



Transport for NSW

Responses to post-Hearing questions

**Legislative Assembly Committee on Investment,
Industry and Regional Development**

**Inquiry into the Inland Rail project and Regional
NSW**

Hearing Date – Friday, 7 May 2021

QUESTIONS ON NOTICE

QUESTION:

1. Mr DAVID HARRIS: With Transport for NSW, you are saying that ARTC negotiates on your department's behalf.

Mr LUNN: Yes, that is right.

Mr DAVID HARRIS: Do they have parameters or rules under which they can and cannot do things?

Mr LUNN: Yes, all the negotiations are done in line with the *Land Acquisition (Just Terms Compensation) Act 1991* and in the same protocols as Transport for NSW. We have an agreement with ARTC around that to ensure that all of their negotiations are in line with *the Land Acquisition (Just Terms Compensation) Act 1991* and how transport would undertake acquisitions on their own projects.

Mr DAVID HARRIS: And are there any consequences or penalties if they do not do the right thing?

Mr LUNN: I would have to take that on notice, to be honest.

ANSWER:

The Inland Rail Acquisition Protocol Deed (Deed) between Transport for NSW (TfNSW) and Australian Rail Track Corporation (ARTC) authorises ARTC to act as its representative, to the extent and on the terms and conditions specified in the Deed.

The Deed releases and indemnifies TfNSW to any and all claims made against or incurred by TfNSW, or which TfNSW might incur, in connection with ARTC or its employees, contractors, licensees, invitees or agents;

(1) when acting as TfNSW representative;

(2) failing to comply with any of the terms or conditions of the Deed; and

(3) undertaking "ARTC Voluntary Landowner Purchases" (as defined in the Deed) or negotiations or actions with respect to such proposed purchases."

Section 3.3.1 of the Deed states "ARTC acknowledges that TfNSW may at any time (acting reasonably) revoke the appointment of ARTC as its representative, including for a material failure by ARTC to comply with this Protocol or such other terms and conditions of appointment, as have previously been agreed in writing by TfNSW and ARTC."

Section 5.6 Complaints Escalation to Minister(s) allows "The PAS (Property Acquisition Standards) group and the CPA (Centre for Property Acquisitions) the capacity to review acquisition cases and if necessary, case manage acquisitions if they fall into significant dispute – more particularly in respect of how the Acquiring Authority conducts the engagement and negotiation process with an impacted landowner."

Non-compliance to the Deed may delay the timely delivery of the Land required for the Inland Rail project that could attract contract penalties and reputational risk for ARTC.

QUESTION:

2. Mr CLAYTON BARR: And then if we get any of the assessments wrong—let us say, for example, we thought putting up a 10-metre bund somewhere was going to be a good idea so that we could have an overpass of some description, and then the project is done and it gets up and running and then we have a whole bunch of rain and the town floods—who is responsible?

Mr LUNN: That would be a matter for Transport for NSW in their agreement with ARTC in that case.

Mr CLAYTON BARR: So the New South Wales taxpayer might end up picking up the tab if we get it wrong?

Mr LUNN: I would have to take that on notice, I am afraid.

ANSWER:

In terms of the grade separation project that TfNSW will be undertaking, TfNSW will be responsible for all works.

ARTC will be accountable for all works it is undertaking and has a responsibility to correct any works that it gets wrong. For example, ARTC is currently undertaking some post drainage works on the Parkes to Narromine Project.

QUESTION:

3. The CHAIR: The comment was made by witnesses earlier today that it is not just hard infrastructure but also supportive policy and regulatory changes that we could be looking at. One of the examples was the fact that we could have operational harmonisation. We have various drug and alcohol protocols. Fatigue management varies from line to line. Where does Transport for NSW see some of that harmonisation? Is that work occurring at this stage?

Mr LUNN: I would have to take that on notice. I am not aware of that process.

The CHAIR: Would you see those efficiencies helping to improve the Inland Rail ultimately?

Mr LUNN: I would have to take it on notice again, sorry

ANSWER:

The Council of Australian Governments (COAG) has committed to a national reform of rail safety regulation, which has seen the establishment of a single national rail safety regulator, the ONRSR, to administer a nationally consistent rail safety law, the Rail Safety National Law. This represents a major change in rail safety regulation which has historically been delivered by State and Territory regulators.

NSW has agreed to obtain a single approach to rail safety and has subsequently adopted the Rail Safety National Law (NSW) No 82a of 2012 and the Rail Safety National Law Regulations 2012.

The Rail Safety National Law (NSW) is complimentary to the *Work Health & Safety Act (NSW)*.

QUESTION:

4. Mr DAVID HARRIS: Does Transport for NSW—who signs the final contract with the landholder?

Mr LUNN: The actual contracts would be signed off, it is my understanding, by ARTC, but I would have to take that on notice.

ANSWER:

In terms of any work agreements between ARTC and landholders, ARTC sign off. TfNSW is not party to any contracts, except for the property acquisitions.

The Inland Rail Acquisition Protocol Deed (Deed) between TfNSW and ARTC authorises ARTC to act as TfNSW's representative, to the extent and in line with the terms and conditions specified in the Deed.

Section 3.4.3 (iii) of the Deed states "Thereafter the Contract/Deed will be executed by TfNSW's delegated officers and exchange with the landowner or the landowner's solicitors will be attended to by TfNSW Legal or TfNSW appointed solicitors."

QUESTION:

5. The CHAIR: Mr Lunn, I touched on operational harmonisation earlier on in the piece and you took that on notice—and thank you for that. Can I add to that a question around control systems? It was raised before by Freight on Rail Group that metropolitan freight rail operates to different operational and control systems and that there could be a level of harmonisation and inter-operations there. Can I ask you to take that on notice, please?

Mr LUNN: I am happy to take that on notice

ANSWER:

The Metropolitan rail network has adopted the European Train Control System and ARTC has adopted the Advance Train Management System.

ARTC and TfNSW are engaged in early discussions on how these systems can be integrated. It is a complicated project that is in the early stages.