

Explanatory Guide - ARTC Response to ACCC HVAU Position Paper (December 2011)

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
1	PP Ch 4, p 61	<p>HVAU term</p> <p>The ACCC considers that the appropriateness of the 10 year duration of the proposed 2010 HVAU is finely balanced, and the ACCC is yet to reach a view.</p> <p>The ACCC considers that the review proposed by section 2.3 of the proposed 2010 HVAU is not, in its current form, sufficient. While the section provides that ARTC will undertake a review, as soon as practicable after the fifth anniversary of the HVAU's commencement, ARTC is under no obligation to submit a variation if it finds that changes are necessary.</p>	<p>ARTC supports a 10 year Term. In light of this, ARTC made amendments to increase the robustness of the 5 year review provision section clauses 2.3(b)) and give more certainty that any issues in relation to the operation of the HVAU will be addressed by the review.</p> <p>ARTC has also included amendments to clauses 2.3(b) and 4.8(b) (previously 4.7(b)) to ensure that if ARTC submits a proposed variation to the Undertaking for approval to the ACCC as result of the 5 year review, it will do so at the same time as it submits a revised Rate of Return proposal to the ACCC for approval under section 4.8(b) (previously 4.7(b)).</p>
2	PP Ch 5.3, p72	<p>Segments without valuation</p> <p>ACCC considers segments with no asset value under NSWRAU or DORC valuations provided by ARTC should be assigned a RAB value of zero and ARTC only recovers opex for those segments.</p> <p>Comments apply to 919 Morandoo & Bullock Island; and 923 Kooragang Island – Walsh Point.</p>	<p>ARTC has amended Schedule B and Schedule E to remove Segments 0919 and 0923 from the Network.</p> <p>Should the commercial circumstances for these Segments change such that it is appropriate to include the Segments in the 2010 HVAU then ARTC can seek a variation to the 2010 HVAU at that time, and propose DORC valuations for those Segments at that time.</p>
3	PP Ch 5.2 p73	<p>Interest during Construction (IDC)</p> <p>The ACCC seeks consistency of treatment of interest cost in the Economic Cost definitions contained in section 4.4(a)(ii) and 4.4(a)(vi) for the returns on Segment and non-Segment Specific Assets.</p>	<p>ARTC has made amendments to section 4.4 (which is now section 4.5) and relevant Definitions to address this Item 3 and Item 10 of this table.</p> <p>In addition, as a consequence of the Revised Investment Framework (see Items 73 -97 of this table), ARTC has also inserted a new subsection (c) at section 4.5 (was previously section 4.4) to clarify that ARTC can still collect revenue in relation to Contributed Assets (which are Prudent), which are not incorporated into economic costs.</p>

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4	PP Ch 5.3 p77 HVAU, cl 4.2	<p>Operative and objective floor limits</p> <p>For clarity, it would be beneficial if the current order of subsections (a) and (b) of 4.2 was reversed, and the two provisions were included in a section separate from the Ceiling Limit.</p>	<p>ARTC has amended:</p> <ul style="list-style-type: none"> section 4.2 of the 2010 HVAU to reverse sub-sections (a) and (b) and moved “floor limit” to para (b); and for further clarify, has separated Floor and Ceiling Limits into separate section 4.2 and 4.3 respectively, and has separately dealt with the application of the Ceiling Limit in Pricing Zones 1 and 2, and Pricing Zone 3, respectively. <p>In addition, as a consequence of the Revised Investment Framework (see Items 73 -97 of this table), ARTC has also inserted a new subsection (d) under section 4.3 (previously section 4.2) to reflect the principles that it is inappropriate to include access revenue in the ceiling limit where that revenue has been returned to a Contributor through the operation of a User funding agreement.</p>
5	PP Ch 5.6, p80	<p>Loss capitalisation in Pricing Zone 3 only</p> <p>Revisions to ensure that loss capitalisation is confined to Pricing Zone 3 only.</p>	<p>Refer Item 6 of this table.</p> <p>In light of the ACCC’s conservative approach to this innovation, ARTC has amended new sections 4.2 and 4.3 (which are now sections 4.3 and 4.4) of 2010 HVAU to limit application of loss capitalisation to Pricing Zone 3 only.</p>
6		<p>Loss Capitalisation to apply to new investments only in Pricing Zone 3</p> <p>Revisions to ensure that loss capitalisation is confined to new investment assets in Pricing Zone 3 only.</p> <p>Conservative approach required with loss capitalisation to avoid regulatory uncertainty.</p>	<p>ARTC proposes to maintain the approach proposed in the 2010 HVAU.</p> <p>ARTC advises that PZ3 producers are supportive of the PZ3 loss capitalisation as proposed by ARTC in the 2010 HVAU.</p>
7	PP Ch 5.7, p83 HVAU, cl 4.3(a)	<p>Out-turn revenue</p> <p>Revisions required to confine loss capitalisation to new investment in Pricing Zone 3, the revisions to clarify revenue allocation are:</p> <ul style="list-style-type: none"> ARTC must allocate Access Revenue to each Segment used by an Access Holder in Pricing Zone 3 that is at least equal to the Direct Cost imposed on ARTC by that Access Holder on that Segment; and 	<p>Refer Item 6 of this table.</p> <p>ARTC is not proposing to amend the ‘Out-turn’ revenue definition. ARTC considers that the Floor Revenue Limit proposed at new section 4.2(b) (old section 4.2(a)) of the 2010 HVAU, achieves the same outcome as the first arm of the ACCC’s suggested changes. The second arm of the ACCC’s suggested changes is unnecessary if loss capitalisation is applied as proposed in Item 6 of this table.</p>

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		<ul style="list-style-type: none"> ARTC must allocate Access Revenue to the new investment prior to allocating the existing assets in Pricing Zone 3. The ACCC considers that these revisions can be made effective through a revision to the 'Out-turn revenue' definition in section 4.3(a). 	
8	PP Ch 5.9, p86 HVAU, cl 4.3(a)	RAB timing ARTC should amend the RAB roll forward equation in section 4.3(a) to apply the rate of return to net revenue for a period of half the year, as is the case for net capital expenditure.	ARTC has amended the equation at new section 4.4(a) (old section 4.3(a)) of the 2010 HVAU as sought. Following further discussion with the ACCC , ARTC is continuing its review of sections 4.4 and 4.5 and 4.7.
9	PP Ch 5.9, p86 HVAU, cl 4.3(b)	RAB and inflation ARTC should amend the RAB Floor Limit roll forward under section 4.3(b) to provide for inflation for a period of half a year on assets commissioned that year in order to provide consistency with the treatment of return on, and depreciation of, this capital expenditure under the roll forwards of both the RAB and RAB Floor Limit in sections 4.3(a) and (b) respectively.	Refer Item 8 of this table. ARTC has also made a change in 4.4(b) to clarify the year and to ensure consistency with the use of the RAB in the RAB roll forward in section 4.4(a).
10	PP Ch 5.9, p87 HVAU, cl 4.3(a)	Opex in RAB - consistency ARTC should amend section 4.3(a) to ensure consistency in the treatment of Economic Cost and the RAB by providing for operating expenditure in the RAB roll forward under section 4.3(a) to be determined in accordance with sections 4.4(a)(i), (iv), (v), (vi) and (vii).	Refer Item 8 of this table. ARTC considers it is appropriate to retain a reference to section 4.5(a)(vii) in order to recognise operating expenditure incurred by ARTC associated with Additional Capacity. ARTC proposes to incorporate the reference in 4.4(a) as 4.5(a)(i), 4.5(a)(iv) and 4.5(a)(vii). As a consequence of the Revised Investment Framework (see Items 73 -97 of this table), ARTC has amended the definition of Out-turn Revenue _{e,t} in 4.4(a)(ii) (previously 4.3(a)(ii)) to reflect the principles that it is inappropriate to include access revenue in the RAB roll forward where that revenue has been returned to a Contributor through the operation of a User funding agreement.

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11	<p>PP Ch 5.9, p87</p> <p>HVAU, cl 4.4(a)(ii)</p>	<p>Depreciation of Segment Specific Assets</p> <p>The value of Depreciation of Segment Specific Assets in section 4.4(a)(ii) should be amended to provide for this value to be determined in a manner consistent with the RAB Floor Limit roll-forward in section 4.3(b) and the definition of Depreciation in section 4.6.</p>	<p>ARTC has amended new section 4.5 (old section 4.4) of the 2010 HVAU to provide for depreciation to be determined in a manner consistent with the RAB Floor Limit roll-forward in new section 4.4(b) (old section 4.3(b)) of the 2010 HVAU.</p> <p>ARTC has not made any amendment to provide for depreciation to be determined in a manner consistent with the definition of Depreciation in new section 4.7 (old section 4.6) of the 2010 HVAU. This amendment is unnecessary as new section 4.5(a)(ii) (old section 4.4(a)(ii)) refers to Depreciation as defined, and Depreciation is defined as having the meaning described in new section 4.7 (old section 4.6) of the 2010 HVAU.</p>
12	<p>PP Ch 5.11, p90</p> <p>HVAU, Sch G, section 3</p>	<p>Annual compliance assessment</p> <p>ACCC considers that several provisions in the remaining sections of Schedule G are unlikely to be appropriate:</p> <ul style="list-style-type: none"> • Delete section 3(b).appears to require the ACCC to provide all submissions indicating noncompliance to ARTC, even those made in confidence. • Delete section 3(c), it is not appropriate for the proposed 2010 HVAU to fetter the ACCC's discretion in relation to performance of its functions. • Section 3(d) is not appropriate and the words after "subject to" should be deleted. It is inappropriate for ARTC's compliance with an information request to be subject to 'the ACCC demonstrating the effectiveness and appropriateness of any confidentiality arrangement between the ACCC and the expert consultant, and ARTC being satisfied with those arrangements.' 	<p>ARTC has deleted sections 3(b) and 3(c) of Schedule G to the 2010 HVAU amended Schedule G section 3(d) of the 2010 HVAU as sought.</p>
13	<p>PP Ch 5.11, p92</p> <p>HVAU, Sch G, section</p>	<p>Annual compliance assessment</p> <p>Section 5(a) of Schedule G should specify that the proposed timeframe is indicative only, and may be subject to change in light of the circumstances.</p>	<p>ARTC has amended section 5(a) of Schedule G to the 2010 HVAU as sought.</p> <p>ARTC has deleted sections 5(b) and 5(c) of Schedule G to the 2010 HVAU as sought.</p>

