

1. Negotiation and dispute resolution

1.1 Outline the negotiation and dispute resolution activity that has occurred under the current 2008 Interstate Access Undertaking (IAU) (as varied from time to time).

The negotiation activities which have occurred under the 2008 IAU reflect the initial execution and extension of Track Access Agreements (TAA's) with every Operator on ARTC's non-coal network. ARTC currently has 29 TAA's in place with Operators for access to its network. The TAA is a standard document that does not differentiate between services, so any operator with a TAA could run Intermodal if they wished. Only 4 operators do so at the moment. Given the on-going process to renew the 2008 IAU, each of the TAA's have been extended on every occasion the 2008 IAU has been extended, in line with the IAU extension terms. The past 9 extensions have required agreement by the Operators and has involved negotiation for every TAA:

- Each of those TAA's contain commitments in respect of train paths and their utilization, including access to Ad Hoc paths, which reflect on-going commercial engagement and discussions on a constant basis.
- Every TAA contains a pricing escalation clause that provide for a 60 day period of engagement, and hence negotiation, on the proposed escalation.

Notwithstanding this level of commercial negotiation in respect of execution and extension of the TAA's, as well as the daily decisions that arise under the TAAs, there have been no commercial disputes brought under a TAA under the 2008 IAU.

1.2. What barriers (if any) does ARTC consider have limited its ability to negotiate varied prices or alternative services to date?

ARTC does not consider there have been any barriers to negotiate the alternative services sought by Operators under the 2008 IAU to date.

ARTC however believes that the extended process to renew the 2008 IAU has impacted on its ability to vary prices for the current Reference Service (due to parties being unwilling to enter into long term arrangements in advance of a new undertaking) and noting that the pricing strategy that ARTC sought to implement in the 2018-19 period has been changed to reflect impact of extraneous events such as COVID-19.

The current process is prescriptive in nature and limits the flexibility of ARTC to respond to the changing needs of its customers in dealing with changing market conditions. Customers are seeking discussions on new services and ARTC perceives that the existing process, particularly from a timing perspective, is a potential barrier to negotiations. As discussed further below, ARTC considers the commercial arbitration framework provides a more fit for purpose dispute resolution regime to address new services requests and innovation.

1.3. Given the price of Reference Services is constrained by the CPI mechanism in clause 4.5 of the Proposed Undertaking, how does ARTC consider changes to prices for the recovery of investments

to improve reliability and service would occur? We note that additional capacity is dealt with under clauses 6.3 and 6.4 of the Proposed Undertaking.

The 2024 IAU retains the right, not an obligation, to negotiate for price changes to reflect a recovery of its investments and changes to its risk profile. If ARTC decides to exercise this right, it will be subject to a binding arbitration dispute mechanism if ARTC's proposal is disputed.

Therefore, any changes to pricing to recover the cost of investments or to improve reliability and service is required to be negotiated and agreed with ARTC's customers. These negotiations will reflect a range of commercial issues, including the competitive balance with road and coastal shipping, addressing the critical issues of transit time, reliability and overall supply chain cost, as well as the unique characteristics of the origin and destination of the particular service, the commodity being transport and the needs of the specific Operator.

ARTC is not able to hypothesise on the process and outcome of such negotiations as they will be specific to the time, market conditions and individual Operator requirements in which they are held.

2. Commercial arbitration

2.1 Explain further ARTC's rationale for the proposed use of a commercial arbitrator instead of the ACCC and what ARTC considers to be the benefits of a commercial arbitration-based framework.

The key reason why commercial arbitration is preferable to a conventional ACCC arbitration process is the context of the freight industry and the nature of the negotiations involved which need to be facilitated by the IAU:

- As the ACCC is aware, ARTC is not in a position to recover the full economic cost of the Interstate Network (as demonstrated by the GHC DORC assessment commissioned by the ACCC).
- This is a result of intermodal competition and rail suffering a significant, structural, competitive disadvantage as it competes with road and coastal shipping that marginally price freight, and the owners of roads (governments) and shipping do not have the same imperatives to earn a return on capital.
- Accordingly, ARTC's pricing is independent of an economic ceiling based on a traditional building block approach.
- The IAU needs to support commercial and operational flexibility to enable rail freight to compete with intermodal competition and not a traditional rigid, cost-focussed, regime which assumes static service provision.

A commercial arbitration framework is preferable in these circumstances:

- This is not a traditional regulatory arbitration process based on cost which the ACCC would ordinarily undertake.
- Innovation in service delivery will be critical to competing with other intermodal modes. This will often be a case of above and below rail working together on solutions such as ATMS. Any investment to achieve this will depend on agreement between the parties and will involve bespoke commercial negotiations and allocating risks and benefits.
- The negotiations require commercial flexibility and involve balancing commercial considerations. An independent commercial arbitrator is better placed to address disputes in this context.
- The choice of arbitrator and the scope of commercial arbitrations can be tailored to the issues involved leading to more timely and cost effective resolutions.
- The approach of commercial arbitration also provides a pathway for national consistency of regulatory approach where rail regulation is split between jurisdictions and regulators.

Finally, commercial arbitration should not be considered some form of "second best" dispute resolution relative to an ACCC arbitration process. The commercial arbitration process was introduced to the gas transmission industry in what was known as Part 23 of the National Gas Law which were then recommended to be applied to Airports in the ACCC's September 2018 submission to the Productivity Commission's 2018-19 review of Airport regulation.

The ACCC strongly supported the introduction of commercial arbitration in Part 23:

- As highlighted in a quote from a 2016 article "Michael Vertigan's path to improbable gas reform consensus" Matthew Stevens, Financial Review Dec 14, 2016 (emphasis added):

"I think the Vertigan recommendations are terrific and very clever," ACCC chairman Rod Sims said after Federal Environment and Energy Minister Josh Frydenberg had led the COAG Energy Council to its rapid-fire endorsement of the pipeline law review and its reform platform.

*"The only goal the ACCC had (in the East Coast Gas Review) was to give the shippers some negotiating muscle with them pipelines. What COAG has agreed to today is a **much more direct and speedier way to get that outcome**. It is much better than what we recommended," Sims admitted.*

- In its April 2017 submission on the GMRC's Gas Pipeline Information Disclosure and Arbitration Framework – Implementation Options Paper (March 2017), the ACCC "*strongly*" supported the proposed Gas Pipeline Information Disclosure and Arbitration Framework and GMRC's "*preferred approach to implementing the regime*".

