



AUSTRALIAN RAIL TRACK CORPORATION LTD

**ARTC HUNTER VALLEY
ACCESS UNDERTAKING
CAPACITY LOSS REVIEW
REPORT**

June 2013

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TABLE OF TERMS & ABBREVIATIONS

ACCC	Australian Competition & Consumer Commission
AHA	access holder agreement between ARTC and an Access Holder for access rights on the Network. An Indicative AHA forms part of the HVAU.
ARTC	Australian Rail Track Corporation Limited
HVAU	ARTC Hunter Valley Access Undertaking as approved by the ACCC 29 June 2011 and amended 17 October 2012.
HVCCC	Hunter Valley Coal Chain Co-ordinator Limited
LRSB	Live Run Superintendents Group – a group comprising superintending managers from each Train Operator, Terminal Operator and ARTC that is convened daily to determine, inter alia, the causes of cancellations and to assign responsibility. The HVCCC acts as convenor for the group.
Network	The network of railway lines covered by the HVAU, as defined in Schedule B of the HVAU.
OSA	operator sub-agreement between ARTC and a nominated Train Operator and which has been endorsed by the Access Holder, the standard terms of which are included as a Schedule to the Indicative AHA.
path usage	A right granted under an AHA to an Access Holder to utilise a train path through a nominated Train Operator. In the context of this report, typically a round trip between the coal terminal and a coal loader.
Terminal Operator	The operator of a coal terminal at the Port of Newcastle.
Train Operator	An accredited operator seeking to operate trains in accordance with the relevant AHA and OSA (as applicable).
UoL	Unit of loss

EXECUTIVE SUMMARY

Section 5.8 of the ARTC Hunter Valley Access Undertaking (**HVAU**) requires ARTC to conduct a review of the capacity loss incentive mechanism contained in clause 11.6 of the Access Holder Agreement (**AHA**), invite industry stakeholders to submit proposals for a suitable framework to minimise the loss of capacity and to and consider any proposals received in the context of certain criteria prescribed at section 5.8(c) of the HVAU.

The current AHA clause 11.6 mechanism gives ARTC the ability to remove path usages from an Access Holder's contracted entitlement on advice from the Hunter Valley Coal Chain Coordinator (**HVCCC**) that the Access Holder has been responsible for train cancellations that have had an impact on capacity.

ARTC has conducted the review in accordance with the HVAU and sought stakeholder input through the publication of a Discussion Paper in October 2012. The Discussion Paper identified a number of flaws in the current mechanism including:

- No path usages have been removed from an Access Holder under clause 11.6 of the AHA to date as the HVCCC has not provided ARTC with any advice that cancelled services assigned to an Access Holder have impacted on capacity.
- The AHA clause 11.6 mechanism only applies to Access Holders, who are responsible for only 18% of cancellations. The mechanism does not provide any means of taking into account Train Operator performance.
- The use of cancellations as a measure of loss of capacity conflates a useful operational tool with an incentive which potentially impacts on the way in which cancellations are made, to the detriment of the coal chain.
- The body that determines responsibility for cancellations is voluntary and, in ARTC's view, is unlikely to function well if commercial pressures increase.
- An Access Holder has discretion whether to accept responsibility for a cancellation and is under no obligation to do so.

Thirteen parties provided responses to the Discussion Paper. The responses varied greatly and there was no strongly supported alternative mechanism. However, 77% of the responses indicated that the incentive mechanism should be based on a measure other than train cancellations. The responses are discussed in section 4 of this report.

Although four alternative proposals were suggested from the responses to the Discussion Paper, no alternative mechanism was suggested that, in ARTC's view, met the criteria set out in section 5.8(c) of the HVAU. Three of the four alternative proposals were raised at the highest conceptual level only and in ARTC's opinion, all four fall beyond the scope of the review. See section 3 of this report for a discussion of the alternative proposals.

As ARTC has determined that no alternative proposal received met the required criteria, ARTC has decided not to make an amendment to the HVAU as contemplated in section 5.8(e) of the HVAU. This report fulfils and completes ARTC's obligation under section 5.8 of the HVAU.

Notwithstanding the above, ARTC recognises that:

- a) the current AHA clause 11.6 mechanism is not an effective mechanism to provide an incentive to utilise capacity efficiently; and
- b) significant increases in the efficient use of capacity could be achieved if an effective incentive mechanism covering both Access Holders and their Train Operators was in place.

Therefore, ARTC is in the process of developing an alternative to the current AHA clause 11.6 mechanism, in consultation with the HVCCC. It is ARTC's intention to further develop and finalise the new alternative mechanism and, if appropriate, submit an amendment to the HVAU to incorporate this mechanism into the HVAU.

A high level overview of the new mechanism under development is set out in section 5 of this report. In brief, the new alternative mechanism measures the time lost by each train each day and assigns the loss to the responsible party. The lost time is then used to proportion the number of dump slots lost at each coal terminal each day which is converted into a unit of loss (**UoL**). The resulting UoLs are accumulated over the course of the month.

