

18<sup>th</sup> January 2010

M/s Audrey Hia  
Senior Project Officer  
Economic Regulation Authority  
PO Box 8469  
Perth BC WA 6849

By email [publicsubmissions@era.wa.gov.au](mailto:publicsubmissions@era.wa.gov.au)

Dear M/s Hia,

### **Review of the Railways (Access) Code 2000**

Thank you for the opportunity of commenting on the Economic Regulation Authority (ERA) Review of the Railways (Access) Code (*the Code*).

The Association of Mining and Exploration Companies (AMEC) is the peak industry body for mineral exploration and mining companies within Australia. Its membership is almost three times larger than its nearest national counterpart. Formed in 1981, AMEC is considered to be the 'voice' and most successful advocate for mineral exploration in Australia.

AMEC's strategic objective is to secure an environment that fosters mineral exploration and mining in Australia in a commercially, politically, socially and environmentally responsible manner.

It is in this context that AMEC provides the following comments relating to the Review of the Code.

AMEC notes with disappointment the limited scope of the Review, particularly recognising that the main objective of the Railways (Access) Act 1998 (*the Act*) and the Code does not appear to be being achieved. There is a general industry view that the Act and the Code do not appear to be serving any practical purpose, and is not assisting those third party industry participants that it is intending to assist.

AMEC further notes that the State Government has long sought to ensure that fair and reasonable third party access is provided to privately owned railways, particularly in the Pilbara network. This was intended to be achieved through the relevant State Agreements Act, however, these provisions have not proven to be an effective means of promoting access.

Numerous attempts to access these railways have also been made through the 'declaration provisions' contained within the Trade Practices Act.

Unfortunately, declaration of the service does not provide the access seeker with an automatic right to use that service. It however establishes a right to commence negotiations on terms and conditions of access with the service provider.

AMEC notes that the Act provides for the establishment of the Code as subsidiary legislation, and contains a variety of provisions; including the process for the negotiation of access agreements between the railway owner and the entity seeking access. AMEC is not aware of any recent circumstance where these negotiations provisions have been successful.

In order to address the specific difficulties being experienced with third party access to the Pilbara railways network, the State Department of Treasury and Finance recently facilitated a Review of the Pilbara Railways (Third Party Haulage) Regime; which had been largely based on the Railways (Access) Code. That Review received differing views, however, identified four options for the Government to proceed on the issue of third party haulage; and expressed its preference for any haulage regime to be adopted by agreement between all the relevant parties and not for unilateral implementation. AMEC supports such an approach as transparent and reasonable dialogue between the parties during the negotiation process is paramount in order to achieve an equitable outcome.

The current complex and convoluted access and haulage negotiation processes do not appear to be encouraging, or resulting in the efficient use of and investment in railway facilities by facilitating a contestable market for rail operations.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Simon Bennison', with a stylized flourish at the end.

Simon Bennison  
**Chief Executive Officer**