The ACCC's submission also highlighted several benefits of commercial arbitration including predictability, transparency, timely resolution of disputes, addresses market power concerns and the ability to factor broad commercial and investment considerations.

In respect of Airports, ARTC further notes that the ACCC's support for the value of a commercial arbitration mechanism in providing timely outcomes that constrain the use of market power led to a recommendation, supported by ARTC at the time, for such a mechanism to be applied to Airports in its September 2018 submission to the PC Airports Review (emphasis added):

*"The ACCC considers that commercial negotiations would be further supported if the parties are provided with a fall-back option of seeking arbitration. This would address the imbalance in bargaining power between monopoly airports and airlines, particularly small airlines. **Arbitration could be undertaken by a commercial arbitrator to ensure that outcomes are reached in a more timely manner.**"*

Similar to the gas and airport sectors, commercial arbitration is fit for purpose for the rail freight industry where bespoke and flexible commercial negotiations are required.

2.2. The Proposed Undertaking introduces several new matters for an arbitrator to take into account; cl. 3.12.5(a)(xii) states the following: In making an award the Arbitrator must take into account: ... (K) factors relating to the industry, including: (aa) comparative rates of return; (ab) risks to the rail industry; and (ac) relativity of price to overall supply chain costs; ... For each of these new factors in (K), provide examples of cases, hypothetical or otherwise, where ARTC considers such a factor could affect pricing, in what direction, and why.

As highlighted above:

- ARTC is not a position to recover the full economic cost of the network as a result of intermodal competition.
- The basis for the arbitration framework is to support the commercial flexibility required to help improve rail's competitiveness in the freight market. This competitiveness reflects a balance of the essential competitive requirements for rail services of transit time, reliability and cost; where that cost reflects rail's door to door service cost.
- ARTC has not been in an access charge related dispute with any customer under the 2008 IAU. Therefore, any response to how an arbitrator will deal with a dispute is hypothetical as it is ARTC's clear intent to reach a negotiated agreement with its customers. However, if a dispute should arise, Clause 3.12.5 provides clarity on the process for resolving disputes.

Clause 3.12.5(xii)(K) is just one of the many factors that the Arbitrator must consider before coming to an independent decision. The factors framed in (K) reflect a commercial reality that rail competes with road and sea for the provision of freight services. The competitive pressure, provided by these competing modes,

places pressure on the service offering of all aspects of the supply chain, of which rail is just one portion. In the circumstance of a hypothetical dispute, it is possible that an applicant may consider that aspects of the proposed service offered by ARTC, including its pricing, are not set at a level or sufficient to allow the applicant to provide a competitive service.

One of the underlying bases of the development of the proposed new framework for the 2024 IAU is that the competitive pressure provided by competing modes does not allow ARTC to achieve full economic cost recovery. The pressure of competing modes has therefore already framed ARTC's price and service response for access to its network.

Therefore, if the basis for a dispute is that ARTC's proposed service offering is not competitive, this necessarily reflects a position that the combination of ARTC's proposal with the costs and risks of other aspects of the supply chain (including the applicant's proposed services to its customers) is not competitive. It is ARTC's view that the resolution of such a dispute, if it was to arise, cannot be held in isolation from the impact of other aspects of the supply chain to the overall service offering.

Based on the above, clause 3.12.5(xii)(K) highlights the importance of taking a holistic approach, which considers overall industry factors related to the dispute and how each factor bears on a dispute and the appropriate pricing and risk allocation on the below rail component. It is critical that these issues are not considered in isolation, so are not separable, but rather reflect a need for the Arbitrator to consider relevant industry factors in their determination, which include the following:

- Comparative Rates of return

This part of the clause ensures that the Arbitrator, in assessing what return is reasonable for ARTC to earn, will have consideration for the balance of that return with those earned by the Operator in its services consistent with the risks accepted by each party. If the pricing proposed is deemed unacceptable by an Operator, it must consider a lower price is required, which necessarily implies a lower return on investment by ARTC. This clause does not preclude that lower return as an outcome of the arbitration, but requires the Arbitrator to have consideration of how ARTC's arbitrated return compares to the Operators, consistent with the risks accepted by each party. It is important to note that ARTC is bound by this decision, whilst the disputing Operator retains the option to not proceed with the agreement if it considers the resulting decision uneconomic.

- Risks to the rail industry

This reflects the individual risk components of the service to each of ARTC and the Operator, but also has broader implications in respect of whether any aspect of the dispute presents a risk to the overall competitiveness of rail as an industry. This could reflect a scenario whereby a particular service risk is required to ensure that rail is able to compete with other transport modes, or where a particular investment is required to ensure continuing service in a key market.

- Relativity of price to overall supply chain costs

As highlighted, the dispute necessarily reflects a scenario where the Operator believes ARTC's price results in an uncompetitive service offering and therefore that the return on investment and/or risk sought by ARTC is too high. Such a determination cannot be considered in isolation from how ARTC's access charges impact on overall supply chain costs and hence impact on rail's competitive position.

ARTC is unable to address the question of the extent and direction of these issues on pricing, as they will necessarily be case specific and ARTC is not able to hypothesise on a potential dispute arising from a negotiation or mediation which has not occurred, let alone what the potential award on that dispute will be. However, ARTC can say that if a dispute arose, such a dispute will likely be that the combination of price and

risk proposed by ARTC is not acceptable to the Operator due to the impact on its service offering. Both ARTC and its customer will need to lead evidence on these issues, which the Arbitrator will take into account and the impact on pricing will be determined by the decision of the Arbitrator at the time.

3. Charges

3.1. How does ARTC consider this two-part pricing structure will promote efficient use of rail capacity regarding different train sizes or non-standard services? Is the split between flag fall and variable charges negotiable by applicants?

ARTC has consistently set its flag fall rate at a relatively low proportion of overall freight costs to ensure that pricing structure is not a barrier to new entrants and hence overall rail competitiveness. ARTC has set the flag fall part of its pricing relatively low to ensure that new entrant Operators are not disadvantaged in their entry to the market as they seek to maximize per train freight efficiency. That is, incumbent Operators are likely to be in a position to maximize the weight per train compared to new entrants. This ensures any fixed path cost is spread over maximum weight and therefore delivers the lowest cost per tonne of freight. As a new entrant builds volume and service capability, it is assumed that it would operate at lower levels of per train freight density, spreading fixed costs over a lower volume of freight and potentially impacting on its ability to compete for new loads.

Subject to ARTC's commitment to non-discriminatory tariffs and its published pricing structure, ARTC is open to negotiate specific service requirements to meet Operator needs where the published tariffs and Reference Services are not sufficient for those needs.

