



Notice

30 July 2014

The Pilbara Infrastructure Pty Ltd Amendments to Segregation Arrangements

APPROVAL AND PUBLICATION OF AMENDED SEGREGATION ARRANGEMENTS

The Economic Regulation Authority has approved amendments to segregation arrangements proposed by The Pilbara Infrastructure (**TPI**) and has published the amended instrument.

The amendments ensure that the segregation arrangements provide the same protections to interested entities before and after negotiations commence. TPI had earlier advised that it considered that its segregation arrangements did not provide these protections before the commencement of negotiations.

On 4 June 2014, the Authority published a notice inviting public submissions on TPI's proposed amendments by 4 July 2014. The Authority received one submission, from Brockman Mining Australia (**BMA**), which has been published on the Authority's website.

BMA submitted that the Authority should not approve the revised TPI segregation arrangements. However, BMA did not object to the proposed amendments and noted in its submission that the proposed revised segregation arrangements are an improvement on the existing segregation arrangements.

BMA's comments relate specifically to:

- The adequacy of the definition of access-related functions;
- Potential for conflict of interest issues to arise;
- The adequacy of the definition of Confidential Information; and
- The adequacy of provisions for of fairness.

The Authority has noted BMA's reservations about the effectiveness of the segregation arrangements.

The Authority is aware that TPI and Brockman Iron Pty Ltd (**Brockman**) are currently commencing negotiations, and that the amendments to TPI's segregation arrangements address concerns expressed by Brockman in relation to the protection of its confidential information. These concerns were expressed in consultation on amendments to TPI's segregation arrangements in 2013, and following acceptance of those amendments in 2013.

If the current amendments proposed by TPI are not accepted by the Authority, then Brockman may not have protection of confidentiality over information it has already provided to TPI in the course of the current negotiations.

In relation to BMA's specific comments, the Authority notes that:

- The list of access-related functions nominated by TPI in its segregation arrangements is consistent with those listed in segregation arrangements for other regulated rail networks.



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- Due to the TPI corporate structure and ownership, perception of conflict of interest in relation to above rail traffic management is an important matter. The segregation arrangements have adequate provisions to ensure conflict of interest is managed effectively when third party above-rail operations commence on the TPI network.
- Section 31 of the *Railways (Access) Act 1998 (Act)* includes a definition of Confidential Information in which information is deemed confidential if specified so by the person who supplied it. The Authority believes that this definition is adequate to fully protect any information considered confidential by the party providing it.
- TPI is obliged by its segregation arrangements to treat all proponents and operators fairly in relation to prices, service quality, paths and priority.

The Authority notes the amended segregation arrangements require full segregation from the date of the first access agreement, and from that time the segregation arrangements assure the adequacy of protections for third party operators on the TPI network, in addition to those of interested entities and proponents. The current amendments ensure that interested entities and proponents are adequately protected prior to the making of the first access agreement.

The Authority notes that section 29 of the Act allows the Authority to confer with TPI on any matter, including those matters raised in BMA's submission, which relate to the way in which TPI's segregation obligations are to be carried out. The amended segregation arrangements retain provision for stakeholders to raise any issue of concern in relation to the segregation arrangements with the Authority, and for the Authority to investigate such claims. The Authority may require TPI to amend its segregation arrangements at any time.

The approved TPI segregation arrangements is available on the Authority's [website](#).

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