



17 December 2021

Ms Carmel Donnelly
Independent Pricing and Regulatory Tribunal
PO Box K35
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Sydney NSW 1240
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Dear Ms Donnelly, *Carmel*

RE: Review of the NSW Rail Access Undertaking

The Transport Asset Holding Entity NSW (TAHE) welcomes the review of the NSW Rail Access Undertaking and the opportunity to provide commentary on the Independent Pricing and Regulatory Tribunal's Issues Paper.

The review of the Undertaking is timely given that many changes have occurred, including ownership, operating structures and the complexity of the rail networks covered by this regime. In addition to, fast but structural long lasting economic changes driven by energy transition and increased volume of commodities needing to be moved.

Please find enclosed TAHE's submission in conjunction with an Appendix providing specific commentary on the 27 issues that were raised in the Issues Paper.

TAHE is steadfast in supporting the review process and would like to engage with IPART following the closure of the Issues Paper submissions, to further examine and address the matters raised in our response.

If you have any further questions or would like additional information, Peter Crimp Executive General Manager Finance and Business Performance would be pleased to take your call.



Benedicte Colin

Chief Executive Officer

Review of the NSW Rail Access Undertaking

IPART Issues Paper



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Introduction

The Transport Asset Holding Entity of NSW (**TAHE**) welcomes the opportunity to provide commentary on the Independent Pricing and Arbitration Tribunal (**IPART**) Issues Paper on the review of the NSW Rail Access Undertaking (the **Undertaking**) which was released on November 2021.

The review of the Undertaking is timely given that many changes have occurred including ownership operating structures and the complexity of the rail networks covered by this regime. During this time TAHE has virtually become the sole Rail Infrastructure Owner (**RIO**) subject to the regime as the Australian Rail Track Corporation (**ARTC**) elected to transition to the Australian Competition and Consumer Commission (**ACCC**) regulatory framework.

This is in addition to fast but structural long lasting economic changes strongly driven by energy transition and the increased volume of commodities needing to be moved. It is TAHE's view that the Undertaking in its current form is no longer fit for purpose and lacks the flexibility to address these changes and equitably balance stakeholder requirements.

The following report, in conjunction with the 27 issues seeking comment detailed in the [Appendix](#), provides an overview of who TAHE is, our Operating Model and TAHE's six (6) key issues of concern:

1. The Undertaking requires greater flexibility to meet the requirements of contemporary operating models and structures.
2. The current Undertaking is disproportionately and heavily focused on the Hunter Valley Coal Network (**HVCN**).
3. Market power perception versus market power constraints.
4. Energy transition leading to stranded rail assets.
5. Country Regional Network (**CRN**) under recovery.
6. Considerations for the Undertaking Review.

TAHE is dedicated to engaging directly with IPART following the closure of the Issues Paper submissions, to further examine and address the matters raised in this response.

TAHE - Who we are

TAHE was established as a State-Owned Corporation of the NSW Government on 1 July 2020. TAHE has a very specific role in the NSW Rail system as an owner of rail assets and infrastructure. As a strategic asset manager, TAHE has a focus on holding, establishing, financing, acquiring, and developing transport assets that maximise value for the community and the TAHE shareholders.

As the owner of NSW public transport heavy rail assets, TAHE has been created to achieve five principal objectives, each considered to be of equal importance. They are:



(a) ... undertake activities in a safe and reliable manner



(b) ...support the interests of communities



(c) ...comply with sustainability principles



(d) ...promote regional economic development



(e) ...be a successful commercial business

Our Networks

TAHE owns heavy rail assets and rail infrastructure related to the Metropolitan Rail Network (**MRN**) (which includes a component of the HVCN, the CRN, the Metropolitan Freight Network (**MFN**) and the South Sydney Freight Line (**SSFL**). The MFN and SSFL are leased to the Australian Rail Track Corporation (**ARTC**). The MRN and CRN are subject to the Undertaking and while the MFN is operated by the ARTC, it too is also subject to the Undertaking.