At the month end, the UoLs are converted into path usages to be removed from an Access Holder's contracted entitlement. Where the UoLs have been accumulated by a Train Operator, these will be allocated to the Access Holders that contract with that Train Operator in proportion to the trains operated on their behalf by the Train Operator during the month.

To avoid placing excessive pressure on an Access Holder, a two stage capping mechanism will apply to limit the number of UoLs assigned to an Access Holder in a month. A limited appeals mechanism will also apply.

1 INTRODUCTION

1.1 PURPOSE OF THIS DOCUMENT

The purpose of this document is to report on the process that ARTC has undertaken to review the capacity loss mechanism set out in clause 11.6 of the indicative Access Holder Agreement (**AHA**), as required under section 5.8 of the ARTC Hunter Valley Access Undertaking (**HVAU**) and the results of that process.

1.2 BACKGROUND

Late in the negotiation of the HVAU in 2011, ARTC agreed with industry representatives to incorporate into the HVAU a mechanism to provide an incentive to Access Holders to utilise capacity¹ on the Network efficiently. This mechanism was incorporated as clause 11.6 of the indicative AHA which forms part of the HVAU and was included as a “Tier 1” provision and required to be included uniformly in all AHAs.

At the time clause 11.6 was included in the Indicative AHA, stakeholders were uncertain as to the efficacy of the provision and so a mechanism to review clause 11.6 was incorporated into the HVAU at section 5.8.

1.3 AHA CLAUSE 11.6 MECHANISM

In brief, the AHA clause 11.6 mechanism requires ARTC to remove an entitlement to a path usage from an Access Holder where that Access Holder has been found by the Live Run Superintendent Group (**LRSG**) to have been the cause of an event that has led to the cancellation of one or more coal train services, and the Hunter Valley Coal Chain Coordinator (**HVCCC**) has determined that the cancellations have impacted adversely on the capacity of the Network, the coal chain as a whole or the capacity entitlements of another Access Holder.

Several key points to note are:

- The mechanism relies wholly on the LRSG and HVCCC, entities that are not parties to the AHA, to determine the number and cause of cancellations and advise ARTC as to the impact on capacity (ie the number of path usages to remove from the Access Holder).

¹ In this report, the term “capacity” is used loosely to refer to the ability to operate coal trains on the Network and more broadly, the throughput of the Hunter Valley coal chain. In the HVAU and AHA, there are several defined terms for “Capacity”, “Coal Chain Capacity” and “Capacity Entitlements” that more precisely define capacity. For the purposes of this report, the common meaning of “capacity” will suffice.

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- The mechanism applies only to cancellations caused directly by an Access Holder and does not deal with cancellations arising due to a Train Operator.
 - The mechanism is capped so that a maximum of 2 path usages can be removed due to a single event.

1.4 OUTLINE OF REQUIREMENTS OF HVAU

Section 5.8 of the HVAU requires ARTC to commence a review, or participate in an HVCCC review, no later than 30 June 2012 (ie 12 months after the commencement of the HVAU) into the *“policy and processes for identifying and allocating losses of Capacity caused by Access Holders and their [Train] Operators and potential incentive mechanisms to minimise such losses where they have a material impact on Capacity or Coal Chain Capacity or the Capacity Entitlements of Access Holders, including those processes outlined in clause 11.6 of the Indicative Access Holder Agreement.”*²

The review, if carried out by ARTC, was required to invite participation by stakeholders to the Hunter Valley coal chain and allow at least 6 weeks for responses. On completion of the review, taking into account stakeholder responses, ARTC was required to consider whether:

- a) particular actions or omissions of Access Holders or their Train Operators have a material impact on capacity, coal chain capacity or the capacity entitlements of Access Holders;
- b) a proposal received from a stakeholder met the following criteria:
 - i) the proposal would be likely to have demonstrably positive benefits in increasing the capacity and allocating the impact of an event causing a capacity shortfall to the Access Holder causing the incident or event leading to the capacity shortfall;
 - ii) the anticipated benefits of the proposal outweigh the potential detriments of the proposal including the costs associated with implementation and monitoring of the proposal and an increase in the likelihood of disputes in assigning capacity losses among Hunter Valley coal chain participants; and
 - iii) the proposal has the support of the HVCCC and the broad support of Hunter Valley Coal Chain participants including Access Holders and the Hunter Valley Coal Chain service providers.

² For the purposes of this report, the term capacity will be used in place of *“Capacity or Coal Chain Capacity or the Capacity Entitlements of Access Holders”* unless the context otherwise dictates.

In the event that a proposal meeting the above criteria was received or developed, ARTC is required to implement the proposal by submitting an amendment of the HVAU to the ACCC by 30 June 2013.

In the absence of any suitable proposal, ARTC is required to publish a report on its website setting out its reasons for rejecting any proposals developed or submitted under the review.