3.2. The Explanatory Guide states that two-part pricing is “set at less than fixed cost levels so as not to inhibit market entry” (page 10). Can ARTC provide a breakdown of estimated fixed and variable costs and tariff revenue for each of its eight proposed Reference Services, or if not available, for the Reference Services combined, for the most recent 2 years?

The following tables provide a breakdown of access revenue by Reference Service type for the Segments proposed in the 2024IAU.

FY 2021/2022	Flagfall Charge	GTK Charge	Flat Fee	Total Charge
Regular	9,943,170	28,457,850	768,965	39,169,986
Super Fght	28,758,249	120,911,015	107,385	149,776,649
Exp Freight	5,197,156	17,962,332	0	23,159,488
Standard Freight	1,569,687	2,211,825	1,329,640	5,111,152
Regular Grain	1,754,290	5,151,758	5,081	6,911,129
Standard Grain	2,102,555	14,763,467	40,292	16,906,314
HeavyFreight	2,271,994	11,216,415	0	13,488,409
Passenger	1,129,378	1,349,193	0	2,478,570
Exp Pass	13,239,789	4,338,080	0	17,577,870
Total	65,966,269	206,361,936	2,251,363	274,579,568

FY 2022/2023	Flagfall Charge	GTK Charge	Flat Fee	Total Charge
Regular	10,643,303	31,019,361	694,304	42,356,968
Super Fght	32,118,236	122,811,424	96,979	155,026,639
Exp Freight	6,001,242	17,839,828	0	23,841,071
Standard Freight	1,964,919	3,154,083	1,479,815	6,598,817
Regular Grain	2,015,807	4,205,145	1,725	6,222,677
Standard Grain	2,053,782	14,730,509	34,038	16,818,330
HeavyFreight	2,499,874	12,809,400	0	15,309,274
Passenger	2,485,071	3,411,243	0	5,896,314
Exp Pass	15,362,695	5,334,256	0	20,696,952
	75,144,930	215,315,250	2,306,861	292,767,041

The following tables break down the Maintenance costs per Regulatory Segment for the past two years. Maintenance costs have no nexus with location and therefore it is not possible to provide them by Reference Service.

FY2022 - IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance
Dry Creek – Parkeston	7,475,050	2,232,181	9,707,231
Dry Creek – Pelican Point	415,929	13,398	429,327
Dry Creek – Spencer St (Melbourne)	11,655,344	4,620,903	16,276,247
Crystal Brook – Parkes	6,309,298	2,935,991	9,245,289
Cootamundra - Parkes	2,410,712	904,307	3,315,019
Melbourne (Tottenham) – Macarthur	26,848,120	15,503,288	42,351,408
Moss Vale – Unanderra	1,045,786	394,341	1,440,126
Newcastle –Acacia Ridge	12,462,836	9,092,488	21,555,324
Port Augusta – Whyalla	97,642	20,543	118,185
Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,160,801	138,045	1,298,846
Metropolitan Freight Network Chullora Junction – Port Botany	2,583,983	115,125	2,699,108
	72,465,501	35,970,610	108,436,111

FY2023 - IAU Segment Description	Fixed Maintenance	Variable Maintenance	Total Maintenance
Dry Creek – Parkeston	8,552,819	5,123,798	13,676,617
Dry Creek – Pelican Point	384,526	8,954	393,481
Dry Creek – Spencer St (Melbourne)	14,059,044	5,508,403	19,567,447
Crystal Brook – Parkes	5,868,011	2,223,612	8,091,623
Cootamundra - Parkes	2,249,804	854,986	3,104,790
Melbourne (Tottenham) – Macarthur	29,548,210	15,736,670	45,284,880
Moss Vale – Unanderra	1,664,302	601,049	2,265,351
Newcastle –Acacia Ridge	14,444,046	8,549,160	22,993,206
Port Augusta – Whyalla	53,999	2,046	56,046
Southern Sydney Freight Line incl Sefton Park Junction – Flemington South	1,299,245	120,455	1,419,700
Metropolitan Freight Network Chullora Junction – Port Botany	3,326,473	57,229	3,383,702
	81,450,479	38,786,363	120,236,842

3.3. Has ARTC applied the excess network occupancy charge under the current 2008 IAU?

No.

3.4. If there have been cases of excess occupancy since 2008 where ARTC could have applied the charge but did not, explain why ARTC did not apply it.

It is ARTC's view that there has been no cases of excess occupancy since 2008. ARTC will negotiate dwells on the network to facilitate customer requirements and operating needs.

3.5. Is it ARTC's expectation that it will make a variation to the Standing Offer every year, including if the formula would provide for a reduction in prices?

Clause 4.5(b) states that:

ARTC may annually vary on 1 July the Standing Offer for Reference Services ("Review Date") by up to an amount determined in accordance with the following formula:

$$AC_t = AC_{t-1} * (1 + TV_i)$$

Where

AC_t is the Standing Offer for Reference Services following the relevant Review Date;

AC_{t-1} is the Standing Offer for Reference Services immediately preceding the relevant Review Date;

TV_i is the maximum variation to the Standing Offer for Reference Services (measured as a percentage) that may be applied from 1 July 2023 and thereafter from each 1 July during the Term ("Determination Date") and is to be determined in accordance with the following formula;

$$TV_i \text{ is } (((CPI\ Index_i / CPI\ Index_0) / CV_{i-1}) - 1) * 100$$

Where

CPI Index_i is the All groups Consumer Price Index, Weighted Average of Eight Capital Cities, Index Number for the March quarter preceding the relevant Determination Date;

CPI Index₀ is the All groups Consumer Price Index, Weighted Average of Eight Capital Cities, Index Number for the March quarter of the year 2023, being 132.6.

CV_{i-1} is the cumulative effect of the variations actually applied by ARTC to the Standing Offer for Reference Services from 1 July 2023 to the relevant Determination Date ("i"). The cumulative effect is to be determined in accordance with the following formula:

$$CV_{i-1} = (1 + V_1) * (1 + V_2) * \dots * (1 + V_{i-1})$$

Where

V₁, V₂ ... V_{i-1} are the actual % variations which have been applied to the Standing Offer for Reference Services from 1 July 2023 to the relevant Determination Date.

Clause 4.5(b) provides ARTC with the discretion (not an obligation) to vary prices **up to the** level defined by the escalation equation. This clause does not provide any discretion in respect of the variation of prices above the level defined in the escalation equation.

