

Mr Clinton Howe MLA
Chair
Public Accounts Committee
Legislative Assembly of the Northern Territory
2 JUNE 2025
By email: LA.PAC@nt.gov.au

Dear Mr Howe

PARLIAMENTARY COMMITTEE INQUIRY INTO THE DARWIN WATERFRONT CORPORATION

We refer to your letter to the AustralAsia Railway Corporation dated 27 May 2025 regarding the Public Accounts Committee inquiry into the use of taxpayer funds and conflict of interest management at the Darwin Waterfront Corporation (**DWC**).

Your letter invites “the Department of the Chief Minister and Cabinet” to make a written submission addressing the terms of reference for the inquiry. We assume your intention was to invite the AustralAsia Railway Corporation to make a submission, and that you have separately written to the Department of the Chief Minister and Cabinet inviting them to make a separate submission.

Background on the AustralAsia Railway Corporation

The AustralAsia Railway Corporation (**AARC** or the **Corporation**) was established in 1997 by the Northern Territory and South Australian Governments to manage the awarding of a Build, Own, Operate and Transfer back (**BOOT**) concession for the AustralAsia Railway (between Darwin and Tarcoola, in South Australia) and to enter into the contractual arrangement with the successful consortium. The Corporation also obtained and holds a leasehold interest in the railway corridor between Darwin and Tarcoola.

The primary contract that was awarded and entered into by the Corporation on 20 April 2001 was the Concession Deed. The deed awarded the 50 year concession to the Asia Pacific Transport Company Pty Ltd (**APT**) as agent of the Asia Pacific Transport Joint Venture. At the same time, the Corporation granted **APT** sub-leases of the railway corridor. The Concession Deed and the sub-leases will expire on 14 January 2054. The obligations of the Corporation under the Concession Deed, the sub-leases and the other project contracts to which **AARC** is a party are jointly guaranteed by South Australia and the Northern Territory Governments.

The legislation that established the Corporation and governs its activities is the AustralAsia Railway Corporation Act 1996 (NT) (**Act**) and the Alice Springs to Darwin Railway Act 1996 (SA). The Corporation is also governed by two Intergovernmental Agreements between the Northern Territory and South Australia. The first Intergovernmental Agreement was signed on 13 November 1996. The second Intergovernmental Agreement was signed on

19 April 2001, and varied at the time of the first sale (described below) on 23 November 2010.

The Corporation's activities and administrative costs are jointly funded by South Australia and the Territory on an equal basis in accordance with the second Intergovernmental Agreement. The second Intergovernmental Agreement also requires that the functions of the Corporation are devolved on other Departments, Agencies and instrumentalities of South Australia and the Territory with a view to minimising the overall expenditure of South Australia and the Territory in connection with the railway, to the extent practicable and consistent with the proper performance of those functions.

Under the Act, the Corporation is comprised of up to nine Board Members (including the Chair and CEO). At least two Board Members are appointed by the Minister to represent the interests of the Northern Territory. At least two Board Members are appointed by the Minister on the nomination of the South Australian Minister to represent the interests of South Australia. Four other Board Members can be appointed by the Minister with the agreement of the South Australian Minister. The Corporation currently consists of five members (two NT (including the Chair), two SA and the CEO).

Under section 29 of the Act, the Corporation may appoint such officers and engage such employees as it thinks necessary. The terms and conditions of employment are determined by the Corporation and the *Public Sector Employment and Management Act 1993* does not apply to or in relation to the employment of officers or employees of the Corporation.

The three sales of the railway concession

APT completed the construction of the railway on 14 January 2004 and commenced to operate the railway from that date.

In 2008, Receivers and Managers were appointed to the Asia Pacific Transport Joint Venture, resulting in the 2010 sale of APT's assets, including its rights under the Concession Deed, to GWA (North) Pty Ltd ACN 144 081 774 (**GWAN**), a wholly owned subsidiary of Genesee & Wyoming Inc. We refer to this as the "**first sale**".

