

23 February 2024

Pacific National submission to the ACCC in response to ARTC's 2024 Interstate Access Undertaking

This is a public submission

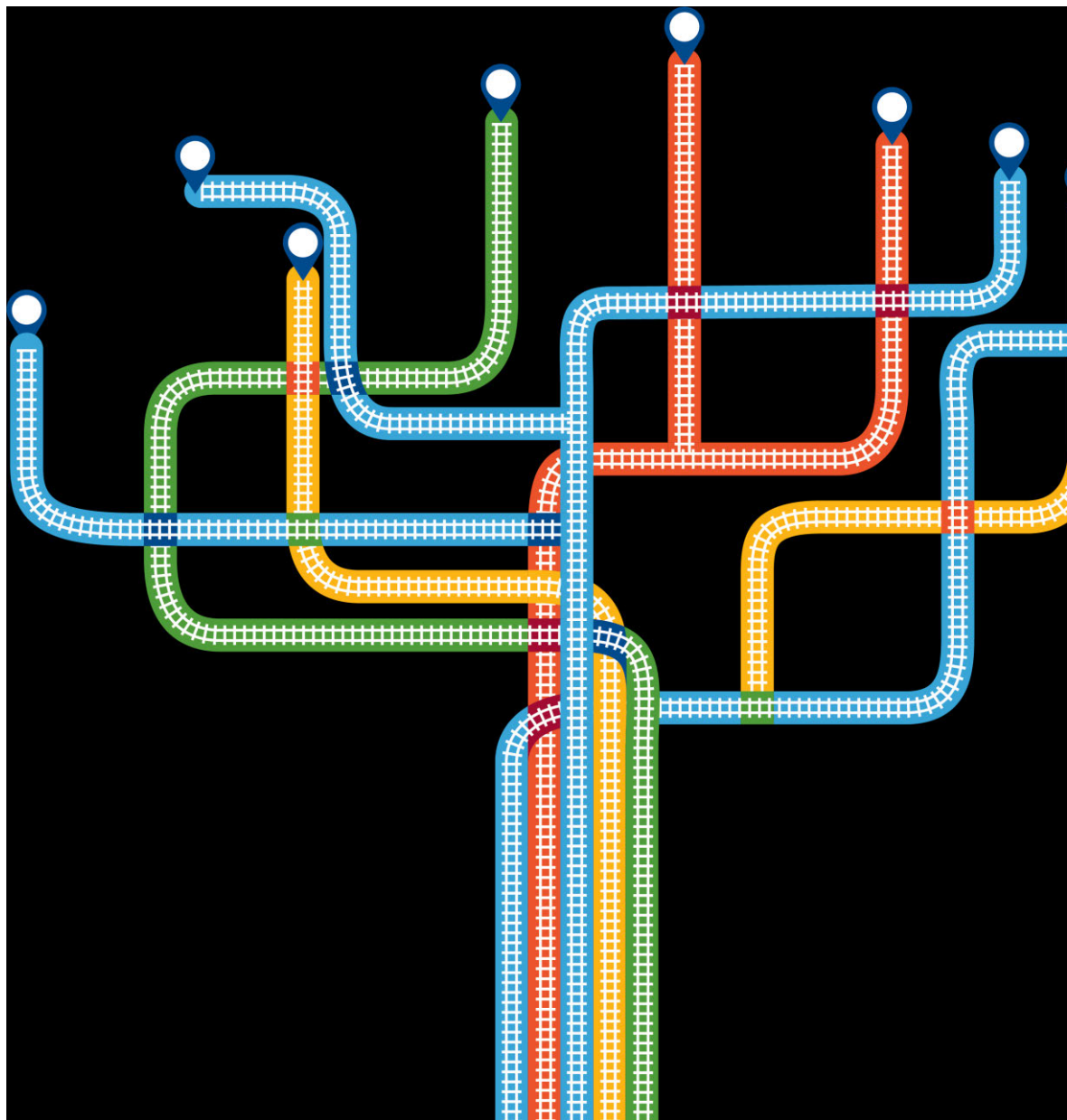


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Attention: **Mr Matthew Schroder**
General Manager Infrastructure and Transport – Access and Pricing Branch
Australian Competition and Consumer Commission
GPO Box 3131 Canberra ACT 2601
Email: transport@acc.gov.au

1 Executive Summary

Pacific National welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) on Australian Rail Track Corporation's (ARTC) proposed 2024 Interstate Access Undertaking (IAU). It has never been more crucial to scrutinise policy and regulatory settings for rail freight, to ensure the freight network is efficient, fit for purpose, and competitive with road transport.

The growing importance of these issues and the need for greater network resilience must be reflected in the 2024 Undertaking. This will be critical to encouraging road to rail modal shift to support the Australian Government's target of net zero emissions by 2050, and meet its commitment to addressing road fatalities¹ by reducing the number of trucks on our roads. When rail freight is utilised instead of road transport the nation benefits from reduced carbon emissions, improved safety outcomes, reduced health and hospital costs² and a reduction in road maintenance expenditure.

Pacific National is concerned that the 2024 IAU does not adequately drive road to rail modal shift, nor deliver the network resilience, productivity and performance incentives required for an efficient, forward-looking rail network that supports end customers.

Customer confidence is key to the success of the Interstate Rail Network and the 2024 IAU should be framed with the end customer in mind. Findings from Pacific National surveys highlight the customer need for:

- Competitive pricing/cost
- Predictability (DIFOT³ improved, network disruption reduced)
- Capacity and availability, at the time they want it.

In line with these findings and the current market environment, Pacific National suggests that a number of overarching strategic themes should be considered by the ACCC in deciding whether to approve the 2024 IAU. These include:

¹ Australian Government, National Road Safety Strategy 2021-30 <https://www.roadsafety.gov.au/>

² Traffic pollution from trucks and vehicles causes more than 11,000 premature deaths in Australia each year. <https://www.abc.net.au/news/2023-02-24/air-pollution-modelling-university-of-melbourne-traffic/102015778>

³ DIFOT means Delivery in Full On Time and is a measurement of delivery performance in a supply chain.

- Network reliability, safety and performance
 - The 2024 IAU must underwrite improved network resilience and maximise capacity on the network so that rail operators can meet customer demand and service peak fluctuations in volume. The Undertaking should contain appropriate accountability to ensure that ARTC is incentivised to measure and manage performance and safety, and act swiftly to remedy failures.
- Mode shift incentives and pricing efficiency
 - Access charges on the Interstate Rail Network have generally escalated annually by CPI, without economic justification on the efficiency of such an escalation factor or reference to freight market factors and road versus rail pricing competitiveness.
- Productivity improvement incentives
 - The Undertaking should recognise the interfaces that exist between the ARTC part of the Interstate Network, and those parts of the network owned by other track providers. These interfaces have a significant impact on all train operations in terms of day-to-day running.
- Transparency and certainty for rail operators
 - Rail operators need visibility of network capacity and of network and rail operator performance. They also need to understand how Inland Rail will integrate into the Interstate Rail Network and be managed. The Undertaking framework should provide certainty for rail operators and establish a link from the current operation to Inland Rail.

A focus on these issues is justified and consistent with the Object of Part IIIA⁴ and the access criteria listed under section 44ZZA of the Competition and Consumer Act 2010 (Cth) (CCA),⁵ due to the overlay of competition from road and sea freight, government ownership of ARTC and the social and public benefits of rail investments for non-rail freight users.

Pacific National's submission considers these strategic factors and includes recommendations to amend the 2024 IAU. Our recommendations also address concerns relating to the content of specific clauses and the drafting of the Undertaking, including the Indicative Track Access Agreement (ITAA) which is attached to the 2024 IAU. Our recommendations and suggested amendments include:

- Requiring ARTC to consult adjoining network owners when developing a network maintenance plan and consult on track possessions, in order to maximise available capacity.

⁴ The relevant object of Part IIIA is defined at 44AA(a) and is to "promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets."

⁵ Under subsection 44ZZA of the Act the CCC must have regard to, among other things, the: legitimate business interests of ARTC; public interest, including the public interest in having competition in markets; interests of persons who might want access to the service; whether the undertaking is in accordance with an access code that applies to the service; and any other matters the ACCC thinks are relevant.

- Inclusion of an interoperability policy and interoperability scorecard to commit ARTC to aligning with other network systems, and then tracking that commitment.
- A blackout period on non-urgent network repairs during seasonal and retail peak periods.
- Providing rail operators with visibility of surplus network capacity and developing systems that provide flexibility to reallocate unused paths.
- Documenting an efficient process for allocating capacity when there are multiple Applicants.
- Pricing and access charges that consider the positive externalities of rail freight compared to road, and cap annual price escalations at a maximum of 50% CPI.
- Inland Rail pricing and mechanisms to address disruption and possessions likely to arise from Inland Rail construction.
- Real-time data and improved relevance of Performance Indicators, with a focus on driving outcomes and aligning metrics to both the ARTC Charter and to other networks. We provide recommendations for additional KPIs around resilience, reliability, volume growth, carbon emissions, and root cause analysis of cancellations and network delays.
- Greater consultation with rail operators, networks and stakeholders when considering equipment and communications technology upgrades.
- Improved processes for removing malfunctioning rollingstock from the track and incentives to reduce locomotive failure on the Interstate Rail Network.

The recommendations in this submission will increase the safe and efficient use of the Interstate Rail Network. They will improve productivity and drive competition with road freight. Specifically, adoption of Pacific National's recommendations will:

- Strengthen economic incentives for greater use of the Interstate Network to underpin economic growth, support the national freight task and reduce the prevalence of trucks on our roads.
- Support improved resilience, reliability and responsiveness for rail customers, with better performance metrics to enable rail operators and industry to hold ARTC to account for standards of service across the network.
- Promote innovation and improved data for operational decision making and efficient long-term investment.
- Promote improved efficiency and safety through increased transparency and accountability for network performance.

If you would like to discuss any of the content in this submission, please contact Pacific National's Regulation Access and Policy Manager, [REDACTED].

This submission is public.

All capitalised words used but not defined in this submission shall have the same meanings ascribed to them in the 2024 IAU and ITAA as applicable.

2 Background

Pacific National welcomes the opportunity to respond to the ACCC in relation to ARTC's 2024 Interstate Access Undertaking (IAU) and looks forward to working with both the ACCC and ARTC to develop an undertaking that supports rail freight growth and the efficient and safe operation of the Interstate Rail Network.

Pacific National is a major user of the ARTC rail network, which is currently regulated under the 2008 IAU that is due to expire 30 June 2024. Pacific National is reliant on access to ARTC's interstate network and the respective state-based rail networks to move containerised intermodal goods within Australia, as well as coal, mineral, grain, steel and construction products. On the Interstate Rail Network, Pacific National competes primarily with the heavy vehicle freight industry that operates on well-maintained government-funded roads.

This Pacific National submission will focus on:

- The state of the market (section 3 of this submission)
- Outcomes required from the 2024 IAU (section 4 of this submission)
- Specific comments on the proposed 2024 IAU (section 5 of this submission)
- Comments on the Indicative Track Access Agreement (ITAA) (section 6 of this submission).

