

**Our reference:** 14/645

**Contact** Mike Smart  
[REDACTED]  
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8 October 2021

Mr David Shoebridge MLC  
Committee Chair  
Public Accountability Committee  
Legislative Council  
Parliament of New South Wales

via email to [Public.Accountability@parliament.nsw.gov.au](mailto:Public.Accountability@parliament.nsw.gov.au)

Dear Mr Shoebridge

### **Inquiry into the Transport Asset Holding Entity**

Thank you for your email of 24 September 2021 about your committee's inquiry into TAHE. I am responding on behalf of the NSW Independent Pricing and Regulatory Tribunal (IPART), which has certain regulatory responsibilities under the NSW Rail Access Undertaking (RAU), the *Transport Administration Act 1988* and the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act) that are relevant to the Transport Asset Holding Entity (TAHE).

The purpose of this letter is to inform the committee of the nature of IPART's role under the RAU and IPART Act and to provide information on two current IPART reviews pertinent to TAHE.

#### **IPART's role under the RAU**

The NSW Rail Access Undertaking applies to all rail track in NSW owned by the State Government that is not subject to another certified access regime. For example, most of the Hunter Valley coal network and much of the interstate trunk network that is leased by the Australian Rail Track Corporation (ARTC) is not covered by the RAU because it is subject to voluntary access undertakings with the Australian Competition and Consumer Commission (ACCC).

IPART's role for the remaining rail infrastructure is set out in the RAU, which can be found on the Transport for NSW web site: <https://www.transport.nsw.gov.au/sites/default/files/media/documents/2017/nsw-rail-access-undertaking.pdf>

IPART does not determine rail access prices under the RAU. The RAU is designed to be a 'negotiate-arbitrate' framework. Under the RAU:

- access owners cannot charge more than the full economic costs of providing access
- the prices must be at least as high as the avoidable costs of operating the network, i.e. the direct costs caused by trains on the line.

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Access providers (usually track owners) and access seekers (usually either train operators or freight owners) negotiate prices and terms and conditions of access within these limits. However, if they cannot agree then either party can initiate arbitration. IPART may act as the arbitrator or appoint a third party to undertake the arbitration. Since 1999 there have been no concluded access price arbitrations, and only one was commenced (later to be withdrawn after a settlement).

We also determine the permitted rate of return and the remaining mine life used to calculate depreciation every five years. These parameters are used to determine the economic costs of providing the rail services. Our current decision applies from 1 July 2019 to 30 June 2024. Our final report for this review can be found on our website here:

<https://www.ipart.nsw.gov.au/Home/Industries/Transport/Reviews/Rail-Access/Rate-of-return-and-remaining-mine-life-from-1-July-2019>.

IPART also has a role in reviewing compliance with some aspects of the RAU.

### **Review of RailCorp/TAHE compliance with the RAU for the 2018-19 and 2019-20 years**

IPART is required to assess compliance with the RAU for the Hunter Valley Coal Network on an annual basis. This section of the Hunter Valley Coal Network was previously owned by RailCorp. From 1 July 2020, RailCorp was converted into TAHE and established as a statutory State-Owned Corporation. RailCorp was the owner of the Hunter Valley Coal Network for the 2018-19 and 2019-20 financial years. Subsequently, TAHE has assumed responsibility for the compliance assessment in these years.

We have recently published a draft report on TAHE's compliance for 2018-19 and 2019-20. A copy of our draft report is available on our web site: [https://www.ipart.nsw.gov.au/documents/document/draft-report-tahe-compliance-hunter-valley-coal-network-september-2021?timeline\\_id=13679](https://www.ipart.nsw.gov.au/documents/document/draft-report-tahe-compliance-hunter-valley-coal-network-september-2021?timeline_id=13679). Our draft finding is that for 2018-19 and 2019-20, TAHE (RailCorp) has not complied with the asset valuation roll forward principles or the ceiling test. Submissions are due by 19 October 2021. We will then make a final decision.

### **Access agreements**

Section 12C of the IPART Act requires all government agencies that, under a public infrastructure access regime, enter into an agreement for the granting of access to services provided by means of infrastructure facilities owned, controlled or operated by them, to notify the Tribunal. Section 12E requires the Tribunal to keep a public register of such agreements. The register of rail access agreements can be found on our website: <https://www.ipart.nsw.gov.au/Home/Industries/Transport/Legislation-Registers>

### **Review of the NSW RAU**

In our 2019 review of the rate of return and remaining mine life, we recommended that the NSW Government ask IPART to review the RAU. We received a range of complaints about the current regime and broad support for a review. The comments we received came from rail infrastructure owners, rail access seekers, users of rail freight services and other regulators. One of the areas of dissatisfaction raised was continued over-recovery by RailCorp (as an infrastructure owner). IPART has no powers under the RAU to enforce compliance.

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On 22 August 2021, the Minister for Customer Service asked IPART to conduct that review. The terms of reference are available on our web site: [https://www.ipart.nsw.gov.au/documents/terms-reference/final-terms-reference-nsw-rail-access-undertaking-august-2021?timeline\\_id=13831](https://www.ipart.nsw.gov.au/documents/terms-reference/final-terms-reference-nsw-rail-access-undertaking-august-2021?timeline_id=13831) That review is in its early stages. We will release an issues paper for the review in November 2021 and call for submissions. We expect to complete the review in August 2022.

This letter contains no confidential material. IPART's contact officer for this matter is Mike Smart, Chief Economist, contactable on [REDACTED]

Yours sincerely

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Liz Livingstone Chief Executive Officer Signed by: Liz Livingstone	