



## THE ESSENTIAL SERVICES COMMISSION

### PACIFIC NATIONAL PROPOSED ACCESS ARRANGEMENT VARIATION: DECISION

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#### **Application**

The Commission has received an application from Pacific National for the variation of its access arrangement applying to the South Dynon Terminal. The access arrangement currently in place has a term of three years, and is set to expire on 1 July 2015. This application was made pursuant to section 38ZO of the *Rail Management Act 1996* (Vic) (RMA).

Pacific National's proposed variation would extend the operation of the current access arrangement for a further two years until 1 July 2017. Pacific National has not sought to vary any other provision in its access arrangement.

Prior to the *Road Safety Amendment Act 2014*, the expiry date of an access arrangement could not be altered through the variation of a binding access arrangement under section 38ZO of the RMA (being expressly prohibited by section 38ZO(2)). However, section 38ZO(2) was repealed by the *Road Safety Amendment Act 2014*, thereby allowing access providers to seek a variation to the date of expiry of a binding access arrangement.

#### **Process**

The Commission may vary a binding access arrangement on the application of an access provider under section 38ZO of the RMA. Section 38ZO(6) requires the Commission to consider whether any proposed access arrangement variation is 'material'. If the Commission considers a variation is 'material', it is required to undertake a public consultation process with respect to the application.

With the exception of the two year extension, Pacific National's existing access arrangement will continue unchanged.

Given the above, the Commission is of the view that the variations are not material and as a result the Commission is not required to undertake a public consultation process.

#### **Commission's Decision**

The Commission agrees to the proposed variation of Pacific National's access arrangement and has approved the changes to the binding access arrangement indicated in Annexure 1 pursuant to section 38ZO of the RMA.

This decision takes effect on and from the date of this decision (18 March 2015).

**DATED:** 18 March 2015