The submission recommends proposed changes to the 2024 IAU and the ITAA, and outlines opportunities to promote the efficient use of the network. This is discussed in the body of the document and also summarised in section 7.

This submission does not contain any confidential information and is a public submission.

3 Context and the State of the Market

Pacific National has reviewed the proposed Undertaking and assessed the outcomes required from the 2024 IAU within the context of the current market environment, and with reference to:

- The ACCC Charter
- The ARTC Statement of Expectations 2023
- The objectives of Part IIIA of the CCA set out in section 44AA.

3.1 The National Freight Task

As the monopoly provider of access to the Interstate Rail Network, ARTC has a strong role to play in ensuring that rail freight transport supply chains are efficient, cost-effective and productive so that rail can compete with road and sea transport.

Australia's total domestic freight task is projected to grow by 26% between 2020 and 2050, increasing from around 756 billion tonne-kilometres in 2020 to 964 billion tonne-kilometres by 2050.⁶ Rail is critical to maintaining national supply chains to meet this challenge and there is increasing awareness that rail is the most carbon efficient and safest form of line-haul land transport.⁷

When rail breaks down and freight shifts to road, the cost is significant in terms of higher emissions, road fatalities, crashes and traffic congestion.⁸ It is critical to build a resilient rail supply chain network and to have alternatives when the existing rail routes are disrupted due to floods, bushfires and pandemics. As outlined in section 3.4, Inland Rail will be essential for improving reliability and building capacity.

Improved service coordination, integration, reliability and performance will be required to meet the national freight task and grow rail freight by attracting new customers that will move their freight by rail. An efficient and nationally harmonised rail freight transport supply chain would enable the rail industry to compete on a level playing field with the trucking industry to grow its share of the national freight task.

3.2 National Freight and Supply Chain Strategy

ARTC, as a fully owned Australian Government body, should be cognisant of what is required by Government to ensure Australia is able to meet its emerging freight and supply chain challenges and actively progress the goals of the National Freight and Supply Chain Strategy.

In 2023 the Australian Government brought forward its review of the National Freight and Supply Chain Strategy, to ensure it can meet Australia's growing freight needs. The Government noted that when the strategy was established in 2019 it provided foundations for improving the efficiency, effectiveness and reliability of Australian supply chains. It acknowledged that over the past few years supply chains have experienced ongoing disruptions at a scale never envisaged when the strategy was being developed.

The 2019 Strategy and National Action Plan set an agenda for integrated national action across all freight modes and it identified six overarching goals designed to guide government and industry in considering strategic priorities for freight policy, programs and investment.

⁶ ARA and FORG, Submission to the Review of the National Freight and Supply Chain Strategy, September 2023; Tonne-kilometres is the aggregation of the number of tonnes moved multiplied by the distance travelled in kilometres.

⁷ Rail freight transport is three to four times more carbon efficient than road freight transport. Source: Pacific National estimates; Association of American Railroads, Freight Rail Facts and Figures [Freight Rail Facts & Figures - Association of American Railroads \(aar.org\)](https://www.aar.org/freight-rail-facts-and-figures)

⁸ This is referenced in section 3.6

The goals identified were:

- Improved efficiency and international competitiveness
- Safe, secure and sustainable operations
- A fit for purpose regulatory environment
- Innovative solutions to meet freight demand
- A skilled and adaptable workforce
- An informed understanding and acceptance of freight operations.

These goals are still critically important to ensuring Australia's freight and supply chains allow efficient and effective delivery of freight, however the Government's 2023 Review Discussion Paper recognised that the environment has shifted since the National Freight and Supply Chain Strategy was developed and that there are additional factors to consider in the next Strategy iteration. It is likely that these additional factors will include decarbonisation, improved interoperability, and enhanced resilience of critical transport infrastructure.

3.3 The Need for Improved Resilience

Rail closures have seen rail operators permanently lose volume as customers switch to road.

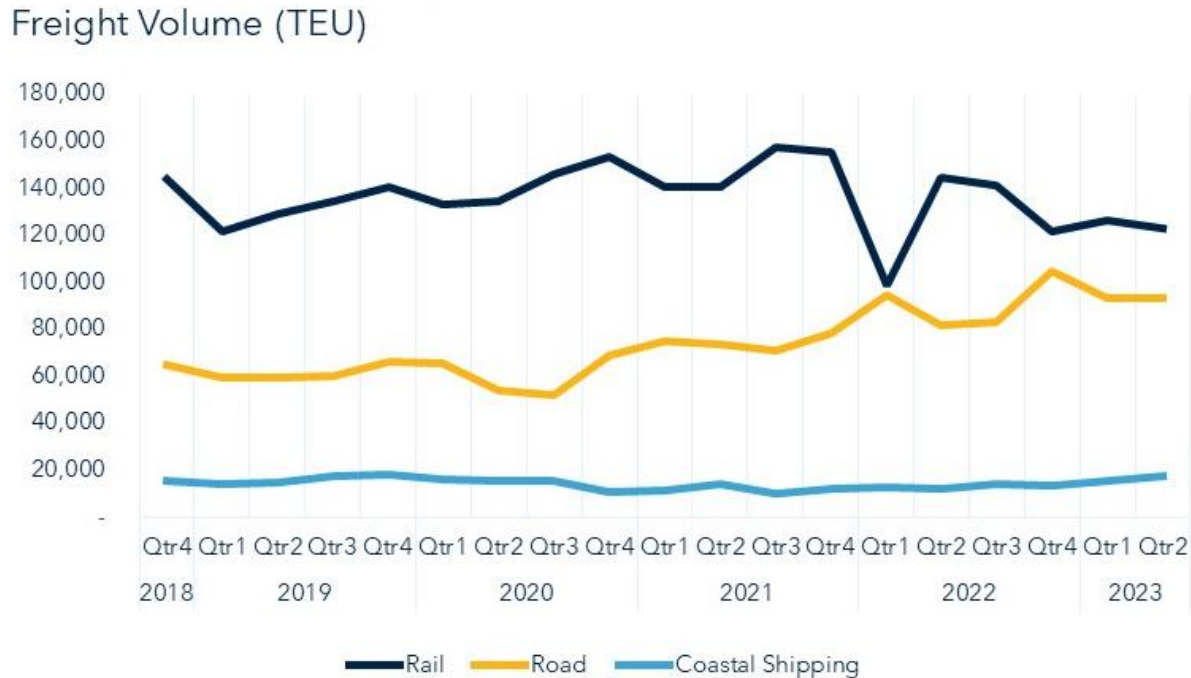
Many sections of ARTC's Interstate Rail Network lack resilience and are being increasingly impacted by severe weather events, such as the 24-day east-west interstate closure due to the January/February 2022 floods around South Australia, at an economic cost of \$320 million.⁹

In addition to the economic impacts, track closures and extensive speed restrictions due to weather events and poor track condition significantly affect service delivery and reliability. This creates additional risks for rail operators and negatively impacts the reputation of rail. As a result of rail closure, rail operators have permanently lost volume as customers switch to road.

Figure 1 highlights the drop in rail volumes in the first quarter of 2022 due to the 24-day east-west Interstate closure and demonstrates the permanent rail freight volume reduction that followed.

⁹ ARA and FORG Submission: Review of the National Freight and Supply Chain Strategy, 2023

Figure 1: 2018-2023 east-west transport corridor container freight volume TEU (twenty-foot equivalent units)



Source: Pacific National analysis

- Road TEU is estimated based on heavy vehicle traffic counts and assumes average load of 3.2 TEU per heavy vehicle.
- Rail TEU is estimated and assumes PN holds 77% market share of east-west rail freight task prior to April 2023. AZJ services estimated at 82% utilisation.
- Coastal Shipping refers to interstate movements to/from the Port of Fremantle.

ARTC has acknowledged the need for improved resilience to withstand future impacts and committed to prioritising network resilience.¹⁰ Pacific National appreciates the work ARTC has been doing to escalate this, but notes that more is needed. It is critical to build a resilient rail supply chain network and to have alternatives when the existing rail routes are disrupted due to floods, bushfires and pandemics. For this reason, Inland Rail will be vital for improving reliability and building capacity.

Figure 1 also illustrates the mode shift to road that can occur when increasingly higher productivity vehicles are authorised for use. Most recently, the National Heavy Vehicle Regulator (NHVR) and the South Australian Department of Infrastructure and Transport approved BA-triples for use on the Eyre Highway in December 2022.¹¹ This approval has reduced the relative price of road freight and seen an increase in road freight volumes (and corresponding drop in rail volumes) on the east-west

¹⁰ ARTC Explanatory Guide for the 2024 Interstate Access Undertaking, 12 December 2023

¹¹ <https://www.nhvr.gov.au/news/2022/12/16/ba-triples-approved-for-use-in-south-australia>

transport corridor. The consequences of this mode shift to road are higher carbon emissions and increased congestion and safety risks.

3.4 Inland Rail

The proposed Undertaking puts the success of Inland Rail at risk because it doesn't provide the regulatory certainty to enable rail operators to invest in complementary above rail assets. It also fails to set north-south corridor prices at the level needed to growth rail freight volumes.

The Independent Review of Inland Rail undertaken by Kerry Schott AO confirmed that Inland Rail is an important project to meet Australia's growing freight task, improve road safety and to help decarbonise our economy.

Upon completion in 2030-31¹² Pacific National understands that Inland Rail will form part of ARTC's 2029 IAU.¹³ In readiness for this, ARTC should be seeking to grow freight volumes on the north-south Interstate Rail Network corridor and should also be signalling how access to Inland Rail will be priced.

Construction of Inland Rail has commenced, and its success relies on rail operators making complementary investments. For example, significant investment in rollingstock, terminals and infrastructure will be required to support Inland Rail. The proposed 2024 IAU does not provide the certainty or incentive required for rail operators to undertake this capital investment.

3.5 Harmonisation

The 2024 IAU gives ARTC an opportunity to adopt a wider network view and take a leadership role in addressing harmonisation. A formal commitment to harmonisation should be documented in the Undertaking.

Rail networks do not operate in isolation and in a single journey rail operators may cross multiple networks and will need to comply with the differing requirements of each network and rail infrastructure manager. These include different operational requirements such as restrictions on axle loads, train height, length and speed; different signalling and communication systems; different safe working arrangements and fatigue management; and different rolling-stock, train driver and skills accreditation rules.

¹² Kerry Schott AO, The Delivery of Inland Rail: An Independent Review, 2023

¹³ Advice from ARTC.

Lack of harmonisation between rail networks is a key source of inefficiency for rail operators. There are eight rail infrastructure managers in Australia, and each has different protocols, operating and safety standards.¹⁴ These different regimes and rail networks create unnecessary cost and complexity.

Within ARTC's Corporate Charter there is a requirement to *provide seamless and efficient access to users of the interstate rail network*. To provide seamless access requires ARTC to take a broad approach to managing the Interstate Rail Network and consider the impact of the interfaces with other rail network providers.

Pacific National is pleased that rail harmonisation recently became an action on the National Transport Commission's (NTC) strategy, with the Australian and Victorian Governments and the Australasian Railway Association signing a Memorandum of Cooperation in March 2023 to make rail more interoperable. As part of this work, we would like to see rail networks incentivised to develop harmonised and consistent processes and more attention given to developing:

- Interoperable systems and technologies
- Consistent safeworking and communication systems
- Adoption of consistent standards, rules and procedures
- Consistent rail environmental regulation
- National, consistent accreditation for train drivers and rollingstock.

