



Government of **Western Australia**
Public Transport Authority

PTA THIRD PARTY RAIL ACCESS SEGREGATION ARRANGEMENTS

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PTA THIRD PARTY RAIL ACCESS - SEGREGATION ARRANGEMENTS

Contents

1. Introduction	3
2. Principle governing the use of the PTA rail network	3
3. Factors Relevant to PTA's Proposed Segregation Arrangements	3
4. Summary of Legislative Requirements to Segregate Access-related functions	4
4.4 Section 31 "Protection of confidential information"	4
4.5 Section 32 "Avoidance of conflict of interest"	4
4.6 Section 33 "Duty of fairness"	5
4.7 Section 34 "Maintenance of separate accounts and records"	5
5. Definitions	5
6. Access-related functions	6
7. Compliance & Review	7
7.1 Regular Monitoring, Enforcement & Review	7
7.2 Complaints Handling	7
7.3 Confidential Information (covered by section 31 of the Act)	8
7.4 Conflict of Interest (covered by section 32 of the Act)	9
7.5 Duty of fairness (covered by section 33 of the Act)	10
7.6 Maintenance of separate accounts and records (covered by section 34 of the Act)	10
7.6.4 Enterprise Asset Management System	11

1. INTRODUCTION

- 1.1. The following Segregation Arrangements (“**Segregation Arrangements**”) set out the mechanisms by which the Public Transport Authority of Western Australia (PTA) will meet its obligations under Part 4, Division 3 of the Railways (Access) Act 1998 (“**the Act**”) to segregate its Access-related functions from its other functions.
- 1.2. The Segregation Arrangements are intended to establish a rail access regime in respect of the Urban Rail Network controlled by PTA that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations, as required by the Act.
- 1.3. Under section 29 of the Act, before a railway owner puts in place or varies any arrangement it must obtain the Regulator's approval to the arrangement or variation. These Segregation Arrangements have been submitted to the Regulator and approved in compliance with section 29(1) of the Act.
- 1.4. Under section 41 of the Railways (Access) Code 2000 (The Code), the Regulator, in considering whether to approve the Segregation Arrangements, must have regard to submissions made in accordance with the specified public consultation process (under section 42 of The Code), the requirements of the public interest and other relevant matters.
- 1.5. Under section 29 of the Act, in addition to approving segregation arrangements proposed by PTA, the Regulator may confer with PTA on any matter which relates to the way in which PTA's obligations under section 28 are to be carried out, with a view to the Regulator and the railway owner reaching agreement on the matter. The Regulator may also give directions in writing to PTA with respect to segregation arrangements.

2. PRINCIPLE GOVERNING THE USE OF THE PTA RAIL NETWORK

- 2.1. The reason for the existence of the PTA urban rail network, and its essential function, is to provide a safe, reliable and efficient rail-based public transport service within metropolitan Perth. Certain performance standards for the provision of that public transport service are required by Government, which funds the urban rail network and the public transport service. PTA currently operates a rail-based public transport service with on-time running within three minutes of schedule and the use of safe systems such as Automatic Train Protection. The Government and the users of the system have a right to expect that these standards will be maintained.
- 2.2. The State rail access regime requires that third party operators be permitted to negotiate agreements to use the PTA network and PTA is committed to facilitating such use. However, PTA maintains that the safe and reliable operation of the rail-based urban public transport service is paramount and must not be compromised as a result of the presence of other operators on the network. This underlies PTA's approach to the provision of track access.

3. FACTORS RELEVANT TO PTA's PROPOSED SEGREGATION ARRANGEMENTS

- 3.1. PTA is established under the Public Transport Authority Act 2003 section 5 to direct, manage, maintain and control the Government railways in Western Australia. As a statutory authority, PTA has certain statutory obligations with respect to its operation, and the management of the organisation. These include the accountability of its Chief Executive Officer for all aspects of the management of Government railways, and certain requirements with respect to its financial management and accounting, and its management of its staff.