In 2019, Genesee & Wyoming Inc was acquired by a consortium known as the Brookfield Consortium. This acquisition resulted in control of Genesee & Wyoming Inc passing to the Brookfield Consortium. As part of this transaction, Genesee & Wyoming Inc sold its 51.1% interest in the Australian holding company of GWAN to various funds known as the MIRA-PGGM Funds, who at that time held a minority 48.9% interest in GWAN. As a result of these two transactions, control of the Australian holding company and, in turn, GWAN, passed from Genesee & Wyoming Inc to the MIRA-PGGM Funds. We refer to this as the "**second sale**". After this second sale, the Australian holding company and GWAN came to trade under the name One Rail Australia.

In 2021, Macquarie Asset Management, on behalf of the MIRA-PGGM Funds, agreed to sell the One Rail Australia Group, including its interest in GWAN, to Aurizon Holdings Limited.

This sale, which we refer to as the “**third sale**”, was completed in 2022. The name of GWAN was then changed to Aurizon Bulk Central Network Pty Ltd.

Consequently, the concession rights under the Concession Deed are now held by Aurizon Bulk Central Network Pty Ltd (the **Railway Concessionaire**), which is a wholly owned subsidiary of Aurizon Holdings Limited.

AARC’s current role

AARC’s current focus is to ensure it fulfils its obligations to the Railway Concessionaire under the Concession Deed and that Railway Concessionaire fulfils its obligations to the AARC under the Concession Deed and related project contracts. AARC also facilitates projects related to the Railway and ensures the economic benefits of this ‘Nation-building’ infrastructure is maximised for both jurisdictions. It is expected that this role will continue until the concession period expires in 2054, at which time the Railway Concessionaire will hand control of the railway back to AARC. AARC will then deal with the Railway in accordance with the wishes of its shareholders, the Northern Territory and South Australia, and the Intergovernmental Agreement between them in respect of the Railway.

Submissions on Terms of Reference

AARC would like to make the following submissions on the Terms of Reference:

- (a) Alleged creation of a made-up part-time job, reportedly unadvertised and resulting in a \$60,000 salary increase via a temporary higher duties allowance*

The DWC is Mr Samuel Burke’s employer of record. Contractual matters, other than AARC reimbursing for his pro-rated salary through shared services arrangements, are a matter for DWC.

Mr Burke performed the role of AARC’s Acting CEO, pursuant to section 29 of the Act, between 1 January 2019 until early 2020 due to the extended leave and ultimate retirement of the then-AARC CEO, Mr Brendan Lawson.

AARC paid a pro-rated reimbursement to DWC for Mr Burke’s work during this period. Prior to 1 January 2019, Mr Burke provided support to AARC, however there was no financial arrangement paid by AARC between late 2016 and 31 December 2018.

In early 2020, Mr Lawson gave notice of his proposed retirement. The AARC Board unanimously resolved to recommend that Mr Burke be appointed as AARC’s permanent CEO pursuant to section 16 of the Act.

Mr Lawson retired as AARC CEO in April 2020. Mr Burke was formally appointed AARC CEO in May 2020, following formal letters of recommendation from the Northern Territory and South Australian Ministers.

- (b) The higher duties allowance allegedly continued for up to six years, long after the temporary role ended*

AARC can only attest to the Higher Duties Allowance paid to Mr Burke between 1 January 2019 and April 2020 which it reimbursed DWC for. Before this time, AARC provided no contribution to DWC for Mr Burke's services.

In May 2020, Mr Burke was formally appointed as AARC CEO and a pro-rated reimbursement of his salary continues to be paid to DWC.

- (c) Claims of funds being moved between the Darwin Waterfront Corporation and the AustralAsia Railway Corporation and their appropriateness*

AARC has shared office facilities, including finance and administrative services, with the DWC, since the DWC was established in 2006. Prior to 2006, AARC shared office facilities with the NTG project team working on the Darwin Waterfront Project.