Pacific National appreciates that ARTC is a member of the NTC working group on harmonisation and interoperability, and that ARTC is planning to outline initiatives to support interoperability in its Interstate Network Development Strategy (INDS) (see section 5.6). However, because the INDS is not an enforceable document there still needs to be a firm commitment to interoperability in the 2024 IAU. The impact on rail operators of misaligned interfaces with other track providers must be reduced.

The interfaces that exist between the ARTC part of the Interstate Rail Network and those parts of the network owned by other track providers have a significant impact on all train operations from investment right through to day-to-day running. While it is noted that ARTC does not control the complete network for most of the major corridors, ARTC is well positioned to take a leadership role in addressing the need for a wider network view.

The 2024 IAU provides an opportunity to recognise the importance of these coordination activities that extend beyond the boundary of a single track owner and formally commit ARTC to working closely with other track owners. Although it is beyond the scope of an undertaking to commit other

¹⁴ National Transport Commission, National Rail Action Plan, P6
<https://www.ntc.gov.au/sites/default/files/assets/files/National-Rail-Action-Plan.pdf>

parties to any particular arrangement, it is reasonable for ARTC to document its aspirations in such a matter in the same way as, for example, the ARTC documents its process for the INDS in Part 6 of the 2024 IAU.

Developing a consistent approach across rail networks would reduce duplication of effort and improve national rail productivity and innovation. For rail operators it would improve efficiency, reduce complexity, and support future opportunities for investment. This in turn would lead to improved services to freight customers and consumers, and a stronger supply chain.

3.6 Social Objectives

Positive externalities should be considered in the economic regulation of infrastructure.

The intent of the Undertaking includes reaching an appropriate balance between:

- The legitimate business interest of ARTC
- The interest of the public
- The interests of Applicants wanting access to the Network.¹⁵

The interest of the public includes promoting relevant social objectives such as an increase of traffic from road to rail.¹⁶

The interest of the public and related social objectives have arguably risen in prominence since the development of the 2008 IAU, with the Australian Government now committed to achieving Net Zero greenhouse gas emissions by 2050, with a target of achieving 43% below 2005 levels by 2030.

Meeting the Government's goal will require a significant shift in traditional operations for the transport sector and the 2024 IAU should be optimised for improved environmental outcomes, as well as improved safety and economic outcomes:

- Improved safety
 - Increased use of rail as a mode of freight transport can save lives on Australia's roads. By reducing the prevalence of trucks on our roads we reduce road crashes, as well as air pollution, emissions, and congestion.
 - Across Australia, trucks and heavy vehicles are high risk and are overrepresented in the crash statistics. Heavy vehicles represent 4% of all registered vehicles in Australia and account for almost 9% of total vehicle kilometres travelled on public roads. However, they are

¹⁵ Clause 1.2 of the 2024 IAU Preamble

¹⁶ Clause 1.2 of the 2024 IAU Preamble

involved in almost 16% of all fatal crashes. These crashes are more likely to result in a death or serious injury and contribute to disproportionate harm to other road users.¹⁷

- By comparison, rail is significantly safer than road transport. Over the three years ending March 2021 an average of 186 people were killed annually in crashes involving heavy trucks or buses,¹⁸ whereas an average of 13 people were killed annually (excluding suicides) on the Australian heavy rail network.¹⁹
- Even adjusted for the higher road freight mode share, truck fatalities remain significantly higher than heavy rail and rail freight fatalities.
- The impact of serious road accident injuries on families, communities, hospitals and rehabilitation facilities can be reduced by moving freight from road to rail.
- Less congestion
 - Rail results in less congestion on major highways as each additional rail service removes the equivalent of 110 trucks from the road for each standard train.²⁰
- Better environmental outcomes
 - Rail freight transport is three to four times more carbon efficient than road freight and rail also indirectly supports emissions reduction by taking trucks off the road to alleviate traffic congestion.²¹
 - Congested traffic has adverse environmental outcomes and research has shown that the stop-start traffic conditions associated with congestion increases fuel consumption and greenhouse gas emissions by around 30%.²²

The inclusion of positive externalities such as safety as a relevant consideration in the economic regulation of infrastructure is not new. The original access criteria included in Part IIIA of the then *Trade Practices Act 1974* (Cth) (TPA), now the CCA, had safety as a relevant criterion. That is, a relevant service could only be declared under Part IIIA of the TPA/CCA if it was safe to provide third party access to the relevant service.

¹⁷ Australian Government DITRDC, April 2022 Reducing Heavy Vehicle Lane Departure Crashes <https://www.infrastructure.gov.au/sites/default/files/documents/consultation-ris-ldws.pdf>

¹⁸ Of the people killed in these fatal crashes, approximately 50% are occupants in a light vehicle, 25% are occupants in the heavy truck and 25% are other road users (pedestrian, motorcyclist or pedal cyclist). BITRE Road trauma involving heavy vehicles Jan 2023 <https://www.bitre.gov.au/publications/ongoing/road-trauma-involving-heavy-vehicles>

¹⁹ TrackSafe Foundation, Fatalities, Injuries and Near Misses on the Australian Heavy Rail Network 2001-2022 July 2023

²⁰ Australasian Railway Association, Submission to Productivity Commission Inquiry into Australia's Maritime Logistics System, 25 February 2022

²¹ Pacific National estimates; Association of American Railroads, Freight Rail Facts and Figures. Retrieved September 2022, from <https://www.aar.org>: <https://www.aar.org/facts-figures>

²² Reducing congestion boosts productivity and reduces delays. Reducing congestion also benefits the environment. Driving in congested traffic increases fuel consumption and emissions. Research has shown that the stop-start traffic conditions associated with congestion increase fuel consumption and greenhouse gas emissions by around 30%. <http://energycut.com.au/business/wp-content/uploads/2015/03/The-Effects-of-Traffic-Congestion-on-Fuel-Consumption-and-Vehicle-Emissions.pdf>

3.7 Modal Shift from Road to Rail

A lack of cost competitiveness is contributing to declining rail freight market share on the north-south corridor. The 2024 IAU, as currently drafted, will hasten the decline unless access charges are reduced.

The Australian Government expects ARTC to pursue a growth strategy for interstate rail and rail's share of the interstate freight market.²³ As such, mechanisms should be incorporated into the 2024 IAU to encourage modal shift of freight from road to rail.

This would seem an appropriate action for ARTC to take, given it is wholly owned by the Australian Government and the Government has publicly recognised the many benefits rail freight delivers (relative to road) for the economy, environment, and community.²⁴

There must be a strong price incentive for rail freight to compete with road. Track closures, weather events and general unreliability of the network are creating an environment that disincentivises rail freight and encourages customers to shift onto road. As outlined in section 3.3, once freight moves from rail to road it often does not return.

Pricing and access charges should consider the positive economic externalities rail provides compared to road freight, and reflect the performance levels required to operate an effective rail freight market and compete with road. Road freight competitors operate on well-maintained government funded roads, while making little contribution to road upkeep other than registration and modest heavy vehicle road user charges.

Rail freight access charges also need to be set in a way that ensures certainty for rail operators and encourages more rail freight take up by end customers. The proposed 2024 IAU pricing regime fails to do this.

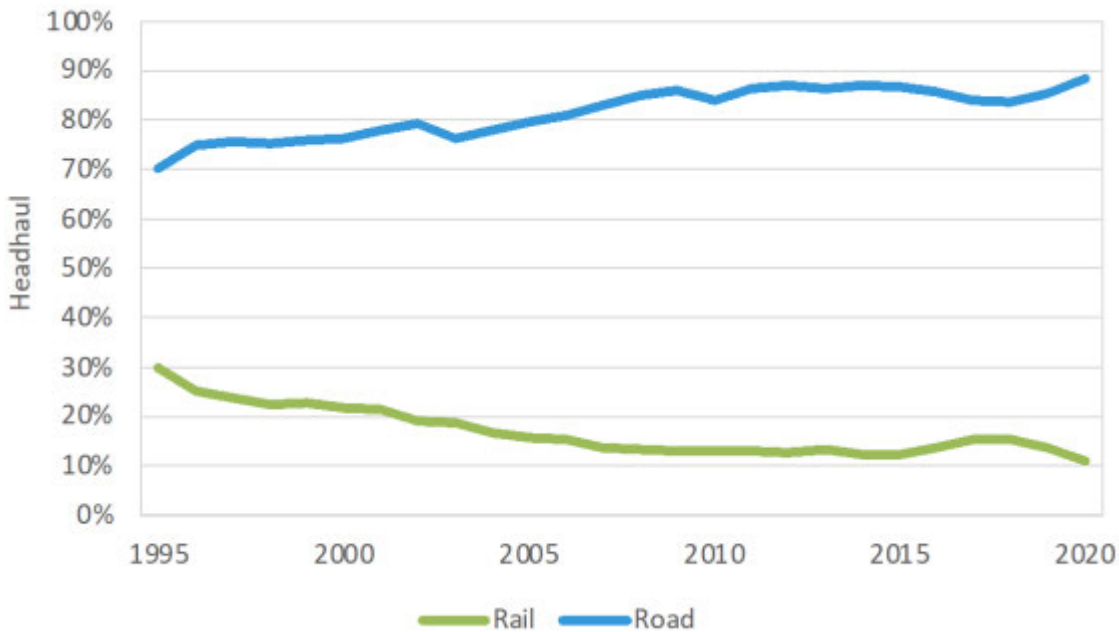
Rail freight is losing market share and this failure is undermining the Australian Government's commitment to reducing emission across the transport sector. Access charges on the Interstate Rail Network increased 7% last year. Not only did this price rise worsen the competitive position of rail relative to road freight, but it also fuelled inflation and increased cost of living pressures for households across Australia.

