



Memorandum

between

The Commonwealth of Australia

&

The State of New South Wales

&

Australian Rail Track Corporation Ltd

*In relation to the Lease of the NSW Interstate and Hunter Valley
rail assets to Australian Rail Track Corporation Ltd and
associated arrangements*

4 June 2004



AUSTRALIAN RAIL TRACK CORPORATION LTD

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PARTIES

- The Commonwealth of Australia (“the Commonwealth”);
- The State of New South Wales (“NSW”); and
- Australian Rail Track Corporation Ltd ACN 081 455 754 (“ARTC”)

BACKGROUND

- A. In 1997 the Commonwealth and States agreed to establish ARTC to manage and provide efficient and seamless access to the interstate rail network. The objectives of that agreement were to improve the efficiency and competitiveness of the interstate rail network thereby increasing the rail industry share of the interstate freight market, fostering a commercially viable Australian rail industry and contributing to an efficient national transport system.
- B. The Commonwealth, NSW and ARTC are committed to working towards:
- (a) a competitive and efficient national rail system to transport the ever increasing tonnage of freight goods for domestic consumption and export;
 - (b) maximisation of the environmental benefits of rail transport and alleviation of road congestion;
 - (c) ensuring long term investment in rail to maintain and improve country rail infrastructure;
 - (d) integration of the NSW interstate rail lines and the Hunter Valley network into the national rail freight network infrastructure;
 - (e) creation of a "one-stop-shop" for freight movement across Australia;
 - (f) a national open access regime for rail;
 - (g) recognition of the employment and economic benefits to regional NSW provided by the rail industry;
 - (h) provision of skilled and satisfying work for rail staff;
 - (i) a rail safety culture that is world's best practice;
 - (j) an approach to industrial relations that is consultative, open and constructive; and
 - (k) a management structure for the operation of the rail network that is efficient and effective.
- C. To achieve these objectives whilst maintaining the cohesion of the NSW Country Regional Network the Commonwealth, NSW and the ARTC have agreed on:

- (a) incorporating the NSW Interstate and Hunter Valley Assets into the national rail network by means of State Rail Authority (SRA)/Rail Infrastructure Corporation (RIC) granting to ARTC a 60 year lease of those assets;
 - (b) ARTC investing over \$872 million on the east coast rail corridor in accordance with the Lease;
 - (c) SRA/RIC entering into an arrangement with ARTC under which ARTC will manage the Country Regional Network on behalf of NSW; and
 - (d) ARTC having the option to include in the Lease the railway corridor from the Gap to Boggabilla.
- D. NSW through its relevant rail agencies has as an objective the provision of access to the Metropolitan Passenger Network for freight and long distance passenger services on terms subject to priority for passenger services over that Network and subject to reasonable future passenger requirements.
- E. The Commonwealth and ARTC acknowledge the NSW enabling legislation *Transport Administration Amendment (New South Wales and Commonwealth Rail Agreement) Act 2004*.
- F. At the same time as the parties have entered this Memorandum, relevant NSW rail entities and ARTC have entered into the Transaction Documents to give effect to the objectives of this Memorandum.

1. DEFINITIONS

In this Memorandum, the following terms mean:

‘Consumer Price Index’ means the Consumer Price Index (All Groups) for Sydney published from time to time by the Australian Bureau of Statistics.

‘Country Regional Network’ means the NSW country regional network corridors as depicted on the map in Attachment 1, including associated rail infrastructure.

‘Country Regional Network Management Agreement’ means the agreement so entitled between ARTC and SRA/RIC dated on or around the date of this Memorandum.

‘Infrastructure Investment Program’ means the infrastructure investment program described in the Lease and summarised in clause 3.3 of this Memorandum.

‘Interstate and Hunter Valley Assets’ means the Interstate and Hunter Valley rail corridors to be leased or licensed to ARTC as described in and subject to the Lease and indicatively depicted on the map in Attachment 1, including associated rail infrastructure.

‘Labour Services Agreement’ means the agreement so entitled between ARTC and SRA/RIC dated the date of this Memorandum.