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	5	<p>Consequently, the ACCC also considers that section 5(b) should be removed,</p> <p>The ACCC also considers that section 5(c) is inappropriate and should be deleted.</p>	
14	<p>PP Ch 5.11, p94</p> <p>HVAU, 4.4(b)</p>	<p>Efficient costs</p> <p>The ACCC considers that it is unclear what 'good rail infrastructure practice' entails and could be interpreted as having different meanings by different parties as it is undefined; consequently, this phrase should be removed.</p> <p>The ACCC notes that section 4.4(b)(iv) introduces a vague concept of 'broader benefits that may arise from delivery through alliance or internally.' The ACCC considers that this phrase is likewise vague and section 4.4(b)(iv) should be deleted.</p> <p>The ACCC reiterates the view from the Draft Decision that appropriate compliance powers be provided to the ACCC for the purposes of the annual compliance assessment. The ACCC considers that under annual compliance assessment it should have explicit powers to disallow inefficiently incurred operational expenditure and costs with reference to section 4.4(b). This provision should be accompanied by a mechanism to return any excessive operating expenditure and costs to Network users, via the 'unders and overs' mechanism of the financial model or reduction of charges in the next period.</p> <p>The ACCC considers that revisions to section 4.4(b) are necessary to ensure ARTC does not face incentives to inefficiently incur operating expenditure or costs, and to ensure that the HVAU operates consistently with the objects of Part IIIA. The ACCC recognises that, should ARTC put forward an appropriate performance incentive proposal, it may be appropriate to reconsider the appropriateness of these revisions.</p>	<p>ARTC has introduced a new definition of 'Efficient' in the HVAU as follows:</p> <p>"Efficient" means, in respect to costs and operating expenditure, costs incurred by a prudent service provider managing the Network, acting efficiently, having regard to any matters particular to the environment in which management of the Network including:</p> <ul style="list-style-type: none"> (a) <i>the Hunter Valley Coal Chain where a key objective in maintenance planning is to maximise coal chain throughput and reliability;</i> (b) <i>ARTC's obligations to maintain the Network having regard to the terms of applicable Access Agreements and Access Holder Agreements existing at the time; and</i> (c) <i>ARTC's obligations under the law, applicable legislation (including regulations) or the NSW Lease.</i> <p>The new 'Efficient' term has been inserted into the following sections: 1.1(i), 4.1(a)(ii), 4.5(b), (definition of Out-turn Opex_{t-1}), 4.10(e) (see below) and the definition of 'Direct Costs' and 'Prudent'.</p> <p>ARTC has also amended the definition of 'Out-turn opex' in new section 4.4(a) (old section 4.3(a)) of the 2010 HVAU to refer to relevant sections of new section 4.5(a) (old section 4.4(a)) of the 2010 HVAU, which in turn are determined in accordance with new section 4.5(b) (old section 4.4(b)) of the 2010 HVAU.</p> <p>With regard to the ACCC's issue in relation to compliance powers, ARTC has inserted a new section 4.10(e):</p> <p><u><i>The ACCC will determine whether ARTC has incurred Efficient costs and Efficient operating expenditure in accordance with section 4.5(b), and determine the change (if any) to:</i></u></p> <ul style="list-style-type: none"> <u><i>(i) the total unders and overs amount or allocation; and</i></u> <u><i>(ii) closing RAB in section 4.4(a).</i></u> <p><u><i>that results from Economic Cost under section 4.5(a) only including Efficient costs and efficient operating expenditure determined in accordance with section 4.5(b).</i></u></p>

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		For consistency, the ACCC requires the removal of the word 'industry' in the definition of Out-turn opex in section 4.3(a)(ii).	
15	PP Ch 5.12, p95	<p>Rate of return</p> <p>ARTC's real pre-tax WACC should be 8.57 per cent (as at December 2010).</p> <p>Asset Beta reduced to 0.45 from 0.55 (ARTC proposal) and 0.5 (Draft Decision)</p> <p>Market risk premium reduced to 6% from 6.5% (ARTC Proposal)</p>	<p>ARTC has provided a separate paper in relation to the Rate of Return as part of its package of supporting material.</p> <p>ARTC has provided further documents to the ACCC. ARTC and ACCC to discuss further.</p>
16	PP Ch 6.2, p 126 HVAU, cl 4.14(b)	<p>Pricing for non-coal</p> <p>ACCC considers that section 4.14(b) be revised to provide that the Indicative Access Charges for Indicative Services should be a factor ARTC may consider in formulating charges for Non-Coal Access Rights</p>	<p>ARTC has not amended section 4.14(b) (which is section 4.15(b)) of the 2010 HVAU as sought.</p> <p>ARTC's proposed approach in the 2010 HVAU puts a cap on non-coal pricing at the equivalent coal price adjusted to reflect capacity differences. This ensures non-coal will pay no more than coal on a like for like basis.</p> <p>The ACCC's proposed approach will cause non-coal pricing to be linked to the Indicative Access Charge for Indicative Services (as opposed to capped at that level).</p> <p>This is likely to have the effect of increasing non-coal pricing (inherited from historical circumstances and likely to be Government policy driven) particularly for general freight and grain and passenger. Whilst linking non-coal pricing to coal pricing may be economically efficient, there may be adverse social outcomes. Also, non-coal price variation would align to coal price fluctuations.</p>
17	PP Ch 6.2, p 127 HVAU, cl 4.11(a)	<p>Minor drafting change</p> <p>Section 4.11(a)(ii) should be amended to specify that the flag fall component is calculated with reference to a <i>Pricing Zone</i> and not a <i>Segment</i></p>	<p>ARTC has amended section 4.11(e) (which is now section 4.12(e)) of the 2010 HVAU to refer to a Segment and not a Pricing Zone, which was an incorrect reference.</p>

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18	<p data-bbox="275 256 400 312">PP Ch 6.4, p 134</p> <p data-bbox="275 339 400 395">HVAU, cl 4.16(a)</p>	<p data-bbox="425 256 1025 312">Reconsider GTK pricing as part of efficient train review</p> <p data-bbox="425 339 1025 483">Section 4.16 should explicitly provide that the process for the determination of the efficient train configuration will also involve a determination of the pricing approach that will enable and incentivise efficient consumption of network capacity.</p>	<p data-bbox="1048 256 2080 368">ARTC has amended section 4.16 (which is now section 4.17) of the 2010 HVAU to provide for ARTC to consult with industry on the use of gtk as a basis of charging, submit an alternative approach to the ACCC and seek to vary the 2010 HVAU to incorporate the new approach (if any).</p>
19	<p data-bbox="275 507 400 563">PP Ch 6.4, p 135</p> <p data-bbox="275 590 400 646">HVAU, cl 4.16(b)</p>	<p data-bbox="425 507 1025 531">Timing of efficient train configuration</p> <p data-bbox="425 558 1025 754">ARTC should submit to the ACCC a proposed variation to the HVAU regarding the efficient train configuration and appropriate pricing approach, within six months of receiving the relevant information from the HVCCC, and in any event within twelve months of the commencement of the undertaking (section 4.16(b) of the 2010 HVAU).</p>	<p data-bbox="1048 507 1249 531">To be determined.</p>
20	<p data-bbox="275 778 400 834">PP Ch 6.4, p 136</p>	<p data-bbox="425 778 1025 802">Consultation with operators on efficient train</p> <p data-bbox="425 829 1025 914">ARTC should appropriately consult with all relevant parties in preparing the variation for submission to the ACCC under section 4.16 including Operators.</p>	<p data-bbox="1048 778 2080 834">ARTC has amended section 4.16(b)(i) (which is now section 4.17(b)(i)) of the 2010 HVAU as sought.</p>
21	<p data-bbox="275 943 400 999">PP Ch 6.4, p 136</p> <p data-bbox="275 1026 400 1082">HVAU, cl 4.16(f)</p>	<p data-bbox="425 943 1025 967">Obligation to resubmit efficient train configuration</p> <p data-bbox="425 994 1025 1137">The 2010 HVAU (section 4.16(f)) should provide for ARTC to submit revised Indicative Service characteristics in the event its initial proposal is not accepted by the ACCC, within a timeframe specified by the ACCC.</p>	<p data-bbox="1048 943 2080 967">ARTC has amended section 4.16(f) (which is now section 4.17(f)) of the 2010 HVAU as sought.</p>

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22	<p data-bbox="275 312 398 368">PP Ch 6.4, p 137</p> <p data-bbox="275 395 398 451">HVAU, cl 4.16(e)</p>	<p data-bbox="425 312 972 368">Obligation to offer indicative service to existing users</p> <p data-bbox="425 395 1003 563">The HVAU should include an explicit transition mechanism for existing Access Holders who wish to adopt the efficient Indicative Service (ie, transition to the efficient train configuration). ACCC considers the that drafting in section 4.16(e)(ii) to be ambiguous in this respect</p>	<p data-bbox="1048 312 2078 395">ARTC has amended old section 4.16(e)(ii) (which is now section 4.17(e)(ii)) of the 2010 HVAU to make it clear that the Indicative Service and Indicative access Charge will be available to existing Access Holders as sought.</p>
23	<p data-bbox="275 579 398 643">PP Ch 6.4, p 138</p> <p data-bbox="275 667 398 722">HVAU, cl 4.16(f)</p>	<p data-bbox="425 579 703 611">Pricing parity until 2014</p> <p data-bbox="425 643 1003 746">Grandfathering arrangements as per ARTC May 2009 letter should apply until 30 June 2014 to allow existing Access Holders to transition to the efficient Indicative Service</p>	<p data-bbox="1048 579 2078 667">ARTC has amended the charge differentiation provision (previously section 4.14, now section 15) to allow the ARTC to have regard to the need to grandfathering arrangements that will apply until 30 June 2014 when formulating charges for non-indicative services.</p>
24	<p data-bbox="275 770 398 834">PP Ch 6.5, p 140</p> <p data-bbox="275 858 398 914">HVAU, cl 4.18(h)</p>	<p data-bbox="425 770 913 802">Timing of two-third dispute rule for pricing</p> <p data-bbox="425 834 1003 1050">Interim Indicative Access Charges are subject to the 'two-thirds' arbitration process under section 4.18, which allows access seekers to dispute the determination of Indicative Access Charges. An amendment may be required to the timeframes in section 4.18 to ensure that the section operates sensibly depending on the commencement date of the undertaking</p>	<p data-bbox="1048 770 2056 834">ARTC has proposed a new section 4.19(h) (in old section 4.18) of the 2010 HVAU in order to address the ACCC's concerns regarding timeframe.</p> <p data-bbox="1048 858 2056 914">The amendment at section 4.19(g)(i) is to correct a typo, which should be a reference to the 20 business day period in section 4.19(f).</p>
25	<p data-bbox="275 1074 398 1137">PP Ch 6.5, p 143</p> <p data-bbox="275 1161 398 1217">HVAU, cl 4.14</p>	<p data-bbox="425 1074 846 1106">More detail on charge differentiation</p> <p data-bbox="425 1137 779 1161">For the HVAU to be appropriate:</p> <ul data-bbox="425 1193 1025 1377" style="list-style-type: none"> <li data-bbox="425 1193 1025 1297">• the factors for charge differentiation should use the Indicative Service as a reference point to then differentiate the costs of providing the non-Indicative Service <li data-bbox="425 1329 1025 1377">• Price differentials for service characteristic variations would need to be specified, as 	<p data-bbox="1048 1074 2078 1217">ARTC understands that the issue for the ACCC is the perceived absence of a reference point for differentiating non-Indicative Services from Indicative Services. The reference point is the Indicative Access Charges for Indicative Services as prescribed at new section 4.15(a)(i) (old section 4.14(a)(i)) of the 2010 HVAU. Accordingly, ARTC considers that no further amendments are required.</p>