Our primary networks are the MRN and the CRN. Both networks perform vital transport functions for both rail passengers and freight services. In addition, both networks form part of the intrastate and national rail logistic chain. The following is a brief description of each network.

Metropolitan Rail Network (MRN)

The MRN is comprised of 1608 km of track which includes 1548km of electrified mainline track. There are 1478.5 track turnouts, 968 bridges, 80 Level crossings, 3962 signals and 67 tunnels.

Currently there are 22 agreements that provide rail access to the MRN enabling a combination of commuter, freight, long-distance passenger, and heritage and track

machinery operations. Commuter services are the dominant form of rail traffic with approximately 3200 timetabled services per weekday providing approximately 1.3 million passenger journeys each weekday. There are approximately 120 freight services per weekday that either operate within the MRN or transverse the network from and to either the ARTC networks or the CRN. The TAHE component of HVCN is a part of this freight network but comprises only 3% of track km on the MRN.

The network is designed, operated, maintained, and managed to meet the safety and operational requirements of the major task of the provision of access for commuter services. The operations of Sydney Trains and NSW Trains account for approximately 87% of the Full Incremental Cost (FIC) of the MRN. Private operators represent 13% of the MRN FIC. However, access revenue from these private operators often only represents 25% that the operator imposes.

Country Regional Network (CRN)

The CRN comprises of 2386km of operational rail lines and 3139 km of track are classified as non-operational lines. There are 300 active level crossings, 600 rail under bridges and 384 over bridges.

Currently there are 20 agreements that provide access to the CRN. Freight services are the dominant form of rail traffic representing approximately 62% of all services with NSW Trains representing 38% of timetabled passenger services per week. Private operators represent approximately 86% of the FIC of the CRN with the remaining 11% being allocated to NSW Trains. Access revenue from individual freight operators does not exceed 10% of the FIC that each operator imposes on the network. The low level of cost recovery on this network and the associated implications are discussed further in this paper.

TAHE's Operating Model

TAHE's Operating Model (refer [Figure 1](#)) has been developed to exercise its remit as a strategic asset manager and support the achievement of its five principal objectives.

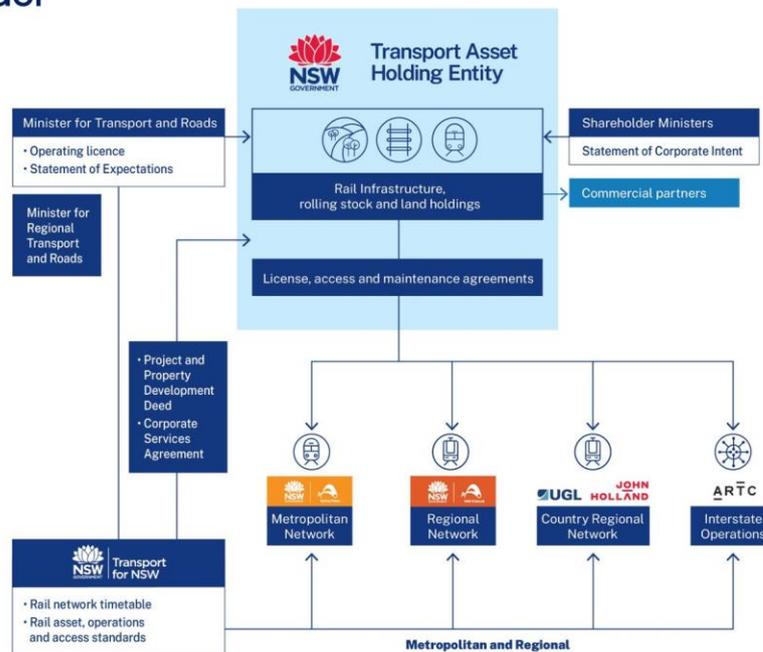
Whilst TAHE has broad functions under the *Transport Administration Act 1988* (NSW) (TAA), TAHE's functions are limited by its Operating Licence which is issued by the Minister for Transport and Roads. This Operating Licence permits TAHE to undertake certain functions and importantly prevents TAHE undertaking traditional rail operations. TAHE's Operating Licence expressly stipulates that TAHE must not:

- carry out railway operations;
- operate a Transport Service; and
- carry out maintenance of Transport assets (other than by having in place arrangements with third parties, whereby third parties maintain such Transport assets).