²³ Australian Government Shareholder Ministers for the ARTC, ARTC Statement of Expectations, 2023
<https://www.infrastructure.gov.au/sites/default/files/documents/australian-rail-track-corporation-interim-statement-of-expectations.pdf>

²⁴ <https://minister.infrastructure.gov.au/c-king/media-release/more-investment-means-more-jobs-more-freight-rail>

The decline in rail freight mode share is particularly evident on the north-south Interstate Network corridor, where only 11% of freight now goes by rail. The mode share proportion gets as low as 2% of freight between Melbourne and Sydney (Figures 2 and 3, and Table 1).²⁵

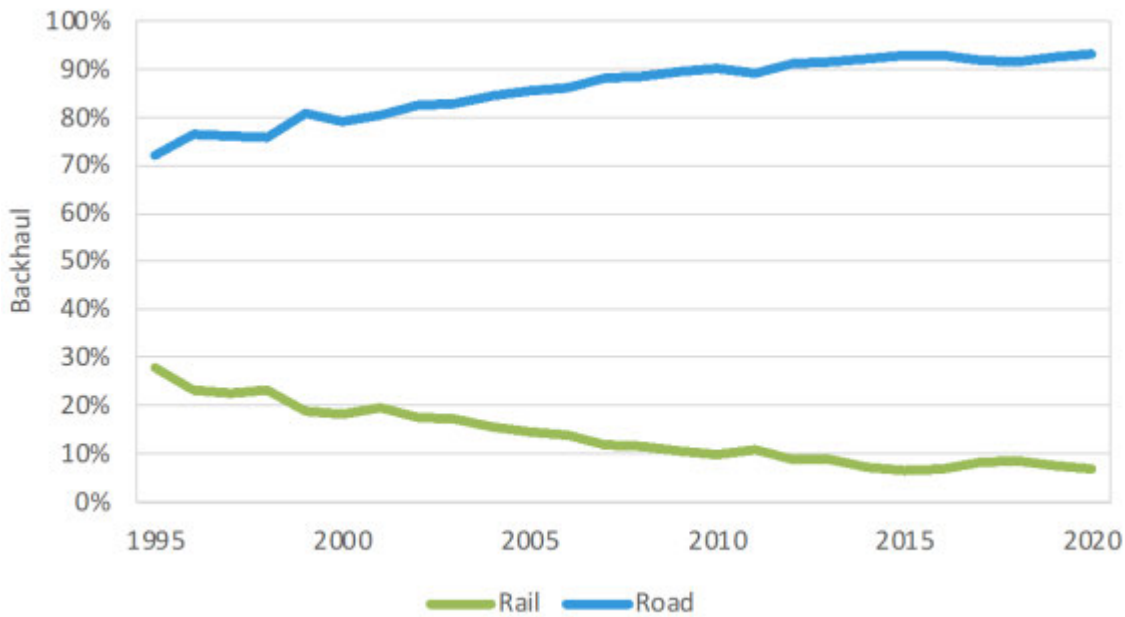
Figure 2: North-South corridor – headhaul mode share (NTK) 1995-2020



Source: ARA and FORG, The Future of Freight Combined Report, October 2023

²⁵ ARA and FORG, The Future of Freight Combined Report, October 2023 <https://ara.net.au/wp-content/uploads/Future-of-Freight-Combined-Report.pdf>

Figure 3: North-South corridor – backhaul - mode share (NTK) 1995-2020



Source: ARA and FORG, The Future of Freight Combined Report, October 2023

Table 1: Mode share (%) by corridor (2020)

CORRIDOR	HEADHAUL			BACKHAUL		
	Rail	Road	Sea	Rail	Road	Sea
Intermodal						
East West	65%	17%	18%	77%	22%	1%
Adelaide – Perth	56%	42%	3%	63%	37%	-
Brisbane – Perth	45%	31%	24%	56%	44%	-
Sydney – Perth	68%	8%	24%	88%	11%	1%
Melbourne – Perth	70%	9%	17%	87%	11%	2%
North South	11%	88%	1%	7%	93%	-
Melbourne – Sydney	2%	98%	-	4%	96%	-
Sydney – Brisbane	3%	96%	-	2%	98%	-
Melbourne – Brisbane	28%	69%	2%	17%	83%	-
North Coast Line	53%	47%	-	42%	58%	-
Brisbane – Cairns	64%	36%	-	42%	58%	-
Brisbane – Tville	83%	17%	-	66%	34%	-
Brisbane – Mackay	38%	62%	-	21%	79%	-
Brisbane – Glad/Rock	12%	88%	-	24%	76%	-

Source: ARA and FORG, The Future of Freight Combined Report, October 2023

The lack of cost competitiveness on the north-south corridor is contributing to the declining market share of rail. If rail were preferable economically, then operators would follow. Pacific National is concerned that in its current state the 2024 IAU will push the north-south corridor into a downward spiral and further worsen its competitive position.

Access charges should consider what the market can bear on each corridor. Halting the decline in rail freight market share requires a step change in pricing, including adjustment of the starting rate in the 2024 IAU and adjustment to annual escalations so they are capped at a maximum 50% of CPI (refer to section 5.4.2.1).

Achieving value for money for the public resources invested in the Interstate Rail Network will only occur when utilisation of the north-south corridor increases.

4 Outcomes Required from the 2024 IAU

As an Australian Government body, ARTC should be actively engaged in ensuring Australia can meet its freight and supply chain challenges, including how over the term of the next regulatory period it will:

- Improve the resilience of the rail freight sector and ensure efficient investment in the Interstate Rail Network, through the development of a regulatory framework aligned to the National Freight and Supply Chain Strategy.
- Strengthen economic incentives for the efficient use and improved utilisation of the Interstate Rail Network to support economic growth, improved road safety outcomes, and reduced transport carbon emissions.
- Support improved service for rail customers with better freight performance data to enable government and the freight industry to hold ARTC to account for standards of service across its network.
- Promote harmonisation and greater policy awareness of the efficiency, safety, and sustainability of a nationally integrated approach to rail freight.
- Include settings that enable a smooth transition to Inland Rail.

5 Pacific National Specific Comments on the 2024 IAU

Several changes have been made between the current IAU and the proposed 2024 IAU. Pacific National's comments on these changes are detailed in the sections below and are further summarised in section 7 of this document.

5.1 Preamble

The 2024 IAU fails to meet the social objective test referenced in the Preamble. The Undertaking will result in higher freight costs that will feed inflation and hurt consumers, particularly low-income households.

Clause 1.2 of the Preamble explains that the intent of the Undertaking includes reaching an appropriate balance between:

- The legitimate business interest of ARTC
- The interest of the public
- The interests of Applicants wanting access to the Network.

The interest of the public is defined in clause 1.2(d)(ii) of the 2024 IAU as:

- A. increase competition ensuring efficient use of resources;*
- B. the promotion of economically efficient investment, use and operation of, the Network; and*
- C. promoting other relevant social objectives, such as an increase of traffic from road to rail.*

Disappointingly, the 2024 IAU does not meet the social and public interest objective of increasing traffic from road to rail. It contains a pricing structure (discussed in section 5.4) that is prohibitive to strengthening freight on rail, particularly on the north-south corridor. Across this corridor rail freight mode share has halved since 1995 and is currently only 2% on the Melbourne to Sydney route. Over the same time, freight mode share on the east-west corridor has only increased slightly.²⁶

The proposed 2024 IAU fails to recognise that the Australian Government's highest priority is lowering inflation and reducing cost pressure on households.²⁷ Rather than helping households, the 2024 IAU is inflationary and will hurt them through higher freight costs and higher grocery and commodity prices.

²⁶ ARA and FORG, The Future of Freight Combined Report, October 2023 <https://ara.net.au/wp-content/uploads/Future-of-Freight-Combined-Report.pdf>

²⁷ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/articles/opinion-piece-cost-living-measures-are-labors-main-priority>

5.2 Scope and Administration of Undertaking

The Scope of the 2024 IAU should be broadened to recognise Inland Rail. It should provide certainty about how Inland Rail will be operated and managed, and acknowledge the potential for disruption and possessions on the Interstate Network arising from Inland Rail construction.

The ARTC proposes a five-year Undertaking that would expire on the earlier of 30 June 2029, or when the ACCC consents to ARTC withdrawing the Undertaking. With Inland Rail due for completion by 2030-31²⁸, it is incongruous for the 2024 IAU not to reference Inland Rail. On the contrary, the 2024 IAU should establish a link from the current Interstate Network operation to Inland Rail. Rail operators need certainty about the operation, management, and pricing of Inland Rail before they can invest in above rail assets.

The 2024 IAU should be framed with a view to supporting the future transition of rail freight on to Inland Rail. This includes a pricing model that supports north-south rail freight volume growth.

Within the IAU framework there should also be consideration of the impact Inland Rail construction will have on Interstate Network possessions, and how rail operators will be compensated for the service disruption.

5.3 Negotiating for Access

Pacific National supports bringing the executive negotiation step forward in the dispute resolution process. Pacific National is largely comfortable with the Arbitration process drafted in the 2024 IAU, providing there are adjustments made to clauses 3.12.5(a)(xii) and 3.12.5(a)(xiii).

5.3.1 Clause 3.12.3 Executive Negotiation

In the 2024 IAU the step of involving Chief Executive Officers in the dispute resolution process has been brought forward prior to the parties deciding to agree or not agree to mediation.

Pacific National supports this change and believes it would streamline the dispute resolution process and ensure all internal negotiation and dispute resolution options are tried before continuing to other external dispute resolution options. It also provides a more consistent approach that aligns with processes in other jurisdictions.²⁹

²⁸ Kerry Schott AO, *The Delivery of Inland Rail: An Independent Review*, 2023

²⁹ Queensland Rail Access Undertaking include a mechanism for dispute resolution by each party's chief executive prior to mediation.

5.3.2 Clause 3.12.5 Arbitration

The 2024 IAU proposes the use of a commercial arbitrator in place of the ACCC. Pacific National is supportive of the requirement to use a commercial arbitrator and for parties to abide closer to the rules of arbitration as set out by the Australian Centre for International Commercial Arbitration (ACICA).

Pacific National is also comfortable with the following amendments to arbitration procedures specified in clause 3.12.5:

- Having the *Commercial Arbitration Act 2011* (SA) (the Act) govern the arbitration.
 - This makes sense as the ARTC is headquartered in South Australia. It is also worth noting that the arbitration act is similar across states and made uniform in 2010, and that clause 3.12.5(xi) specifies that the State/location of the seat of arbitration will not necessarily govern what court proceeding rules apply.
- ARTC and Applicant in dispute are to execute an Arbitration Agreement (included in Schedule A) prior to referring the dispute to arbitration.
 - Pacific National is comfortable with the Arbitration Agreement template included in Schedule A and that it aligns with the definition of “arbitration agreement” in the Act i.e. “*An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*”
- The ACICA Arbitration rules allow for the arbitral tribunal to be composed of either 1 or 3 arbitrators. Pacific National is comfortable with there being a sole arbitrator instead of 3, as this ends up being more cost effective.
 - We note the discrepancy in the 2024 IAU and ACICA rules between the number of days that need to pass during which the parties cannot agree on an arbitrator – 10 Business Days versus 40 days. Pacific National is comfortable with the shorter timeframe.
- Pacific National is supportive of the various joinder / additional provisions in the ACICA that will be incorporated into the 2024 IAU, including that under ACICA rules clause 29, a Statement of Claim is required to be served on the respondent by the claimant.

5.3.2.1 Clause 3.12.5(a)(xii)(A)

Pacific National does not agree with ARTC’s removal of clause 3.12.5(a)(xii)(A). Clause 3.12.5(a)(xii)(A) states that in making an award the Arbitrator must take into account the objectives and principles enunciated in Part IIIA of the TPA and the Competition Principles Agreement.

Rather than removing this clause, it should be retained and updated to reference the CCA in place of the TPA. The principles enunciated in Part IIIA of the TPA (now the CCA) remain relevant to arbitrating disputes.

5.3.2.2 Clause 3.12.5(a)(xii)(B)

Under the proposed Undertaking in clause 3.12.5(xii)(B) the Arbitrator must take into account the ARTC's legitimate business interests and investment in the Network. Pacific National proposes an amendment so that the Arbitrator must also take into account "the Applicant's legitimate business interests and investment in the Network". We also suggest the addition of "the benefit to the public from having competitive markets" after clause 3.12.5(xii)(F).