‘Lease’ means the sixty year lease of the rail corridors, rail track and associated assets granted by SRA/RIC to the ARTC to operate, maintain and manage that land and rail infrastructure so entitled between ARTC and SRA/RIC dated the date of this Memorandum.

‘Metropolitan Freight Network’ means the metropolitan rail corridors to be leased or licensed to ARTC as described in the Metropolitan Freight Network MOU.

‘Metropolitan Freight Network MOU’ means the memorandum of understanding entered into between ARTC and RailCorp on the date of this Memorandum relating to the metropolitan freight network.

‘Metropolitan Passenger Network’ means the metropolitan rail corridors excluding the Metropolitan Freight Network, as depicted on the map in Attachment 1.

‘RailCorp’ means the Rail Corporation New South Wales.

‘RIC’ means the Rail Infrastructure Corporation.

‘Sale of Plant and Equipment Agreement’ means the agreement so entitled for the sale of certain plant and equipment not required for the Metropolitan Passenger Network, by SRA/RIC to ARTC for a nominal amount dated the date of this Memorandum.

‘Southern Sydney Freight Line’ means the single track railway line to be built by ARTC between Macarthur and Sefton Park Junction, to connect with the leased interstate network, including associated facilities and works.

‘Southern Sydney Freight Line Development Agreement’ means the agreement so entitled between RailCorp and the ARTC for the construction of the Southern Sydney Freight Line dated the date of this Memorandum.

‘SRA’ means the State Rail Authority of New South Wales.

‘Transaction Documents’ means the documents between NSW entities and ARTC which will record the legal arrangements between them and includes but is not limited to the documents set out in Attachment 2.

‘Transition Services Agreement MOU’ means the memorandum of understanding entered into between the relevant NSW rail entities and ARTC for the provision of services during the transition period.

2. INTERPRETATION

- (a) The achievement of the objectives in this Memorandum will, from a NSW perspective, be undertaken (as applicable) through the relevant NSW rail entities.
- (b) The legal obligations of the parties to give effect to the arrangements referred to in this Memorandum are set out in the relevant Transaction Documents. This Memorandum is not intended to and does not give rise to any legal obligations. To the extent of any inconsistency between the terms in this

Memorandum and the terms in the Transaction Documents the terms in any of the Transaction Documents will prevail to the extent of the inconsistency.

3. COMMITMENTS

3.1 Commonwealth Commitment

The Commonwealth will:

- (a) inject \$143.4 million of capital into ARTC by the commencement of the Lease;
- (b) support ARTC borrowing to finance the Infrastructure Investment Program by making available temporary loan guarantees for specified borrowings if the guarantees are needed for ARTC to achieve an investment grade credit rating, with the giving of any guarantee:
 - (i) to be on such terms and conditions as the Commonwealth may require;
 - (ii) to be subject to the requirements of the *Financial Management and Accountability Act 1997* and subordinate legislation; and
 - (iii) to remain in place until it is no longer needed for ARTC to achieve an investment grade credit rating.

3.2 NSW Commitment

NSW:

- (a) will (through RIC) pay \$61.9 million to ARTC (in a manner to be agreed with ARTC) to undertake works on the Interstate and Hunter Valley Assets by paying:
 - (i) \$50 million within 3 years of the commencement of the Lease; and
 - (ii) a further \$11.9 million within 4 years of that date

subject to ARTC making satisfactory progress with the Infrastructure Investment Program.

- (b) will (through RIC) pay to ARTC (in a manner to be agreed with ARTC) an additional \$30 million (in 2004 dollars). This amount will be paid in three instalments of \$10 million (in 2004 dollars) in each of years 4, 5 and 6 of the Lease term. Each of these amounts will be indexed by the annual movement in the Consumer Price Index from the commencement of the Lease to the date when payments are made by NSW. ARTC agrees to spend these funds on NSW rail infrastructure, or land directly related to NSW rail infrastructure, the subject of the Transaction Documents.

