



NATIONAL ROAD TRANSPORT ASSOCIATION

**Submission to the Australian Competition and  
Consumer Commission (ACCC)**

**The regulatory framework for ARTC's  
Interstate network**

**6 October 2021**

## **Executive Summary**

This submission responds to the Australian Competition and Consumer Commission (ACCC) Issues Paper on the Australian Rail Track Corporation's (ARTC) monopoly power position over large tracts of railway track. It first sets out factors affecting the competitive environment of the rail network and the influence of road freight on modal competition and, secondly, the anti-competitive practices of the ARTC when assessing permission for, in particular, A-doubles to cross its tracks.

NatRoad takes the stance that as road and rail transport have different strengths, they are not perfect substitutes, and businesses will select the mode which best meets their needs, subject to market prices. Much of the freight load on major routes will not be contestable, and in many cases, road and rail act as complementary modes of transport.

One of the areas of road transport that is crying out for reform is the access system. The submission shows how the ARTC is using access to rail crossings to in effect stop or heavily restrict access by A doubles, a highly productive heavy vehicle combination. This measure is affecting road transport productivity. NatRoad asks the ACCC to act to impose more reasonable requirements on the ARTC for access to rail crossings. There is no safety issue in play: supervision of rail crossings for A doubles appears to be required (at great cost) on the basis that the extended crossing time of a longer combination is outside the parameters of the current crossing warning device timings. But this is counter intuitive when the best interests of safety are met when combinations slow down to cross railway tracks.

The submission focuses on a case study from Victoria to illustrate the problem of restrictions on A doubles crossing tracks, concluding that more work needs to be done on getting a national perspective on the nature and extent of the problem of access to level crossings for A doubles. The ACCC should take this matter further and use this submission as a stimulus for detailed investigation of the practice of supervision that adversely affects A double operators.

## Introduction

1. This submission responds to the Issues Paper<sup>1</sup> seeking views on the regulatory framework for the Australian Rail Track Corporation (ARTC). The Issues Paper was published by the Australian Competition and Consumer Commission (ACCC) on 25 August 2021.
2. NatRoad is Australia's largest national representative road freight transport operators' association. NatRoad represents road freight operators, from owner-drivers to large fleet operators, general freight, road trains, livestock, tippers, car carriers, as well as tankers and refrigerated freight operators.
3. In responding to the Issues Paper, the main perspective adopted is that of heavy vehicle operators who form the vast majority of NatRoad members. Those operators transport freight both where they are in competition with the rail network and where their functions complement the rail freight task. The latter observation arises because rail freight delivery frequently requires pre- and post-haulage by truck. This is particularly the case with growing demand for door to door freight transport services, a matter fuelled by the current pandemic. It is the element of complementarity that we focus on in this submission.
4. NatRoad has chosen not to answer the questions posed in the Issues Paper. Instead, this submission focuses on two issues: first, the competitive environment of the rail network and the influence of road freight in understanding the competitive issues and, secondly, the anti-competitive practices of the ARTC when assessing permission for, in particular, A-doubles to cross its tracks.
5. The first discussion is in essence a response to Question 1 in the Issues Paper. The second area covered shows an example of where regulatory constraints/disciplines on the ARTC are required given its utilisation of so-called protective mechanisms to reduce the efficiency of the road freight task. There are no other choices than to comply with the ARTC's requirements when seeking to cross its tracks. This exercise of monopoly power should be stopped, as is set out in this submission.