The application of ARTC's discretion in respect of the variation of prices is not something ARTC is able to hypothesise on, as this will be a function of economic and market conditions relevant to that specific time. For example, in 2020 ARTC exercised its discretion NOT to pass on price increases and froze pricing for a

year based on the impact of COVID-19, and did not exercise its available discretion post those events to recover that price freeze. ARTC is not able to hypothesise on the circumstances that would drive ARTC to exercise (either in partial or full or not at all) its discretion not to pass through the full aggregate CPI impacts over the term; other than to note those discretions are available and have only been exercised historically to freeze pricing to the benefit of the Operator.

ARTC's discretion is constrained by the pricing limit defined by the equation. Therefore, in circumstances where there is a negative CPI outcome which would reduce the pricing limit by application of the equation, and in the event ARTC's pricing was already at the limit, then ARTC would be required to pass through this reduction to customers as its discretion is bound by the cap.

3.6. Is it ARTC's expectation that variations could be different in magnitude for the various Reference Services? For example, if there were cost differences between provision of the services.

Each Reference Service is priced separately and subject to the same escalation provision under Clause 4.5(b). Theoretically, ARTC has the ability to vary each reference service individually under Clause 4.5(b). However, ARTC has never exercised this discretion and has always treated all services equally in the application of this clause.

3.7. Provide worked examples showing how ARTC intends the Standing Offer formula would work to change the price of Reference Services over the 5 years of the Proposed Undertaking in the below scenarios. Include both price and any headroom to the cumulative cap. a) positive inflation each year where: I. ARTC increases the price of the Reference Service by the full annual CPI amount each year II. ARTC increases the price of the Reference Service by less than the annual CPI amount in some years and the annual CPI in others III. ARTC increases the price of the Reference Service by more than the annual CPI in some years and below the CPI in others b) negative inflation in a middle year of the examples given in response to a) to illustrate how deflation affects the price of the Reference Service c) negative inflation causes the cap change to become negative/a price reduction. ARTC may provide other scenarios to illustrate the how the formula may be applied to the price of the Reference Service.

ARTC assesses its application of pricing discretion in the application of Clause 4.5(b) at the relevant time and based on the customer feedback it receives. ARTC is therefore not able to hypothesise on any future scenarios covering broader economic and market conditions, nor to define any intention in respect of the application of Clause 4.5(b) now or in the future.

In respect of the scenarios defined by the ACCC, ARTC would make the following comments:

- Under (a)(I) where ARTC has passed through CPI in full in every year, there is no headroom as the price cap is defined by CPI;
- Under (a)(III), ARTC cannot price above the cap which is defined by the annual CPI. Therefore, ARTC is not in a position to price above annual CPI, unless this follows a period of pricing below CPI. Scenario III is therefore not a possible scenario to implement.

Under (b) and (c), given the discussion under Question 3.5, ARTC is required to pass through in full any negative CPI if it has previously passed on CPI changes in full and ARTC is unable to price above CPI unless it has previously priced below CPI, so Scenario III remains an unviable option in all scenarios.

ARTC has provided the attached spreadsheet on a confidential basis providing worked examples as requested. ARTC claims confidentiality on this data as it is significantly concerned that publication of this data could be seen by customers as indicative of an intent to apply CPI escalations under the scenarios requested.

4. INDS, Inland Rail and additional capacity

4.1. How does ARTC consider work for Inland Rail on existing segments of the Interstate Network (e.g., most of Melbourne to Narromine) will be treated under the Proposed Undertaking for annual reporting and the INDS?

Inland Rail will be considered as existing segments once commissioned and will be reported as such under the relevant provisions of the 2024 IAU.

4.2. Has ARTC/Applicants used the provisions of cl. 6.3 of the current 2008 IAU regarding Additional Capacity sought by Applicants in the past?

No

4.3. Does ARTC consider that a variation to prices made under cl. 6.3(d) could apply to Reference Services or only non-Reference Services?

ARTC notes that Clause 6.3(d) provides a level of discretion for ARTC to negotiate with an Applicant on the extent and method of the recovery of its costs where an applicant seeks additional capacity. ARTC is not able to hypothesise on the exercise of this discretion as a theoretical exercise in the absence of the particular circumstances that apply to the request, including whether there is any benefit which flows to existing Reference Services. Such a request could apply to Reference or non-Reference Services. ARTC would note that any change for Reference Services would be required to be by agreement.

4.4. If an applicant sought and paid for an increase in capacity under cl. 6.3, and that capacity also increased capacity for Reference Services generally, would that user contribution reduce any future increases in prices for the relevant Reference services?

ARTC notes that Clause 6.3(d) provides a level of discretion for ARTC to negotiate with an Applicant on the extent and method of the recovery of its costs. ARTC is not able to hypothesise on the exercise of this discretion as a theoretical exercise in the absence of the particular circumstances that apply to the request, including whether there is any benefit which flows to existing Reference Services. ARTC would note that to the extent that one user has funded capacity which is available to other users, then ARTC would ordinarily expect that user to require some reimbursement of its funding in which case there would not be a reduction in the costs of reference services.

4.5. Is cl. 6.4 (Additional Capacity sought by ARTC for the benefit of the rail industry) intended to operate only when it results in a proposed change in price to one or more Reference Services?

Note, this is a Clause that anticipates an event where negotiations have failed with Industry but ARTC believes the investment, and cost recovery of that investment, is essential for the efficient operation of the network. Such a project would not be commercial in nature and therefore requires resolution by the ACCC and not via commercial arbitration. ARTC is not able to hypothesise on the range of scenarios where this would apply, however would note that given the ACCC's indication that a future IAU may revert to a RAB based framework post Inland Rail, there may be merit in such a process to demonstrate the need for the investment even if no change in pricing is sought.

4.6. What is the intention for having efficiency of expenditure dealt with separately under cl. 6.4(c) rather than under the list of factors in (b)?

6.4(c) reflects the operating cost efficiency impact of the proposed project more than the underlying factors that supported the assessment of the need for the capital project as listed in (b) and are therefore only relevant to question of the impact on the Reference Services prices rather than whether the project was worthwhile.

4.7. Given price is not linked to capital expenditure (capex) for the purpose of maintaining a regulatory asset base, how does ARTC consider the additional capacity and a change in Reference Services prices would work? More specifically, how does ARTC consider cl. 6.4 would work in conjunction with the formula for the calculation of the Standing Offer for Reference services in cl. 4.5?

Clause 4.5 is limited purely to the annual variation of prices based on the application of the CPI formula. ARTC therefore considers that any ACCC approval of pricing under Clause 6.4 is separate to the application of Clause 4.5.

