

12 February 2013

National Access Regime  
Productivity Commission  
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Melbourne VIC 8003



SOUTH AUSTRALIAN FREIGHT COUNCIL



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Dear Sir/Madam

**Re: Productivity Commission Issues Paper: National Access Regime**

Thank you for the opportunity for the South Australian Freight Council (SAFC) to comment on the Productivity Commission Issues Paper: National Access Regime.

As you may be aware, SAFC is South Australia's peak, multi-modal freight and logistics industry group that advises both the Commonwealth and State Governments on industry related issues, and is funded by both governments. It represents road, rail, sea and air freight modes.

In developing our submission, SAFC was mindful of the fact that the issue of access is extremely complex, with many different market players, many of whom have conflicting interests. The SAFC commends the Commission on its efforts to date in ensuring the right balance is struck between the interests of providers, users and the general community.

We were also mindful that the terms of reference for the inquiry are very broad, however in this submission SAFC seeks to address the main theme of the inquiry: the decision-making processes under Part IIIA, as we believe this will have significant consequences for the availability of access under a wide range of regimes for various infrastructures.

Freight transport infrastructure access plays a key part in ensuring economic efficiency in Australia. Railways, sea ports, airports and large scale dedicated loading and unloading facilities usually exhibit natural monopoly characteristics which occasionally see bottleneck situations restricting competition. It is in the interests of the South Australian and Australian community as a whole that the complexity, time and cost involved in the existing processes is reduced wherever possible.

The various access regimes in place in South Australia (and indeed Australia), including those administered by the Essential Services Commission of South Australia (ESCOSA), presently provide a useful brake on the potential to exercise monopoly power.

However, potential to use infrastructure access as a tool to limit competition exists within Australian and South Australian supply chains, particularly with regards to access to port, airport and rail infrastructure (including the peculiarities of the Adelaide – Darwin railway arrangements) and bulk handling infrastructure. Consequently ongoing oversight is necessary to ensure that the existing regimes continue to deliver appropriate access arrangements.

In South Australia's case, the Port Adelaide Container Terminal Monitoring Panel (of which I am Chair) reviews the overall performance of the terminal on a quarterly basis and is specifically aimed at ensuring any potential to implement monopoly excesses are limited. The panel has implemented measures and reporting arrangements that enable the review of the terminal's overall productivity, as well as dealing with any specific issues arising on a day-to-day basis. A similar network of review panels could be implemented on a national basis for key pieces of infrastructure, and could lead to the early resolution of any issues arising.

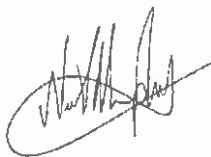
The High Court's September 2012 decision in the Pilbara rail access case clarified many issues associated with Part IIIA of the *Competition and Consumer Act 2010* (Cth), including the Australian Competition Tribunal's powers, and the supremacy of the 'private profitability' test. This is important as we believe the Fortescue Metal Group's long and difficult experience (declaration applications were first lodged in 2004) in seeking access has discouraged other industry players from making similar applications. We believe that the High Court decision will result in the implementation of a more streamlined declaration process, which may see an increase in applications for declarations.

While we understand there is a need to address the issues with Part IIIA, we believe that the impact of the High Court's September 2012 decision in the Pilbara rail access case has yet to be fully understood, therefore we could encourage caution before implementing any radical policy or regulatory changes to Part IIIA.

This access regime review will impact greatly on freight transport infrastructure providers, users and the general Australian community, and therefore SAFC looks forward to receiving future updates on the development and progress of this review.

Should you have any questions or comments regarding this submission, please contact me on (08) 8447 0688.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Neil Murphy', written over a circular scribble.

Neil Murphy  
Chief Executive Officer  
South Australian Freight Council Inc