## Competitive Environment of the Interstate Network

6. The Issues Paper when posing Question 1 seeks feedback on ACCC observations made about the competitive environment. This issue arises, amongst other things, because rail can face competition where road freight is available for those who might otherwise use the railway network. The Issues Paper does not contemplate the matter of control of rail crossings. That issue is discussed infra. The more general competitive issue is next discussed.
7. During the Productivity Commission inquiry into national transport regulatory reform, stakeholders from the rail industry discussed intermodal substitution between heavy vehicles and rail freight, arguing that shifting more of the freight task from road to rail could improve safety and reduce road congestion. The Productivity Commission response is pertinent for the current inquiry:

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<sup>1</sup> <https://www.accc.gov.au/system/files/IAU%20-%20ARTC%20-%20Issues%20Paper%20-%20The%20regulatory%20framework%20for%20ARTC%27s%20Interstate%20network%20-%2020210825.pdf>

*As road and rail transport have different strengths, they are not perfect substitutes, and businesses will select the mode which best meets their needs, subject to market prices. Much of the freight load on major routes will not be contestable, and in many cases, road and rail act as complementary modes of transport. Where competition is possible, the relatively agile nature of road transport means that rail will not be suitable for all freight tasks and will be less efficient when there is double and triple handling over relatively short distances. As such, the relative safety benefits of rail freight are more usefully compared with regard to specific freight corridors (rather than in aggregate as above).<sup>2</sup>*

8. Relatedly, the Issues Paper makes the following observation:

*The Bureau of Infrastructure and Transport Research Economics contends that road transport can be better suited to shorter haul distances compared to rail, particularly where:*

- *it can leverage the use of higher productivity vehicles (for example, A-doubles; B-triples)*
- *the time and cost of pickup and delivery for freight on rail is high*
- *the freight task requires flexibility and timely delivery.<sup>3</sup>*

9. The observations in these dot points remain correct, albeit that the Bureau's work is now somewhat dated and an up-to-date compilation (perhaps jointly with the ACCC) would be welcomed. The first dot point is, in NatRoad's view, both correct and timely in the current context. It is highly relevant to a NatRoad concern raised in this submission. A practice of the ARTC currently inhibits the use of A doubles where those combinations need to cross ARTC tracks, discussed below, and thereby inhibits competition with rail.

10. The Productivity Commission finding in relation to how to deal with multi-modal competition is also instructive:

*An efficient outcome in intermodal freight would need to balance many factors. Governments should ensure that policy and regulation (including infrastructure provision and management) does not result in price distortions in either mode, and that infrastructure provision and management is mode-neutral. To some extent, these objectives may be progressed by improvements to the provision of infrastructure on major transport corridors, where intermodal options are considered ... In order to minimise the potential for regulatory costs to cause distortions to intermodal competition, governments and regulators should be committed to minimising compliance costs where possible<sup>4</sup>.*

11. The centrality of two factors arises from the observations in the prior paragraph. First, is the need to focus on infrastructure costs along freight corridors. Secondly, is the minimisation of compliance costs for both sectors, an issue that links with the question of access (and the means used to restrict A double access), discussed below. Getting more efficient practices in place is the key to making both sectors more competitive.

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<sup>2</sup> <https://www.pc.gov.au/inquiries/completed/transport/report/transport.pdf> at p 276

<sup>3</sup> Above note 1 at p6

<sup>4</sup> Above note 2 at p315

12. Mode development and mode shift are dependent on economic and geographic factors with rail freight facing a significant set of capacity problems which are in part being addressed by the development of the Inland Rail project. Further, the benefits of any modal shift are highly dependent on the length of the particular journey and the infrastructure issues that were identified by the Productivity Commission. Those observations support the conclusions of an overseas study thus:

*In general, a modal shift towards water borne – and railway transport gives rise to longer transport times and thus the necessity of bigger local stocks. In addition, the need for pre- and post-haulage for water borne – and railway transport can lower the environmental benefit of these transport modes, depending on the distance over which the road transport has to take place.<sup>5</sup>*

13. The analysis in the prior paragraph combined with the Productivity Commission finding that intermodal issues would be better studied through corridor analyses is reflected in the Issues Paper. In addition, the questions in the Issues Paper pivot from the discussion of access to the rail network and any necessary constraints on the ARTC's monopoly power.
14. In essence, the direct competitive landscape is not, at this point, a major concern to NatRoad. NatRoad is confident that the twin issues of superior reliability of road freight and short haul necessity and, in that area of the freight task, superior competitiveness will weigh in favour of road transport in the long term. But as an immediate issue, ARTC in its capacity as an infrastructure manager affects heavy vehicle productivity in the exercise of its current power to regulate the crossing of its tracks. That is a power which must be constrained, with appropriate regulatory action by the ACCC, as indicated in the next part of this submission. That is a power which has immediate anti-competitive effect and where we have examples of poor productivity outcomes for the road freight task as a result of the manner of the exercise of the ARTC's powers..

