

Track Access Agreements - Australia

Full Description

Regulating third party access to privately operated infrastructure is often a key issue in rail PPPs, as this would have important implications for both the project itself and the broader economy. An [open access regime](#) exists on many railway lines in Australia. There are different track access regimes administered at the national and state levels. Broadly speaking, there are two alternative approaches to regulating access to rail networks:

1. the competent regulatory authority may make a declaration in respect of a railway network, requiring its infrastructure manager to provide access to third parties pursuant to a prescribed framework (usually an access undertaking); or
2. the infrastructure manager may voluntarily submit an access undertaking (setting out the terms and conditions on which it will provide access to third parties) to the regulator for approval.

Access undertakings by infrastructure managers (whether voluntarily submitted or mandated by the regulator) ensure the non-discriminatory treatment of all railway operators who have concluded or wish to enter into track access agreements. They typically contain provisions on the process for negotiating access, rules on capacity allocation, principles for calculating of access charges, performance measurement, operational requirements and dispute resolution. In some states, access undertakings are replaced by different documents serving the same purpose (for example, “access arrangements” in Victoria). Access undertakings serve a similar function as [network statements](#) in the European Union.

Track access is granted on the basis of [track access agreements](#). The basis for these negotiations is a model track access agreement or key principles for such an agreement laid down in the respective access undertakings. If the parties cannot reach an agreement, either party may refer the case to the regulator that will make the final decision on the terms of access (“negotiate-arbitrate-model”).

For sample access undertakings, model track access agreements, access laws and regulations and information on track access provided by the different economic regulators in Australia see below:

- [Access Undertakings and Track Access Agreements](#)
- [Track Access Laws and Regulations](#)
- [Regulatory Authorities](#)

Examples of Access Undertakings and Track Access Agreements

Example 1: Hunter Valley Coal Network – Significant parts of the Hunter Valley Coal Network are managed and operated by ARTC. The predominant use of the rail network is for the transport of coal from mine to port. The Access Holder Agreement and the Operator Sub-Agreement together comprise the basis on which ARTC grants access rights.

[Access Holder Agreement for Indicative Services in the Hunter Valley](#) – Model agreement between ARTC and the Access Holder (for example a mining company). ARTC grants the Access Holder the right to access its railway network for the purpose of transporting coal through a railway operator nominated by the Access Holder against payment of an access charge. The nominated operator must have an unconditional Operator Sub-Agreement with ARTC.

[Operator Sub-Agreement for Indicative Services in the Hunter Valley](#) – Model agreement between ARTC and a railway operator. ARTC grants the operator the right to use its railway network and to provide services to the Access Holder on the terms and conditions of this agreement and the Access Holder Agreement.

ARTC provides information on its website on the current [Access Undertaking](#) regarding the management and operation of the Hunter Valley Coal Network.

Example 2: Central Queensland Coal Network - The Central Queensland coal network is operated and managed by Aurizon Network Pty Ltd (“Aurizon”). It is the largest coal rail network in Australia and comprises four major coal systems (Blackwater, Moura, Goonyella, Newlands). The heavy haul rail infrastructure is used almost exclusively for mine to port transport.

[Model Access Agreement Coal](#) – standard form access agreement between Aurizon and the Access Holder (for example, a mining company). The Access Holder is granted the non-exclusive right for the operation of coal trains on a specific part of the coal network through an accredited railway operator (which must be nominated to Aurizon). The Access Holder is required to pay access charges for this right.

[Train Operations Deed Coal](#) – standard form agreement where the operator of coal trains (who has been nominated to operate by an access holder who has the right to use Aurizon’s network under an access agreement, see above) contracts directly with Aurizon to operate train services on Aurizon’s network. The operator is granted non-exclusive operational rights for the operation of coal trains on a specific part of the coal network against the payment of certain service charges. Aurizon is responsible for the infrastructure management as well as the scheduling and control of all train movements.

Aurizon provides information on its [website](#) on the current access undertaking regarding the management and operation of the Central Queensland coal network.

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