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		<p>currently, no guidance is provided as to the application of the charge differentiation factors</p> <ul style="list-style-type: none"> for the proposed service characteristic variations and price differentials for non-Indicative coal services to be developed and implemented using the same processes that will be used to develop the Indicative Service and access charges 	
26	N/A	Limits on Charge Differentiation	Although this is not an issue raised by the ACCC, ARTC has amended the formatting of section 4.16(b) (old section 4.15(b)) of the 2010 HVAU.
27	<p>PP Ch 6.7, p 147 AHA, sch 3</p>	<p>Pricing if no future access arrangement</p> <p>Access Agreements may continue to operate beyond the term of the proposed 2010 HVAU. ARTC has consequently used a specially defined term for 'Access Undertaking' in clause 4 of Schedule 3 in relation to the determination of prices and the arbitration of disputes; that is, the clause provides that these matters will be determined by reference to an accepted Part IIIA undertaking, or if one such undertaking is not in force, 'access protocols published by ARTC after consultation with Access Holders, under which ARTC agrees to offer access to the Network from time to time.'</p> <p>The ACCC considers that this arrangement is inappropriate because it shifts a substantial amount of risk from ARTC onto Access Holders and therefore does not balance the interests of Access Holders and ARTC. The ACCC recognises however that an appropriate response to this concern will depend upon the final view taken on the appropriate term of the proposed 2010 HVAU.</p>	ARTC has sought to address the ACCC's concerns by amending the HVAU to clarify that the access protocols (which will apply when there is no access undertaking in place) will include an effective dispute resolution procedure to resolve disputes about Prices through binding determination by an independent arbitrator.
28	PP Ch 6.8, p 149	<p>ARTC excusing TOP obligations</p> <p>HVAU should explicitly state that ARTC should not be entitled to increase access charges for an Access Holder where ARTC has agreed to reduce some or all of another Access Holder's TOP liability relating to</p>	ARTC agrees in principle that, where it agrees to reduce the TOP obligation for an Access Holder it should not be able to recover reduced TOP obligations from other parties. There are however many circumstances where recovery from other users (socialisation) is reasonable. This includes circumstances where improved system efficiency is a result. The intent of unders and overs accounting applied historically has been to enable ARTC to recover shortfalls in revenue (and return surpluses) when the forecast volumes and costs upon which pricing is

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		common Segments	based do not eventuate. With this in mind, ARTC has proposed new sections 4.9(d), (e) and (f) (in old section 4.8) of the 2010 HVAU which seeks to prohibit recovery where the only beneficiary of the decision to waive TOP obligations is the Access Holder to which the TOP reduction applies.
29	PP Ch 6.8, p 149 HVAU, cl 4.2(d)	Remove proposed price cap Section 4.2(d) of the 2010 HVAU should be removed. No longer necessary given changes to Loss Capitalisation and other changes to increase price certainty.	ARTC has removed the price cap that was at section 4.2(d).
30	PP Ch 7.2, p 161 HVAU, cl 3.15	ACCC arbitration of Tier 1 disputes If an appropriate degree of certainty could be achieved via an appropriate term for the HVAU, it may not be necessary for the ACCC to have a continuing role arbitrating disputes on Tier 1 terms. The ACCC's view on this issue will therefore depend on the final view taken on the term of the HVAU.	ARTC does not consider that an amendment is necessary as the 5 year review will offer an opportunity to address alignment (Tier 1) issues, and the 2010 HVAU provides for a number of earlier reviews to address alignment issues considered necessary by the industry.
31	PP Ch 7.2, p 165 HVAU, cl 3.14	Access agreements for non-coal ARTC must take into account non-coal access seekers and address any uncertainties ACCC considers that ARTC's proposed approach to non-coal access agreements is not entirely satisfactory. It is unclear how provisions of the modified Interstate Access Agreement apply in relation to the Hunter Valley network eg. clause 2.1(b), 4, 4.7 and the KIP provisions clause 2.1(b) of the Interstate Access Agreement contemplates the grant of a 'Scheduled Train Path' to the access seeker, which is different to the 'path usage' allocation provided under the IAHA under the HVAU; it is not clear how the provisions relating to pricing in clause 4 of the Interstate Access Agreement interact	ARTC has amended section 3.14(b)(ii) of the 2010 HVAU to limit the application of clause 4.7 (Extensions and Additional Capacity) of the Interstate Access Agreement to areas outside of the Network. ARTC has also included a commitment to make any other amendments to the Interstate Access Undertaking reasonably considered necessary to take into account the particular circumstances of the Hunter Valley in order to address the ACCC's concerns.

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		<p>with the pricing sections of the HVAU;</p> <p>clause 4.7, relating to extensions and additional capacity, appears to be inconsistent with the HVAU; and</p> <p>It is not clear how the KPI provisions in the Interstate Access Agreement interact with the KPI provisions of the HVAU.</p>	
32	<p>PP Ch 7.2, p 166</p> <p>HVAU, cl 2.4(b)</p>	<p>Non coal reservation</p> <p>ACCC considers that ARTC's revisions have clarified the operation of the section, and that the section may facilitate the transition of non-coal network users to the new access arrangements. However, this view is subject to resolution of the larger issues with the practical implementation of the proposed 2010 HVAU (including transitional arrangements).</p>	<p>ARTC provided an industry transition letter to the ACCC in December 2010 to clarify the transitional arrangements to apply.</p>
33	<p>PP Ch 7.3, p 167</p> <p>HVAU, cl 3.4(e)</p>	<p>Prudential Requirements</p> <p>Minor revision (inserting "reasonable satisfaction") to ensure that the section 3.4(e) to on Prudential Requirements is objective.</p>	<p>ARTC has amended section 3.4(e) of the 2010 HVAU as sought.</p>
34	<p>PP Ch 7.4, p 172</p> <p>HVAU, s 3.4(d)</p>	<p>Network Exit Capability CP</p> <p>Revisions to the Network Exit Capability condition precedent in the Train Path Schedule to ensure it operates consistently with section 3.14(d) the HVAU.</p> <p>The 'condition precedent' version of the Network Exit Capability requirement is stricter than the versions expressed elsewhere. The clause specifies that the Access Holder must demonstrate an Exit Capability for 10 years from the Start date. This does not reflect section 3.14(d) of the HVAU</p> <p>HVAU 3.14(b)(i)(B) and (C) make no reference to NEC.</p>	<p>ARTC has amended section 3.14(b)(i) and 3.14(b)(i)(A) of the 2010 HVAU to clarify the reference to NEC as sought.</p> <p>However, the Network Exit Capability condition precedent in the TP schedule should not be consistent with section 3.14(d) of the HVAU because those condition precedents are based on an indicative AHA, which assumes an indicative term of 10 years. However, ARTC has included the following drafting note in the IAHA, Train Path Schedule (clause 4.1 - Network Exit Capability Condition Precedent) as clarification:</p> <p><i>[Drafting note: To avoid doubt, if parties negotiate a term less than 10 years (ie a non-indicative agreement), the applicant will only be required to demonstrate Network Exit Capability for that agreed term.]</i></p>

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35	PP Ch 7.6, p 175	<p>Operator involvement in OSA negotiation disputes</p> <p>A minor revision to permit Operator involvement in negotiation of the Operator Sub-Agreement, and in dispute resolution proceedings, with the consent of the Access Holder</p>	<p>ARTC believes the existing wording permits Operator involvement in negotiation of the OSA. ARTC does not wish to strengthen the Operator's role to the extent that an operator may negotiate the OSA without the Access Holder. As pointed out in the Position Paper, it is important the Access Holder and Operator are aligned in their negotiation.</p> <p>ARTC has included wording in section 3.15 of the 2010 HVAU to provide for Operator involvement in dispute resolution proceedings as sought.</p> <p>ARTC has also re-numbered section 3.15 of the HVAU.</p>
36	PP Ch 7.7, p 176 HVAU, cl 3.5 AHA, cl 15 OSA, cl 18	<p>Confidentiality</p> <p>Revisions to confidentiality provision section 3.5(d)(v) to allow disclosure of confidential information to the ACCC</p> <p>First, the ACCC considers that section 3.5(d)(v) should be revised to allow for the provision of confidential information to the ACCC upon its request, rather than "where required under the Access Undertaking".</p> <p>Second, the ACCC considers that section 3.5(d)(iii) requires revision to avoid the disclosure, via the RCG process, of competitively sensitive information among competing participants in the Hunter Valley coal Industry (be they coal producers, rail operators, or otherwise competitive). The ACCC also considers that disclosure of competitively sensitive confidential information to the HVCCC should also be subject to the HVCCC entering appropriate confidentiality arrangements to prevent dissemination of such information among competitors (as was provided for in the 2009 HVAU).</p> <p>Finally, the ACCC considers that section 3.5(a) of the proposed 2010 HVAU should be revised to ensure that the terms 'Provider' and 'Receiver' reflect the provision of information to and from ARTC and the access seeker. The ACCC considers it is unlikely to be appropriate for section 3.5 to be relied upon to permit disclosure of confidential information between access seekers, particularly where those access seekers are</p>	<p>ARTC has amended section 3.5(d)(v) of the 2010 HVAU to permit disclosure to the ACCC where necessary to undertake its functions in relation to the 2010 HVAU and the CCA.</p> <p>ARTC has amended section 3.5(d)(iii) of the 2010 HVAU as sought.</p> <p>ARTC has amended section 3.5(a) of the 2010 HVAU as sought. A similar amendment has been made to section 3.5(d) of the 2010 HVAU.</p> <p>Consistent amendments have been made to Clause 15 of the IAHA and clause 18 of the OSA.</p>