In 2023/24, AARC contributed towards the cost of the DWC's CEO (43%), DWC's Financial Controller (30%) and DWC's finance staff members' budgeted salary and other entitlements (10%) via reimbursement. In addition, general expenses are reimbursed via cross charge based on actuals or a percentage of use based on budgeted expenditure approved by the AARC Board.

The devolution of functions of AARC into other instrumentalities of the Territory or South Australia is consistent with the obligations of the Territory and South Australia under the second Intergovernmental Agreement for the railway.

- (d) Signing of a new four-year executive contract that was not advertised, not subject to the required job evaluation system review and signed six months before the previous one expired*

Mr Burke's appointment as CEO of AARC is ongoing under the Act. The DWC is Mr Burke's employer of record. Contractual matters, other than AARC reimbursing for the pro-rated salary through shared services arrangements, are a matter for DWC.

A statement from Mr Lawson, who was the AARC CEO at the time the alleged activities are alleged to have occurred, is attached. Mr Lawson's statement supports our submissions.

This submission is made by the entire AARC Board.

Your faithfully,

AUSTRALASIA RAILWAY CORPORATION



30 May 2025

AustralAsia Railway Corporation
GPO Box 1449
DARWIN NT 0801

Via email: Australasia.railway@nt.gov.au

Re: Parliamentary Committee inquiry into the Darwin Waterfront Corporation

The Northern Territory Public Accounts committee has written to the AustralAsia Railway Corporation on 27 May 2025, regarding an inquiry into the Darwin Waterfront Corporation. You have requested that I provide advice in relation to the third item of reference: *'funds being moved between the Darwin Waterfront Corporation and the AustralAsia Railway Corporation and their appropriateness'*.

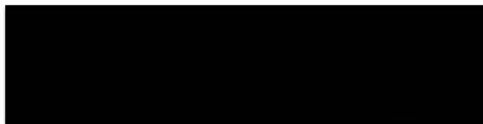
1. I am a civil engineer by profession and have been involved with the AustralAsia Railway project since 1996. My career with the Northern Territory public sector involved many roles in major projects including the East Arm Port, Darwin Waterfront, Inpex and planning for the development of Weddell.
2. I was appointed Chief Executive Officer of the AustralAsia Railway Corporation (AARC) on 6 October 2004, following the appointment of Mr Paul Tyrrell AO to the position of AARC Chairman whilst also holding the position of Chief Executive Officer of the Department of Chief Minister and Cabinet.
3. At the time I was appointed Chief Executive Officer of AARC, I was also the Project Administrator of the Darwin Waterfront Project during the period 2004-2006 on a contract at the Executive Level 4.
4. From the time of my appointment as Chief Executive Officer in 2004, as the railway project moved into a post construction, operational phase, AARC was co-located with the project team for the Darwin Waterfront. The AARC Board resolved that the location for the AARC office and administrative functions, including records management, would best be provided in Darwin where the project delivery team resided and where the administrative support for AARC could be delivered consistent with the Intergovernmental Agreement and Deed of Conditions of Financial Assistance, which set out the arrangements for shared funding between the South Australian and NT Governments going forward.