Given the monopoly position of the ARTC, it is reasonable that greater weight should be given in clause 3.12.5(xii) to the impact on the Applicant and the public interest, to make the factors for determination more balanced during an arbitration.

5.3.2.3 Clause 3.12.5(a)(xiii)

Pacific National is not comfortable that the arbitral award cannot require ARTC to bear some of the costs of maintaining extensions or interconnections, particularly when there may an occasion where these are firmly in the public interest.

Government-owned enterprises, such as ARTC, are often expected to operate at higher standards of corporate social responsibility than private equivalents, including giving a higher weight to long-term national and community interests. This balancing of commercial and non-commercial priorities is reflected in clause 1.2 of the 2024 IAU, which explains the intent of the Undertaking includes reaching an appropriate balance between:

- The legitimate business interest of ARTC
- The interest of the public
- The interests of Applicants wanting access to the Network.

To align with clause 1.2, Pacific National recommends amending clause 3.12.5(a)(xiii) by removing subsections (I), (J), (K):

(xiii) In making an award, the Arbitrator:

~~*(I) must not require ARTC to bear some or all of the costs of extending the Network (including expanding the capacity of the Network and expanding the geographical reach of the Network);*~~

~~*(J) must not require ARTC to bear some or all of the costs of maintaining extensions of the Network (including expansions of the capacity of the Network and expansions of the geographical reach of the Network); and*~~

~~*(K) must not require ARTC to bear some or all of the costs of interconnections to the Network or maintaining interconnections to the Network.*~~

5.4 Pricing Principles

Pacific National does not support an annual price increase to a maximum of CPI. Price increases should be capped to a maximum of 50% of CPI, particularly on the north-south corridor. Underutilisation of the north-south corridor - because it is not price competitive with road freight - is costing the Australian economy and costing the environment.

Under the proposed 2024 IAU annual price increases are capped at CPI (including a catch-up mechanism).³⁰

Unlike the current IAU, the proposed Undertaking does not include a Floor Limit and Ceiling Limit and instead it uses a stand-alone price cap mechanism.³¹ As a result, the 2024 IAU removes the need for the revenue for each Segment to sit between the Floor Limit and Ceiling Limit for that Segment. It also removes the requirement to calculate a Regulatory Asset Base.

In addition to containing a CPI-based annual price control, the 2024 IAU proposes that the prices at the commencement of the proposed Undertaking would be the current prices plus an amount up to CPI. As outlined below in section **5.4.2.1** Pacific National does not support this CPI increase.

5.4.1 Clause 4.4 Structure of Charges

The pricing structure proposed in the 2024 IAU consists of:

- A variable component which is a function of distance and gross mass (\$/gross tonne kilometres)
- A flagfall component, which is fixed and specific to each Train service type and Segment (\$/kilometre).³²

The 2024 IAU removes the excess network occupancy component of access charges that exists in the current Undertaking. That is, under the current Undertaking an excess network occupancy charge can be levied where the rail operator applies for a permanent or ad hoc path that will occupy the network longer than the standard transit time (including tolerance).

³⁰ As with the existing Undertaking, if prices were below the price cap because ARTC did not apply a full year's CPI increase previously, ARTC could increase prices in future years to anywhere up to the cap to 'catch up'.

³¹ In July 2022 the ACCC published a guidance paper on the Interstate Undertaking and suggested that a price control mechanism without a Regulated Asset Base could be acceptable for the proposed IAU. ACCC, Guidance paper ARTC's Interstate network access undertaking 2023, July 2022

³² ACCC, Consultation Paper Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking, December 2023

This charge has never been levied on users³³ and Pacific National is not opposed to the removal of the excess network occupancy charge.

5.4.2 4.5 Standing Offer

Pacific National welcomes the 2024 IAU amendment that will see ARTC publish eight core regulated services, known as Reference Services, compared to the current publication of a single Indicative Service (Super Freight). The Reference Services are: Express Freight, Regular Freight, Standard Freight, Heavy Freight, Passenger, Express Passenger, Ad-hoc Grain, and the Super Freight.

Pacific National believes that transparency of access pricing is important to minimise the information asymmetry that exists between the track owner and rail operators. Pacific National therefore supports the prices for the eight Reference Services being specified in the proposed Undertaking.

5.4.2.1 Clause 4.5(b) Price Escalation

Pacific National does not support the annual CPI price escalation proposed in the 2024 IAU.

Over the last 15 years CPI increases have been enacted annually on the Interstate Rail Network, outside of a few exceptions.³⁴ The increases have been applied without economic justification on the efficiency of such an escalation factor, and without reference to freight market factors or the pricing competitiveness of road versus rail freight. They have also been levied regardless of the quality of the service offered. The 2024 IAU continues to impose this same damaging price escalation policy.

In recent years significant upgrades in national, state, and local road networks have combined with innovations in heavy vehicle technology to erode the rail industry's share of the national freight task. During this time ARTC has usually enjoyed a guaranteed annual CPI escalation on its access tariffs. This has made it increasingly difficult for the rail industry to compete effectively with road operators. If ARTC maintains an annual CPI adjustment in the 2024 IAU, it will continue to negatively impact customer perceptions on the competitiveness of rail freight in comparison to road freight.

We acknowledge that under the 2024 IAU the CPI represents a maximum in terms of a pricing increase. However the reality is that as a monopoly provider of access to the Interstate Rail Network, the ARTC can usually be expected to raise prices to the maximum CPI cap each year. For example, the July 2023 price increase levied by ARTC on rail operators was an unprecedented 7% price hike. Pacific National sought price relief and reconsideration of the amount, but ARTC were inflexible and enforced the maximum CPI increase. This was despite the increase potentially fuelling inflation and

³³ ACCC, Consultation Paper Australian Rail Track Corporation's 2024 Interstate Rail Network Access Undertaking, December 2023

³⁴ Most recently COVID 19. Because of the pandemic the ARTC deferred the CPI increase that was scheduled for July 2020.

delivering an outcome contrary with the Government's desire to curb inflation and alleviate cost of living pressures for households, for whom food is the largest expense after housing.³⁵

Disappointingly, ARTC's 2024 IAU pricing methodology is signalling to the freight market and to consumers that rail freight access charges - and hence food and commodity prices - will continue to increase.

Pacific National recommends the 2024 IAU cap price increases to a maximum of 50% of CPI, particularly on the north-south corridor. The halved CPI increase should remain in place until there is evidence the network is meeting its Corporate Charter requirement to *pursue a growth strategy for interstate rail through improved efficiency and competitiveness*.^{36 37}

Of course, if ARTC was to pursue a growth strategy and build volumes on the north-south corridor, the reduction in revenue from applying halved CPI increases could be negated by a fall in the average cost of providing services associated with higher train volumes.

It is worth restating that it will also be critical to grow north-south corridor volumes ahead of Inland Rail – yet another reason for pricing of the north-south corridor to prioritise growth of rail freight.

5.4.3 Clause 4.6 Publication of Charges

Along with publishing the Standing Offer for Reference Services (see section **5.4.2**), the 2024 IAU proposes to publish the prices of negotiated outcomes for other services, along with a general description of the services.

Pacific National supports the principle of improved transparency resulting from publishing individual prices, but we have concerns about how effectively ARTC would de-identify the Customer from the pricing information. There is a danger, for example, that publishing the price along with a general description of the Services could inadvertently reveal commercially sensitive information, particularly if the general description included key terms and conditions. To protect commercial confidentiality Pacific National suggests the following amendments:

Clause 4.6 Publication of Charges

(a) ARTC will publish on its website:

³⁵ <https://www.abs.gov.au/statistics/economy/finance/household-expenditure-survey-australia-summary-results/latest-release>

³⁶ <https://www.artc.com.au/about/our-charter/>

³⁷ ARTC offer a 25% discount on demonstrated modal shift from road on the north-south corridor. Unfortunately, the rules governing the discount are very onerous. Application of the discount is also unfair to existing traffic on rail and creates an uneven playing field. Any discount applied to the north-south corridor should be delivered uniformly within categories.

(i) the Standing Offer for Reference Services; and

(ii) subject to paragraph (b), prices for which Access has been granted to a Customer for Services other than Reference Services, together with a general description of the Services to which such prices relate. *The description will not include identifying terms and conditions.*

(b) If ARTC cannot de-identify a Customer from the pricing information it is required to publish under paragraph (a)(ii), then ARTC will publish the pricing information or equivalent information that it can reasonably do so in the circumstances.

5.5 Management of Capacity

To maximise capacity the 2024 IAU should provide visibility of surplus capacity on the network, incentivise collaboration between ARTC and other networks on track possessions, and avoid maintenance work during peak periods. It should also document a process for allocating capacity when there are multiple Applicants.

The 2024 IAU should promote efficient capacity allocation and operational efficiency. Improvements in network management and capacity are essential to optimise paths across the Interstate Rail Network.

To support efficient capacity utilisation, the 2024 IAU should incentivise ARTC to implement a system that highlights where there is surplus capacity on the network. Doing this would:

- Reduce information asymmetry and increase pathing transparency for rail operators
- Support capacity utilisation and management for seasonal or uneven demand profiles
- Provide longer-term benefits. Knowing where there's surplus capacity on the network would allow rail operators to fulfil growth opportunities with end customers.

Pacific National currently services grain and other bulk end customers largely via ad hoc paths on the Interstate Rail Network, with no guarantee that capacity will continue to be available. Grain traffic can vary based on the harvest size and shipping schedules, and there can be late grain changes and adjustments due to weather. Inconsistent pathing and arrangements for access creates complexity and increases costs for grain producers and rail operators.

Pacific National understands that ad hoc pathing for seasonable products can be unavoidable and that it would be inefficient for ARTC to permanently quarantine all train paths for use on a flexible basis. Nonetheless, given a large proportion of business is based on commodities with uneven demand profiles such as grain, access to paths must improve to prevent grain and other bulk traffic being lost to road, with its associated impacts of increased road congestion, road crashes and carbon emissions.

One solution is to increase visibility for rail operators to highlight where there are unused coal paths and surplus capacity on the network at any given time. Rail operators could potentially flex and divert trains to utilise available pathing. Longer term, the 2024 IAU should include a goal of publishing available train paths and allowing operators to book them online. This function should be

implemented before the conclusion of the 2024 IAU. It would allow greater flexibility of operation and greater utilisation of the network.

To further manage and maximise capacity, the 2024 IAU should incentivise greater collaboration between ARTC and other networks on track possessions and closures, including the addition of a KPI that measures aligned versus standalone closures.

Pacific National understands that track possessions and scheduling changes can be unavoidable, but outside of this there are opportunities to improve how rail infrastructure managers coordinate their capacity management, for example, with better coordination of maintenance between networks.

Lack of coordination between rail networks and inconsistent arrangements for access creates network inefficiencies and higher costs, ultimately borne by the rail operator and the end customer.

It would minimise the service disruption to rail operators if track possessions for maintenance were coordinated with adjacent networks. If, for example, ARTC closes a section of track on Wednesday and then ARC closes a section on Saturday, it means trains are disrupted for two days. Conversely, if ARTC and ARC both have their closures on the same day the disruption to rail operators and trains is halved.