The Operating Licence requires arrangements to be in place with Sydney Trains, NSW Trains and third party Rail Infrastructure Managers (RIM) to manage, operate and maintain transport assets and infrastructure, including rolling stock.

Figure 1

Operating Model



To implement the Operating Model, on 1 July 2021 TAHE entered into a number of new commercial operating agreements with various transport cluster agencies, including:



Licence, Agency and Maintenance Deed between TAHE, TfNSW, Sydney Trains and NSW Trains



Track Access Agreements between TAHE and Sydney Trains and TAHE and NSW Trains



Project and Property Development Deed between TAHE and TfNSW



Corporate Services Agreement between TAHE, TfNSW and Sydney Trains

Transport for NSW (TfNSW), Sydney Trains and NSW Trains are the accredited Rail Transport Operators under the Rail Safety National Law. TAHE relies on these transport

entities to operate, maintain, construct, and deliver assets and services to customers in a safe and reliable manner. This includes the planning and implementation of network maintenance, allocation of capacity and the delivery of rail access through the management of network control on a day-to-day basis.

Capacity Management

TfNSW has a legislative responsibility under the TAA to undertake the allocation of rail capacity through the development of the standard working timetable for the MRN. Sydney Trains operationalise the standard working timetable on the MRN. The RIM on the CRN has a contractual obligation for the management and allocation of capacity including developing and operationalising the standard working timetable. TAHE has no role in the allocation of rail capacity.

Access Agreement Management

TfNSW and Sydney Trains act as TAHE's agents in relation to the management of third-party Access Agreements including negotiation, consultation, contract management and delivery of access to the rail networks. TAHE directly negotiated the Access Agreements with Sydney Trains and NSW Trains. TAHE retains the responsibility for pricing and regulatory liaison roles for both the MRN and CRN.

TAHE's 6 key issues of concern

1. The current Undertaking requires greater flexibility to meet the requirements of contemporary operating models and structures

The current regulatory framework was designed to reflect traditional railway ownership structures where the RIO has control of the assets and the network expenditure including maintenance and capital investment requirements. Whilst TAHE is an owner of NSW heavy rail assets including rolling stock, it is not permitted by its Operating Licence to operate or maintain these rail assets and networks.

In the TAHE model, RIMs accredited under the Rail Safety National Law undertake all maintenance activities and make the decisions for all routine maintenance and major periodic maintenance of railway infrastructure requirements. This includes the budget to meet these requirements.

The pricing principles of the Undertaking requires revenue to be within a floor and a ceiling level which operates as a revenue cap that the RIO can charge for a group of similar access seekers. The revenue ceiling is designed to incentivise the RIO to develop and maintain efficient maintenance practices.

In accordance with the Rail Safety National Law and TAHE's Operating Licence, the aforementioned incentive will not drive network maintenance efficiencies as it is the RIM, on the MRN and the CRN, who has the accountability and accredited remit for undertaking and determining the maintenance requirements, not the RIO.

TAHE appreciates the need to drive appropriate efficiencies and innovation, however the traditional approaches used by the Undertaking in providing the RIO with these incentives, particularly in maintenance practices are not appropriate. As a result, the Undertaking requires greater flexibility to meet the contemporary requirements of current operating models and structures.

2. The current Undertaking is disproportionately and heavily focused on the Hunter Valley Coal Network

The greater Hunter Valley Coal Network is a single commodity coal network, which is operated by the ARTC and now regulated by the ACCC. The ARTC lease does not include 52 km of mixed traffic track within the Hunter Valley Coal Network that is owned by TAHE and remains subject to the NSW Rail Access Undertaking.

The current Undertaking has a strong focus on the greater Hunter Valley Coal Network being a single commodity, stand-alone network. However, only 52 km of this network remains regulated within the regime and is not a single commodity, standalone network to which the Undertaking was largely designed, for compliance determination purposes.