- (c) accepts that it is a condition precedent to the Lease that a Regulation is made to exclude from stamp duty any transactions to which a NSW entity is a party, and which primarily give effect to the Transaction Documents.
- (d) accepts that it is a condition precedent to the Lease that a Regulation is made to exclude all relevant land and rail infrastructure used to maintain and enable safe and efficient operation of the Interstate and Hunter Valley Assets from land tax and local government rates. The exclusion under the Regulation will not apply to the extent that the rail corridor is used for activities other than to maintain and enable safe and efficient operation of the Interstate and Hunter Valley Assets.

3.3 ARTC Commitment

ARTC will:

- (a) assume responsibility in accordance with the Lease for maintenance and capital projects on the Interstate and Hunter Valley Assets;
- (b) invest over \$872 million on the east coast rail corridor in accordance with the Lease. The investment in NSW will be more than \$818 million (excluding the amount referred to in clause 3.2(b)) and will include:
 - (i) a new non-electrified southern Sydney access route from Macarthur to Sefton Park Junction (estimated cost: \$192 million);
 - (ii) development of the Hunter Valley assets, incorporating the lines from Islington Junction to Werris Creek and Merrygoen, to facilitate over 100m tonnes of coal shipped per annum (estimated cost: \$152 million). This investment is subject to the works projects being approved by ARTC's customers and other primary users in the region for inclusion in the relevant pricing regime and falling within the regulated return for the coal network;
 - (iii) upgrading of the main south line from Macarthur to Melbourne (estimated cost: \$186 million);
 - (iv) upgrading of the main northern line from Maitland to the Queensland border (estimated cost: \$119 million);
 - (v) improvements to the Parkes to Broken Hill corridor, the inland corridor from Cootamundra to Werris Creek and Ulan (estimated cost: \$78 million); and
 - (vi) State wide train control enhancements and other developments across NSW (estimated cost: \$91 million)

with the objective of achieving the operational performance improvements set out in Attachment 3.

- (c) assume responsibility in accordance with the Lease for train control on the Interstate and Hunter Valley Assets and will locate these train control services in NSW (with the possible exception of Parkes to Broken Hill) in accordance with the Lease.

3.4 Reduction in ARTC commitment

ARTC's investment commitment of not less than \$818 million referred to in clause 3.3(b) will be reduced by the amount (if any) by which NSW does not pay the amount of \$61.9 million referred to in clause 3.2(a).

4. METROPOLITAN FREIGHT LINES LICENCE

- (a) ARTC and RailCorp propose to enter into a lease and licence agreement for the Metropolitan Freight Network (“the Metropolitan Freight Network Lease and Licence”) in accordance with the Metropolitan Freight Network MOU.
- (b) On completion of the construction, the Southern Sydney Freight Line will be subject to the Metropolitan Freight Network Lease and Licence or a document in similar terms.

5. COUNTRY REGIONAL NETWORK

The Country Regional Network will remain in NSW ownership. In accordance with the Country Regional Network Management Agreement the Country Regional Network will be managed by ARTC on behalf of NSW. SRA/RIC will determine maintenance requirements, capital projects and access terms and conditions (including prices) on the Country Regional Network in accordance with the Country Regional Network Management Agreement.

6. LABOUR SERVICES

- (a) ARTC will directly employ personnel for the management and administration of the leased and the Country Regional Networks.
- (b) ARTC will second employees from SRA/RIC in accordance with the Labour Services Agreement.

7. PATHING OF RAIL SERVICES

NSW (through its rail entities) and ARTC undertake to work cooperatively to facilitate the efficient pathing of rail services subject to passenger priority between the leased, Country Regional and metropolitan networks and ARTC network.

8. METROPOLITAN PASSENGER NETWORK

The Metropolitan Passenger Network will remain owned and managed by RailCorp. It is proposed that customers may use ARTC as their interface with RailCorp on a non-exclusive basis, subject to the development of an appropriate agreement.

9. PLANT AND EQUIPMENT

- (a) Certain plant and equipment owned by SRA/RIC and not required for the Metropolitan Passenger Network will be acquired by ARTC for a nominal amount, under terms agreed in the Sale of Plant and Equipment Agreement.
- (b) Certain major plant and equipment and associated staff will be available to both ARTC and the relevant NSW rail entities on the basis that first priority is given to the metropolitan network maintenance needs in accordance with a cross hire agreement proposed to be developed.