We appreciate that ARTC recognises the need to coordinate its activities (such as train planning and day of operations) with other track managers, however the proposed 2024 IAU needs to go further on addressing inter-network inefficiencies. Addressing these inefficiencies is critical to meeting customer needs and encouraging modal shift from road to rail.

Aligning closures among networks becomes particularly critical during agricultural and retail peaks, such as the lead up to Easter and Christmas. At these times it is vital to maximise whole of network capacity. It is also necessary to ensure planned maintenance works and possessions are avoided during these peaks.

To incentivise harmonisation with other track managers, the 2024 IAU should specify interoperability goals and KPIs to measure and promote improvements in alignment with other networks. Pacific National recommends the 2024 IAU include an interoperability policy and development of an interoperability scorecard that tracks the degree to which ARTC is aligned with other network systems.

ARTC, in conjunction with other network providers, should also seek to improve alignment and harmonisation of the performance metrics they use. This would enable clearer understanding and comparison of performance for similar services across different networks.

The ARTC have said that issues of rail interoperability and harmonisation with other networks will be addressed in a chapter of its proposed INDS. While this is a good first step, it does not go far enough. The INDS is not enforceable, so an accountability mechanism still needs to sit within the 2024 IAU to support improved interoperability (see section [5.6](#)).

5.5.1 5.2 Capacity Allocation

There is an opportunity to amend clause 5.2 in the 2024 IAU to increase transparency and provide greater certainty about how ARTC makes capacity decisions.

The Undertaking process outlined in clauses 5.2(a) and 5.2(b) does not provide sufficient guidance on how capacity is allocated in the event of multiple Applicants:

5.2 Capacity Allocation

(a) In the event of multiple Applicants and subject to clause 5.2(b), Access Rights will be allocated to the Applicant with whom ARTC can negotiate and execute an Access Agreement which, in the opinion of ARTC, is most favourable to it.

(b) As previously stated in this Undertaking, if, at any time, two or more Applicants are seeking access with respect to mutually exclusive Access Rights, each of the Applicants who have received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be so advised. In such circumstances, ARTC is entitled to seek to finalise an Access Agreement in respect of such Access with the Applicant with whom ARTC can agree terms and conditions, including Charges, which are considered in the opinion of ARTC, to be most favourable to it. Ordinarily, but without limiting ARTC's discretion in this regard, ARTC would make such a decision based on the Access Agreement that represented the highest present value of future returns to ARTC after considering all risks associated with the Access Agreement.

For ARTC to make its determination solely based on the Access Agreement yielding the highest present value of future returns to ARTC, seems to be focussed very narrowly on ARTC's self-interest.

It also appears to contradict the objectives of Part IIIA of the CCA set out in section 44AA, which are to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets.

Government-owned rail network providers, like ARTC, should be incentivised to allocate capacity based on economic value, rather than purely on financial return. The use of net present value, which is a measure of financial value rather than economic efficiency, is not a suitable sole determinant for allocating capacity. The determination should also be underpinned by economic efficiency and relevant social objectives - such as increasing rail freight mode share to save lives and reduce road crashes and emissions.³⁸

³⁸ Rail provides positive economic externalities compared to road freight and reduced costs to government and communities in terms of accidents, congestion, and emissions.

In place of net present value, Pacific National suggests the 2024 IAU should include a documented decision process with well-defined steps for allocating capacity when there is more than one Applicant. This would enhance transparency and provide greater certainty about how ARTC is making its decisions. Improved process transparency would also allow rail operators to hold ARTC accountable to the allocation mechanism if a matter was brought to arbitration. This was a point recently made by the Independent Pricing and Regulatory Tribunal (IPART).³⁹

5.6 Network Connections and Additions

Pacific National welcomes the ARTC commitment to improve transparency and consultation by publishing an annual Interstate Network Development Strategy (INDS). We are concerned, however, that the INDS is not an enforceable document. Although the transparency and consultation the INDS will facilitate is appreciated, we question whether the INDS will provide adequate accountability.

The INDS will be a capacity planning document based on forecast volumes and future capacity requirements. It will cover potential investment projects on the Interstate Rail Network and will include:⁴⁰

- Performance indicators for each segment of the Interstate Network
- Total access revenue earned for each segment
- Volumes on each segment of the Interstate Network
- Maintenance costs, split by category of fixed and variable for each Segment of the Network
- Rail infrastructure capital associated with each Segment of the Network (noting that within the INDS, capital costs will be categorised as either rail infrastructure capital or completed major project costs)
- Non-maintenance operating costs, including network control and overheads for the Interstate Network
- References to published financial reports
- Major project documentation, including a description of the relevant major projects, the published business case, and the final capital cost and associated data.⁴¹

³⁹ IPART, Review of the NSW Rail Access Undertaking Final Report, May 2023
<https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Rail-Access/Review-of-third-party-access-to-Rail-infrastructure-in-NSW>

⁴⁰ The INDS will be similar to the Hunter Valley Corridor Capacity Strategy.

⁴¹ ARTC Explanatory Guide for the 2024 Interstate Access Undertaking, 12 December 2023

Given the increasing impacts of extreme climate and weather events in recent years, the INDS will be important for identifying actions to improve resilience and reduce service disruptions along the Interstate Rail Network.

The process of developing the INDS must include genuine consultation with rail operators and other stakeholders to consider the infrastructure and service initiatives required to:

- Address deficiencies and improve the reliability and resilience of the track
- Support the running of longer, faster, more efficient trains to boost productivity
- Promote innovation and efficient long-term investment
- Increase rail capacity to address competing demands of freight and passenger rail
- Improve the overall efficiency of rail operations and the interfaces with other networks.

INDS expenditure should be clearly aligned with outcomes that will improve rail sector productivity and will generate improvements in key freight performance metrics.

The ARTC have explained that issues of rail interoperability and harmonisation with other networks will be addressed in a chapter of the INDS, and that this will outline the steps ARTC is taking to support the resolution of rail network interoperability issues. However, because the INDS is not an enforceable document an accountability mechanism is still needed within the 2024 IAU to support improved interoperability (see section 5.5).

5.6.1 6.3 Additional Capacity Sought by Applicants

ARTC have amended clause 6.3 to clarify that when an Applicant is seeking additional paths or capacity, ARTC must provide the Applicant with reasons in writing if they refuse the request.

Pacific National suggests that clause 6.3 be further revised so that if ARTC refuse the request the Applicant is also given a right of reply and an opportunity to seek a negotiated compromise.

Our addition to clause 6.3 is outlined in red below:

*6.3(b) If ARTC does not agree to the creation of Additional Capacity, then ARTC will provide the relevant Applicant with its reasons in writing (having regard to the matters in paragraph (a)). **The Applicant will be granted a right of response and an opportunity to seek a negotiated compromise.***

5.7 Performance Indicators and Reporting

ARTC should improve the timeliness, transparency and relevance of reporting, including improved alignment to other networks and to the ARTC Corporate Charter.

Pacific National acknowledges ARTC's continued commitment to publishing the Performance Indicators set out in Schedule G of the 2024 IAU and Schedule 5 of the ITAA. These Performance Indicators include reliability, network availability, transit time, temporary speed restrictions and track

condition measures. One of the key metrics for Pacific National is knowing that if our train leaves on time, it arrives on time.

Regular provision of data and KPI reporting can be an effective and transparent way to monitor the condition of the network and the service provided. However, data needs to be relevant and timely. Continuous improvement and ARTC provision of accurate, real-time data should be incorporated into the 2024 IAU, with mechanisms to drive data accuracy, efficiency and improved transparency.

There have been significant developments in software and data analytics since the 2008 IAU and it is reasonable to expect improved data provision with shorter lead times as technology and analytics evolve, including real time performance on cancellations and rail operator performance.

Many organisations provide information in interactive software formats so that data can be dissected multiple ways.⁴² Pacific National would like to see ARTC provide data via a similar interactive and accessible tool.

There are opportunities within the 2024 IAU to drive an outcomes and improvement focus, and to expand the suite of performance indicators to align with ARTC's Corporate Charter. There are currently no performance indicators that adequately measure ARTC's Corporate Charter objectives to:

- Provide seamless and efficient access to users of the interstate rail network
- Pursue a growth strategy for interstate rail through improved efficiency and competitiveness
- Encourage uniformity in access, technical, operating and safe working procedures.

To rectify this, Pacific National recommends the 2024 IAU include the additional Performance Indicators outlined below.

ARTC Corporate Charter objective:

Provide seamless and efficient access to users of the interstate rail network

- Create a measure of outages (planned versus unplanned) and how quickly they are rectified
 - This would be a measure of resilience and of efficient access to the interstate rail network.

ARTC Corporate Charter objective:

Pursue a growth strategy for interstate rail through improved efficiency and competitiveness

- Evaluate and report on causes of network delays and cancellations
 - This would determine root causes for delays and cancellations and provide rail operators with information on the cause of train cancellations

⁴² One example of an interactive data tool is PowerBI, that allows data to be cut and interrogated in multiple ways.

- It would also be an indicator of network efficiency and resilience.
- Develop a KPI to assess utilisation and volume growth trends over time
 - ARTC could publish path utilisation reports that include usage compared to maximum capacity⁴³
 - This would need to be time-of-day reporting to accurately reflect path timing and peaking challenges
 - The measure would reflect how successfully ARTC was pursuing a growth strategy for interstate rail and encouraging innovative ideas to grow volumes.
- Establish a metric to assess and safeguard network reliability
 - This could adopt a similar methodology to Inland Rail, which has a set target of 98% reliability
 - Reporting on Interstate Network reliability would lay the groundwork for incorporation of Inland Rail into the 2029 Undertaking. By that time, a reliability target will already need to be in place to facilitate public reporting on Inland Rail's reliability.
- Develop a performance measure of carbon emissions avoided due to freight running on the ARTC network rather than road
 - This measure would support the Australian Government's target of net zero emissions by 2050.

ARTC Corporate Charter objective:

Encourage uniformity in access, technical, operating and safe working procedures

- Develop a KPI that measures standalone closures versus closures that have been coordinated and aligned with adjacent networks (as discussed in section 5.5)
 - This would incentivise greater collaboration between ARTC and other networks on track possessions and closures and support uniformity in access.
- Create an interoperability scorecard that tracks the degree to which ARTC is aligned with other network systems.

In considering these additional KPIs, as well as ARTC's existing suite of Performance Indicators, ARTC should consult with other networks and align performance definitions and parameters across networks where there are similar KPIs in use.

The Performance Indicators should be coupled with an action imperative to ensure they generate change and improved network outcomes. We have suggested amendments to the ITAA to address this in section 6.2.

⁴³ This could be in Twenty-foot equivalent unit (TEU) or Net Tonne Kilometres (NTK).

6 Pacific National's Specific Comments on 2024 IAU Track Access Agreement Drafting

The proposed ITAA sets out the default terms and conditions of access for services including the contract term, track access rights, pricing and payment terms. It also includes operational processes, cancellation terms, insurance terms, network requirements such track quality and possessions, and dispute resolution frameworks.

Pacific National is proposing amendments to ITAA sections we believe must be improved. These include performance outcomes, interoperability of communications equipment, improved processes for recovery of failed locomotives, coordination with adjacent networks, and blackout periods for network maintenance.