Further, the 52km of track that is TAHE's component of the HVCN, whilst an integral component of the MRN, it represents only 3% of the wider, shared MRN with a mix of traffic being passenger and freight services that includes coal. The mixed network is required to meet minimum safety and operational requirements for the provision and access of passenger commuter services. This results in a higher cost structure across the entire MRN for all asset classes that a standalone, freight only network would not incur.

Whilst TAHE concurs it is unreasonable for a freight operator to pay for maintenance such as overhead wiring used for commuter passenger rolling stock, it is not equitable to benchmark efficient maintenance costs of the TAHE component of the HVCN against a stand-alone, freight only network (similar to the ARTC HVCN). The current Undertaking does not allow for these considerations to meet the varied stakeholder needs.

3. Market power perception versus market power constraints

Competition from road and the industry's ability to pay rail access fees, together with the legislative obligations of the RIO to provide access to its networks, considerably constrains TAHE's ability to exercise any perceived market power of being a natural monopoly in all freight markets. The current level of cost recovery for freight services on the MRN (including more recently, the TAHE component of the HVCN) and the CRN is far below the Full Economic Cost as defined by the Undertaking.

The Undertaking requires a more considered and proportional approach to effectively and transparently balance market power in all market sectors and rail networks.

4. Energy transition leading to stranded rail assets

The current Undertaking (established in 1996) was designed for a rail market that was heavily dominated by coal and therefore calculated railway network depreciation based on mine life. IPART determine the mine life every five (5) years in compliance with the Undertaking.

Since that time, global climate change has heavily influenced the generation of energy away from coal and gas towards renewable energy sources. This transition away from coal fired energy has accelerated the closure of power stations and has therefore reduced mine life.

The Australian Energy Regulator (**AER**), in its annual report *State of the energy market 2021*, confirmed this transition and identified the Vales Point and Eraring coal-fired power stations on the TAHE component of the HVCN, are scheduled for closure from 2029-30 to 2030-32 respectively.

This will lead to stranded assets prior to 2040, which is the terminal life date for the TAHE HVCN, as determined by IPART in its report in *The rate of return and remaining mine life* published in July 2019.

The reduced time frame between the IPART determined mine life of 2040 and the AER's scheduled closure of coal-fired power stations in 2030/32 severely impacts TAHE's ability to fully depreciate its railway assets and determine the full economic cost.

The Undertaking requires greater flexibility for IPART to conduct regular reviews proportional to market changes and environmental impacts.

5. Country Regional Network (CRN) under recovery

Access revenue from the CRN does not recover its total network operating and maintenance costs.

In IPART's most recent CRN Compliance Submission 2017/18 determined, that after making efficiency adjustments, the access revenue recovered only 13% of the total network operating and maintenance costs. The costs do not include depreciation or a return on capital and the level of under-recovery has remained static in subsequent years.

The dominant form of rail traffic on the CRN is freight services equalling approximately 62% of all services however, access revenue from this group has rarely reached 10% of the FIC attributed to this group of access seekers.

The Undertaking does not compensate for an under-recovery and only addresses a determined over-recovery and the requirement for a RIO to reach a zero over and unders account.

6. Considerations for the Undertaking Review

TAHE is seeking clarification as to whether the intent of the future Undertaking is to regulate the provision of access to all categories of access seekers, including commuter passenger services, or is the intent to solely address the provision of access for freight services.