- 3.2. As a Government agency, PTA is also bound by the provisions of the **Public Sector Management Act 1994**, the **Financial Administration and Audit Act 1985**, the **Freedom of Information Act 1992** and the **Statutory Corporations (Liability of Directors) Act 1996**, among other statutes. Administrative arrangements designed to meet the requirements of the Act may not be in breach of other legislation governing the operation and management of PTA as a Government agency and statutory authority.
- 3.3. PTA operates the urban railway passenger public transport services. These services are significantly subsidised by the State Government. The services operate over 6 electrified lines (from Perth to Midland, Butler, Mandurah, Fremantle, Thornlie and Armadale) which total 180 kilometres of narrow gauge, electrified, bidirectional track – the Urban Electrified System. In addition, PTA owns, manages and controls a further 17 kilometres of non-electrified single line track from Armadale to Mundijong (narrow gauge) and from Robbs Jetty to Fremantle (dual gauge), for a total “Urban Network” comprising 197 route kilometres of track. The track from Midland to East Perth is also dual gauge, with standard gauge access to the East Perth terminal.
- 3.4. It is likely that only a small portion of the PTA Urban Network will be subject to access applications from third party freight rail operators, heritage/boutique train service providers, private passenger train operators and work train operators. These prospective third party users of the PTA Network may not be operating train services that could be considered to be in the same competitive market as PTA.

4. SUMMARY OF LEGISLATIVE REQUIREMENTS TO SEGREGATE ACCESS-RELATED FUNCTIONS

- 4.1. Section 28 of the Act requires that PTA must segregate its Access-related functions from its other functions by having appropriate controls and procedures to ensure that the measures in place operate effectively and are complied with. Segregation arrangements are also sometimes termed “ring fencing”.
- 4.2. Section 29 of the Act sets out the powers of the Regulator with respect to segregation arrangements.
- 4.3. Section 30 of the Act requires that PTA must ensure as a minimum that the provisions of sections 31, 32, 33 and 34 are satisfied.
- 4.4. **Section 31 “Protection of confidential information”**
 - 4.4.1. “There must be an effective regime designed for the protection of confidential information relating to the affairs of persons seeking access as rail operators from:
 - 4.4.1.1. improper use; and
 - 4.4.1.2. disclosure by relevant officers, or other persons, to other officers or employees of the railway owner or other persons, except for proper purposes”.
- 4.5. **Section 32 “Avoidance of conflict of interest”**
 - 4.5.1. “The arrangements under section 28 must be such as to ensure that a relevant officer does not have a conflict between his or her duties:
 - 4.5.1.1. as a person concerned in the performance of access-related functions, on the one hand; and
 - 4.5.1.2. as a person involved in other business of the railway owner, on the other”.

4.6. **Section 33 “Duty of fairness”**

4.6.1. “In performing their functions relevant officers must not have regard to the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators”.

4.7. **Section 34 “Maintenance of separate accounts and records”**

4.7.1. “A railway owner must ensure that its accounts and records are in such form as to enable:

4.7.1.1. all income, expenditure, assets and liabilities relating to the carrying out of its access-related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities; and

4.7.1.2. where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the carrying out of its access-related functions to be apportioned in a fair and reasonable manner.”

5. DEFINITIONS

Access Agreement - means the railway access agreement entered into under the Railways (Access) Code, between the railway owner (PTA) and an Entity, for access to the railway network by that Entity.

Access-related functions - means the functions involved in arranging the provision of access to railway infrastructure under the Code and includes those function set out in clause 6.

Code - means the Code for the time being in force under section 4 of the Act.

Confidential Information - means information that has not been made public and that:

- a) is by its nature confidential;
- b) was specified to be confidential by the person who supplied it; or
- c) is known by a person using or disclosing it to be confidential.

Contractor - means any person who is contracted by PTA to undertake services which are, in any way, concerned in the performance of access-related functions.

N&I - means PTA's Network and Infrastructure Division.

Network - means that part of the railway permanent way, controlled by PTA, which is delineated, described or defined in Schedule 1 of the Railways (Access) Code 2000 and includes the narrow gauge double tracks between Clarkson and Butler.