We have included updates to insurance clauses to improve relevance and certainty for rail operators and outlined other concerns relating to specific clauses.

We recommend the ACCC consider these amendments to the ITAA to ensure the efficient utilisation of ARTC's network.

6.1 Clause 2.7 Manner of Control of the Network ARTC

Pacific National does not agree with ARTC qualifying its responsibility to control the network by adding the caveat - "*so far as is reasonably practicable*" - in clause 2.7.

In its Statement of Expectations for ARTC, The Australian Government has set an objective for ARTC *to operate, manage, maintain and improve track infrastructure owned or controlled by ARTC*.⁴⁴

The Government does not include a caveat in its objective for ARTC, and nor should clause 2.7. ARTC should have a positive duty to control the Network.

6.2 Clause 2.10(b) Key Performance Indicators

As discussed in section 5.7, there needs to be an action imperative associated with Performance Indicators to generate improvement and change. Pacific National recommends amending clause 2.10 to improve specificity and create a focus on outcomes that will in turn deliver results.

⁴⁴ Australian Government Shareholder Ministers for the ARTC, ARTC Statement of Expectations 2023
<https://www.infrastructure.gov.au/sites/default/files/documents/australian-rail-track-corporation-interim-statement-of-expectations.pdf>

Our proposed amendments to clause 13.2(a) are outlined in red below:

2.10 Key Performance Indicators

(b) The parties will meet regularly for

- (i) the purpose of discussing actual performance against the Key Performance Indicators and*
- (ii) identifying any actions that need to be taken to address performance.*

6.3 Clause 4.4(c) Variation of Charges and Negotiated Access Charges

ARTC has added clause 4.4(c) into the ITAA to clarify that negotiated charges are not subject to the CPI cap on price increases. Instead, they are subject to an alternative price increase regime as agreed with the rail operator.

To provide more clarity and certainty, Pacific National proposes that ARTC must provide at least 30 days notice of a price change to negotiated charges:

44(c) Where access charges for Services are negotiated between ARTC and the Customer:

- (i) those Charges are set out in Schedule 3; and*
- (ii) ARTC may at any time vary the relevant Charges in accordance with Schedule 3 by giving not less than 30 days written notice to the Operator.*

6.4 Clause 5.4 Rolling Stock

Pacific National does not support ARTC's addition of sections (a) and (b) to clause 5.4 of the ITAA (shown in purple below) and recommends that clause 5.4 is reverted back to its original wording.

5.4 (Rolling Stock)

The Operator agrees as at the Commencement Date and at all material times during the Term to maintain each Train operated by the Operator on the Network ~~in a condition which is fit for use on the Network having regard to the terms of this Agreement so that at all times each Train is:~~

- (a) in a condition which is fit and proper for use on the Network; and*
- (b) operated by properly trained and qualified personnel who exercise due diligence and care during the operation of each Train on the Network.*

Pacific National does not agree with ARTC's proposed changes because these operator requirements are already governed by Rail Safety Acts. ARTC should not be responsible for determining what is "properly trained", "qualified personnel", "due diligence", and "care during the operation of each Train on the Network".

6.5 Clause 5.5(j) Communications Equipment

Communication upgrades can have a significant cost impost on rail operators and ARTC should strive to align to adjacent and other networks when considering communications equipment upgrades.

The 2024 IAU and ITAA should incentivise interoperability of communication systems through increased consultation with key stakeholders with a view to supporting national rail productivity improvements. Amending clause 5.5(j), as proposed in red below, would help achieve this:

5.5(j) where ARTC proposes to change communications equipment in the Train Control Centre:

(i) the Operator agrees to share information and cooperate with ARTC and any Communications or TMS Provider to the extent that may be required to ensure that the parties' obligations in clauses 5.3 and 5.5 are achieved;

(ii) if such proposal will result in the Operator having to replace or upgrade its communications equipment, ARTC will consult with the Operator and the Operator will, after such consultation and after reasonable notice from ARTC to the Operator, reasonably replace or upgrade the communications equipment to be compatible with the equipment used in the Train Control Centre.

(iii) where the proposal in clause 5.5(j)(ii) constitutes a significant change to the communications equipment and / or system, ARTC will further consult with other rail network managers, rail safety governance organisations, and the National Transport Commission and Interoperability Advisory Group⁴⁵ to discuss the proposed changes.

6.6 Clause 5.6 Conduct of ARTC

Pacific National does not support ARTC's changes (shown in purple below) to clause 5.6(a)(ii) to include "the applicable non-price terms". This is a vague, non-defined term that would potentially allow ARTC greater autonomy over the matters they choose to consider when determining whether two services are alike.

Pacific National requests the removal of "the applicable non-price terms" from section 5.6(a)(ii):

5.6 (a) In formulating its ~~Indicative Access proposed~~ Charges, ARTC will not differentiate between operators in circumstances where:

- (i) the characteristics of the ~~Indicative~~ Services are alike; and
- (ii) the operators are operating within the same end market.

In determining whether the characteristics of two ~~Indicative~~ Services are alike ARTC may have regard to matters including but without limitation the applicable non-price terms, [remove] location, duration and quality of the Train Path, nature of Train consist, characteristics of the ~~Indicative~~ Service, longevity of access, arrival and departure times of the day and week.

⁴⁵ The National Transport Commission is progressing a rail interoperability framework.

6.7 Clause 6.1 ARTC to Repair and Maintain the Network

Pacific National does not agree with ARTC adding “*in accordance with all proper restrictions or Instructions issued from time to time by ARTC*” to clause 6.1:

6.1 ARTC to Repair and Maintain the Network

Subject to clauses 6.2, 9.3 and 9.4 ARTC agrees at all times during the Term to maintain the Network (but only in so far as the Network is relevant to the Operator’s Scheduled Train Paths) in a condition which is fit for use by the Operator to provide rail transport services in accordance with all proper restrictions or Instructions issued from time to time by ARTC. [remove]

ARTC should not be allowed to issue Instructions in relation to maintenance and repairs. This clause should solely require ARTC to be responsible for maintenance and repairs.

6.8 Clause 6.2 Operating Restrictions

Clause 6.2 has been updated in the 2024 IAU to allow ARTC to issue Instructions to Operators including in relation to speed and weight.

Pacific National does not object to ARTC’s change. The amendment to clause 6.2 is articulating current practices already in place.

6.9 Clause 8.1 Issue of Instructions by ARTC

Greater transparency and improved processes for recovery from network incidents are required within the 2024 IAU and ITAA, including the practice of using rail operators to remove non-functioning rollingstock.

When locomotives breakdown it produces cost and time delays for both the network and rail operators. It creates significant safety risk for the rail operators involved and reputational risk for the rail freight industry generally.

Matters such as the provision of assistance by one rail operator to another are currently left largely to custom and practice, and there is only cursory reference to it in the ITAA. For example, clause 8.1 in the ITAA allows for the issue of instructions to rail operators that may include recoveries, and by virtue of clause 8.2, the operator receiving the instruction is required to comply. Clause 8.1(c) then further outlines that ARTC will aim to minimise disruption for the rescuing rail operator:

8.1(c) ARTC will:

- (i) in giving any Instruction have due regard to minimising the disruption to the Operator’s Services; and*
- (ii) other than in an emergency, consult with the Operator in giving an Instruction concerning the use of an Operator’s locomotive and its crew for the purpose of assisting in the clearing of a Network blockage.*

Pacific National recommends that the ITAA incentivise a reduction in locomotive failures. More attention should be given to the underlying breakdown cause, with a view to reducing the safety and cost impact of recoveries on the Interstate Network.

Repeated locomotive failures should trigger the ARTC to instigate a root-cause analysis of breakdowns. The analysis should consider the locomotives themselves as well as equipment, load levels and network factors that could impact a breakdown. The results of the root-cause locomotive breakdown analysis, as well as performance reporting more generally, should be transparent and provided to all operators. Where there are repeated failures shown to be associated with the locomotives of one rail operator, ARTC should then issue an improvement notice.

To recognise rail operator cost, time and risk involved in rescuing another operator's locomotive, the ITAA should provide a framework to establish a system of reciprocal charging that could be mutually agreed among the rail operators. Further, it should provide the rescuing operator with flexibility to adjust the timing and staging of the rescue, in consultation with the Train Control Centre.

When a locomotive operator requests their failed train to be returned to the depot, there may be an opportunity for that train to be rescued in multiple stages. For example, the train could be recovered back to a suitable siding (as dictated by the Train Control Centre), which would leave the rescuing locomotive free to then continue to go past. Later when there is a convenient opportunity, the rescuing rail operator could organise to move the failed train back to its depot. Although this would extend the recovery time, it may assist the overall movement of trains on that day. By removing the failed train to a siding, it would clear the track for other locomotives to go past.

To give effect to these suggestions, we propose amendments (in red) to clause 8.1(c) of the ITAA. In addition, Schedule C in the 2024 IAU should include a requirement to incorporate arrangements associated with recovery from in-service failures and incidents.

8.1(c) ARTC will:

- (i) in giving any Instruction have due regard to minimising the disruption to the Operator's Services, **including consideration of a staged recovery operation**; and*
- (ii) other than in an emergency, consult with the Operator in giving an Instruction concerning the use of an Operator's locomotive and its crew for the purpose of assisting in the clearing of a Network blockage. **When breakdown recoveries reach a [to be specified] threshold, ARTC will initiate and publish root-cause analysis of breakdowns. In instances where one rail operator is rescuing the locomotive of another rail operator, the operators may agree on a schedule of reciprocal charging.***

6.10 Clause 9.3 Repairs, Maintenance and Upgrading of the Network

The 2024 IAU and the ITAA should recognise the interfaces that exist between the ARTC part of the interstate network, and those parts of the network owned by other track providers. These interfaces have a significant impact on all train operations in terms of day-to-day running.

Pacific National proposes amending clause 9.3 to incentivise improved coordination with adjacent networks and to prevent an unreasonable burden being placed on rail operators. Where feasible, ARTC planning of maintenance, repairs and upgrades should be coordinated with planned possessions or closures on adjoining networks.

Maintenance and non-urgent repair should consider customer demand profiles and avoid peak services. Where possible, ARTC should avoid disruption to the Scheduled Train Paths during peak retail periods such as Christmas and Easter, and avoid service disruption during peak agricultural seasonal periods.

We also propose adding clause 9.3(d) to recognise ARTC should have an obligation during maintenance activities to keep tracks and related areas clear of equipment where they can. There is currently an issue on the ARTC Interstate Network of track machines being parked. Our drivers will go out to stable a train or load a train, only to find there are track machines in the area. In instances where Pacific National gets a confirmed path and then arrives to find a track machine parked there, it creates operational complexity. It also creates additional cost if we are then required to commit extra crews to taking the train to another point to stable, or we are compelled to change arrangements with customers to load.