ARTC notes that Clause 6.4 has existed, in some form or another, across all versions of the IAU and it is a clause that has yet to be used by ARTC. ARTC is therefore not able to hypothesise on a theoretical application of it at some point in the future, except to state that where an application was made by ARTC under 6.4, and the ACCC supported that application, the exact details of how such a change would apply would be part of the application.

4.8. What determines whether ARTC would or would not apply under cl. 6.4 for a project that provides additional capacity?

Given the 22 year history of the IAU has seen no applications made by ARTC for investment on this basis, ARTC is not able to hypothesise on exact determinations for the use of Clause 6.4. However, given the arbitration framework that applies, it is possible to extrapolate that any application under 6.4 would likely be made only where a project is sought by ARTC with no support from industry and no commercial benefit to trigger a commercial arbitration but ARTC saw value in pursuing an ACCC application.

4.9. Does ARTC expect any of the projects currently under consideration by ARTC, (including projects to be included in the INDS, and Inland Rail projects upgrading existing segments) will need to be considered under cl. 6.4?

ARTC has not implemented a project under Clause 6.4 in the 22 year history of the IAU and is not currently aware of a project that would need to be considered under Clause 6.4.

4.10. How does ARTC consider the proposed cl. 6.6 (providing for industry consultation on additional capacity) would interact with the provisions for consultation in the INDS?

Consultation for Projects under Clause 6.6 reflect those sought in accordance with Clause 6.3 and 6.4. The INDS will contain the projects which ARTC identifies as required based on its view of network resilience requirements and/or capacity increments to meet growth scenarios.

Clause 6.3 relates to Additional Capacity projects requested by Applicants. It is therefore possible that such projects would not be in those included in the INDS and so may not have been consulted on. The nature of the use of Clause 6.4 assumes that ARTC is of the understanding that industry does not support the benefits of the project, which presupposes consultation which will likely have occurred under the provisions of the INDS. However, where 6.4 has been triggered, and noting that this has yet to be done in the 22 year history of the IAU, additional consultation under Clause 6.6 will be of merit.

5. Cost recovery

5.1. For the most recent 2 years, what percentage of access revenue for the Interstate Network is contributed by the eight proposed Reference Services?

For both FY2022 and FY2023, 95% of total Interstate Revenue has been contributed by the eight proposed reference services.

5.2. What services contribute to the remainder of the access revenue for the Interstate Network?

In addition to the eight reference services, the Interstate network receives access revenue from coal traffic that utilises the Interstate Network.

5.3. Have the prices of the eight proposed Reference Services vary relative to each other under the current 2008 IAU, by negotiation or otherwise? If so, provide details.

The eligible price increase was not applied to Express Passenger rates effective 1 July 2011.

ARTC created a new Heavy Minerals rate on 1st July 2012 by applying a 12.5% increase to the prior year's Regular Rate. A further 12.5% increase was applied the following year.

[REDACTED]

5.4. Does ARTC have any concerns or evidence that the current pricing no longer reflects the charge differentiation factors such as opportunity costs and market value listed in cl. 4.2(c) of the Proposed Undertaking?

ARTC does not have concerns in respect of the relationship between pricing and the differentiation and therefore no evidence is required.

5.5. Has ARTC considered introducing sub-categories of Reference Services (such as time of day or duration) to reflect differing desirability of paths and promote efficient use of the network?

ARTC notes there has been some recent discussion in respect of this service differentiation, which discussion has arisen from time to time previously over the IAU's history. ARTC notes the difficulties of time of day of pricing given the value of that time differs between commodities and the definition of peak times can also change for segments depending on the origin-destination pairing of the freight. ARTC is always willing to engage on commercial requests of its customers and has developed this IAU framework to support that process. In particular, ARTC has allowed for a chapter within the INDS to incorporate suggested

commercial innovations by customers and provide for broader industry engagement to help improve transparency across all stakeholders.

5.6. Advise whether the floor analysis data provided by ARTC on 21 November 2023 relates to calendar years or financial years; for example, does “2019” refer to 2018-19 or calendar year 2019?

Data has been provided in Financial Years.

5.7. Provide data on capital expenditures for each year from 2018-19 up to 2022-23, in categories consistent as far as possible with the data to be reported annually under the proposed Schedule I

Capital Expenditure	FY19 (\$m)	FY20 (\$m)	FY21 (\$m)	FY22 (\$m)	FY23 (\$m)
Dry Creek to Parkeston	107	22	21	13	16
Tarcoola to Asia Pacific	0	0	2	1	2
Dry Creek to Spencer St (Melbourne)	5	12	15	15	64
Melbourne (Tottenham to Macarthur)	44	105	162	52	57
Newcastle to Acacia Ridge	11	40	26	49	33
Crystal Brook to Parkes	3	1	3	5	12
Cootamundra to Parkes	2	6	5	2	11
Dry Creek to Pelican Point	0	0	0	0	0
Port Augusta to Whyalla	0	0	0	0	0
Moss Vale to Unanderra	3	2	1	14	9
SSFL to Flemington South	0	6	-3	26	51
MFN Chullora to Botany	7	23	-9	63	171
	184	216	224	241	425

Note that the Metropolitan Freight Network is not in the current IAU, but has been provided for context given its proposed incorporation in the 2024 IAU.

5.8. Provide historical whole of network data for the Interstate network for each financial year from 2018-19 to 2022-23 for the following: (i) accounting depreciation of ARTC’s asset base; and (ii) asset values for the interstate network on which the depreciation data are based. Include in your response any relevant public documents that show depreciation for the interstate network.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]

5.9. Explain the general methodology for the asset valuation.

[REDACTED]

5.10. Provide any further relevant information on ARTC's forecasts of revenue and direct cost of segments insofar as they are available.

ARTC has no additional information to provide.

6. Annual reporting information

6.1. Are the Performance Indicators to be published under Schedule I intended to be the same as those required under Schedule G, or additional?

No. Schedule G details Performance Indicators relating to network performance that a customer would experience day-to-day (such as on-time performance).

Schedule I refers to information in Schedule G and also makes commitments for additional reporting on the broader maintenance and management of the network by 30 November of each year.

6.2. If additional, specify what items are proposed.

All Schedule I items from (ii) onwards are in addition to reporting proposed in Schedule G. These are:

(ii) total Access revenue earned for each Segment;

(iii) volumes on each Segment of the Network (gtkm and train km);

(iv) maintenance costs, split by category of fixed and variable for each Segment of the Network;

(v) rail infrastructure capital for each Segment of the Network;

(vi) non-maintenance operating costs, including Network control and overheads, for the Interstate Rail Network; and

(vii) references to published financial reports, for the purpose of outlining the accounting depreciation of ARTC's asset base as reflected in ARTC's financial asset registers.