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		<p>competitors.</p> <p>These considerations also apply to clause 15 of the IAHA and clause 18 of the OSA.</p>	
37	PP Ch 7.8, p 185	<p>Transition</p> <p>Steps to facilitate transition of users to the new access arrangements:</p> <ul style="list-style-type: none"> • ARTC providing a non-binding public statement of the capacity on the Hunter Valley rail network for 2011 <u>and the remainder of the regulatory period, including also the relevant assumptions on which ARTC has based its estimate;</u> • coal producer access seekers providing to ARTC non-binding capacity nominations for 2011 and the remainder of the regulatory period; • ARTC providing to each coal producer access seeker non-binding train path schedules outlining the capacity entitlements of that coal producer for 2011 and the remainder of the regulatory period; • <u>ARTC making revisions to section 3.13 of the proposed 2010 HVAU, regarding mutually exclusive access applications, in line with the ACCC's views below; and</u> • <u>ARTC providing to non-coal access seekers a written indication of their likely contractual arrangements and capacity entitlements.</u> 	<p>ARTC considers that its transition letter distributed on 10 December 2010 (and provided to the ACCC) addresses most of the ACCC's concerns.</p> <p>Response to other underlined concerns are:</p> <ul style="list-style-type: none"> • Future capacity – ARTC can provide no more than what is incorporated in HV capacity strategy and coal chain master plan for future years. References have been provided to the Corridor Capacity Strategy and Master Coal Chain Plan. • Mutually exclusive capacity – refer Item 38 of this table.
38	PP Ch 7.8, p 187 HVAU cl 3.13 AHA, TP	<p>Clarify mutually exclusive</p> <p>Revisions to section 3.13 regarding the mutually exclusive access applications provision, including what constitutes a 'mutually exclusive' scenario, and how much a scenario would be resolved in relation to coal access seekers, domestic coal access seekers, non-coal access seeker, incumbent users and new entrants.</p>	<p>ARTC has amended section 3.13 of the 2010 HVAU to define Mutually Exclusive Access Applications, the period during which a Mutually Exclusive Access Application can arise and to clarify the operation of section 3.13 as sought.</p> <p>In order to increase certainty as to the approach to be used, ARTC will amend section 3.13(c) of the 2010 HVAU to provide for an NPV test to be used 'except where impractical'.</p> <p>ARTC has also deleted 3.13(d) and instead included the following wording about assisting</p>

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	Sched	<p>Consequential amendments to the Train Path Schedule (clause 2.5) will also be required.</p> <p>For example, it is unclear whether Applications submitted several months or even days apart could nonetheless still give rise to 'mutually exclusive Access Rights.'</p>	<p>applicants to avoid mutually exclusive applications:</p> <p>3.13 Application for mutually exclusive Access Rights</p> <p><u>... (d) ARTC will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is no longer a Mutually Exclusive Access Application.</u></p> <p>ARTC has also amended clause 2.5(b)(i) of the TPS in the IAHA to further clarify the treatment.</p>
39	<p>PP Ch 8.1, p 198</p> <p>AHA, cl 3.3</p>	<p>Obligation to have a minimum Tolerance</p> <p>Revisions to the clauses dealing with Tolerance to set a minimum level of Tolerance. The RCG should then provide the relevant forum within which to discuss changes to the level of Tolerance via the construction of Additional Capacity.</p> <p>To ensure Tolerance does not fall below a specified minimum level as to reduce the Monthly Tolerance Cap to a level may compromise supply chain objectives</p> <p>The ACCC understands that a consequence of setting a minimum level of Tolerance may be a requirement for ARTC to seek to construct, and the RCG to endorse, Additional Capacity projects to ensure that level of certainty.</p>	<p>ARTC has amended the definition of TMTC in the IAHA, in addition to making a reasonable determination, to require consultation with the RCG, having regard to the actual level of capacity that would be available, through RCG endorsed investment, for the purpose of system flexibility.</p>
40	<p>PP Ch 8.3, p 204</p> <p>AHA, cl 19.1</p>	<p>Consequential changes to uplift provisions</p> <p>Clause of the IAHA dealing with the uplift into the agreements of changes resulting from revisions to the HVAU may require consequential amendments depending on the term of the HVAU</p>	<p>ARTC has considered this Item 40 and does not consider any amendments are required.</p>
41	<p>PP Ch 9.2, p 219</p> <p>AHA, cl 13</p>	<p>Clarify availability of equitable remedies</p> <p>Revisions of the IAHA to include the explicit recognition of the availability of equitable (non-monetary) remedies.</p> <p>While the ACCC recommends more explicit acknowledgement of equitable remedies, it also recognises that there may be a distinction between the</p>	<p>ARTC has included a new clause 13.1(b) in the IAHA as sought.</p>

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		availability of those remedies for Path Usages contracted on the basis of unconditional Available Capacity and other circumstances. That is, equitable remedies may not be of practical use in relation to a failure by ARTC to make available an unconditional Path Usage, as the need for that particular Usage may depend on a particular point in time. Consequently, it may be appropriate for the TOP rebate to be sole remedy for ARTC's failure to perform in such circumstances. The ACCC is not, however, best placed to devise the particular drafting to address such subtle distinctions.	
42	PP Ch 9.3, p 229 AHA	Network Path Capability definitions to be more objective Greater objectivity is required in relation to the determination of 'Network Path Capability' under the system true-up test (TUT) in IAHA Schedule 2.	ARTC has proposed a package of amendments to the system wide TUT provisions to address the ACCC's concerns including: <ul style="list-style-type: none"> • an annual independent audit of the TUT (refer to Item 44 of this table), • a review of the operation of the TUT, which will involve industry consultation (see new section 13.4 of the HVAU), • the development of TUT specific performance incentive scheme (see new section 13.5 of the HVAU) and • the introduction of Allowed Tolerance (refer to Item 43 of this table) for rebate accrual. In addition, ARTC has made amendments to improve the transparency and certainty in relation to the definition to System Assumptions and Track-Related Assumptions (refer to Item 47 of this table). ARTC considers that, together, these amendments sufficiently address the ACCC's concern regarding the transparency and objectivity of ARTC's determination of the Network Path Capability.
43	PP Ch 9.3, p 231 AHA	Rebates for failing to provide Tolerance Revise the 'take or pay' (TOP) rebate mechanism in the IAHA. The TOP rebate mechanism should allow rebate accruals in a situation where an access holder seeks to rely on the provision of Tolerance to make up for an inability to use Base Path Usages in prior period, but	ARTC has inserted a new clause 2.5 in Schedule 2 (System True Up Test) of the IAHA to provide a rebate for tolerance in certain circumstances. If the Access Holder can demonstrate that it was entitled to but did not receive tolerance (referred to as Allowed Tolerance), that Allowed Tolerance will be included in the Access Holder's individual shortfall for the purposes of determining its entitlement to a TOP rebate accrual for the relevant period. ARTC has also made consequential amendments at clause 5.4(a) of the IAHA and clauses 1(a)

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		Tolerance is not made available.	and 2.7 of Schedule 2 to the IAHA, to increased the relevant timeframes by 5 business days to allow for the 5-day window for receiving and determining applications made in relation to Allowed Tolerance.
44	PP Ch 9.3, p 232 AHA, cl 2.6 of Sch 2	<p>Independent audit of TUT</p> <p>ARTC's calculations under the system TUT in Schedule 2 of the IAHA should be independently audited. Costs should be met by ARTC but ARTC can include cost in RAB</p> <p>The IAHA should provide that where the audit reveals discrepancy with ARTC's TUT calculations, appropriate adjustments will be made to Access Holder's rebate entitlements.</p>	<p>ARTC has inserted a new clause 2.8 in Schedule 2 to the IAHA to provide for an independent audit of ARTC's compliance with its obligations in relation to the system wide TUT on annual basis.</p> <p>Consequently, ARTC has removed the requirement to provide details relating to calculation of the TOP Rebate and Ad Hoc Charge Rebate to the ACCC as part of Annual Compliance Assessment. (section 2(e) of Schedule G of the 2010 HVAU).</p>
45	PP Ch 9.5, p 235 HVAU, cl 8.3	<p>Incentive proposals</p> <p>ARTC should submit a performance incentive proposal to the ACCC in a timely fashion - it may be appropriate to accept the HVAU without an incentive scheme provided that a suitable proposal will be developed in consultation with stakeholders and proposed for inclusion in the HVAU within an appropriate timeframe.</p>	<p>ARTC has amended section 8.3 (which is now section 13.3) of the 2010 HVAU to provide for a more certain and robust process to develop ARTC performance incentives, including time frames, industry consultation, and variation to the 2010 HVAU.</p> <p>In addition, ARTC has also committed to the development of TUT specific performance incentive scheme (see new section 13.5 of the HVAU) to created a positive incentive for ARTC to improves its performance in relation the TUT.</p>
46	PP Ch 10.2, p 246 HVAU, cl 5.1	<p>System Assumptions v Track Related System Assumptions</p> <p>The definition of System Assumptions should be amended to distinguish between System Assumptions that are agreed to by ARTC with the HVCCC (and other relevant service providers), and the Track Related System Assumptions that are to be reasonably determined by ARTC. More specifically, ARTC should amend the HVAU and IAHA so that there is a separate definition of Track Related System Assumptions, which</p>	<p>ARTC has included in the HVAU a new definition 'Track Related System Assumptions' as sought. (see section 14.1 (previously section 9.1).</p> <p>ARTC has also amended the definition 'System Assumptions' accordingly:</p> <p>Amendments in HVAU section 14.1 (previously section 9.1)</p> <p><i>"System Assumptions" means the assumptions for the Hunter Valley Coal Chain as detailed in the System Assumption Document as varied from time to time, including:</i></p>

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		<p>should state that:</p> <ul style="list-style-type: none"> the Track Related System Assumptions set out in the System Assumptions Document (that is, if ARTC has agreed to them); or if not agreed to by ARTC and set out in the System Assumptions document, then as reasonably determined by ARTC and published on ARTC's website. 	<p>(a) interface and live run losses between each element in the Hunter Valley Coal Chain;</p> <p>(b) agreed operating mode of the Hunter Valley Coal Chain;</p> <p>(c) surge and tolerance requirements;</p> <p>(d) capacities of fixed infrastructure;</p> <p>(e) rolling stock requirements; and</p> <p>(f) vessel requirements,;</p> <p>as detailed in the System Assumption Document as varied from time to time and as agreed to by ARTC and, to the extent not otherwise dealt with in the System Assumptions Document, track related assumptions as reasonably determined by ARTC including:</p> <p>(g) train lengths;</p> <p>(h) train speeds;</p> <p>(i) train axle loads; and</p> <p>(j) section run times,</p> <p><u>except if not agreed to by ARTC, then those System Assumptions reasonably determined by ARTC from time to time and published on its website.</u></p> <p><u>"Track Related System Assumptions" means:</u></p> <p><u>(a) those assumptions identified as the track related assumptions in the System Assumptions Document and agreed to by ARTC, as published by the HVCCC on its website as at the Commencement Date and from time to time, or if not published by the HVCCC, then as published by ARTC on its website as at the Commencement Date and from time to time; or</u></p> <p><u>(b) if ARTC does not agree with the track related assumptions included in the System Assumptions Document or identifies additional assumptions, then those track related system assumptions reasonably determined by ARTC from time to time and published on its website;</u></p> <p>Amendment to HVAU section 2.6:</p> <p>(b) Applicants are also encouraged to search ARTC's internet web site at www.artc.com.au on</p>