PTA Safeworking Rules & Procedures - means the operating rules relating to PTA's Safeworking Systems, needed to meet the requirements of the Rail Safety National Law (WA) Act 2015.

TTO - means PTA's Transperth Train Operations Division.

Operator - means a person to whom access is provided to the network under an Access Agreement for the purpose of running trains.

PTA - means the Public Transport Authority of Western Australia established by the Public Transport Authority Act 2003 section 5.

Regulator - means the Economic Regulation Authority established by the Economic Regulation Authority Act 2003.

Relevant Officer - means an officer of PTA who is in any way concerned in the performance of access-related functions.

Safeworking Systems - means an integrated system of operating procedures and technology for the safe operation of trains and the protection of people and property on, and in the vicinity of, the railway.

Working Timetable - means the train time-tables and operating data, including general and local instructions which apply to PTA's Rail Network.

6. ACCESS-RELATED FUNCTIONS

- 6.1. Access-related functions include:
 - 6.1.1. Negotiation of Access Agreements and approving of access rights;
 - 6.1.2. The various steps prior to negotiation as specified in the Code (e.g. provision of preliminary information, obtaining the Regulators approval under section 10 of the Code, assessing the access seekers managerial and financial ability).
 - 6.1.3. Management of Access Agreements including performance monitoring and reporting, and day to day operational issues;
 - 6.1.4. Development and authorisation of the PTA Network Rules and Procedures including the Working Timetables and the issue of special notices, instructions and warnings related to the rules;
 - 6.1.5. Emergency management on the network including co-ordination of emergency service responses;
 - 6.1.6. Train control which includes provision of appropriate authorities for trains to use scheduled train paths;
 - 6.1.7. Train scheduling including train path allocation and variation, publication of working timetables, control planning and the approving of ad-hoc train path allocations;
 - 6.1.8. Development, maintenance and monitoring compliance with appropriate safety standards for PTA staff, its Contractors and Operators on the Network;
 - 6.1.9. The maintenance of the track and infrastructure including signalling and communications;
 - 6.1.10. The collection, use, and dissemination of train running data including manifest details and access usage;
 - 6.1.11. The development of train operating standards (to the extent they relate to the infrastructure) such as maximum braking distances, maximum train lengths etc., and also the maintenance standards for the infrastructure itself;
 - 6.1.12. Calculation of Total and Incremental prices for line sections, including calculation of inputs to those prices;
 - 6.1.13. Compliance with the access legislation and Regulator's requirements; and
 - 6.1.14. Ensuring suitable controls, measures and procedures are maintained to provide an effective system of segregation.
- 6.2. PTA may perform the Access-related functions in-house or contract them to external suppliers. In either case, PTA has a responsibility for the management of all functions and must ensure that the Segregation Arrangements are complied with.
- 6.3. As defined by section 28 of the Act , any agreements or arrangements arising from negotiations for access between PTA and a third party that fall outside the Code will not be considered to be:
 - 6.3.1. "Access-related functions"; or
 - 6.3.2. "other functions".

7. COMPLIANCE & REVIEW

7.1. Regulator Monitoring, Enforcement and Review

- 7.1.1. PTA will comply with the provisions of these Segregation Arrangements including by way of:
 - 7.1.1.1. the general operation of business relating to third party access;
 - 7.1.1.2. undertaking compliance auditing; and
 - 7.1.1.3. development of a complaints handling processes.
- 7.1.2. The Regulator will investigate any concerns or claims raised by third parties or other stakeholders regarding these Segregation Arrangements and/or PTA's compliance with such.
- 7.1.3. At any time the Regulator, for their own reason or at the request of a third party, may require PTA to modify these Segregation Arrangements.
- 7.1.4. Any breach of these Segregation Arrangements will be reported to the Regulator in writing within five business days of the breach being discovered, including details of any rectification process. PTA acknowledges that the Regulator may conduct a special audit on the breach if it is deemed necessary.
- 7.1.5. PTA will provide training for staff involved in Access-related functions regarding the implementation of these Segregation Arrangements and their confidentiality obligations.
- 7.1.6. At a time of not more than once every two years, the Regulator will appoint an independent auditor to conduct an audit on PTA's compliance with these Segregation Arrangements. The scope of the audit will be determined by the Regulator with PTA managing and funding the audit.
- 7.1.7. The final audit report, excluding any confidential information, will be published on the Regulator's website.