No	Topic and questions	Commentary
1.	<p><i>Do you agree with our proposed approach and principles to guide our decision making? What other principles, if any, should we apply?</i></p>	<p>TAHE note IPART’s approach and the five principles that IPART has proposed to guide decision making for what an effective third-party access regime should look like. TAHE is not able to provide considered commentary on the proposed principles in the absence of more detailed and comprehensive information and welcomes further exploration to better understand the proposed framework.</p> <p>In the interim, TAHE encourage consideration of the broader policy environment such as influencing the appropriate modal choice, notably freight from roads to rail and the following points:</p> <ul style="list-style-type: none"> • Efficient <ul style="list-style-type: none"> ○ utilisation of pricing benchmarks that are current, comparative and fit for purpose ○ appropriate rail owner incentives to drive intended network outcomes • Proportional <ul style="list-style-type: none"> ○ testing market power perception versus market power constraints ○ cost of operations versus cost recovery • Enforceable <ul style="list-style-type: none"> ○ discretion to determine enforcement action • Flexible <ul style="list-style-type: none"> ○ to adapt to market changes and environmental impacts leading to stranded rail assets
Form of regulation		
2.	<p><i>How effective is the current negotiate-arbitrate regime in</i></p>	<p>In September 2018, the Australian Competition and Consumer Commission (ACCC) authorised nine rail access seekers to negotiate with TfNSW as a collective known as the Rail Operators Group (ROG) for a</p>

No	Topic and questions	Commentary
	<i>balancing the market power between rail owners and access seekers in negotiating access?</i>	<p>period of up to five years. TfNSW has been negotiating the Standard Track Access Agreement with the ROG since 2018 and negotiations are still ongoing. The ability for parties to bypass the Undertaking, has prevented parties from reaching a contractual agreement under the current negotiate-arbitrate regime.</p> <p>The combination of the ACCC authorisation and the negotiate-arbitrate regime has not been effective in balancing the market power between the parties. TAHE would welcome consideration of mediation mechanisms to improve the timeliness and effectiveness of negotiations, enabling contractual outcomes to be reached expeditiously and to avoid formal arbitration.</p> <p>TfNSW acts as TAHE’s agent in all Access Agreement negotiations (other than with Sydney Trains and NSW Trains) and may have further commentary to provide.</p>
3.	<i>Should the negotiate-arbitrate model be replaced by regulator-determined access prices and/or other conditions of access?</i>	<p>The current negotiate – arbitrate model does not need to be replaced by regulator determined access prices and other conditions of access.</p> <p>A negotiate – arbitrate model would be more successful if the Undertaking prevented parties from seeking formal arbitration or authorisations from other regulatory regimes.</p> <p>Direct regulation for the whole NSW network, must consider the wide variety of mixed line traffic circumstances and the characteristics of each network, together with the disparity of cost recovery between freight and passenger services and commodities.</p> <p>Direct regulation will have certain implications for the current pricing structures as most freight commodities are low-cost recovery and do not meet the full economic cost of the network.</p>
4.	<i>Should different forms of regulation apply to different parts of the network? If so, what criteria should</i>	<p>TAHE recognises the merits of applying a standard set of pricing principles and minimum standards to all networks, however strongly supports the need to consider the variables and characteristics of the different standalone networks across NSW.</p>

No	Topic and questions	Commentary
	<i>we use to determine what form of regulation applies?</i>	
5.	<i>Are the current compliance obligations for non-Hunter Valley rail networks proportionate to the level of market power rail owners can exercise?</i>	<p>TAHE does not consider that the current compliance obligations are appropriate and proportionate to the level of market power that the Rail Infrastructure Owner (RIO) can exercise on the Metropolitan Rail Network (MRN) and the Country Regional Network (CRN).</p> <p>TAHE's obligations under the Transport Administration Act to provide access to its networks, competition from road and the low level of cost recovery from freight services constrain any perceived market power. Whilst the Undertaking has provisions for a formal Regulatory Asset Base (RAB) to be applied to all NSW networks, the RAB has only been developed by IPART for the HVCN. The regulatory framework compliance obligations would benefit from guidance on the criteria to determine a cost-effective alternative to developing a formal official RAB.</p>
The negotiation process		
6.	<i>What problems have access seekers experienced in negotiating access? What changes would help them negotiate access on fair and reasonable terms?</i>	<p>TAHE understands that some of the key issues raised by the ROG in recent negotiations have related to:</p> <ul style="list-style-type: none"> • the TfNSW's Operational Protocol and technical standards for the operation of rolling stock; • registration of rolling stock; and • the amount of security required and the form in which that security is provided. <p>TfNSW is TAHE's agent for access agreement negotiations with third party rail access seekers and is best positioned to comment on this issue in their response.</p>
7.	<i>How could the Undertaking facilitate more effective consultation between</i>	<p>There is merit in strengthening the consultation process between RIOs (and rail agents) and access seekers which may include a consultation forum. TAHE would welcome a forum that facilitates access</p>

