to treat these costs and makes specific reference to section 3 of the pricing principles.
- Section 3(4)(a) of the pricing principles provides that an approach for valuing capital assets which reflects the Depreciated Optimised Replacement Cost of those assets must be used.

Further, ORAN notes that *The AustralAsia Railway (Third Party Access) Act 1999* Code-Schedule 2(7)(a) requires that an approach for valuing capital assets be adopted which reflects the Depreciated Optimised Replacement Cost (DORC) for those assets.

ORAN's views on this are also consistent with previous statements by ESCOSA. For example, in the 2015 review, ESCOSA used DORC noting that "consistent with the requirements of the Pricing Principles as set out in the Code, the value of the Railway should reflect the DORC for those assets". Additionally, in the 2015 review ESCOSA makes similar statements such as "the Railway Guidelines to the Code specify that the asset base should be valued using the DORC

methodology.” (pg. 35) and, of even more relevance for this submission that “the revenue review is backward looking, with the DORC methodology to be applied clearly set out in the Guidelines” (pg. 36).

Notwithstanding that ORAN does not agree that a change from DORC is allowed under the Code, ORAN considers that any such a change could only happen prospectively at the start of a 5-year revenue period, rather than part way through an existing period and could only take effect after 2030. Further, if a review of asset valuation methodologies is deemed appropriate by ESCOSA such a review should also include considerations of other factors that interact with the asset base to determine the overall revenue levels such as the commercial rates of return.

Both the requirement to use DORC and the risks and costs of conducting periodic revaluations have been previously recognised by ESCOSA and have been succinctly summarised:

“While there are various known ways of valuing assets, each with disadvantages and advantages, the requirement to use a Depreciated Optimised Replacement Cost (DORC) to value the assets on which the Access Provider can earn a return is set out in the Code. A DORC valuation was undertaken around the date of commencement of the railway. The Code, however, does not set out the procedure for rolling forward the value of the assets. ... An alternative to using a roll forward mechanism would be to conduct periodic DORC revaluations of the asset base. ... the Commission notes that conducting periodic DORC revaluations is costly and could have practical consequences for future investment decisions, as a DORC valuation may write down (or increase) the value of assets depending on the level of utilisation in the period assessed. Such a variation would risk contravention of the Code, where a reasonable risk-adjusted return on the capital invested in the Tarcoola-Darwin Railway must not be prevented.”⁶

⁶ Review of Rail Guidelines for the Tarcoola to Darwin Railway, Final Decision, October 2019, [3.2.1.1].

3 OTHER MATTERS: STAKEHOLDER QUESTIONS

3.1 RESPONSES TO ADDITIONAL STAKEHOLDER QUESTIONS

This section outlines ORAN's responses to the specific questions addressed to stakeholders throughout ESCOSA's Draft Report.

3.1.1 MINERAL ORE RAIL TRANSPORT VS ROAD TRANSPORT

To what extent does the rail transport of mineral ores face competition from road transport on the Tarcoola to Darwin rail line? Do you agree with the Commission's draft finding that the transport of mineral ores are not subject to sustainable competitive prices? Please provide evidence to support your position.

Generally, we agree with ESCOSA's conclusion that bulk mineral ores are not subject to sustainable competitive prices. The nature of these movements, being high volume and over longer distances and in proximity to existing rail infrastructure lend themselves to rail transport. Where these movements may occur, they are very low volume and over short distances to be manageable. Ultimately, ORAN has seen little to no evidence of mineral ores moving via road.

3.1.2 INTERMODAL RAIL TRANSPORT COMPETITION FROM ALTERNATIVE MODES OF TRANSPORT

To what extent does intermodal rail transport face competition from alternative modes of transport on the Tarcoola to Darwin freight route? Do you agree with the Commission's draft finding that the transport of intermodal freight is subject to sustainable competitive prices? Please provide evidence to support your position.

We agree with ESCOSA's conclusion that intermodal rail transport is subject to sustainable competitive prices. Road transport offers a competitive alternative to rail transport for containerised product through the flexibility of service offering particularly on a customer-by-customer basis, including "door to door" service. This is relative to rail offerings with six fixed services per week with limited ability to flex for any one customer's needs.

Competition around intermodal freight is common, ORAN have historically been impacted by such practices with customers such as Woolworths (fresh produce moved to road), Coles (via freight forwarder Linfox moving to road) and on various *ad hoc* occasions during derailment / track closures where freight forwarders will convert to road.

3.1.3 COST ALLOCATION METHODS

Do stakeholders support the cost allocation methods adopted in relation to fixed costs and avoidable costs? Please provide evidence to support your position.

No, ORAN does not support the cost allocation methods adopted in relation to fixed costs and avoidable costs (refer section 2.2 for further comments).

3.1.4 RAIL INFRASTRUCTURE SEGMENT COST ALLOCATION

Do stakeholders support options 1 and 2 to allocate costs according to segments of the rail infrastructure? Are there alternative methodologies that stakeholders would suggest that the Commission should adopt? Please provide evidence to support your position.

ORAN supports Option 1 only which adopts a ‘whole of line’ approach, consistent with ORAN’s submission in 2015. ORAN fundamentally disagrees with the approach taken in Option 2 which chooses to limit the portion of the network that bulk freight operates on and seeks to use this to assess excessive revenues. This ignores several key considerations and fails to recognise the nature and operation of the network (refer section 2.2 for further comments)

3.1.5 RATE OF RETURN ON ASSETS

Do stakeholders support the rate of return being applied for the purpose of calculating the return on assets? Please provide evidence to support your position.

ORAN does not support the rate of return being applied for the purpose of calculating the return on assets. The yield on the nominal risk-free rate was calculated as 1.57%. This is the 40-day average of daily observations on 10-year Commonwealth Government Securities over the period to 30 June 2021. From this, the real risk-free rate was calculated to be **negative** 0.47% based on an inflation rate expectation of 2.04% (refer section 2.1). ORAN does not believe this is a commercially acceptable rate (refer to section 2.1.2).

Consequently, ORAN considers a point-in-time estimate of WACC such as that employed by ESCOSA in this review is not appropriate and can lead to material differences in estimates. It is ORAN’s view that the approach employed in the 2015 review was more suitable.

3.1.6 COMMISSION’S OVERALL REVENUE EARNED ASSESSMENT METHODOLOGY

Do stakeholders have any comments or views on the Commission’s overall methodology for assessing whether revenues earned have been excessive? Please provide evidence to support your position.

The Code was certified as an effective state-based regime until December 2030. The approach employed for calculating the lower revenue bound represents a significant departure from the approach employed in the 2015 review without providing an explanation for the change. It is the view of ORAN that the Code does not allow for a revision of the overall methodology until 2030. Furthermore, the proposed changes are not consistent with other rail access regimes nationally and suffers from various shortcomings (refer section 2).