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			<p>which will be published various information regarding ARTC and this Undertaking including:</p> <p>....</p> <p>(xvi) Track Related System Assumptions not published by the HVCCC.</p>
47	<p>PP Ch 10.2, p 247</p> <p>HVAU</p>	<p>Capacity to be based on System Assumptions</p> <p>ARTC to pursue appropriate revisions through the proposed 2010 HVAU and related agreements in line with the following views:</p> <ul style="list-style-type: none"> • Wherever there is an obligation on ARTC to determine capacity under the HVAU or the IAHA (for example, under the Capacity Analysis provisions in section 5.2 of the HVAU, or the determination of Network Path Capability in Schedule 2 to the IAHA), ARTC must calculate that capacity in accordance with the System Assumptions, not simply the Track Related System Assumptions. • A transparent, objective determination of rail network capacity, taking into account interactions with other supply chain components, should ensure the efficient use of the Hunter Valley rail network. • Also goes to determination of the efficient train configuration and the TUT calculations. 	<p>ARTC has amended section 5.1(b) of the 2010 HVAU to provide for Capacity Analysis to reflect Track Related System Assumptions as defined.</p> <p>ARTC has also made further amendments to address the ACCC's concerns about the transparency and objectivity of ARTC's determination of the Network Path Capability, including providing for annual auditing of the TUT, a review of the TUT and the development of a TUT-related performance incentive scheme, in addition to the development of the non-TUT a performance incentive scheme.</p>
48	<p>PP Ch 10.3, p 251</p> <p>HVAU, cl 5.2(d)(iii)</p>	<p>Written reasons to be given to HVCCC where ARTC disagrees with HVCCC</p> <p>Amend section 5.2(d)(iii) of the HVAU so that ARTC is obliged to provide written reasons to the HVCCC when it disagrees with the HVCCC's assessment within 10 Business Days of receipt of that assessment. No obligation to disclose confidential information.</p>	<p>ARTC has amended section 5.2(d)(iii) of the 2010 HVAU as sought.</p>

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49	PP Ch 10.3, p 252 HVAU, cl 5.2(d)(iii)	<p>Written reasons to be given to Applicant who is not in the HVCCC where ARTC disagrees with HVCCC</p> <p>Amend the HVAU, for those Applicants who are not members of the HVCCC so that ARTC should be obliged to provide the Applicants with written reasons if requested as to why ARTC disagrees with the HVCCC's assessment. No obligation to disclose confidential information.</p>	ARTC has amended section 5.2(d)(iii) of the 2010 HVAU as sought.
50	PP Ch 10.4, p 264 HVAU, cl 5.3	<p>Delete Capacity Reservation mechanism</p> <p>The provision regarding the capacity reservation mechanism (and fee) to Non-coal Access Rights should be removed from the HVAU.</p>	ARTC has removed section 5.3 (Capacity Reservation for Non-Coal Access Rights) of the 2010 HVAU as requested.
51	PP Ch 10.5, p 264 HVAU, s 5.5(a)(ii) AHA,	<p>Capacity shortfall – allocation other than on an equitable basis</p> <p>That ARTC only be able to allocate capacity other than on an equitable basis in the short term if it is consistent with the objective of ensuring efficient utilisation of Capacity and Coal Chain Capacity during the Capacity Shortfall and after considering recommendations provided by the HVCCC (section 5.5(a)(ii) of the HVAU).</p>	ARTC has amended section 5.5(a)(ii) (which is now section 5.4(a)(ii)) of the 2010 HVAU as sought.
52	PP Ch 10.5, p 264 HVAU, cl 5.5(a)(ii) AHA,	<p>Capacity shortfall – best endeavours obligation re unaffected load points</p> <p>Amendments be made to oblige ARTC (when exercising its discretion to allocate capacity under the shorter term capacity shortfall provisions in section 5.5) to use its best endeavours, to the extent practicable, to not reduce contracted access rights from load points not affected by the Capacity Shortfall under section 5.5(a)(ii).</p>	ARTC has included a new section 5.4(a)(iii) of the 2010 HVAU as sought. The new section contemplates not reducing availability of contracted access rights from unaffected load points.
53	PP Ch 10.5, p 265 HVAU, cl 5.5(a)(ii)	<p>Capacity shortfall – minor changes</p> <p>Section 5.5(a)(ii) of the proposed 2010 HVAU and clause 6.2(a)(ii) of the proposed IAHA are not the same. Amend so that ARTC's intended wording is</p>	ARTC has amended clauses 6.2(a)(ii) and 6.2(a)(iii) of the IAHA to align to section 5.4(a)(ii) and 5.4(a)(iii) and amended sections 5.5(a)(ii) as suggested.

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	AHA,	<p>reflected in both provisions.</p> <p>Section 5.5(a)(ii) contains a reference to 'subsection (a)'. This provision be amended so that it accurately refers to 'subsection (a)(i)' as appears to have been intended.</p>	
54	PP Ch 10.7, p 272 AHA, cl 11.4	<p>Anti-hoarding threshold</p> <p>Amend the resumption threshold in clause 11.4 of the IAHA from 80% to 85%.</p>	ARTC has amended clause 11.4 of the IAHA as sought.
55	PP Ch 10.9, p 274 AHA, cl 16	<p>More trading provisions to be Tier 1</p> <p>The ACCC recommends that clauses 16.6, 16.7 and 16.8 be included as Tier 1 (Mandatory) provisions.</p> <p>The ACCC also considers the inclusion of clauses 16.4 and 16.5 as Tier 1 (Mandatory) provisions is likely to be appropriate.</p> <p>The ACCC is also of the view that there is no obvious reason why clause 16.3, relating to permanent trades, is not also a Tier 1 (Mandatory) provision</p>	<p>ARTC has amended Schedule A:1 of the 2010 HVAU to include IAHA clause 16.6 and 16.8 as a Tier 1 (mandatory) provisions.</p> <p>ARTC has also referred to clause 16.7 as a Tier 1 provision, but only to the extent it relates to section 16.4. That is, the reference to clauses 16.1 and 16.3 is not relevant.</p> <p>ARTC has not included clause 16.3 as it does not see any coal chain alignment issues arising if an Applicant sought to have different arrangements (or no arrangement at all).</p> <p><i>SCHEDULE A:1 - Elements of Coal Access Agreements</i></p> <p><i>Tier 1 (mandatory) provisions for all Access Holder Agreements for Coal Access Rights*:</i></p> <p>...</p> <p>16 <i>IAHA Clause 16.5: Treatment of Traded Path Usages</i></p> <p>17 <i>IAHA Clause 16.6: CTS Administrator and HVCCC</i></p> <p><u>18</u> <i>IAHA Clause 16.7: The effect of assignment (but only to the extent it relates to clause 16.4)</i></p> <p>19 <i>IAHA Clause 16.8: Reduction in time period for ARTC approval of trades</i></p> <p>17<u>20</u> <i>IAHA Clause 19.1 New or varied Access Undertaking</i></p>
56	PP Ch 10.10, p 278 AHA, cl 16	<p>Transfer without Access Holder consent</p> <p>Clause 16.1 be amended so the IAHA can only be assigned without consent of the Access Holder only in the specific circumstances referred to in the NSW Lease and the assignment involves the transfer of the entire agreement.</p>	ARTC has amended clause 16.1(a)(i) of the IAHA to permit, in addition to the specific circumstances referred to in the NSW Lease, assignment or novation without consent where the management of the relevant Network is transferred to another party. This is intended to cover the circumstances where ARTC sells or is directed to sell its assets. In such cases, ARTC requires the ability to assign or novate, without consent, those interests and rights under the AHA that are attached to the assets being sold.

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57	PP Ch 10.10, p 278 AHA, cl 16	Reasonableness test on other transfers Clause 16.2 of the IAHA be amended to include a reasonableness requirement	ARTC has amended clause 16.2 of the IAHA as sought.
58	PP Ch 10.12, p 282 AHA, cl 16	Temporary trades – HVCCC acceptance The HVCCC consultation process in 16.6(c) of the IAHA should apply to all trades but ARTC can rely on the HVCCC's view as to the impact of a trade. This will also apply to clause 16.4(a)(ii).	ARTC considers there is merit in requiring the relevant access holders to have input from the HVCCC before they conduct a safe harbour trade. Accordingly, ARTC proposes to require those access holders to provide evidence that the HVCCC accepts the Trade (in the form of a recommendation made by the HVCCC under clause 16.6(c)). ARTC believes this will reduce the possibility that a trade will have an adverse impact on Coal Chain Capacity. ARTC has amended clause 16.4(a)(iv) of the IAHA to make evidence of an HVCCC recommendation on Coal Chain Capacity impact a requirement for a trade to be considered 'safe harbour' as sought.
59	PP Ch 10.12, p 284 AHA, cl 16	HVCCC acceptance removes warranty Clause 16.4(a)(iv) of the IAHA should be amended so that evidence of the HVCCC's acceptance of the trade will constitute the warranty required by ARTC under this provision.	ARTC does not propose to treat HVCCC acceptance of a trade as a deemed warranty provided by access holders participating in 'safe harbour' trades of paths. ARTC believes that if a warranty is provided, it must come from the Access Holders, not the third party. ARTC is not requiring a written form of warranty but rather, if access holders intend to carry out a 'safe harbour' trade without ARTC's consent, then they automatically warrant there will be no adverse impact on Coal Chain Capacity and the Capacity entitlements of other access holders. ARTC has amended clause 16.4(a)(iv) of the IAHA to treat acceptance of the trade by the HVCCC as an acceptable form of evidence required for a trade to be considered 'safe harbour'.
60	PP Ch 10.12, p 287 AHA, cl 16	HVCCC acceptance of non-safe harbour trades Clause 16.4(d) of the IAHA should be amended so that ARTC is to seek and consider in good faith the views of the HVCCC in relation to all non-safe harbour trades regarding the impact on capacity. This requires an amendment to clause 16.4(d)(i) stating that the HVCCC's recommendation received under clause 16.6(c) could constitute sufficient evidence for ARTC 'that the Trade will not have an impact on Coal Chain Capacity and the Capacity entitlements of other access holders'.	ARTC has amended clause 16.4(d)(i) of the IAHA as sought. ARTC does not propose to make an amendment to deem HVCCC acceptance of the trade in circumstances where no HVCCC advice is received in two weeks. The CTS protocols contemplate advice in a much shorter time frame. The requirement for ARTC to advise the HVCCC of its decision within two weeks effectively caps the time frame in which the HVCCC is to provide advice. Moreover, ARTC does not believe it is appropriate for its decision to accept or reject a trade to be based on assumption of acceptance in cases where the HVCCC provides no advice. Instead, ARTC's proposed amendments to section 16.4(d)(i) provide an entitlement for ARTC to refuse a non safe harbour trade if no HVCCC advice is received.