#### **Power over track crossing and heavy vehicle access**

15. Frankly, the heavy vehicle access regime is a mess, with the permit system in place reactive and focused solely on the short term. An element of the process that is clunky and time consuming for road freight operators is obtaining separate and distinct approval from rail operators to cross their tracks<sup>6</sup>. This is a separate required task and not one within the jurisdiction of the National Heavy Vehicle Regulator (NHVR).<sup>7</sup>
16. A large part of Chapter 10 of the Productivity Commission report discussed earlier covers findings and recommendations about improving heavy vehicle access. One of its observations is particularly instructive:

*Access permit decisions focus on single events, and are reactive to the needs existing in a particular time and place. One risk of focusing resources on this task alone is that it may take priority over longer term strategic planning. Such planning would allow road managers to better understand how infrastructure management should adapt to changes in freight flows and volumes, as well as*

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<sup>5</sup> <https://www.ctc-n.org/technologies/modal-shift-freight-transport>

<sup>6</sup> A process discussed here <https://www.nhvr.gov.au/road-access/access-management/third-party-approvals>

<sup>7</sup> Ibid

to new technologies ... While this is true for access arrangements, it is particularly relevant to the provision, maintenance, and use of roads<sup>8</sup>.

17. During the course of the National Transport Commission (NTC) Heavy Vehicle National Law (HVNL) review that is currently underway<sup>9</sup> NatRoad has emphasised that future heavy vehicle productivity will emanate from reform of the HVNL access regime. Reform as it relates to high productivity vehicles (HPVs) is especially required. Reform of the current system is overdue. The operation of A-doubles is illustrative of that general point and relevant to the specific issue raised about the practices of the ARTC.
18. HPVs are in the main approved under a scheme run by the National Heavy Vehicle Regulator known as the as Performance Based Standards (PBS) scheme.<sup>10</sup> PBS vehicles are designed around performance outcomes rather than built to conform to the prescriptive rules which generally constrain heavy vehicle dimensions but which give general access to the road network. The PBS scheme assists to maximise freight productivity while conforming to safety and stability outcomes, with a recent report by the NHVR showing that PBS vehicles have better outcomes as reflected in crash statistics.<sup>11</sup>
19. Most A-doubles are PBS approved vehicles. Not only are they designed with the safety considerations that the PBS scheme requires but, as a generalised rule, they have the capacity to carry four containers on two trailers and hence they are also often known as double road trains.<sup>12</sup> This capacity is one container more than is carried by B-Doubles. B doubles operate generally at a length of 19 metres as part of the general access regime. Restricted access B doubles are up to 26 metres.<sup>13</sup> PBS B doubles are generally up to 30 metres whereas PBS A-doubles are generally at 30 to 36 metres.<sup>14</sup> In any event, A doubles obviously increase productivity when in use as they typically carry 25% more payload than does a B double and axiomatically reduce the number of vehicles travelling on the road to complete the same freight task. These combinations require permits to operate, inclusive of third party approvals where they cross railway tracks.
20. In line with the *Transport (Compliance and Miscellaneous) Act 1983* (Vic), heavy vehicles that exceed 26.0 metres in length require a permit to cross a rail level crossing in Victoria. The Victorian Department of Transport requires operators who are seeking to have these vehicles cross ARTC tracks to apply directly to the ARTC but after submitting an initial application to the Department.<sup>15</sup> On other guidance it indicates that permits can take up to 15 days to process.<sup>16</sup>