1.5 REVIEW PROCESS

Section 5.8 of the HVAU contemplated that the HVCCC might conduct the review and provided for ARTC to contribute to a HVCCC review or, in the absence of a HVCCC review, for ARTC to conduct the review. Throughout 2012, ARTC and the HVCCC discussed whether the HVCCC would conduct the review, but eventually the HVCCC decided that it would not conduct the review. Accordingly, in June 2012, ARTC began to research and prepare a Discussion Paper to consider the existing mechanism and potential alternatives in accordance with the HVAU.

ARTC published a Discussion Paper in October 2012³ which sought stakeholder responses to a series of questions arising from the review and alternative proposals to address the adverse impacts of capacity losses.

A total of thirteen responses were received in response to the Discussion Paper. Several were provided in confidence and the remainder were been published on ARTC's website.⁴

The Discussion Paper identified significant flaws in the current AHA clause 11.6 mechanism which are discussed further in section 2.3 below. There was general acceptance in the responses that the current mechanism is ineffective and that cancellations are a poor measure of capacity loss given the limitations of the current mechanism. There was no strong consensus on what alternative mechanism should be adopted.

Four alternative proposals, not canvassed by ARTC in the Discussion Paper, were raised by respondents with varying degrees of detail. In ARTC's view none of the alternative proposals met the criteria in section 5.8(c) of the HVAU. These alternatives are discussed in section 3 of this report.

³ A copy of the Discussion Paper can be obtained at <http://www.artc.com.au/library/Capacity%20Loss%20Review%20Discussion%20Paper.pdf>.

⁴ Copies of non-confidential stakeholder responses can be downloaded at <http://www.artc.com.au/Content.aspx?p=265>.

In light of the lack of a strong consensus and any proposal meeting the section 5.8(c) criteria, ARTC has determined not to submit an amendment to the ACCC under section 5.8(d) of the HVAU. Given ARTC's decision section 5.8(e) of the HVAU requires ARTC to publish a report on the reasons for its decision by 30 June 2013. This report fulfils ARTC's obligation under section 5.8(e) of the HVAU and completes the section 5.8 review.

Notwithstanding that no stakeholder proposal met the requirements of section 5.8(c) of the HVAU, ARTC recognises that:

- a) the current AHA clause 11.6 mechanism is not an effective mechanism to provide an incentive to utilise capacity efficiently; and
- b) significant increases in the efficient use of capacity could be achieved if an effective incentive mechanism covering both Access Holders and their Train Operators was in place.

Therefore, subsequent to the receipt of stakeholder submissions, ARTC has been developing an alternative mechanism to that prescribed in the current AHA clause 11.6, in consultation with the HVCCC. The alternative mechanism is based on concepts that were raised in the Discussion Paper and builds on elements that received a degree of stakeholder support.

The new alternative mechanism is still being developed. It is ARTC's intention to further develop and finalise the new alternative mechanism and, if appropriate, submit an amendment to the HVAU to incorporate this mechanism into the HVAU. The new alternative mechanism is discussed in concept in section 5 of this report.

It should be noted that ARTC is under no obligation to amend the HVAU nor adopt an alternative mechanism. However, ARTC believes that it is important to provide an incentive to use capacity efficiently for the benefit of all participants in the coal chain and therefore ARTC is willing to implement the proposed new mechanism, provided that this is not seen as an opportunity to reopen other aspects of the HVAU, nor increase ARTC's commercial risk without a commensurate increase in the permitted rate of return.

Despite bona fide attempts being made, the development timing, and ultimate realisation, of an alternative mechanism will largely depend on the level of support of industry participants. ARTC recognises that for any mechanism such as this to ultimately be workable it would need to have a substantial majority of support,

particularly from Access Holders and Operators, as opposition may have the potential to undermine the relative costs and benefits.

2 CURRENT AHA CLAUSE 11.6 MECHANISM

2.1 DESCRIPTION OF MECHANISM

The current AHA clause 11.6 mechanism is based on removing path usages from an Access Holder where that Access Holder is responsible for an event that leads to the cancellation of one or more train services which has an impact on capacity.

The determination of responsibility for cancellations is carried out daily by the LRSG. The LRSG is convened daily to determine, amongst of things, the causes of cancellations and to assign responsibility. The HVCCC acts as convenor for the group. Participation in the group is voluntary.

AHA clause 11.6 is based on the assumptions that:

- the LRSG will determine the cause of cancellations through an appropriate process; and
- the HVCCC will provide ARTC with advice as to whether an Access Holder has had an impact on capacity.

ARTC then is required to either act on that advice or provide reasons why it has decided not to.

2.2 MECHANISM CONTEXT

During the 2012 calendar year approximately 11% of planned Hunter Valley coal trains did not run due to cancellations. There were 2,088 trains cancelled equating to a loss of 15.9 million tonnes of system throughput. Of these cancellations, the responsibility for some was split between more than one party, giving a total of 2,205 cancellations assigned to various parties. Table 1 sets out the allocation of responsibility by service provider type.