6.3. What is the relationship between the unit cost categories in schedule G and those to be reported under Schedule I?

Schedule G Unit Costs is a subset of the costs included in Schedule I, specific to train operations, normalised using relevant measures for each category.

6.4. Explain what is meant by, and provide definitions for, "rail infrastructure capital" and "major projects".

The executive summary of the Explanatory Guide notes that "within the INDS, capital costs will be categorised as either rail infrastructure capital or completed major project costs" (page 3).

(Rail infrastructure capital) "Rail infrastructure capital" refers to capital required to maintain the Network and associated facilities, ie "sustaining capital" or "replacement capital" and was inserted following discussion with the ACCC on what an appropriate definition would be, and reflects a discussion with ARTC's Finance team on the most appropriate terminology to align with our internal systems. Rail infrastructure capital is capital expenditure intended to support the economic sustainability of fixed assets such as lines/tracks, level crossings, bridges and tunnels. It is intended to include BAU capital works. Major projects are dealt with separately.

(Major projects) The INDS will identify which future investment projects on the Interstate Network are major projects.

As noted in the executive summary of the Explanatory Guide, the description of major projects will also be accompanied by "the published business case, and the final capital cost and associated data" (page 3).

Additionally, the INDS will “facilitate stakeholder engagement on major projects which are required to meet demand growth on the Interstate Network” (Explanatory Guide, page 17).

Major projects reflect substantial non-BAU projects which are separately reported on and will involve initial engagement through publication in the INDS. Examples of current major projects are the:

1. Cabramatta Loop Project;
2. Narrabri to Turravan Line Upgrade; and
3. Adelaide – Tarcoola Rail Upgrade Acceleration.

6.5. How do the above terms (“rail infrastructure capital” and “major projects”) relate to the following terms previously used by ARTC: corridor capital, sustaining capital, minor capital, expansion capital

Rail infrastructure capital

Per the explanation of Rail infrastructure capital above, this term may cover terms such as “corridor capital”, “minor capital” but not “expansion capital”.

Major projects

See explanation above. This primarily relates to expansion capital.

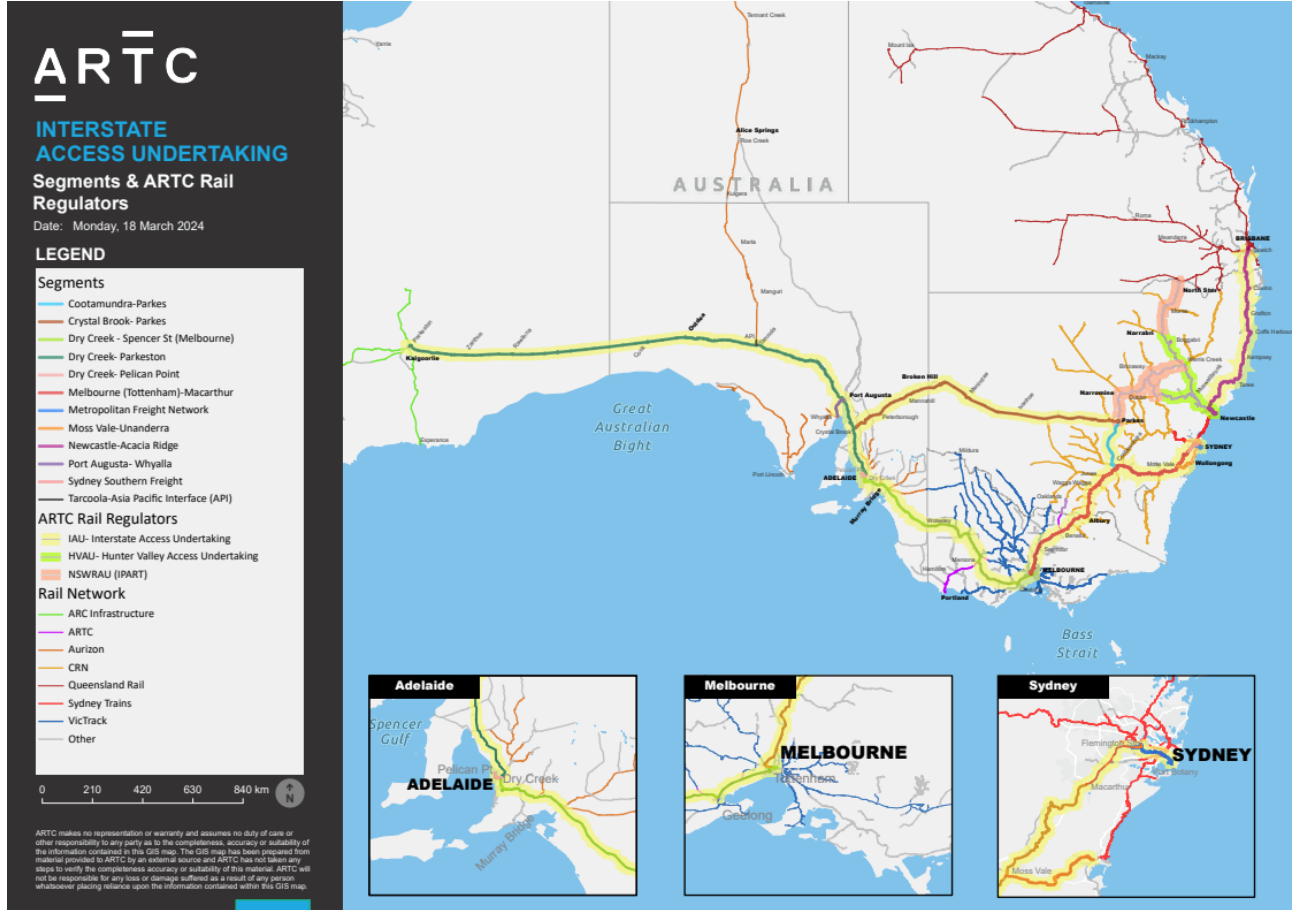
Previous terms

- Corridor capital – is an industry term used to define capital spent on maintain the condition of the corridor. Whilst a general term it has no specific definition in ARTC’s undertaking or accounting systems and has therefore not been used to avoid confusion.
- Sustaining Capital – is a term specific to the HVAU and is used for the purposes of calculating Economic Costs of a segment. It has no function in the IAU and is not used.
- Minor capital - is a term used in the HVAU to reflect an aggregation of capital projects that are not large enough for individual approval by the RCG. This term has no function in the IAU as it is specific to the HVAU and operation of the RCG.
- Expansion capital - is a term specific to the HVAU and is used for the purposes of calculating Economic Costs of a segment. It has no function in the IAU and is not used.

