



20 June 2017

Grant Kari  
Regulated Access – Rail  
Australian Competition and Consumer ACCC  
GPO Box 520  
MELBOURNE VIC 3001

Dear Grant,

**Re: HVCCC Submission in response to ACCC consultation on proposed variation to the Australian Rail Track Corporation Limited 2011 Hunter Valley Coal Network Access Undertaking**

## **BACKGROUND**

On 6<sup>th</sup> June 2017, the ACCC requested submissions from Stakeholders on Australian Rail Track Corporation Limited's (**ARTC**) application to vary its 2011 Hunter Valley Coal Network Access Undertaking (the **2011 HVAU**).

## **HVCCC RESPONSE TO ARTC APPLICATION TO VARY THE 2011 HVAU (the *Application*)**

### **1. EXECUTIVE SUMMARY**

#### **Role of HVCCC**

HVCCC's Objects, as embodied in its Constitution, are to plan and co-ordinate the cooperative operation and alignment of the Coal Chain to maximise coal volumes at minimum logistics costs in accordance with the agreed collective needs and contractual obligations of Producers and Service Providers. HVCCC was incorporated in 2009 as an independent entity, funded by the industry, to meet those Objects.

The Hunter Valley Coal Chain construct operating within the regulatory parameters established by the 2011 HVAU has proven effectiveness in enabling capacity and efficiency. These constructs have supported the long-term solutions to systemic challenges experienced by the industry. Any reduction, displacement or elimination of this construct, and the role of HVCCC in that, presents increasing risk to efficient operation across the various coal chain stakeholders.

## Consequences of ACCC Refusal of Application

In the event the ACCC refuses the Application, and consequently regulatory control of the Hunter Valley Coal Chain reverts to the State controlled Independent Pricing and Regulatory Tribunal New South Wales (**IPART**) operating under the regime established by the NSW Rail Access Undertaking, the adverse impact to the entire coal industry has the potential, in the opinion of HVCCC, to be severe. The commercial and operational parameters under IPART are, at best, uncertain, meaning the operational impact would be immediate and industry wide.

An HVAU provides industry stability and regulatory certainty which is key to the ongoing operation and continued viability of the Hunter Valley Coal Chain. Without an HVAU any ongoing role of HVCCC would be placed in jeopardy meaning the cooperative planning and alignment of the Coal Chain, to meet the collective needs of both producers and service providers, would be placed at immediate risk.

HVCCC strongly believes an HVAU, and ongoing certainty of that regulatory construct, is critical to the stability and short to medium term, and indeed long term, success, of the Hunter Valley Coal Chain.

## 2. ARTC PROPOSED VARIATIONS AND HVCCC RESPONSE

Section of 2011 HVAU	HVCCC Response to ARTC's proposed variation
1.1	HVCCC supports this variation.
1.2(d)(ii)(B)	HVCCC supports this variation in principle however please refer to Items 3(a) and (b) below for further submission regarding HVAU duration certainty.
1.5	HVCCC supports this variation.
2.2(b)	HVCCC supports this variation in principle however please refer to Items 3(a) and (b) below for further submission regarding HVAU duration certainty.
2.3(b)	HVCCC supports this variation however notes that the matters in respect of which ARTC has an obligation to consult stakeholders and submit a variation are commercial matters only (as specified in clause 2.3(d)). The variation mechanism is more limited than HVCCC was initially led to believe and it would be desirable from HVCCC's perspective if ARTC was also required to consult with wider stakeholders, including HVCCC, in respect of further variations which might be required (for example, inclusion of the Consultation Principles at Annexure G per the 2017 HVAU as further referred to in Item 3(c) below).
2.6(a)	HVCCC supports this variation.
4.4(a)(ii)	This is a commercial item in respect of which HVCCC makes no comment.
4.6	This is a commercial item in respect of which HVCCC makes no comment.
4.7	This is a commercial item in respect of which HVCCC makes no comment.
4.8	This is a commercial item in respect of which HVCCC makes no comment.
4.10(g)	This is a commercial item in respect of which HVCCC makes no comment.
4.10(h)-(j)	This is a commercial item in respect of which HVCCC makes no comment.
4.22	This is a commercial item in respect of which HVCCC makes no comment.
4.23(c)	This is a commercial item in respect of which HVCCC makes no comment.
Amend definitions	HVCCC supports this variation



Delete definitions	HVCCC supports this variation
New definitions	HVCCC supports this variation
New Schedule 1	This is a commercial item in respect of which HVCCC makes no comment.
Amend IAHA	This is a commercial item in respect of which HVCCC makes no comment.
20.3	HVCCC supports this variation.