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		<p>ARTC cannot be held responsible for delays caused by the HVCCC in the HVCCC's assessment of the impact of a particular trade. Therefore, the ACCC is of the view that where the HVCCC has not responded within the two week (or any future reduced period that emerges as a result of the review under clause 16.8 of the IAHA) timeframe required for trades under clause 16.4(d), ARTC should be entitled to assume that the HVCCC does not harbour any concerns as to the proposed trade's impact on Coal Chain Capacity or the Capacity entitlements of other access holders; and ARTC can proceed with its own assessment of whether or not to approve the trade pursuant to clause 16.4(d).</p>	
61	<p>PP Ch 10.13, p 289</p> <p>AHA, cl 16.5</p>	<p>Deemed usage of traded paths</p> <p>Clause 16.5(a) of the IAHA should be amended so that where an unconditional Base Path Usage is traded, it will be deemed to be used by the Former Access Holder except in the circumstances where a Capacity Shortfall is caused by ARTC that prevents the new Access Holder from using that traded Path Usage.</p>	<p>It is ARTC's view that it should be entitled to deem usage of traded paths by the former AH without the need for inquiry because trading occurs entirely between the AHs and ARTC obtains no benefit from allowing trading.</p>
62	<p>PP Ch 10.14, p 293</p> <p>AHA, cl 16</p>	<p>Consultation with HVCCC on trades</p> <p>The ACCC recommends that clause 16.6(c) of the IAHA be amended to clearly set out a specific obligation on ARTC to seek the views of the HVCCC and consider its views in good faith in relation to all trades under 16.3, 16.4(a) and 16.4(d). It is considered that this obligation would be satisfied for the purposes of clause 16.4(a), through the HVCCC assessment under clause 16.4(a)(iv) constituting sufficient evidence that the Trade will not adversely impact Coal Chain Capacity.</p> <p>The ACCC also notes that the reference to 'clause 16.4(c)' in clause 16.6(b) is incorrect and should instead refer to clause 16.4(a).</p>	<p>ARTC has amended clause 16.4(a)(iv) and 16.6(c) of the IAHA as sought.</p> <p>ARTC has also amended clause 16.4(b) of the IAHA as sought.</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
63	PP Ch 10.15, p 295 AHA, cl 16	<p>Written reasons following review of timing for trades</p> <p>IAHA should be further amended to clarify the operation of the review of the two week notice period under clause 16.8, primarily that ARTC be obliged to provide written reasons for its decision to reduce or maintain the two week period.</p>	<p>ARTC has amended clause 16.8 of the IAHA as sought.</p> <p>ARTC has also clarified the time by which the review must be conducted.</p>
64	PP Ch 10.17, p 300 AHA, cl 11.5	<p>No consent for change in operators where no capacity impact</p> <p>Clause 11.5 of the IAHA be amended to provide that Access Holders can make use of different Operators without having to obtain consent from ARTC where the difference in the characteristics of the trains used do not have any impact on capacity.</p>	<p>ARTC has amended clause 11.5(a)(ii) of the IAHA to have the effect of deeming that the use or operation of a Non-Compliant Service will not have an adverse impact on Capacity, Coal Chain Capacity or the Capacity entitlement of another access holder, where the Non-Compliant Service has the same Service Assumptions.</p>
65	PP Ch 10.17, p 300 AHA, cl 11.5(c)(iii)	<p>ARTC ability to withhold consent where reduction in TOP charges</p> <p>Clause 11.5(c)(iii) of the IAHA may require amendment to avoid disincentives for access seekers to transfer to a more efficient service, where to do so would lead to a reduction in TOP charges. A preferable approach may be for the clause to provide that where a permanent change is sought, access charges will be recalculated on the basis of the new Service.</p>	<p>To address the ACCC's concerns, ARTC has included a new clause 11.5(d) to provide that ARTC will not unreasonably withhold its consent to a permanent change to the Service Assumptions for a Train Path that would lead to a reduction in TOP Charges if, in ARTC's reasonable opinion reached in consultation with the HVCCC, the variation involves the transfer to a Service which provides for more efficient use of Capacity or Coal Chain Capacity.</p>
66	PP Ch 10.18, p 309 AHA, cl 11.6	<p>Notify of removal of BPU's</p> <p>ARTC should be obliged to notify an Access Holder where its Base Path Usages are to be removed under clause 11.6.</p>	<p>ARTC has amended clause 11.6(c) of the IAHA as sought.</p>
67	PP Ch 10.18, p 309 AHA, cl 11.6	<p>Cross referral to HVAU review</p> <p>Clause 11.6 of the IAHA should clearly state that it is to be subject to review under the mechanism set out in section 5.9 of the HVAU.</p>	<p>ARTC has included a new clause 11.6(i) of the IAHA as sought.</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
68	PP Ch 10.18, p 309 AHA, cl 11.6	<p>No double penalty</p> <p>The interaction of clause 11.6 of the IAHA and the capacity shortfall provisions in clause 6 should be clarified to set out that an Access Holder cannot be penalised twice for the same event.</p>	<p>ARTC does not believe an amendment is necessary because, under clause 6, the paths are not reduced on an 'at fault' basis. Rather, Capacity Shortfall is allocated so that path losses are borne by <i>all affected load points</i> on an equitable pro-rata share basis. That is, it is not a penalty and nor is fault attributed to anyone.</p> <p>Nevertheless, ARTC has made the following amendment to clause 11.6 of the IAHA to address the ACCC's concerns by clarifying that a reduction of capacity under the capacity shortfall provisions will not constitute a cancellation under clause 11.6:</p> <p>(d) <i>If Base Path Usages are removed in accordance with this clause 11.6(c), ARTC will delete the number of removed Path Usages from the Access Holder's Annual Contracted Path Usages in the relevant Train Path Schedule by notice to the Access Holder. To avoid doubt, a cancellation or a reduction of Path Usages made available to the Access Holder as a result of a Capacity Shortfall under clause 6 will not constitute a cancellation under this clause 11.6.</i></p>
69	PP Ch 10.18, p 309 AHA, cl 11.6	<p>Written reasons for not removing BPUs</p> <p>Under clause 11.6(e) of the IAHA, where the HVCCC advises that a cancellation has impacted on Capacity, Coal Chain Capacity, or the Capacity entitlement of another Access Holder, and ARTC chooses not to remove BPUs, ARTC should be obliged to provide written reasons to the HVCCC (or to the Access Holder where they are not a member of the HVCCC). There should be a specific time frame within which ARTC must provide those written reasons to the HVCCC and the affected Access Holders. No obligation to provide confidential information.</p>	<p>ARTC has amended clause 11.6(e) of the IAHA as sought. The time frame is specified as 10 Business Days.</p>
70	PP Ch 10.19, p 314 HVAU, cl 5.9	<p>HVAU review of quarantining mechanisms</p> <p>Recommends that if the HVCCC conducts an industry wide review within 12 months of the commencement date, then ARTC should participate in good faith in that review. If at the end of that review a proposal is developed that includes proposed amendments to the HVAU, the ACCC is of the view that any such proposal could be submitted to the ACCC under the existing mechanisms set out in section 5.9(c).</p>	<p>ARTC has amended section 5.8(b)(i) (old section 5.9(b)(i)) of the 2010 HVAU to provide for ARTC to participate in good faith in, and consider any proposals arising from, and industry wide review that may be conducted by the HVCCC.</p> <p>ARTC's consultation process provides for the HVCCC to make any submissions. ARTC has amended section 5.8(c) (old section 5.9(c)) of the 2010 HVAU to explicitly recognise a submission arising from any HVCCC review.</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
71	PP Ch 10.19, p 315 HVAU, cl 5.9	<p>Consultation process for review</p> <p>That the review of the loss allocation mechanisms in section 5.9 of the HVAU should be amended to set out a more robust and specific consultation mechanism, such as that included at section 5.2(d) of the proposed HVAU. ACCC considers that a robust consultation mechanism should also provide the means by which all relevant parties are adequately informed of the outcome of the consultation process where they are either: (i) involved in the consultation process; and (ii) where their interests under that process are potentially affected.</p>	<p>ARTC has:</p> <ul style="list-style-type: none"> amended section 5.8(b)(ii) (old section 5.9(b)(ii)) of the 2010 HVAU to increase the robustness of the consultation process as sought. amended section 5.8(c) (old section 5.9(c)) of the 2010 HVAU to increase the robustness of the consultation process as sought. inserted a new section 5.8(e) of the 2010 HVAU to provide for the publishing of any report arising from the review as sought.
72	PP Ch 10.19, p 315 HVAU, cl 5.9	<p>Scope of the review</p> <p>Section 5.9(a) of the HVAU could specify with greater clarity which particular sections of the proposed HVAU and clauses of the IAHA or OSA are likely to come within the scope of the review. ACCC considers that the scope of the review should explicitly include the sections of the HVAU and corresponding clauses of the IAHA regarding the identification and management of capacity shortfalls.</p>	<p>ARTC has amended section 5.8(a) (old section 5.9(a)) of the 2010 HVAU to prescribe that the review will relate to clause 11.6 of the IAHA, in line with ARTC's original intention.</p>
73	PP Ch 11, p 317, 327 HVAU, cl 6.2, 6.33 and 6.4	<p>Sections 6.2, 6.3 and 4 needs to be redrafted</p> <p>At a broad level, the ACCC is of the view that a revised HVAU must clearly and logically set out the different available investment 'mechanisms' in their intended order of operation, that is:</p> <ul style="list-style-type: none"> that the Hunter Valley Corridor Capacity sets out the investment strategy for the Hunter Valley coal network; that ARTC may identify, fund and construct additional capacity; that the HVCCC may recommended investments to provide additional capacity; and 	<p>In order to improve the logical flow and clearly set out the different investment 'mechanisms' available, ARTC has separated the 'Network Connections' section (previously section 6.1) into its own section 6. The remainder of what was section 6, which sets out the capacity investment framework, has been rearranged and redrafted and is now comprised of sections 7 - 10 of the HVAU (Revised Investment Framework)/</p> <p>The sections of the Revised Investment Framework include:</p> <ul style="list-style-type: none"> Overview - section 7 - The purpose of this section 7 is to provide an overview of the investment framework for providing Additional Capacity outlined in detail in sections 8 to 11. Project initiation - section 8 - This is the process by which new Projects to provide Additional Capacity are identified and ARTC is obliged to prepare a Concept Assessment Report for endorsement to the RCG.