6.6. For the purpose of aggregating total capex, are there any gaps or overlaps between the scope of rail infrastructure capital and major projects?

No.

7. Map



Please note a PDF version of this map will be provided.

8. Stakeholder consultation

Pathing			
Issue	ARTC response	ACCC query	ARTC detailed response
Concern around equivalence of train paths	ARTC does not price differentiate between individual train paths. ARTC encourages engagement with the Interstate Commercial and Customer team on all matters, including access charges and pathing.	8.1. Provide further information on the concerns that were raised around the equivalence of train paths.	Some operators feel that access to what they regard as premium paths (those with an efficient transit time combined with a late evening departure and an early morning arrival) is limited. This is as a result of another customer having contracted these paths. ARTC has addressed this question above under 5.5.
Process for migrating paths over from existing north south line to Inland Rail on Inland Rail commencement.	This is not an issue for the term of this IAU. The change of the definition of "Applicant" in the IAU to include existing customers clarifies there is access to IAU arbitration for disputes in respect of new pathing requests.	8.2. Advise the extent to which there will be any expected disruptions of service or other migration issues during the rollout of Inland Rail from works during the term of the IAU, and how they will be managed and communicated to users.	ARTC has a well-established possession planning process. While construction on Inland Rail is focused on sections south of Parkes until 2027, any construction activities that affect services on existing lines will be managed in liaison with rail operators. ARTC is considering options for the allocation of paths on Inland Rail once complete.
Questions in respect of the schedule in the master train plan and de-identification of paths.	ARTC works with all Customers to provide an optimal schedule based on the needs of the Network which maximises utilisation and, where possible based on confidentiality requirements, maximises transparency. ARTC takes volume risk on its Network and therefore is fully incentivized to maximise the freight tonnage on its Network and optimise pathing to facilitate this. There is always opportunity to engage with Interstate	8.3. Provide further detail on the various questions that were raised by stakeholders in respect of the schedule in the master train plan and de-identification of paths. 8.4. Has ARTC reviewed the confidentiality requirements that limit the release of information and whether those limits are consistent with other networks? Please explain	ARTC is committed to publishing the master train plan (MTP). In alignment with the Access Undertaking and Track Access Agreements, we are committed to providing transparent pricing for services on a like-for-like basis (commodity, market, origin and destination). The MTP is not deidentified and does not require a confidentiality review. ARTC has not reviewed its confidentiality clause relative to other networks.

	Commercial and Customer team to discuss pathing.		
Pricing			
Would like to see flexibility of pricing to reflect seasonally-based commodities	We encourage engagement with the Interstate Commercial and Customer team on all matters, including access charges. We are always willing to work with stakeholders and beneficial freight owners to develop solutions and maximise freight on rail.	8.5. What practical steps would an access holder need to take to propose and negotiate a change to the terms/conditions including pricing for seasonal commodities? 8.6. Has ARTC had requests for varied pricing for seasonally based commodities in recent years, and what were the outcomes? 8.7. How would a new arrangement be communicated publicly so that other access users can consider the same opportunity?	8.5 The access holder would need to put forward a request for a change for a new service under the relevant parts of the IAU. . 8.6 No. 8.7 Any new outcome would be published on the website. On a like-for-like basis, all customers operating an equivalent service would receive the same opportunity.
Concerned that ARTC access charges aren't waived when other networks have possessions that impact the ability to use a path	ARTC engages with other RIMs to align possessions wherever possible. However, it is not within ARTC's remit to waive access charges when another RIM's possession affects usage of a path.	8.8. Provide further information on the concerns that were raised around the waiver of access charges. 8.9. Outline why ARTC considers it is not within its remit to waive access charges for paths that cannot be used.	Where a path cannot be used, ARTC only charges a flagfall and not the full access charge. There is an allowance within the access agreements for free cancellations per path per contract year. The free cancellations can be applied at any time, recognising the need for operational flexibility, not just possession impacts.
Concern in respect of the manner of price escalation	ARTC's escalation clauses in its Access Agreements requires a 60 day consultation on its pricing proposal for the coming year. We encourage engagement with the Interstate Commercial and Customer team on all matters, including access charges. We are always willing to work with stakeholders and beneficial freight	8.10. Provide further information on the concerns that were raised around the manner of price escalation charges.	Some customers felt that the Consumer Price Index was not reflective of the rail-specific cost increases and didn't include reflective competitive price differentials, in particular to heavy vehicle price changes.

	owners to develop solutions and maximise freight on rail.		
INDS and reporting			
What will be included in the INDS	The INDS is an annual snapshot of ARTC's view of the opportunities for the commodities that underpin the use of the rail network, the investments (and forecast costs) required to improve service and deliver increased capacity to capture those opportunities, a summary of actions ARTC has taken to address broader policy issues such as interoperability and an ability for stakeholders to propose alternatives based on industry wide consultation. A draft will be provided for consultation, then a final version published.	No request	
What will be included in annual performance reporting	Annual reporting will include, by segment, maintenance costs, revenue, utilisation (by GTK and TKM), rail infrastructure capital and non-maintenance operating costs (including Network control and overheads) at the Network level as well as the existing performance metrics. In addition, upon completion of major capital projects, ARTC will publish costs and supporting	No request	

	project documentation.		
Request to put out a draft of the INDS to operators to make sure it meets their needs	A draft will be provided for consultation, then a final version published.	No request	
What is the process for agreeing upon a capex project, what the cost recovery is, whether a rail operator has a say in it.	The INDS will be a dynamic document that is consulted on and updated annually. It provides a forecast of what capital costs are expected to be for projects, but is not a commitment by ARTC to develop referenced projects. Through the consultation process, there will be opportunity to provide feedback on any planned network improvements. Where ARTC seeks to recover the costs of investments	8.11. Is there a separate process for consulting with stakeholders on proposed Inland Rail capex projects?	Consultation on the requirement for Inland Rail was extensive and undertaken throughout the development of the Business Case culminating in the Inland Rail Program Business Case 2015 Link available here
Contractual documents			
Various requests in respect of the matters to be considered by the Arbitrator and the dispute resolution process	ARTC has accommodated many of these requests (such as inclusion of CEO negotiation prior to mediation) however some requests were not incorporated to ensure consistency with the provisions of the CCA and other access regimes.	8.12. Provide a list of the various requests that were made on matters regarding the Arbitrator and dispute resolution process. 8.13. Advise which of these requests were not incorporated and why.	Customers requested more detail around the Arbitration process – a slide pack and explanatory guide was provided. A customer requested the inclusion of “legitimate interests of the operator” within the matters to be considered by the Arbitrator. ARTC addressed this issue in consultation with the ACCC. ARTC considers that including the interests of prospective access seekers to the matters which the arbitrator must take into account under clause 3.12.5(a)(xii) of the IAU would be to expand the powers of the arbitrator beyond what has been deemed appropriate under the CCA and would be a departure from standard practice.
Would like more detail around what	ARTC has provided detail on the	[No request]	