TABLE 1: CANCELLATIONS BY SERVICE PROVIDER – SUMMARISED

Service Provider Group	Cancellations	Tonnes	%
Access Holders/Load Points	371	2,846,500	18%
Train Operators	1,359	9,682,132	61%
Terminal Operators	215	1,539,174	10%
ARTC	223	1,596,766	10%
Other	37	252,325	2%
Total	2,205	15,916,897	100%

Cancellations are a response by Train Operators to a disruption to the planned services for the day and provide a means of restoring operations as near as possible to plan. Cancellations are currently a routine occurrence in the Hunter Valley coal chain. Figure 1 shows the daily cancellations for the Hunter Valley coal chain throughout 2012.

FIGURE 1: HUNTER VALLEY COAL CHAIN, DAILY CANCELLATIONS

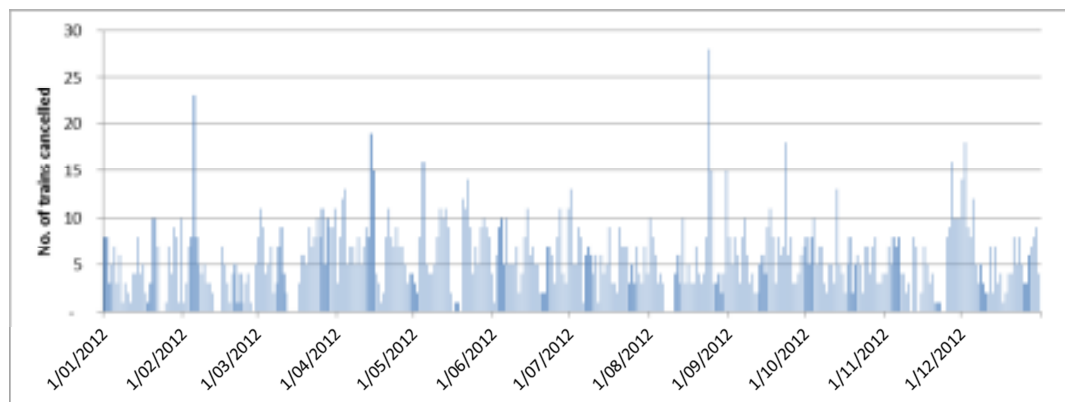


FIGURE 2: NO. OF DAYS FOR EACH FREQUENCY OF CANCELLATIONS

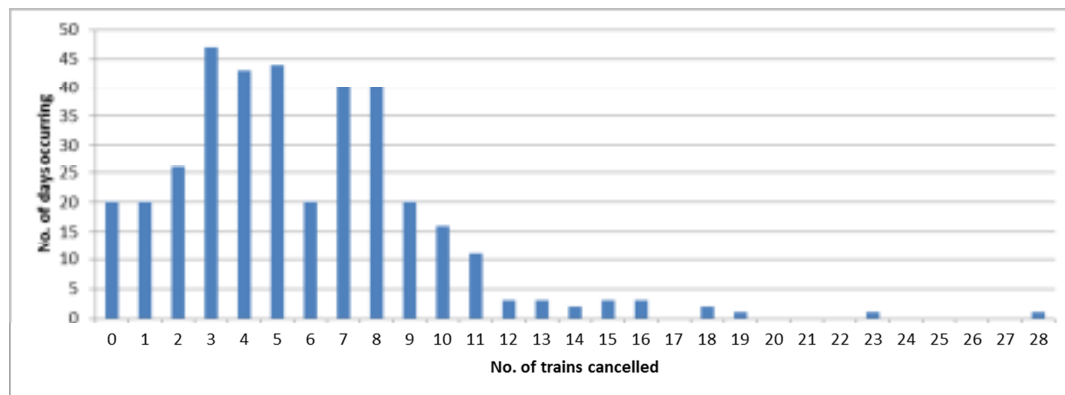
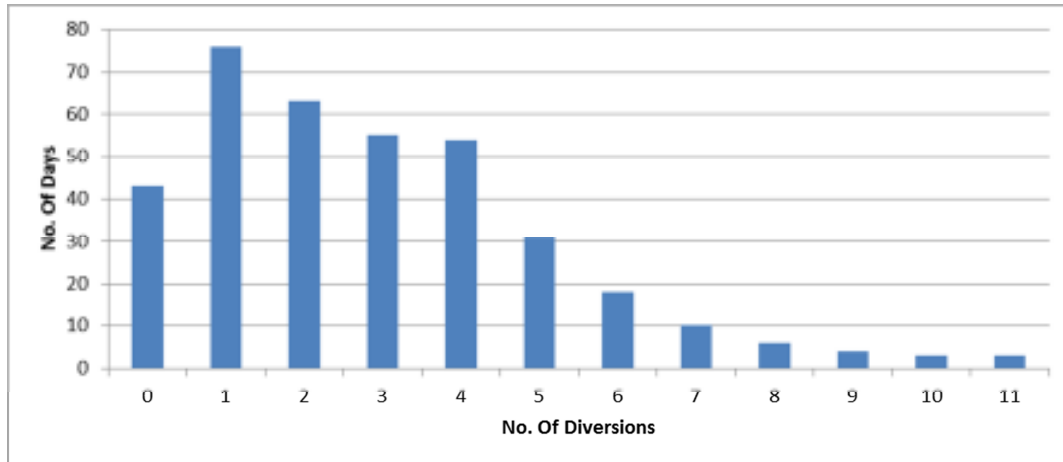


Figure 2 sets out the number of days for each level of cancellations. This figure indicates that on the majority of days there are between 3 and 8 trains cancelled.