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
		<ul style="list-style-type: none"> that user-funding is available as an option in certain circumstances. <p>Similarly, the ACCC considers that the rights and obligations of all relevant parties under those different investment mechanisms must be clearly and logically set out, including:</p> <ul style="list-style-type: none"> when ARTC is obliged to fulfil obligations and make decisions, as well as when ARTC will be bound by its decisions, and the criteria on which those decision will be made; and where an access seeker or group of access seekers ability to fund an investment will be triggered, including the criteria on which ARTC will base its decision on whether to consent to the investment, and the principles of equitable reconciliation that will apply to a user funded investment. 	<ul style="list-style-type: none"> Industry consultation - section 9 - This process provides a staged process for development and implementation of a project in consultation with industry as represented by the RCG commencing with concept assessment. The process involves a number of stages where the RCG is asked to endorse the project proceeding to the next stage. User funding option - section 10 - This section outlines the funding options available for a user to fund an investment. ARTC decision making - section 11 - This section sets out ARTC's decision making process for consenting to Additional Capacity and funding Projects which is relevant to the above steps <p>Cross references to the Revised Investment Framework sections corresponding to the ACCC's points in this Item 73 are as follows:</p> <ul style="list-style-type: none"> that the Hunter Valley Corridor Capacity sets out the investment strategy for the Hunter Valley coal network - see sections 7.3(b) and 8.1; that ARTC may identify, fund and construct additional capacity - see sections 7.3(a)(iv) and 8.5; that the HVCCC may recommended investments to provide additional capacity - see sections 7.3(a)(ii) and 8.3; and that user-funding is available as an option in certain circumstances - see sections 7.2(c), 7.5 and 10. clearly and logically set out when ARTC is obliged to fulfil obligations and make decisions, and the criteria on which those decision will be made - see section 11 and refer to Item 75 of this table; and clearly and logically set out where an access seeker or group of access seekers ability to fund an investment will be triggered, including the criteria on which ARTC will base its decision on whether to consent to the investment, and the principles of equitable reconciliation that will apply to a user funded investment - see new sections see sections 7.2(c), 7.5, 10 and 11.

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
74	<p>PP Ch 11.2.3, p 337</p> <p>HVAU, cl 6.3(b),6.2(a)</p>	<p>Clarify user funding available</p> <p>Under the current drafting it is unclear that user-funding may be pursued as a general option in circumstances where ARTC has decided that it does not wish to fund a particular investment. The HVAU should clarify that where ARTC decides that it will not fund the investment, then the applicable access seekers will have the ability to meet the cost of the investment.</p>	<p>Sections 7.2(c), 7.5, 10 now make it clear that user-funding is available at any development stage if ARTC advises it will not fund all or part of an investment.</p>
75	<p>PP Ch 11.2.3, p 337</p> <p>HVAU, cl 6.3(b),6.2(a)</p>	<p>Clarify when user funding triggered</p> <p>HVAU should be amended to specify that a user-funding option may be pursued at an appropriately timely juncture in the planning and development of additional capacity. It appears to the ACCC that a decision could be made at the 'project assessment' stage of the RCG process (referred to in section 6.4(f) of the HVAU) at which funding decisions are made, and where commitment to delivery of the capacity occurs.</p>	<p>ARTC recognises that it is important that users have advice of ARTC funding intentions as soon as possible during project development. Accordingly, ARTC has strengthened its commitment to funding project development in the Revised Investment Framework by incorporating a requirement to indicate its intention to fund the next stage at every stage, subject to RCG endorsement of that stage, to be recovered through the RAB or expensed (see sections 9.3(c), 9.4(c), 9.5(c) and 9.6(i)(B)).</p> <p>ARTC's decision to fund investment of a project will necessarily consider a range of factors, some of which are outside of ARTC's control, including:</p> <ul style="list-style-type: none"> • whether or not the RCG endorses a project; • prevailing economic (financing) conditions; • prevailing regulatory circumstances; • ARTC's balance sheet and other competing calls on funding; and • that ARTC should have an obligation to provide additional capacity but it is ARTC's commercial decision to fund projects.
76	<p>PP Ch 11.3.4, p 364, 365</p> <p>HVAU, cl 6.3(b), 6.2</p>	<p>Criteria for ARTC consenting to user funded project</p> <p>HVAU should clarify that the decision by ARTC whether to consent to proceed with a user-funded investment (as opposed to ARTC's determination of whether to fund the project itself on commercial viability grounds) is made objectively by reference to clear criteria.</p>	<p>See new sections 7.4(d) and 11.1 and new definition for 'Technical Criteria'.</p> <p>The Technical Criteria applies to ARTC's decision to consent to a project (based on ARTC's reasonable opinion).</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
77	PP Ch 11.2.3, p 337 HVAU, cl 6.3(b), 6.2	<p>Best endeavours to agree a user funding agreement</p> <p>HVAU should set out that where the applicable access holder(s) propose to meet the costs of the investment, ARTC and the applicable access holder(s) will use their best endeavours to enter into a user funding agreement within a specific timeframe.</p>	<p>Where the user funding option is triggered (see Item 75 of this table), the Revised Investment Framework now includes an obligation on ARTC to negotiate in good faith a user funding agreement, provide an indicative timeframe and use reasonable endeavours to adhere to the agreed timeframe (see section 10.1)</p>
78	PP Ch 11.2.3, 11.5 p 338, 399 AHA, TP Sched	<p>Remove commercial viability CP and other CPs from TP Schedule</p> <p>ACCC is concerned that the commercial viability Condition Precedent created uncertainty. However the ACCC equally recognised that ARTC is not a construction company and that is appropriate to have funding arrangements negotiated in a commercial contract.</p>	<p>ARTC has considered the ACCC's proposal and does not propose to make amendments to the 2010 HVAU as sought because it considers that the increased clarity around the user recovery options and the obligation to negotiate a user funding agreement should sufficiently deal with the ACCC's concerns. These agreements are the appropriate place to deal with certainty of projects proceeding in circumstances where they are being funded by the user.</p> <p>ARTC has dealt with the uncertainty issue in the HVAU via the Revised Investment Framework in the HVAU and the commercial viability Condition Precedent now reflects the intent to the Revised Investment Framework.</p> <p>ARTC acknowledges the ACCC's view that is appropriate to have these arrangements in place in a commercial contract and ARTC accepts that the commercial viability Condition Precedent remains a negotiable clause in the contract. However, in negotiating this clause in the AHA the applicant has recourse to the ACCC as the arbitrator.</p> <p>Moreover, the Revised Investment Framework in the HVAU provides for ARTC to advise the industry of its funding intention as early as possible during project development.</p>
79	PP Ch 11.2.3, p 336 HVAU, cl 6.3(b)(i)	<p>CI 6.3(b)(i) – RCG endorsement process</p> <p>Clarify how the current requirement for RCG endorsement in section 6.3(b)(i) of the HVAU interacts with ARTC's broader investment framework and the RCG process set out in 6.4(d), to ensure that it is clear that:</p> <ul style="list-style-type: none"> • HVCCC may recommend an investment at any time under section 6.3(b) • the project will go through the RCG process starting with concept assessment 	<p>These points have been clarified in sections 7.2(a), 7.3, 8.3 and 9.3 of the Revised Investment Framework. That is:</p> <ul style="list-style-type: none"> • The HVCCC may at any time recommend to ARTC a Project which may, but does not need to be, a Project identified in the Hunter Valley corridor capacity strategy. • If the HVCCC makes such a recommendation, ARTC will consult with the HVCCC to develop the Project and will use reasonable endeavours to agree with the HVCCC an estimated cost and timeframe to prepare a Concept Assessment Report for that Project. • If the HVCCC pays the agreed costs, ARTC will prepare a Concept Assessment Report for that Project and use reasonable endeavours to do so in the agreed timeframe. These costs will be refunded if the RCG endorses those costs and for the Project to proceed to project feasibility.

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
			ARTC has also included a similar process for projects initiated by an Applicant to proceed to Concept Assessment (see section 8.4).
80	PP Ch 11.2.3, p 337, 338 HVAU, cl 6.4	CI 6.4(d) – Timeframe for concept assessment report Clarify the timeframes within which ARTC is obliged to provide a concept assessment report to the RCG under section 6.4(d) once it has received the HVCCC's recommendation	ARTC does not consider it appropriate to incorporate a fixed timeframe for develop of a Concept Assessment Report. As set out above, ARTC will consult with the HVCCC to develop the Project and will use reasonable endeavours to agree with the HVCCC (or the Applicant) an estimated cost and timeframe to prepare a Concept Assessment Report for that Project (see new sections 8.3(b) and 8.4(a)).
81	PP Ch 11.2.3 HVAU cl 6.3	CI 6.3 – User funding where ARTC does not fund an HVCCC recommended project Given the significant uncertainty caused by the current drafting in the HVAU in relation to ARTC intention for a 'user funded' mechanism under section 6.3(b), the ACCC is of the view that a clearer 'user funded' mechanism for HVCCC recommended Additional Capacity given ARTC's broader 'investment framework', would be for the HVAU to be amended in the manner set out in the position paper (some of which have already been addressed in the Items above).	The ACCC is of the view that a clearer approach to seeking RCG endorsement, given ARTC's broader 'investment framework', would be for the HVAU to be amended so that it is clear that: <ul style="list-style-type: none"> • The HVCCC may recommend an investment to provide Additional Capacity to the Network to ARTC at any time under section 6.3(b) of the HVAU (see sections (refer to Item 79 of this table)); • ARTC will prepare a concept assessment report in relation to that recommended Additional Capacity under section 6.4(d) within a specific timeframe (refer to Items 79 and 80 of this table). • The project will go through the RCG process. ARTC will assess whether or not it will fund the project in line with the criteria set out at section 6.3(b) at each project stage. If ARTC decides that it is not willing to fund the investment, then the applicable Access Holder(s) will have the ability to agree to meet the cost of the Additional Capacity (refer to Items 74 to 77 of this table). • Where ARTC has assessed that it is willing to fund the investment, ARTC will also consider whether the recommended Additional Capacity satisfy, in the reasonable opinion of ARTC, the range of objective non-financial criteria set out in section 6.3(b)(iv) Capacity (see sections 7.4(d) and 11.1 of the Revised Investment Framework). • Where the applicable Access Holder(s) have agreed to meet the cost of the recommended Additional Capacity, then ARTC will consider whether the recommended Additional Capacity satisfy, in the reasonable opinion of ARTC, the range of non-financial criteria set out in section 6.3(b)(iv) (see sections 7.4(d) and 11.1 of the Revised Investment Framework). • Where the applicable Access Holder(s) have agreed to meet the cost of the recommended Additional Capacity, ARTC and the applicable Access Holder(s) must enter into a user