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<sup>8</sup> Above note 2 at p 323

<sup>9</sup> <https://hvnireview.ntc.gov.au/>

<sup>10</sup> <https://www.nhvr.gov.au/road-access/performance-based-standards>

<sup>11</sup> <https://www.nhvr.gov.au/files/202105-1232-cilta-ntarc-review-of-major-crash-rates-hpv-2015-19.pdf>

<sup>12</sup> <https://www.truck.net.au/sites/default/files/TAPs%20-%20description%20of%20truck%20configuration%20September%202016.pdf>

see p9 for a diagrammatic representation of an A double

<sup>13</sup> For full dimensional specifications see <https://www.nhvr.gov.au/files/201901-0977-national-class2-b-double-operators-guide.pdf>

<sup>14</sup> Illustrations of a range of combinations and their specifications are found here: <https://roads-waterways.transport.nsw.gov.au/documents/business-industry/heavy-vehicles/focus-on-freight/heavy-vehicle-truck-chart.pdf>

<sup>15</sup> <https://transport.vic.gov.au/getting-around/roads/over-dimensional-load-permits-for-travel-across-railways-and-tramways>

<sup>16</sup> Victoria's High-Productivity Freight Vehicle Network Information Sheet May 2021

21. A member operating in Victoria sought to have its 30m long PBS A Double line haul trucks cross various rail crossings in Victoria. These trucks were used to transport green waste, sawdust/woodchips and compost throughout regional Victoria and as such the margins on the transport of these bulky items were tight.
22. In June this year the company was informed that new conditions for many crossings in Western Victoria would change, inclusive of attendance at such crossings by what was designated an “accredited Track Force Protection Coordinator” at each crossing. This antediluvian (or nineteenth century at best) requirement was imposed as a result of some sort of ARTC review (undisclosed), as the NatRoad member company had been undertaking similar crossings for the prior three and a half years without this requirement being applied.
23. The communication the company received from the ARTC explaining the new policy said (inter alia):

*(W)hile many of the ARTC level crossings are on the VicRoads gazetted routes, according to the timing for each level crossing which was set according to the ARTC standards in the past, many of the level crossings are not set for the trucks that appear to be travelling the routes.*

*For management of level crossings, as designated in VicRoads permits, you are required to appoint a qualified Track Force Protection Officer to manage each truck movement across each level crossing.*

*The only crossing that ARTC are able to provide that service for is the Western Highway at Ararat (there is a fee applicable), alternatively the trucking company may appoint their own TFPC to manage the movement.*

*For all others the trucking business must appoint their own TFPC (see list attached of possible companies who provide these services), the individual TFPC appointed must be ARTC accredited and ARTC ODL ([odl.permits@artc.com.au](mailto:odl.permits@artc.com.au)) is to be advised who the appointed TFPC is, date and time of the crossing and payment for the permit prior to ARTC issuing the necessary permit. Please note that this permit is required when the TFPC contacts ARTC train control when setting up for the crossing.<sup>17</sup>*

24. The company did not have and did not want the expense of employing or independently engaging a TFPC. Instead, they inquired about the ARTC TFPC fees and were told:

*Costs for the management of the Ararat crossing depends upon what time of day and what day of the week the movement is.*

*Monday to Friday 08:00 – 16:00 - \$1,000*

*Out of hours and weekends – depending upon time of day/nightmax \$1,500.*

25. The application of the fee and the process raises both productivity and safety issues. In relation to the issue of productivity, the application of the fee exceeded the operator’s margin on the relevant journey. Feedback from members when they were commenting on an early draft of this submission was that current freight rates Melbourne to Adelaide are about \$1500/trailer; Adelaide

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<sup>17</sup> Private communication ARTC to NatRoad member July 2021

Melbourne about \$800. The operator's estimate was that in respect of the journey it undertook where the imposition of an ARTC fee was to be applied an approximate gross financial return on a 30m A Double of \$1500 to \$2500 per day was received. That means the crossing is fee is equal to or greater than the total gross revenue for the trip. That is clearly an unreasonable impost both in proportionate terms and in terms of so-called protection of infrastructure.