No	Topic and questions	Commentary
	<i>rail owners and access seekers on capacity and investment decisions?</i>	seeker's forward projection including, but not limited to, traffic freight volumes and commodity types to inform future network capital investment decisions.
8.	<i>Should IPART have a role providing advice on proposed agreements before they are executed in a negotiate-arbitrate model?</i>	<p>The commercial agreements are between the access provider and the access seeker to negotiate within the confines of the Undertaking. It is unclear what the role of the regulator would be in the negotiation stages between the parties.</p> <p>Post contract execution, the parties may benefit from Regulator oversight to make certain that the parties have applied and continue to apply the provisions and criteria of the Undertaking.</p>
Terms of access and information disclosure		
9.	<i>Should the Undertaking apply different rules to non-price terms and conditions in the Hunter Valley Coal Network? If so, what differences would be useful and why?</i>	<p>The application of different rules and bespoke non-price terms and conditions within a small segment of the MRN would lead to deteriorating overall performance impacting other access seekers and creating a competitive disadvantage.</p> <p>The TAHE Hunter Valley Coal Network (HVCN) comprises only 3% of track km on the MRN, which is a mixed traffic passenger dominated network. There are terms and conditions within the MRN Standard Access Agreement, that are used as the base for all access seekers Access Agreements, for the operation of rolling stock throughout the entire network. Different rules do not apply to non-price terms and conditions within these access agreements, regardless as to whether the access seeker is only accessing the HVCN or the entire MRN.</p> <p>The ARTC Hunter Valley Access Undertaking provides a detailed list of conditions that must be included in Access Agreements which address issues specific to a large coal only rail network. Applying different rules to the HVCN similar to the ARTC Hunter Valley Access Undertaking is challenging given the MRN is not only a mixed passenger dominated network, it also provides mixed freight commodities which includes but is not coal specific.</p>

No	Topic and questions	Commentary
		The Undertaking needs to provide greater clarity of the non-price conditions that are mandatory or negotiable that apply on a network wide basis.
10.	<i>Which of the current information disclosure provisions in the Undertaking should be retained and why? What else would be useful to include?</i>	<p>The existing provisions in Schedule 5. of the Undertaking includes information that access seekers are entitled to request as follows:</p> <ul style="list-style-type: none"> • Network configurations • Recurrent costs • Capital costs • System usage • Operational information • Unutilised capacity by sector day and time • Arbitration information <p>Under the current Undertaking disclosure provisions, TAHE is not aware of a formal request for this information, therefore the value remains unclear.</p>
11.	<i>Should rail owners publish more information about how they will set prices and indicative access agreements?</i>	The Standard Track Access Agreements for the CRN and the MRN are published on both the TfNSW and the CRN Rail Infrastructure Manager’s websites. Following conclusion of negotiations with the ROG, the next version of the Standard Track Access Agreement will be published on the appropriate websites.
12.	<i>Should the Undertaking prescribe a standard set of performance indicators? If so, should they apply to</i>	The Undertaking should prescribe a set of performance standards or indicators that apply to all access seekers on the network and network operators. This will enable transparency, consistency of practice, benchmarking and continuous improvement. TAHE supports performance measurements similar to those