7.2. Complaints handling

- 7.2.1. PTA understands that should any parties or Operators consider that a breach of these Segregation Arrangements has occurred, they are entitled to approach the Regulator at any time, and that the Regulator may conduct an investigation into any alleged breach of these Segregation Arrangements.
- 7.2.2. In addition, if any parties or Operators consider that PTA has breached its obligations in regards to these Segregation Arrangements, they may lodge a written complaint with PTA, and PTA will conduct an internal investigation. PTA will notify the Regulator within 10 business days of receipt of any complaint and what action has been taken to rectify the issue. PTA will endeavour to complete its internal investigation and notify the complainant and the Regulator of the outcome within 30 business days of receiving the complaint.

7.3. Confidential Information (covered by section 31 of the Act)

Section 31(2) of the Act defines confidential information as:

information that has not been made public and that —

(a) is by its nature confidential;

(b) was specified to be confidential by the person who supplied it; or

(c) is known by a person using or disclosing it to be confidential.

- 7.3.1. The position titles of all PTA staff and contractors, who will handle confidential information and who will have responsibility for ensuring confidentiality by prohibiting any other non-authorized staff from accessing it are cited in 7.3.11. Those staff identified will be required to sign a confidentiality undertaking.
- 7.3.2. Confidential information on Access-related functions will only be opened and assessed by an officer cited in 7.3.11.
- 7.3.3. Examples of documents which would be considered to be confidential information are listed below:
 - 7.3.3.1. Submissions from Operators and prospective access seekers;
 - 7.3.3.2. Access Agreements;
 - 7.3.3.3. Document Register pertaining to Segregation Arrangements;
 - 7.3.3.4. Management Reports on Access Related Functions;
 - 7.3.3.5. Periodic summary of activities conducted;
 - 7.3.3.6. Revenues from access charges. Costs of providing access; and
 - 7.3.3.7. Revenues and costs will be both shown in aggregated form in Management Reports.
- 7.3.4. All Access Agreements, associated correspondence and supporting documentation supplied by an access seeker or an Operator is maintained on specially designated files. A separate file is maintained for each access seeker. These files are secured within the PTA Registry system, physically stored within N&I and access to these files is restricted to the General Manager - N&I, and such other officers nominated and authorized by him.
- 7.3.5. Electronic files on the PTA server are kept on individual and divisional password protected directories. Officers in one PTA division cannot access confidential electronic information on directories assigned to other divisions. The information technology support for PTA is provided by a branch within N&I, TTO does not have global access to all PTA electronic files.
- 7.3.6. N&I is geographically separated from TTO.
- 7.3.7. Where an employee is privy to significant levels of confidential information related to access seekers is transferred into TTO, the employee will be required to sign a formal confidentiality undertaking.
- 7.3.8. Reports on access - related functions to be provided to PTA management will include the types of information listed below:
 - 7.3.8.1. Management Reports on Access Related Functions;
 - 7.3.8.2. Periodic summary of activities conducted;
 - 7.3.8.3. Revenues from access charges. Costs of providing access; and