In addition to these cancellations, daily there are a number of diversions that can also impact on Network capacity (see Figure 3).

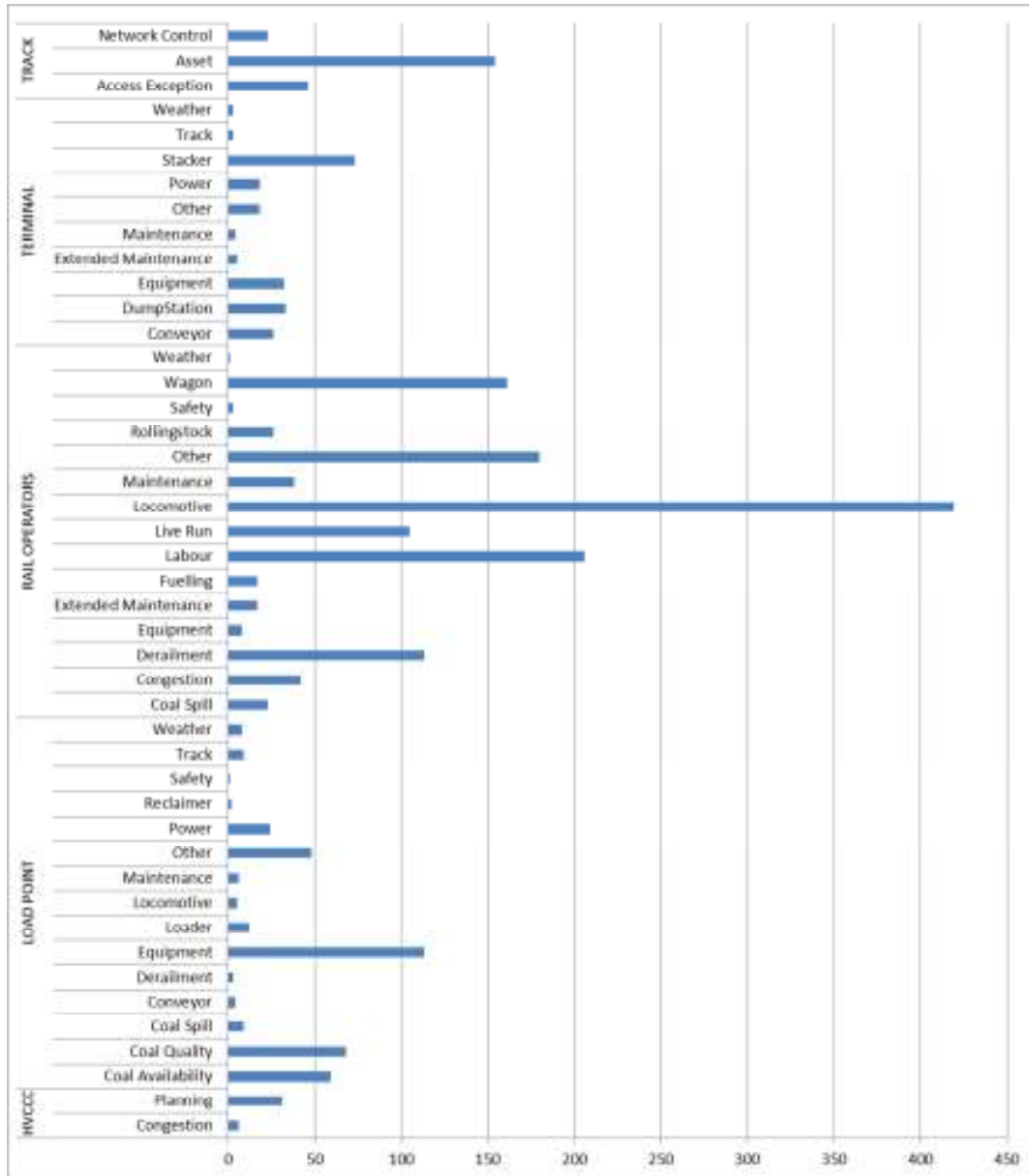
FIGURE 3: NO. OF DAYS FOR EACH FREQUENCY OF DIVERSIONS



A diversion occurs where a train planned for one load point is typically either diverted to another load-point or is loaded with a different cargo to the one planned. Diversions are not taken into account in the current AHA clause 11.6 mechanism.

Figure 4 sets out the frequency of cancellations by cause. Locomotive failures are clearly the largest cause and reflect the fact that Train Operators are responsible for over 60% of cancellations.