**3. MATTERS RAISED BY HVCCC IN PREVIOUS SUBMISSIONS TO THE ACCC IN RESPONSE TO ARTC'S DRAFT 2016 AND 2017 HVAU'S WHICH ARE NOT ADDRESSED BY ARTC IN THE APPLICATION**

Item/Section of HVAU	HVCCC position in response to 2016 and 2017 HVAU's	HVCCC current position
<p>(a) Duration and Expiry of HVAU</p> <p>(b) Mandatory Review of HVAU – section 2.3 of 2017 HVAU</p>	<p>HVCCC supported in previous submissions inclusion of automatic continuation unless or until a replacement HVAU is effected.</p> <p>HVCCC also supported the proposed Mandatory Review of HVAU process outlined in section 2.3 of the 2017 HVAU.</p>	<p>The Application proposes a Term of 4.5 years only which is substantially shorter than the 10.5 years proposed under the 2017 HVAU. From HVCCC's perspective, and noting the concerns outlined in the Executive Summary relating to the role an HVAU plays in providing essential regulatory certainty and industry stability, possible expiry of the HVAU in 2021 without an obligation on ARTC to make application for a replacement HVAU poses a significant risk.</p> <p>The only effective means of eliminating this risk would be inclusion within the Application of a mechanism which forces ARTC to review (per the Mandatory Review provisions outlined in the 2017 HVAU) and replace the 2011 HVAU on its expiry. In the absence of such a mechanism, a longer term, with reinstatement of the Mandatory Review provisions outlined in the 2017 HVAU, is preferred.</p>
(c) HVCCC Consultation Principles – Schedule F/G of 2016 HVAU	HVCCC supported inclusion of the principles from the Hunter Valley Supply Chain Alignment Protocol in the Consultation Principles at Schedule F/G noting it offered increased transparency and process improvements.	<p>The Consultation Principles proposed in the 2016 and 2017 HVAU's incorporate the principles from the Hunter Valley Supply Chain Alignment Protocol</p> <p>The Hunter Valley Supply Chain Alignment Protocol, developed by ARTC in 2013, sets out the process of engagement and consultation between ARTC and the HVCCC on capacity management. The objective of the protocol is to ensure that ARTC and the HVCCC establish, develop, implement and monitor suitable mechanisms that assist them to carry out their respective roles under the HVAU in an effective, timely and consistent manner that meets the requirements of the HVAU.</p> <p>HVCCC and ARTC systems are interdependent and interfaced in a range</p>

		<p>of areas and at present HVCCC utilise an ARTC system for some core planning and scheduling tasks. The ability to maintain a collaborative approach and to ensure systems remain current with appropriate updates is critical. A requirement or commitment to do so via the Application would be valuable in ensuring HVCCC's ability to meet its Objects and effectively plan for the whole of coal chain.</p> <p>HVCCC strongly asserts that these principles should be included within the Application or, at the very least, addressed as a specific item in respect of which ARTC must lodge a variation per the new clause 2.3(d) of the Application.</p>
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#### 4. CONCLUSION

HVCCC support ARTC's application to vary its 2011 Hunter Valley Coal Network Access Undertaking as the most effective option available for ongoing industry stability and certainty. HVCCC notes its support for certain provisions from the prior draft 2016 and 2017 HVAU's which have not been included in the Application, to be further considered as part of any future variation or extension of the 2011 HVAU.

Yours faithfully



**Kirsten Molloy**

CEO, Hunter Valley Coal Chain Coordinator Limited