- 7.3.8.4. Revenues and costs will be both shown in aggregated form in Management Reports.
- 7.3.9. PTA procedures for managing the forwarding of confidential information associated with Access-related functions to the Minister and Government are managed through PTA's Corporate Issues Division.
- 7.3.10. PTA will inform access seekers of their respective rights to confidentiality when negotiating inside and outside the regime, and will establish a protocol for dealing with access seekers who move from negotiating outside of the regime to under the regime.
- 7.3.11. **Position Titles of All PTA Staff and Contractors Handling Confidential Information**
- 7.3.11.1. The following positions are required to sign confidentiality undertakings:
- a. **Corporate Group**
 - i. Chief Executive Officer, Managing Director, Executive Assistant to Managing Director, General Counsel, Senior Legal Counsel, Legal and Administrative Support.
 - b. **Network and Infrastructure Division**
 - i. General Manager, Executive Assistant, Manager Track & Structures, Track Infrastructure Maintenance Manager.
 - c. **Finance Directorate**
 - i. Executive Director Finance and Contracts, Executive Support Officer, Manager Management Accounting, Manager Budget and Financial Planning.
 - d. **Transperth Train Operations Division**
 - i. General Manager Transperth Train Operations, Operations Manager, Assistant Operations Manager, Train Services Manager, Suburban Operations Coordinator (3), Service Planning Manager, Planning & Systems Officer, Special Events Coordinator, Service Planning and Events Officer, Service Planning Assistant, Train Controllers (15), Relief Staff (8), Train Controller (Training).
 - e. **Safety and Strategy Directorate**
 - i. Executive Director Safety & Strategic Development, Research & Support Officer, Manager Rail Freight Infrastructure, Records Services Manager, Records Services & Disposals Coordinator, Records Management Officer (2), Records Customer Service Officer.

7.4. Conflict of Interest (covered by section 32 of the Act)

- 7.4.1. PTA will require that all relevant officers disclose any potential conflicts of interest that may affect either their performance of Access-related functions or any other PTA business. Any conflicts will be managed by way of organisational separation of duties and control of information flow.

7.4.2. The organisational structure of PTA provides for separation of the infrastructure provider (N&I) from TTO. Applications for access are managed, and negotiations undertaken, by the General Manager, N&I, and persons authorised by and reporting to him or her. Confidential information provided by any other party or Operator will be disclosed to only the relevant officers dealing with an Access Application which necessitates the knowledge of that information. Employees transferring between N&I and TTO will be required, in all instances, to sign a formal confidentiality undertaking.

7.5. Duty of fairness (covered by section 33 of the Act)

7.5.1. PTA will treat all access seekers and Operators (including associates and third parties) fairly in relation to prices, service quality, train paths and priorities in accordance with the requirements of the Act and the Code.

7.5.2. PTA will put in place the following mechanisms to reinforce the duty of fairness for third parties:

7.5.2.1. The key terms and conditions of internal access arrangements for all existing services will be broadly comparable to those provided to or offered to third parties; and

7.5.2.2. Access seekers will be referred to their rights under section 21 (1) of the Code to determine the fairness of prices.

7.5.3. Officers responsible for Access-related functions will be obliged to be familiar with the requirements of the Public Sector Code of Ethics, PTA's Code of Conduct and their obligations under the Act and the Code.

7.5.4. PTA will immediately investigate allegations that any employee engaged in Access-related functions has unfairly advanced the interests of PTA at the expense of the interests of persons seeking access or of other rail operators. This will be treated as a possible breach of the Act.

7.6. Maintenance of separate accounts and records (covered by section 34 of the Act)

7.6.1. The Access-related functions are managed by N&I which maintains accounting, information systems processing, recording and reporting of data separate to TTO.

7.6.2. All income, expenditure, assets and liabilities relating to the carrying out of PTA's Access-related functions is properly recorded and can be distinguished from PTA's other income, expenditure, assets and liabilities.

7.6.3. In some cases, all income, expenditure, assets and liabilities associated with a branch within N&I is entirely attributable to Access-related functions. Where an item of income, expenditure, assets or liabilities relates only in part to the carrying out of PTA's Access-related functions, an internal assessment has been made as to what proportion of that item can be fairly attributed to those functions.

7.6.4. Enterprise Asset Management System

7.6.4.1. PTA's centralised Finance Division operates an integrated Corporate Management (ERP) system for its asset-intensive operations which provides reliable, sound and timely reports on revenue, assets, expenditure and liabilities and other performance measures. This information is captured and reported at a Divisional level, and internal control procedures ensure appropriate cost allocations and approvals are followed.

7.6.4.2. Access to this system is protected through user identification and logon process, which is password protected and system secured. Divisional staff are restricted from access to another Division's information.