is involved in arbitration	arbitration process in this Explanatory Guide.		
Would like to see "reasonable requests for information" included in ITAA	The IAU allows for reasonable requests for information, and this is covered off by the change to the definition of "Applicant" which clarifies there is access to IAU arbitration for disputes in respect of new pathing requests.	8.14. Can a user request information under the ITAA other than by initiating arbitration? If not, provide further detail as to the issue raised by the stakeholder and why ARTC considers the issue has been addressed.	<p>Yes, please refer to:</p> <p>CI 2.7 – Provides contact details for persons seeking information and references to resources on ARTC’s websites.</p> <p>CI 3.3(a) ARTC will, if requested by an Applicant, provide the following information to Applicants to assist with negotiations:</p> <ul style="list-style-type: none"> (i) path length availability; (ii) Available Capacity; (iii) axle load limitations; (iv) maximum allowable speeds; (v) infrastructure characteristics; (vi) applicable safeworking requirements; (vii) Segment run times; (viii) any other information relating to Capacity or Train operations reasonably required by the Applicant in relation to the Access Application, provided ARTC is given an opportunity to provide to the Applicant an estimate of the reasonable cost of preparing the aspects of such other information which are not ordinarily and freely available to ARTC, and the Applicant agrees to pay such costs. <p>This is subject to confidentiality restrictions and paying ARTC’s reasonable costs if that information is not ordinarily and freely available to ARTC (cl 3.3(b)).</p> <p>Further, users are able to engage with the ARTC Interstate Commercial and Customer</p>

			Service team at any time to request information.
Interoperability			
Concern regarding new technologies and interfacing across networks	As one of National Cabinet’s five priorities for collective action, we are focussed on improving national rail interoperability and working with governments and industry in contributing to the development and harmonisation of processes and systems to increase productivity and safety in the sector. ARTC has committed to provide an update on its actions to address this issue in the INDS.	8.15. Provide further information on the concerns that were raised around new technologies and interfacing across networks, and whether stakeholders’ suggested adjustments to the Proposed Undertaking address their concerns. 8.16. Explain what clauses (if any) in the Proposed Undertaking reflect the commitment by ARTC to report in the INDS on the steps ARTC is taking to support the resolution of rail network interoperability issues.	The issue reflects broader concerns that Operators have around the impact of fragmented network ownership. This issue particularly reflects the development and installation of new safe working and signalling systems, such as ATMS and ETCS, and the need for these systems to interact with each other. These are issues which are being addressed in the broader policy arena and are not for resolution via economic regulation under the Competition and Consumer Act in a network specific undertaking. ARTC is actively engaged in the policy arena and is taking a lead role with the NTC to assist in the resolution of the issues. ARTC has made the commitment to address this issue in the Explanatory Guide rather than the formal IAU itself.
Concerned with interoperability of multiple networks, and the resolution of disputes across networks	ARTC recognises the challenges of interfacing with other networks and RIMs. While the interoperability of the standard gauge network doesn’t fit within the scope of IAU discussions, ARTC works with government and industry to streamline transitions between RIMs wherever possible. ARTC has committed to provide an update on its actions to address this issue in the INDS.	8.17. Provide further information on the concerns that were raised around dispute resolution across networks. 8.18. Is there a documented process for a dispute resolution issue that relates to multiple networks? If so, provide the link or relevant information.	The concerns reflect issues in respect of pathing continuity and the impact of network disruptions on contracted paths. ARTC works with its customers and adjacent RIMS to minimize the impact of cross network issues where it can, but has no ability to impact on non ARTC issues given it has no contractual position on those networks. There is no process to resolve cross network disputes. This is a broader policy issue that is being addressed by the NTC in its review of interoperability of the rail systems which ARTC is actively engaged in.
Non-rollingstock interests			
Concerned regarding rights of	The IAU is a document for	8.19. Provide further information on the	The ARTC process to gain safe access to the rail corridor was

<p>non-rollingstock access users</p>	<p>negotiation of track access agreements for all traffic. Where access to the network is not the subject of an Access Agreement, the IAU is not the appropriate forum for management of such access.</p>	<p>concerns that were raised on the rights of non-rollingstock access users.</p>	<p>regarded as being too restrictive and impacting on the efficient maintenance of third-party sites.</p>
<p>Network reliability</p>			
<p>Concern regarding network reliability</p>	<p>The INDS is an ongoing vehicle for stakeholders, regardless of their contractual relationship, to provide input into ARTC’s investment planning and Network development to support and protect current volumes and meet future demand.</p>	<p>8.20. Provide further information on the concerns that were raised around network reliability. The INDS focussed on a forward-facing capital improvement program. If concerns relate to current reliability issues in the network, how are these being addressed?</p>	<p>As part of its normal business, ARTC maintains the network to be fit-for-purpose. Our annual works plan delivers maintenance and capital projects to support a safe and reliable service offering. ARTC has experienced a series of Force Majeure events that have impacted our customers. The work to address and mitigate the risk of outages occurring is beyond the scope of the annual works plan. Engagement on a range of options to address reliability concerns has been undertaken with our customers.</p>
<p>Operations</p>			
<p>Need a better system to get access to track to recover rollingstock</p>	<p>We note the varied efficiency of processes to access track in instances of network disruption. We note this feedback and are working to improve the system for operators and the broader supply chain.</p>	<p>8.21. Provide further information on the concerns that were raised around systems to access track to recover rollingstock</p>	<p>Operators expressed concern with timeframes to access ARTC track to recover their rollingstock after breakdowns and derailments. ARTC has a process to ensure safe access to the network while maintaining ongoing service to healthy trains. It is in ARTC’s best interest to enable quick recovery of rollingstock. In the case of a safety incident regulatory bodies and authorities may impact the timing of release of the site.</p>