Our proposed amendments to clause 9.3 are outlined in red:

9.3 Repairs, Maintenance and Upgrading of the Network

*(a) Notwithstanding any other provisions to the contract in this clause 9, but subject only to clauses 9.3(b), 9.3(c) and 9.4 ARTC may, **with reasonable notice**, perform repairs, maintenance or upgrading of the Network, carry out any new work on the Network, or take possession of any part of the Network, at any time.*

(b) If repairs, maintenance or upgrading of the Network, the carrying out any new work on the Network, or taking possession of the Network, are reasonably likely to materially affect the Scheduled Train Paths, ARTC will, prior to commencement of the works:

*(i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths **and commercial impact on the Operator**;*

*(ii) notify the Operator of the works as soon as reasonably practicable; **and***

(iii) use its best endeavours to provide an alternative Train Path, but need not obtain the Operator's consent to such repairs, maintenance or upgrading, or possession of the Network;-

*(iv) **Coordinate maintenance plans with interface networks to minimise the impact on rail operators; and***

*(v) **take all reasonable steps to avoid disruption to the Scheduled Train Paths during peak retail periods (e.g., Christmas, Easter) and peak agricultural seasonal periods.***

*(c) Possession of the Network means closure of the relevant part of the Network to all traffic for the purpose of effecting repairs, maintenance or upgrading. ARTC will consult with the Operator a reasonable time before taking possession of the Network (except in the case of an emergency) and **undertakes to involve the Operator in the planning process as early as reasonably practicable**, with a view to efficient possession planning and with a view to*

minimising disruption to Services and ARTC may at its discretion waive the flagfall charge applicable to any Services affected by this clause.”

(d) ARTC will take all reasonable steps to keep tracks and related areas clear of equipment when it is possible to do so.

6.11 Part 15 Indemnities/Loss or Damage Arising from an Incident

6.11.1 Clause 15.2(c) Prohibited Claim

Clause 15.2(c) defines ‘Prohibited Claim’ as a Claim arising from an Incident where the total value of the Loss or Damage suffered by a party to this Agreement is less than \$50,000.

Given the threshold of “less than \$50,000” has been in place since the 2008 Undertaking, Pacific National suggests this be adjusted for inflation and increased to “less than \$100,000”.

6.11.2 Clause 15.9 Obligation to Pay

To avoid a party paying costs that have not been reviewed or agreed, Pacific National proposes the following amendments to clause 15.9(d):

*15.9(d) The Responsible Party will, **subject to amounts being agreed by the parties or their loss adjusters***

(i) reimburse the Indemnified Party all costs or expenses incurred by the Indemnified Party in repairing or reinstating plant, equipment or other assets, and

(ii) pay any other Loss or Damage which is the subject of the indemnity, within fourteen 14 days (14) of being requested in writing by the Indemnified Party to do so.

6.12 Clause 16.1 Operator’s Insurance Policies

Clause 16.1(b)(ii) should be amended to recognise that rail operators do not have readily available liability insurance and therefore cannot confirm ahead of time that any additional limits are reasonably procurable:

16.1(b)(ii) have a limit of liability of not less than \$250,000,000 ~~(or such other amount as ARTC may reasonably require and notify to the Operator from time to time)~~ for any one occurrence.

6.13 Clause 16.2 ARTC’s Insurance Policies

The ITAA is proposing in clauses 16.2(c)(ii) and 16.2(d) to remove requirements for ARTC to publish annually its liability insurance premium paid or to apply any savings from a substantial reduction in an insurance premium towards repairs, maintenance or upgrades to the network. Pacific National does not support this change.

We recommend reintroducing clauses 16.2(c)(ii) and 16.2(d) that require ARTC to publish its liability insurance premium and apply any substantial savings back into the network. We note that the term

‘substantial’ is not defined, so there would need to be a mutual agreement on this at the time of discussion.

6.14 Clause 20.3 “Force Majeure”

ARTC has removed the definitional requirement for Force Majeure event to exclude negligence.

Pacific National requests that ARTC reinstate this wording. A party should not be responsible for any failure to perform its contractual obligations if it is prevented from or delayed in performing those obligations by a Force Majeure event.

7 Summary of Pacific National’s position

Table 2 highlights ARTC's summary of changes relevant to Pacific National under the proposed 2024 IAU. It also lists additional amendments to the 2024 IAU and ITAA sought by Pacific National.

Table 2: Pacific National comments on specific sections of the proposed 2024 IAU and ITAA

Clause / Issue	ARTC proposed amendment	Pacific National Comment
Section 3 of this submission: Context and the State of the Market	No change proposed by ARTC.	Pacific National has included recommendations to support the National Freight and Supply Chain Strategy, improve resilience of the network, position Inland Rail for success, take a lead on network harmonisation, support modal shift from road to rail, and support social objectives. Refer to section 3
Part 1 - Preamble 1.2 Objectives	No change proposed by ARTC.	Undertaking fails to meet the public interest test. Refer to section 5.1
Part 2 - Scope and Administration of Undertaking 2.1 Scope	No change proposed by ARTC.	Broaden the scope of the 2024 IAU to recognise Inland Rail Refer to section 5.2
Part 3 3.12.3 Executive negotiation	New clause: Executive negotiation step brought forward – previously executive negotiation occurred as the	Pacific National supports this change. Refer to section 5.3.1

Clause / Issue	ARTC proposed amendment	Pacific National Comment
	first step in the mediation procedure, whereas now it occurs before commencing mediation.	
Part 3 3.12.5 Arbitration	Arbitrator no longer ACCC and arbitration regime revised to commercial arbitration.	Pacific National is largely comfortable with the Arbitration process drafted in the 2024 IAU, providing there are adjustments are made to clauses 3.12.5(a)(xii) and 3.12.5(a)(xiii). Refer to 5.3.2
Part 4 – Pricing Principles 4.4 Structure of Charges	Removed references to “Excess network occupancy component” (globally).	Pacific National has no objection to the removal of the excess network occupancy charge. Refer to section 5.4.1
Part 4 – Pricing Principles 4.5 Standing Offer	Eight core regulated services to be known as Reference Services, compared to the current single Indicative Service (Super Freight).	Pacific National supports this change. Refer to section 5.4.2
Part 4 – Pricing Principles 4.5(b) Price Escalation	No change proposed by ARTC.	Pacific National does not support annual CPI price escalation. Refer to section 5.4.2.1
Part 4 – Pricing Principles 4.6 Publication of Charges	Undertaking will publish the prices of negotiated outcomes for other (non Reference) Services, along with a general description of the services.	Pacific National opposes clause 4.6(a)(ii) as currently drafted and suggests amending the clause. Refer to 5.4.3
Part 5 Management of Capacity	No change proposed by ARTC.	Provide transparency on surplus capacity in the network. Coordinate possessions and closures with other networks. Add a KPI that measures aligned versus standalone closures.

Clause / Issue	ARTC proposed amendment	Pacific National Comment
		<p>Include an Interoperability Policy and Interoperability Scorecard in the Undertaking.</p> <p>Refer to section 5.5</p>
<p>Part 5 5.2 Capacity Allocation</p>	<p>No change proposed by ARTC.</p>	<p>Pacific National proposes including a documented decision process for allocating capacity when there is more than one Applicant.</p> <p>Refer to 5.5.1</p>
<p>Part 6 Network Connections and Additions</p>	<p>Amended to include the development, publication and consultation on the indicative INDS.</p>	<p>Pacific National is supportive of the INDS, but it needs to be more than words on a page and must drive improved outcomes.</p> <p>Refer to 5.6</p>
<p>Part 6 6.3 Additional Capacity Sought by Applicants</p>	<p>Amended to clarify that ARTC must provide Applicant with reasons in writing for refusal of Additional Capacity.</p>	<p>Pacific National suggests a further amendment to allow the Applicant a right of reply.</p> <p>Refer to 5.6.1</p>
<p>Part 8 Performance Indicators</p>	<p>No change proposed by ARTC.</p>	<p>PN has recommended changes to improve the transparency and relevance of reporting and KPIs.</p> <p>Refer to 5.7</p>
<p>Schedule C - Essential Elements of Access Agreement</p>	<p>No change proposed by ARTC.</p>	<p>Pacific National recommends that Schedule C include a requirement to incorporate arrangements associated with recovery from in service failures and incidents.</p> <p>Refer to 6.9</p>
<p>Schedule D - Standard Access Agreement</p>		
<p>Part 2 2.7 Manner of Control of the Network by ARTC</p>	<p>ARTC's control of Network qualified by the words "so far as is reasonably practicable".</p>	<p>Pacific National does not support this amendment. ARTC should have a positive duty to control the Network.</p> <p>Refer to section 6.1</p>

Clause / Issue	ARTC proposed amendment	Pacific National Comment
Part 2 2.10 Key Performance Indicators	No change proposed by ARTC.	Pacific National suggests amending clause 2.10 to include an action/outcomes focus. Refer to section 6.2
Part 4 4.4 Variation of Charges	Amended to clarify that negotiated Charges are set out and amended in accordance with Schedule 3 and are not subject to the CPI cap on price increases.	Pacific National has suggested an amendment to improve clarity and certainty. Refer to section 6.3
Part 5 5.4 Rolling Stock	Adjustments to Operator's requirements for rolling stock (e.g., must be fit and proper for use and operated by properly trained and qualified personnel who exercise due diligence and care).	Pacific National does not support this change and requests clause 5.4 revert back to the original wording. Refer to 6.4
Part 5 5.5(j) Communications Equipment	No change proposed by ARTC.	In section 6.5 we have outlined amendments to incentivise harmonisation and interoperability between networks.
Part 5 5.6 Conduct of ARTC	Consistent with the IAU, ARTC is permitted to have regard to applicable non-price terms when determining whether characteristics of two Services are alike.	Pacific National does not support the addition of " <i>the applicable non-price terms</i> ". Refer to 6.6
Part 6 6.1 ARTC to Repair and Maintain the Network	Updated to refer to restrictions or Instructions issued from time to time by ARTC.	Pacific National does not support this change. Refer to 6.7
Part 6 6.2 Operating Restrictions	Updated to allow ARTC to issue Instructions to Operator including in relation to speed and weight.	Pacific National does not object to this change. Refer to 6.8
Part 8 8.1 Issue of Instructions by ARTC	No change proposed by ARTC.	Pacific National suggests amendments to improve locomotive recovery processes.

Clause / Issue	ARTC proposed amendment	Pacific National Comment
		Refer to 6.9
Part 9 Clause 9.3 Repairs, Maintenance and Upgrading of the Network	No change proposed by ARTC.	In section 6.10 we have outlined amendments to ensure an unreasonable burden isn't placed on rail operators and that maintenance considers interfaces on adjoining networks and avoids peak services.
Part 15 Indemnities/Loss or Damage Arising from an Incident	No change proposed by ARTC.	Pacific National suggests amendments to 15.2(c) and 15.9(d) to adjust for inflation and improve certainty. Refer to 6.11
Part 16 Clause 16.1 Operator's Insurance Policies	No change proposed by ARTC.	This should be amended to recognise that rail operators do not have readily available liability insurance. Refer to 6.12
Part 16 Clause 16.2 ARTC's Insurance Policies	Removed requirements for ARTC to publish annually its liability insurance premium and to apply any savings from a substantial reduction in an insurance premium towards repairs, maintenance or upgrades to the network.	Pacific National does not support this change. Refer to 6.13
Part 20 Clause 20.3 "Force Majeure"	Removed the definitional requirement for Force Majeure event to exclude negligence.	Pacific National does not support this change. Refer to 6.14