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
			<p>funding agreement within a specific timeframe (refer to Item 77 of this table and section 10.1 of the Revised Investment Framework);</p> <ul style="list-style-type: none"> Where ARTC has decided to fund the recommended Additional Capacity at each project stage, ARTC should be obliged to construct that Additional Capacity. Any change in circumstances that affects the ability of ARTC to get funding which prevents ARTC from being able to complete the Additional Capacity on the terms agreed can be appropriately dealt with in a commercial contract (see Item 75 of this table).
82	PP Ch11.2.4, p 350	<p>CI 6.3(b)(iii) – Commercial viability criteria</p> <p>Revise section 6.3(b)(iii) to clarify that ARTC’s assessment of whether the provision of additional capacity is commercially viable, relates specifically to ARTC’s commercial viability. Section 6.3(b)(iii) of the HVAU should copy the wording in section 6.2(a)(i)(A) of the HVAU</p> <p>Specifically, section 6.3(b)(iii) of the HVAU should copy the wording in section 6.2(a)(i)(A) of the HVAU so that it reads: ‘in ARTC’s opinion, the provision of the Additional Capacity is commercially viable to <u>ARTC</u> having regard to:…’.</p>	ARTC has amended the concept of “commercial viability” into a generic “Financial Criteria” concept that it will apply to its decision to fund a project at each consultation stage (see section 11.2 of the Revised Investment Framework).
83	PP Ch 11.2.4, p 354	<p>CI 6.3(b)(iv) – reasonable requirement for non-financial criteria</p> <p>Revise section 6.3(b)(iv) to provide a reasonableness requirement in relation to the non-financial criteria by which ARTC will determine whether additional capacity should be provided</p>	Section 11.1(a) of the Revised Investment Framework clarifies that the Technical Criteria will be applied objectively (i.e. in ARTC’s reasonable opinion) to its decision to consent to a project at each industry consultation stage.
84	PP Ch 11.2.4, p 358	<p>CI 6.3(b)(iv)(D) – legitimate business interests</p> <p>Revise section 6.3(b)(iv)(D) so that it is clear that the interests contemplated under the ‘legitimate business interests’ can only be those not already addressed by the non-financial criteria at 6.3(b)(iv)(A) to (C). If ARTC is contemplating interests other than those already</p>	<p>Paragraph (d) of the new Definition of Technical Criteria (see section 14.1 of the HVAU) clarifies that the reference to ‘legitimate business interest’ does not include those interests already addressed by the Financial Criteria.</p> <p>ARTC does not propose to specify the interests which it will consider are as part the ‘legitimate business interest’ criterion as legitimate business interests is a common consideration in access regulation and need not be defined or unduly restricted. For example the ACCC must have regard to an access provider’s legitimate business in determining an access dispute under</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
		dealt with in the section, they should be specified	section 44X of the CCA and when deciding to accept an access undertaking (section 44ZZA) or access code (section 44ZZAA). Moreover, under the Competition Principles Agreement, the ability to require an infrastructure owner to extend, or to permit extension of, their facility that is used to provide a service is subject to the owner's legitimate business interests in the facility being protected. However, it now is clear that legitimate business interest does not include the Financial Criteria.
85	PP Ch 11.2.4, p 359	<p>CI 6.3(b)(iv)(D) – written reasons where compromises legitimate business interests</p> <p>Provide that where ARTC has decided under section 6.3(b)(iv)(D) that the recommended additional capacity does compromise ARTC's legitimate business interests, ARTC should provide written reasons for that decision to the HVCCC and (where relevant) the applicable access holder(s) as soon as practicable.</p>	<p>ARTC has addressed this Item in sections 8.3(d), 8.4(c) and 11.1 of the Revised Investment Framework.</p> <p>Where a Project does not satisfy the Technical Criteria (which includes the legitimate business interests criterion) and ARTC decides not to proceed to the next stage, it will give written reasons to the RCG and, if applicable, the Applicant who has initiated the Project.</p>
86	PP 11.3	<p>Same changes above to be included in clause 6.2(a)</p> <p>The ACCC also recommends that similar and consequential amendments to those set out above in relation to section 6.3 and 6.4 be made in relation to the relevant provisions in section 6.2(a) for additional capacity requested by Applicants.</p>	All the amendments made to address the ACCC's issues in relation to projects initiated by the HVCCC have been similarly addressed for those projects initiated by an Applicant (see sections 7 and 8.3 of the Revised Investment Framework).
87	PP 11.3.3, p 363 CI 6.2	<p>Operation and timing of user funding</p> <p>Amend section 6.2 of the proposed HVAU to specify the timeframes within which ARTC is obliged to make a decision as to whether it will consent to the provision of additional capacity under section 6.2(a) once it has received a request (via the mechanism set out in section 3.9(d))</p>	<p>Section 8.4(a) of the Revised Investment Framework now provides that ARTC will consult, and use reasonable endeavours to agree, with the Applicant, a timeframe to prepare a Concept Assessment Report. In addition ARTC will provide a Contributor with an indicative timetable and will use best endeavours to adhere to that timeframe (see 10.1 of the Revised Investment Framework) and keep the Applicant informed of the progress of the application through the RCG process (section 8.4(e)).</p> <p>In addition, ARTC has committed to promptly notify the RCG and the Applicant (if applicable) if it decides not to fund a Project stage (see section 11.2) of the Revised Investment Framework).</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
88	PP 11.3.3, p 366	<p>CI 6.2(a)(ii)(C) – Consultation with HVCCC</p> <p>Amend section 6.2(a)(ii)(C) to strengthen ARTC’s obligation to consult with the HVCCC in line with the recommendations made in relation to section 5.2(d) and (e) of the HVAU in the Capacity Management chapter (see above)</p>	<p>Section 8.4 of the Revised Investment Framework now provides that ARTC will consult, and use reasonable endeavours to agree a timeframe, with the Applicant, and consult with the HVCCC where appropriate.</p>
89	PP 11.3.6, p 374	<p>CI 6.2(g) – economically no worse off</p> <p>Section 6.2(g) should be amended to provide greater clarity as to what it means for ARTC to be ‘economically no worse off’ at section 6.2(g)(i)</p>	<p>ARTC has clarified the concept of ‘economically no worse off’ at section 10.2(b) of the Revised Investment Framework.</p>
90	PP 11.3.6, p 376	<p>CI 6,2 - Explicit recognition of User funding agreement</p> <p>The ACCC notes that under the current drafting of section 6.2, where an Applicant has agreed to meet the costs of Additional Capacity under section 6.2(a)(i)(B), and ARTC has agreed to the creation of that Additional Capacity, it is implicit that the parties will come to a binding formal agreement to govern those arrangements. The HVAU should state that ARTC and the relevant user funders will enter an agreement governing the user-funding arrangements, which is consistent with the principles specified in section 6.2(g)</p>	<p>Refer of Item 74 of this table.</p>
91	PP 11.2, p 343	<p>RCG control of timing of project stages to be clarified</p> <p>The drafting of 6.4 should be clarified to specify that the RCG controls the timing of the various stages of industry consultation set out in sections 6.4(d) through (h) and that the specific timeframes where there is an obligation on ARTC should be provided (it is appropriate that these timeframes differ in relation to the scope of the proposed Additional Capacity)</p>	<p>ARTC has amended the HVAU in relation to the timing of capacity development and the consultation process by including in the scope of endorsement at each stage an endorsement of the proposed timeframe for the next stage of process development (see sections 9.3(d)(ii), 9.4(d)(ii), 9.5(d)(ii) and 9.6(b) of the Revised Investment Framework).</p>

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
92	PP 11.4.2, p 385 HVAU, cl 6.4(b)(ii)(C)	RCG voting Section 6.4(b)(ii)(C) should be amended so it is clear that the party who is representing those access holders with less than 7 per cent of contracted coal GTK on the Network may split its vote according to the percentage of contracted coal GTK held by each represented access holder if requested	ARTC has addressed this Item at section 9.2(b)(iii) of the Revised Investment Framework.
93	PP 11.4.2, p 385 HVAU	RCG Charter elements to be included in HVAU ARTC is proposing to introduce a Charter governing the key procedures around the RCG and the ACCC has sought that any elements that are relevant to voting rights (in addition to those already set out at section 6.4) should be incorporated into the HVAU	ARTC has considered the amendments to the 2010 HVAU proposed by the ACCC but considers they would be restrictive on the operation of the RCG.. The effect of the ACCC's proposed change would be that any time any minor adjustment to relevant voting elements in the RCG Charter changes, would result in the RCG Charter being inconsistent with the voting provisions of the HVAU, which will require a variation to the HVAU. ARTC and Industry may therefore be restricted in its ability to modify the functioning of the RCG to ensure it is an efficient and effective arrangements.
94	PP 11.4.4, p 387	CI 6.4(c) - Obligation to publish Corridor Capacity Strategy Section 6.4(c) should be amended to set out that ARTC is obliged to publish the Hunter Valley Corridor Capacity Strategy on its website as soon as possible after it is finalised each year under section 6.4(c)(iv)(C)	ARTC has addressed this Item at section 8.1(e) of the Revised Investment Framework.
95	PP 11.4.10, p 393	CI 6.4(i) – RCG veto rights limitation Section 6.4(i) should be amended so that where the relevant users are willing to fund a project on a 'non-RAB' basis to the extent required to keep charge increases at 10 per cent, then the RCG should not veto the construction of that additional capacity	ARTC has addressed this Item at section 9.8(c) of the Revised Investment Framework.
96	PP 11.5, p 398 AHA	Train Path Schedule CPs not apply where user funding The ACCC is also of the view that clauses 4.3(a)(iii) and (iv) of the Train Path Schedule should only apply to Additional Capacity that is funded by ARTC.	ARTC has considered the ACCC proposed amendments to sections 4.3(a)(ii) and 4.3(a)(iv) of the 2010 AHA and does not consider them to be necessary. The IAHA is an indicative agreement. Any provisions required to specifically deal with user costs recovery options taken up by an user should more appropriately be dealt with in the user funding agreement to be agreed between ARTC and the Contributor.

Issue (Item No)	Doc ref.	ARTC understanding of ACCC recommendation	ARTC response
		<p>The ACCC is of the view that the only grounds on which ARTC can cease construction of Additional Capacity that is funded by a binding 'user-funding' agreement would be if it is determined that the Additional Capacity no longer meets the non-financial criteria set out in sections 6.2 and 6.3 of the HVAU.</p>	
97	PP 11.6, p 404 and 405	<p>Network Connections</p> <p>Section 6.1 should be amended to:</p> <ul style="list-style-type: none"> • include an obligation for ARTC to consult with HVCCC under section 6.1 need to be strengthened • clarify that the dispute resolution provisions in the HVAU apply to disputes under section 6.1 of the HVAU; and • reflect the general rule that applies to the ownership of connecting infrastructure 	<p>ARTC has amended section 5.2(d)(iii) of the 2010 HVAU as sought, and has included a cross reference at section 6(a)(ii) of the 2010 HVAU to strengthen ARTC obligation to consult.</p> <p>ARTC has included a new section 6(e) of the 2010 HVAU to clarify the application of dispute resolution.</p> <p>ARTC has included a new section 6(c) of the 2010 HVAU to reflect the rule to apply to ownership of connecting infrastructure.</p>