10. TRANSITION SERVICES

NSW rail entities will provide certain support and assistance to ARTC for a period of up to 6 months from the commencement of the Lease to ensure a smooth transition, in accordance with an agreement to be developed having regard to the Transition Services Agreement MOU.

11. REVIEW

The Commonwealth and NSW will undertake a review of the arrangements in this Memorandum commencing no earlier than 30 June 2007.

12. ARTC ACCESS UNDERTAKING

- (a) ARTC will lodge an Access Undertaking with the Australian Competition and Consumer Commission (ACCC) pursuant to Part IIIA of the *Trade Practices Act 1974* as soon as practicable after commencement of and in accordance with the Lease and will seek to have it approved by the ACCC. The Access Undertaking will include passenger priority principles referred to in clause 13 of this Memorandum.
- (b) ARTC will abide by the Rail Infrastructure Corporation's existing access undertakings in accordance with the Lease pending the approval of the ARTC access undertaking to be obtained in accordance with clause 12(a) of this Memorandum.

13. PASSENGER PRIORITY

The Commonwealth and ARTC acknowledge NSW legislation that includes an obligation on ARTC to implement reasonable priority for passenger services. ARTC will implement the NSW passenger priority principles in NSW at all times after the commencement of and in accordance with the Lease.

14. ARTC OPERATION OF FREIGHT AND PASSENGER SERVICES

- (a) ARTC and any related corporation will not operate freight or passenger services for reward on the leased or licensed rail infrastructure.
- (b) ARTC will not have any interest in any freight or passenger services operated for reward on the leased or licensed rail infrastructure.

15. SAFETY STANDARDS

ARTC, in undertaking its activities in NSW, will be subject to the statutory powers of the NSW Transport Safety and Reliability Regulator, including the requirement to gain safety accreditation under the *Rail Safety Act 2002* (NSW).

16. KEY PERFORMANCE INDICATORS

Clear and achievable key performance indicators will be established for the performance of the Interstate and Hunter Valley Assets in accordance with the Lease.

17. CHANGE OF OWNERSHIP

The Commonwealth and NSW have entered into an agreement in relation to arrangements (including a buy back of the Lease and related arrangements) in the event that the Commonwealth proposes to dispose of or adjust its interest in ARTC.

SIGNED for the Commonwealth of Australia by
The Honourable John Anderson MP
Minister for Transport and Regional Services

_____ June 2004

SIGNED for the State of New South Wales by
The Honourable Michael Costa MLC
Minister for Transport Services and Minister for the Hunter

_____ June 2004

SIGNED for the Australian Rail Track Corporation Ltd by
Mr Barry Murphy
Chairman

_____ June 2004

TRANSACTION DOCUMENTS

1. Deed of Lease
2. Country Regional Network Management Agreement
3. Labour Services Agreement
4. Sale of Plant and Equipment Agreement
5. Southern Sydney Freight Line Development Agreement
6. Memorandum of Understanding for the Metropolitan Freight Network Agreement for Lease and Licence, and the Southern Sydney Freight Line Agreement for Lease and Licence
7. Memorandum of Understanding for the Transition Services Agreement

**OBJECTIVES OF THE INFRASTRUCTURE INVESTMENT PROGRAM WITH
REGARD TO SUPER FREIGHTER INTERMODAL SERVICES**

| | Transit Time (hrs) | | Reliability ⁽¹⁾ (%) | | Service Availability (%) | |
|---------------------------------|-----------------------|-------------|-----------------------------------|-----------|-----------------------------|-----------|
| | From | To | From | To | From | To |
| Sydney – Melbourne | 13.5 | 10.5 | 55 | 75 | 50 | 75 |
| Sydney – Brisbane | 21 | 17.5 | 50 | 75 | 25 | 60 |
| Melbourne – Brisbane | 36 | 29.5 | 45 | 75 | 60 | 85 |

1: Reliability is defined as the exit from the ARTC Network within 15 minutes of schedule