5. At the completion of Stage 1 of the Darwin Waterfront in or about 2008, as I concluded my role as the Project Administrator of the Darwin Waterfront Project, the joint offices of the AARC and Darwin Waterfront Corporation (DWC) moved to the newly constructed Darwin Waterfront Precinct sharing finance and administrative services with co-location.
6. Between early 2008 and early 2013, Mr Tyrrell was both the Chairman of AARC and DWC.
7. In early 2014 the shared service arrangement between AARC and DWC became tripartite, now including the Land Development Corporation for financial functions.
8. In late 2014, Mr Alastair Shields was appointed Chairman of AARC. I had worked with Mr Shields during the development of the AustralAsia Railway Project and also on the Darwin Waterfront Project.
9. In April 2015, Mr Andrew Kirkman was appointed Chief Executive Officer of DWC and in October 2015 he was appointed to the Board of AARC. At that time, he was also the Chief Executive Officer of the Department of Transport.
10. In early 2016 I met Mr Samuel Burke, who had been recruited to the position of General Manager of DWC. Given our shared office facilities and shared financial services, Mr Burke and I had a relatively close working relationship. At this time, I was working as CEO of AARC managing AARC's interests following the sale of the business to Genessee & Wyoming and attending to the storage/disposal of the extensive project documentation for 3 days per week.
11. Since AARC had no full time staff and my position as Chief Executive Officer was part-time, in late 2016 and throughout 2017 I commenced briefing Mr Burke on AARC matters with a view to him being able to provide management support and coverage during periods of my recreation leave or other absence. At this time, shared service arrangements were between the DWC and AARC only.
12. During a period of leave during April 2017, I made arrangements for Mr Burke to be available as the referral contact point for AARC. Since this arrangement did not involve delegated powers/authority, no Higher Duties or other financial arrangement was provided for this support. This arrangement proved successful and I found Mr Burke to be both a capable and skilled operator. His legal

background was also particularly useful in understanding the complex contract administration functions of AARC.

13. This same arrangement was repeated when I took more recreation leave later in 2017 with Mr Burke nominated as the management contact point for AARC. Again, there was no Higher Duties or other financial arrangement for this support.
14. Throughout 2018, Mr Burke undertook a senior Major Projects role with the then Department of Trade, Business and Innovation and also continued his role with DWC. Mr Burke continued to be kept abreast of AARC matters as part of a Board approved arrangement for management coverage during periods of my leave and succession planning purposes. Mr Burke attended AARC Board meetings as an "Observer". There was no Higher Duties or other financial arrangement for Mr Burke's involvement at this time.
15. By this time, with the operations at a steady state, the AARC focus was on asset maintenance and my time requirement reduced to 2 days per week.
16. In late 2018, in anticipation of taking Long Service Leave in 2019, after discussion with the AARC Board, I approached Mr Burke about assuming the role of Acting Chief Executive Officer for AARC in 2019. Mr Burke indicated he would be concluding with the Department of Trade, Business and Innovation and would return to DWC full-time. Mr Burke was supportive of continuing his involvement with AARC.
17. At AARC Board Meeting number 113, held on 19 November 2018, the Board unanimously endorsed arrangements to delegate authority to Mr Burke to perform my functions at the AARC.
18. Arrangements were put in place for Mr Burke to formally work with AARC on and from 1 January 2019 under a Higher Duties Allowance paid by his substantive employer, the DWC, but recovered from AARC.
19. I returned to work on or about 4 November 2019, working 2 days per week and commenced the process of handover with a view to retiring completely in early 2020. Mr Burke continued his functions with the AARC during this time and also became the lead for projects involving the AARC during this transition period like SunCable.

20. In early 2020 the AARC Board formally resolved to recommend Mr Burke be appointed as the permanent Chief Executive Officer of AARC and this was supported by the South Australian and Northern Territory Ministers.
21. Mr Burke continued as Acting Chief Executive Officer of AARC until my formal retirement notification in April 2020.
22. Mr Burke was appointed Chief Executive Officer of AARC in May 2020.
23. I concluded my contract and all working arrangements with the Northern Territory Government and AARC in July 2020.
24. In my view, the shared services arrangements with an entity like the DWC ensures that AARC is managed and assisted by highly skilled and capable staff in the most financially efficient way, as was originally agreed between the South Australian and Northern Territory governments.
25. The arrangement provided and continues to provide value to the Governments of South Australia and the Northern Territory through their interest in AARC.
26. I am available to give evidence if required by the Public Accounts Committee of the Northern Territory Parliament.



BRENDAN LAWSON PSM, FIEAust

30 MAY 2025