FIGURE 4: FREQUENCY OF CANCELLATIONS BY CAUSE



2.3 PROBLEMS WITH THE CURRENT MECHANISM

The current mechanism has significant flaws. These are discussed in detail in the Discussion Paper. In summary the major issues include:

- No path usages have been removed from an Access Holder under clause 11.6 of the AHA to date as the HVCCC has not provided ARTC with any advice that cancelled services assigned to an Access Holder has impacted on capacity.
- The AHA clause 11.6 mechanism only applies to Access Holders, who are responsible for only 18% of cancellations. The mechanism does not provide any means of taking into account Train Operator performance.

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- The use of cancellations as a measure of loss of capacity conflates a useful operational tool with a disincentive mechanism. This potentially discourages the use of cancellations when their use would be of advantage to the wider coal chain and can bias a cancellation decision towards cancelling a particular train due to commercial rather than operational considerations.
 - The current process relies on the voluntary cooperation of parties to determine the party responsible for cancellations. If the commercial consequence of capacity loss increases, as may occur if more losses are attributed to Access Holders, this may make the current voluntary process less workable either through biasing elements of the process (eg making a Train Operator reluctant to cancel a train), or through a reluctance to participate effectively in the process.
 - An Access Holder has discretion whether to accept responsibility for a cancellation and is under no obligation to do so.

3 ALTERNATIVE PROPOSALS

Four alternative concepts, not canvassed by ARTC in the Discussion Paper, were proposed by respondents, though with the exception of the 'scheduling cap' these were only proposed as general concepts at the highest level. These are discussed below.

3.1 SCHEDULING CAP

One submission proposed that a 'scheduling cap' model should be considered as part of the review. In essence this model involves the allocation of set proportions of Network capacity to each Access Holder, the intention being that if an Access Holder fails to use its portion of capacity then it cannot have any call on other capacity except where there is surplus to other demands.

This model was previously proposed during the negotiations in the lead up to the approval of the HVAU. ARTC is of the view that this model would require a fundamental restructuring of the contractual arrangements in the HVAU/AHA model and is significantly beyond the scope of the HVAU 5.8 review.

No other submissions proposed or supported a 'scheduling cap' or similar model and given the character of the remainder of the stakeholder's response, ARTC formed the view that the inclusion of the model was in the context of a wider interest to pursue a different contractual framework.

3.2 USE OF KEY PERFORMANCE INDICATORS

One submission suggested that instead of sanctions, a comprehensive series of key performance indicators should be in place. The proponent did not indicate how this differed from the provisions for key performance indicators already contained within the HVAU and AHA, nor how this would drive the efficient use of capacity.

While ARTC agrees that performance indicators are a useful tool in managing processes, unless they are linked to consequences, they are unlikely to significantly influence behaviours. As the proponent specifically excluded any consequence from a failure to meet performance objectives, ARTC believes that this does not fulfil the intentions of the mechanism nor the review. The AHA clause 11.6 mechanism is clearly intended as an additional measure that would have material consequences and is quite separate and distinct from the performance measure provisions of the HVAU and AHA.

3.3 DIRECTING THE CONSEQUENCE TO TRAIN OPERATORS

Two submissions suggested the imposition of a sanction directly against Train Operators.

One of the difficulties in formulating an effective mechanism to encourage efficient use of Network capacity is that the class of party responsible for the majority of losses (as measured by cancellations) does not have any entitlement against which a sanction could be applied. Train Operators have no contractual entitlement to path usages, those entitlements are held by Access Holders and a Train Operator utilises a path usage through (and on behalf of) the Access Holder. Therefore, a path usage based mechanism could not be applied to Train Operators.

No obvious alternative to the removal of path usages is readily available. Access charges are paid by Access Holders and applying financial sanctions against Train Operators would be difficult, requiring a major change in the contractual framework and would run contrary to the conceptual scheme of the undertaking which is based on responsibility for the use and benefit of access rights resting with the Access Holder.

As a result of these difficulties, while it would provide a more direct relationship between the desired behaviour and the responsible party, there does not appear to be a practical means by which it could be achieved under the existing contractual framework. The proponents raised this mechanism in concept only and did not suggest a mechanism by which it might be given effect. Therefore, this concept has not been pursued.

3.4 DISCOUNTING OF ACCESS CHARGES

One submission suggested the concept of discounting access charges where capacity loss was reduced below a certain threshold. This concept was not developed by the proponent.

In one sense, the existing scheme of the HVAU already provides for such an arrangement through the unders and overs mechanism which rebates take-or-pay charges to Access Holders in proportion to the amount by which revenue exceeds ARTC's revenue ceiling (or increases charges to the extent of under-utilisation). However, this mechanism is based on volume and revenue received and does not take into account any individual Access Holder contribution to the efficient use or misuse of capacity.

ARTC is of the view that the scope of the review should not extend to a reconsideration of the access charging mechanism at this time, and any mechanism requiring modification to access charges would necessarily require modification of the charging provisions of the HVAU and the AHA. While there may be merit in some form of performance based modification to access charges, this would need to be considered in the wider context of the unders and overs mechanism and the various rebates contained within the AHA and would, therefore, be complex. Change on that scale could perhaps be considered when the HVAU is next reviewed as a whole in 2016, if there was strong stakeholder support. However, ARTC is of the view that this proposal should not be pursued as part of this review.