No	Topic and questions	Commentary
	<i>the Hunter Valley network or coal customers only? Which metrics would be useful?</i>	provided in the ARTC Hunter Valley Access Undertaking. However, note that the variability of network characteristics may prove challenging in developing performance indicators that drive intended outcomes.
Trading access rights		
13.	<i>What are the benefits of trading access rights? What are the risks if access holders could on-sell access rights to a third party? How could these be managed without prohibiting re-sale?</i>	TAHE does not support trading access rights. TAHE's first priority is the safety and reliability of the network and trading access rights has the potential to introduce unqualified risks.
Access pricing principles		
14.	<i>Is it still appropriate to calculate full economic costs under the ceiling test on a standalone basis? If not, is there an alternative method that would still protect access seekers from paying too much and promote efficient use of and investment in the network?</i>	Mixed traffic networks have an inherent higher cost structure than freight only networks. It would be more equitable to calculate the operating and maintenance expenditure for mixed traffic networks benchmarked against comparable shared networks, rather than standalone, freight only networks.
15.	<i>Should the RAB continue to be set using a DORC valuation? If so, should the Undertaking provide more</i>	TAHE is of the opinion that the Regulatory Asset Base (RAB) should be flexible enough to accommodate a range of valuation methodologies. Where asset bases are required to be valued on a particular basis for financial reporting purposes, it would create a significant overhead burden to also maintain an alternative valuation basis in parallel.

No	Topic and questions	Commentary
	<i>guidance on how to calculate the DORC value?</i>	<p>Whilst the Undertaking has provisions for a formal RAB to be applied to all NSW networks, a RAB has only been developed by IPART for the full HVCN. As a result, there is no formal RAB for the majority of TAHE MRN and no RAB for the CRN.</p> <p>The regulatory framework compliance obligations would benefit from guidance on how to determine a cost-effective RAB using the RIO valuation of the respective networks. This guidance would need to address, particularly for the MRN, the different asset classes (for example track, overhead wiring infrastructure and sub stations) required to provide access to different groups of access seekers.</p>
16.	<i>Should a single rate of return continue to apply across all networks under the Undertaking? Should it be based on the coal network, given that is the network most at risk of exceeding the ceiling test?</i>	<p>TAHE does not support the continued application of a single rate of return across all networks as this does not accommodate for the varied and unique characteristics of each network. The rate of return should reflect the relative volatility of underlying commodities of the group of access seekers and consideration of market circumstances. This should not be based solely on the coal network.</p> <p>TAHE concurs with recommended changes to the Undertaking to allow more flexibility in the determination of the Weighted Average Cost of Capital (WACC) and the cost of debt. The RIO should be afforded the opportunity to provide comment and input into these more frequent reviews.</p>
17.	<i>Should the Undertaking allow greater flexibility in calculating depreciation? What are the merits of levying depreciation on a per unit basis or calculating it separately for branch lines?</i>	<p>The IPART Issues paper has a strong focus on the TAHE component of the HVCN. Coal traffic represents a small component of the overall rail traffic that uses the MRN or the CRN. The proposal to recover the remaining regulatory base as a per tonne charge of coal rather than a fixed annual charge would require robust forecasts of future tonnage and would not be appropriate for general freight or passenger operations.</p> <p>The Undertaking requires greater flexibility in calculating depreciation and more regular reviews of the useful asset life of the TAHE HVCN to take into account market and environmental changes including the transition towards electricity generation by renewable sources and the scheduled closure of Vales</p>

No	Topic and questions	Commentary
		<p>Point and Eraring coal-fired power stations by 2032. These factors will result in stranded assets well before the current terminal date of 2040 as determined by IPART.</p> <p>Depreciation calculations for the entire network need to consider the combined asset life of the respective corridors and the various categories of access seekers as opposed to concentrating on a single commodity such as coal.</p>
18.	<p><i>Should the pricing principles continue to include a floor test? If so, should IPART assess compliance with the floor test, and are other mechanisms required to ensure compliance?</i></p>	<p>TAHE agrees with IPART that there is market competition between road and rail for certain commodities. This market competition self regulates and greatly limits the RIO's market power and ability to charge higher prices and recover its economic costs. TAHE supports the pricing principles in the Undertaking that includes a floor test. TAHE also encourages further exploration of the benefits and impacts of regular assessments of the floor test and compliance powers, to enable a refund process for under-recovery if the floor test is not met.</p>
Operation of the unders and overs account		
19.	<p><i>Should the Undertaking provide more explicit guidance about the operation of the unders and overs account? If so, what should that guidance include? Should the Undertaking allow capitalised loss accounts for new infrastructure?</i></p>	<p>TAHE supports the Undertaking providing more explicit guidance about the operation of the unders and overs account to provide a transparent method for RIOs to work towards a zero unders and overs balance for all access seeker groups.</p> <p>This guidance should include how RIOs carry forward under recoveries. This is especially applicable to the management of account balances that represent both over and under recoveries from multiple access seeker groups. In the instance of under recoveries, TAHE advocate that there is benefit in maintaining these account balances into future years to offset future over recoveries.</p> <p>TAHE note the concept of allowing RIOs to have capitalised loss accounts for new infrastructure and encourage further examination of this possibility.</p>
Enforcing compliance with the Undertaking		