26. Far from facilitating the safety that the process presumes, it would in fact exacerbate safety issues. This is because there are no appropriate safe places to park a 30 metre vehicle in proximity to rail crossings and the timing of arrival at these crossings cannot be guaranteed. The driver of the A double would have no choice but to wait for the TFPC to arrive thus endangering the safety of himself and other road users. The timing issue that was invoked as a rationale seems spurious given that heavy vehicles are being asked to slow down at rail crossings, but with the issue of short stacking being a major issue rather than crossing time. Short stacking is when a truck "hangs over" the crossing because there isn't enough space ahead.
27. In addition, based on informal member feedback this supervisory requirement by ARTC requirement has been applied beyond Western Victoria to other ARTC owned tracks in that State. This is all because, apparently, the timing mechanisms for triggering level crossing signals are not set for heavy vehicles with a length above "standard" B double lengths. So, the road freight industry is denied productivity benefits (which would be completely subsumed in the sort of fee set out above in any event) that HPVs bring because of a timing issue that only the ARTC has control of and which also appears to be an historical anomaly, just like the TFPC appointment resonates with a nineteenth century "red flag" outlook. The rationale for the application of crossing supervision also stands in contrast to moves to slow heavy vehicles when they enter level crossings, as well as to apply a myriad of other safety strategies.<sup>18</sup>
28. During the course of preparing this submission, we liaised with the member affected by the ARTC decision to deny the crossing of its tracks unless a TFPC was appointed or utilized for individual crossings. NatRoad was informed by the member that the company had sold its two A double combinations because of the ARTC requirements, an outcome that is appalling and which has arisen from a poor bureaucratic practice.
29. We have had discussions with Transport for NSW and a similar situation has arisen in that State. We believe that negotiations have occurred between ARTC and Transport for NSW to allow road trains to traverse the Newell Highway but other areas are still not able to be accessed by A doubles for reasons similar to those set out in the Victorian case study. Whilst we have been informed by Transport for NSW that the detail of those negotiations and the issues in play are confidential, we are aware that during that process there was recognition of a large number of rail crossings across the State where this issue might arise. In our understanding, negotiations on a broader front continue between ARTC and Transport for NSW but that most communications and documents in play are, as stated, confidential to those parties.
30. The ACCC should further investigate this issue as part of the current process and it would be useful if the ACCC could investigate the nature and extent of the problem highlighted in this submission across all Australian States and territories where the ARTC has control of rail crossings. It would

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<sup>18</sup> Well-articulated for NSW here: <https://www.transport.nsw.gov.au/projects/programs/level-crossing-safety> NB the policy of slowing vehicles to 80kmh



have the power to overcome the issues of confidentiality which have constrained NatRoad's inquiries.

31. NatRoad believes that this issue should be examined in detail by the ACCC as a national issue. The road and rail interface should be considered on a whole of country basis not merely on a State by State basis. In the result, the ACCC should require the ARTC when exercising its function of issuing permits to not use its monopoly power to stifle the use of HPVs but to facilitate their use. We would recommend that ways to facilitate rail crossings by HPVs rather than to stifle that operation would add to efficiency.
32. A condition of the provision of the ARTC ongoing monopoly status should be for it to facilitate within supervised parameters, low cost, quick response railway crossing permits. It should get its house in order with the timing issue (mentioned above) which is entirely within its own hands.

### **Conclusion**

33. We urge the ACCC to use the current investigation to ensure that the practices of the ARTC relating to crossing its railway tracks are not able to constrain the movement of HPVs and that the practice set out in this submission of requiring a supervised track crossing of high cost be abolished as soon as possible.