4 RESPONSES TO THE DISCUSSION PAPER

The Discussion Paper raised a number of questions directed to specific issues. In many instances, the questions were open ended and respondents were encouraged to provide more than simple yes/no answers. The responses received varied greatly in the degree to which specific questions were answered. In a number of instances, respondents chose to present a particular view without necessarily responding directly to some or all of the questions. Because of this, the presentation of the results does not lend itself well to a simple tabulation. Nevertheless, those questions which lent themselves to a tabulated response, at least partially, are listed in Appendix A – even for those questions, there tends to be a relatively high proportion of “unclear” responses, typically where a respondent has not directly answered the question, though in a few cases it is because the respondent's answer did not clearly indicate a preference. The table presents the results in percentages only as some respondents

declined to make their submissions public. Those submissions which were not confidential can be viewed on the ARTC website.

Notwithstanding the difficulty in characterising the responses, several conclusions can be drawn:

- a) A significant majority of respondents (77%) agreed that cancellations are a poor measure of capacity loss.
- b) 54% agreed that there is little value in retaining a mechanism that applies to less than 20% of the cancellations.
- c) 46% agree that it is desirable that the mechanism should apply primarily to the Access Holder even where the Access Holder is not directly responsible for the loss of capacity (ie that an Access Holder should take responsibility for losses arising from its Train Operator). 38% disagreed with this proposition and 15% of responses were unclear on this point.
- d) 69% agreed that the removal of path usages from an Access Holder's entitlement is the most appropriate sanction.
- e) 67% agreed that the mechanism should be supported by an appeal mechanism.
- f) 46% either directly, or by implication, supported the adoption of a mechanism based on lost dump slots. 15% favoured retaining some form of the current cancellations mechanism while 23% were unclear on this point. 16% favoured some other alternative.

Respondents generally supported the imposition of a cap on the sanction to ensure that the mechanism did not materially damage an Access Holder's business, although there were varying views as to the level of the cap.

It can readily be seen from the above, and also from Appendix A, that there is a diversity of views. The only point which approaches agreement across the board is that the current mechanism based on cancellations is not supported.

5 PROPOSED ALTERNATIVE (STILL UNDER DEVELOPMENT)

5.1 INTRODUCTION

In light of the lack of any broad majority support for an alternative mechanism, ARTC is in the process of designing and developing a new mechanism based on the elements that received most support from industry, and in consultation with the HVCCC.

The proposed alternative mechanism is based on using the accumulated time lost by trains to allocate lost dump slots to the responsible parties. In turn, these are then translated into path usages that are removed from an Access Holder's entitlement each month.

A dump slot is a planned use of a dump station at a coal terminal at a particular time and date, and a lost dump slot is a dump slot that is not utilised. The HVCCC has proposed lost dump slots as a preferred measure of capacity loss and ARTC's proposal has been formulated with this in mind.

5.2 OVERVIEW OF MECHANISM UNDER DEVELOPMENT

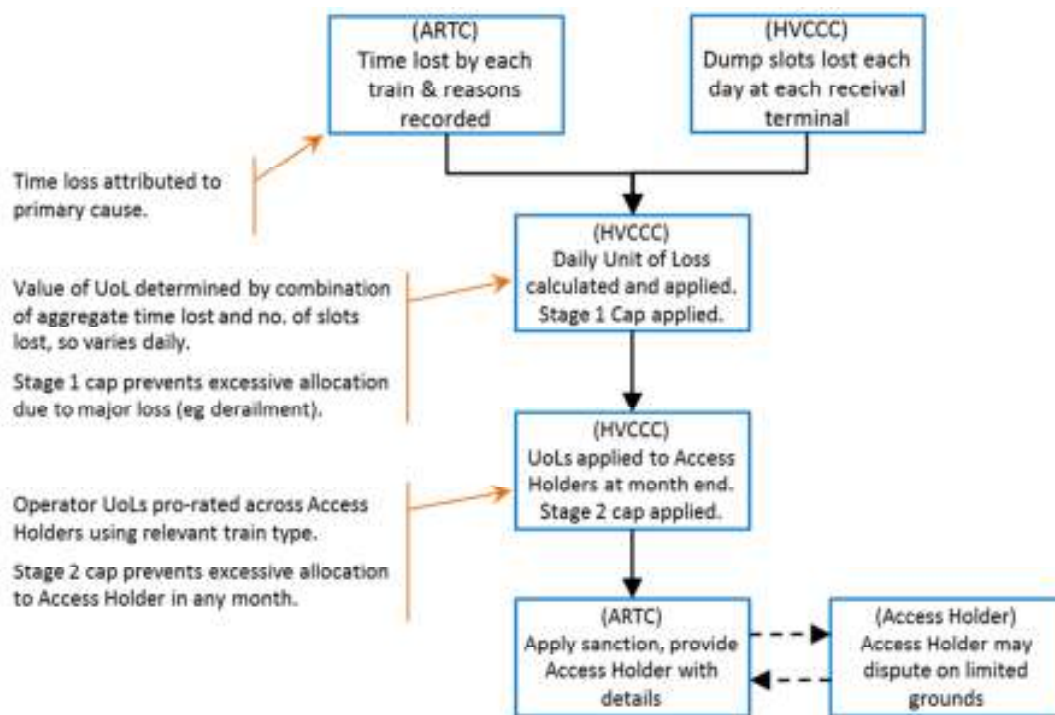
The mechanism being developed has the following elements:

- a) Each day, the time lost by each coal train operating in the Hunter Valley will be measured against its scheduled time at various points on the Network, and the cause for the lost time will be attributed to the party primarily responsible.
- b) The number of planned dump slots lost at all coal terminals each day will determine the unit of loss (**UoL**) for the day and this will be allocated in proportion to the time lost assigned to each party.
- c) The UoLs will be aggregated over the course of the month.
- d) Where the primary cause of lost time is a Train Operator, the accumulated UoLs of a Train Operator will be allocated to Access Holders that contract with that Train Operator in proportion to the actual path usages relating to that Train Operator used in that month by each Access Holder.
- e) At the end of the month, a sanction of the loss of one path usage will be applied to the Access Holder for each UoL allocated for the month, with the sanction to apply in Month +1 or +2 (ie sanctions for January may be taken, at the Access Holder's choice, in February or March).
- f) To avoid excessive sanctions being imposed on Access Holders, a 2 stage capping mechanism will apply:
 - i) Stage 1 Cap: No Train Operator or Access Holder will be allocated in excess of [x] UoLs on any one day.
 - ii) Stage 2 Cap: An Access Holder will not be subjected to a reduction of more path usages than [y%] of its path usage entitlements for the month for a particular origin-destination combination.
- g) An abbreviated dispute resolution process will be available.

- h) It is ARTC's preference that the mechanism be managed by a suitable external party, such as the HVCCC. The external party would determine and advise ARTC of the number of path usages to be removed from Access Holders, recognising that much of the data would be sourced from ARTC. However, to ensure that the mechanism is capable of being applied on a consistent basis and to overcome a major flaw in the current AHA clause 11.6 mechanism, in the absence of a functioning and willing external third party to administer the mechanism ARTC would manage and administer the mechanism.

The operation of the mechanism, at its current state of development, is set out schematically in Figure 5.

FIGURE 5: SCHEMATIC OF ALTERNATIVE INCENTIVE MECHANISM BEING DEVELOPED



The mechanism is being developed so that it would be capable of being introduced with gradual effect through the periodic adjustment of the caps. This could be achieved through initially setting the caps so that no path usages are deducted from Access Holders. The caps could then be progressively adjusted over time to achieve a target level of allocated capacity loss. This progressive introduction would allow the mechanism to be refined without causing unanticipated effects and also give Access Holders time to understand the operation of the mechanism and adjust their relationships with their Train Operators.

APPENDIX A RESPONSES TO DISCUSSION PAPER QUESTIONS

The table below provides a summary of responses to questions raised in the Discussion Paper. A number of the questions were deliberately open ended and the responses to such questions are not amenable to simple Yes/No categorisation. However, where such categorisation is meaningful, the responses have been tabulated below, based on ARTC’s interpretation of the respondent’s position. In many instances, the respondent did not directly answer a question or the response was unclear – in these instances, the response has been included as “unclear”. In some cases, a question was not relevant to a respondent given that respondent’s answer to a previous question – in this case “n/a” is shown. The majority of stakeholder responses are publicly available on the ARTC website at <http://www.artc.com.au/Content.aspx?p=265> and stakeholders may consider these responses in more detail.

Discussion Paper Question	Yes	No	Unclear	n/a
Should the incentive mechanism be based on train cancellations or some other measure?	8%	77%	15%	0%
If cancellations are an appropriate measure, does the current approach for Train Operators to volunteer cancellations work effectively?	0%	0%	15%	85%
Is it appropriate that Train Operators choose which train to cancel?	46%	31%	23%	0%
Is the membership of the LRSG appropriate?	46%	23%	31%	0%
Is the process for the assignment of responsibility for cancellations appropriate?	38%	31%	31%	0%
Is the current informal approach appropriate, either under a continuation of the existing process or some new process?	23%	31%	46%	0%
Is the current process sufficiently timely to be effective both from the perspective of the sanction being sufficiently proximate to the cause and also not so quick as to cause the Access Holder unintended consequences?	15%	38%	38%	8%
Is it appropriate that a Train Operator must seek consent from an Access Holder for the assignment of responsibility to that Access Holder?	46%	15%	38%	0%
Is it appropriate that an Access Holder can unilaterally refuse to accept the assignment of responsibility?	8%	38%	54%	0%
If an alternative mechanism is proposed, what will be the consequences on the timing to provide an outcome?	0%	0%	77%	23%
Is there value in retaining a mechanism that applies to less than 20% of the cancellations.	23%	54%	23%	0%
Is it desirable that the mechanism should apply responsibility to the Access Holder even where the Access Holder is not directly responsible for the loss of capacity?	46%	38%	15%	0%