No	Topic and questions	Commentary
20.	<i>What powers should the regulator have to enforce compliance? Should the Undertaking include remedies or sanctions for non-compliance?</i>	<p>Future compliance enforcement should be narrowed solely to the TAHE component of the HVCN.</p> <p>The RIO should be provided with reciprocal rights of review of a regulator/arbitrator's decisions. This would include decision regarding the determinations of Full Economic Cost and unders and overs balance</p>
21	<i>Why do end use customers prefer to contract with rail operators to access the rail network, rather than contracting directly with the rail owner?</i>	<p>TAHE does not have Access Agreements with end use customers. There are end use customers who have invested in their own rolling stock but have engaged Rail Operators to operate these services on their behalf.</p> <p>TfNSW, as TAHE's agent, manages all contractual arrangements with rail customers and is best placed to provide commentary on this issue.</p>
22.	<i>Should the Undertaking allow automatic triggers for arbitration? If so, in what circumstances should this apply?</i>	<p>Automatic triggers for arbitration or the inclusion of mediation in the Undertaking would benefit all parties where negotiations cannot be completed in a satisfactory timeframe.</p>
23.	<i>Do rail owners and access seekers have adequate rights of review of the regulator/arbitrator's decisions?</i>	<p>Under the Undertaking, RIOs only have the right to challenge the regulator/arbitrator's decisions if there is evidence of a procedural error in the application of the decision. Decisions made by other regulatory authorities such as the ACCC offer the proponents a right of review of the outcome of a decision. There would be benefit for all parties to be provided a right of review of the regulator/arbitrator's final decision.</p>
Facilitating appropriate modal choice		
24.	<i>Are access seekers unreasonably constrained from accessing train paths? How could the Undertaking</i>	<p>TfNSW is best placed to provide commentary on these issues. TfNSW is responsible for capacity allocation and the granting of train paths in respect of the MRN and CRN.</p>

No	Topic and questions	Commentary
	<i>provide more transparency and certainty about how rail owners allocate capacity?</i>	
Relationship with other regimes		
25.	<i>Does the Undertaking facilitate efficient investment decisions? What else should it include?</i>	The Undertaking and the way it details the facilitation of investment decisions would benefit from a more comprehensive investment framework to inform efficient investment decision making.
26.	<i>What changes to the Transport Administration Act 1988 (or other legislation) that govern voluntary undertakings would provide more certainty to access seekers about regulatory arrangements they can expect? What transitional arrangements should apply if a rail owner decides to switch regimes?</i>	TAHE concur with IPART that the current <i>Transport Administration Act 1988 (TAA)</i> does not provide certainty to access seekers regarding regulatory arrangements. It would be beneficial to amend the TAA to ensure all RIOs seek and obtain NSW Ministerial approval prior to switching regimes to prevent RIOs from ‘regime shopping’.
27.	<i>Which operating procedures, systems, technologies or environmental requirements cause the biggest problems between networks? Which elements of other networks or regimes should we</i>	TfNSW, in its capacity as agent for TAHE and in its legislative role in developing transport strategy and policy, would be best placed to comment.

No	Topic and questions	Commentary
	<i>consider adopting in the NSW Undertaking?</i>	