



# **Rail Access Segregation Arrangements**

## **The Pilbara Infrastructure**

**July 2019**

### **The Pilbara Infrastructure Pty Ltd**


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	<b>TPI RAIL ACCESS MANAGEMENT SYSTEM</b>	<b>DOCUMENT NUMBER R-PL-RA-0001</b>
	<b>SECTION PLANS</b>	<b>TITLE RAIL ACCESS SEGREGATION ARRANGEMENTS</b>

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	Rail Access Segregation Arrangements R-PL-RA-0001	
<b>Revision Number</b>	8	<b>17/07/2019</b>
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<b>Amendments in this revision</b>	<p>Section 2 removed “(inside and outside of the WA Rail Regime)”</p> <p style="padding-left: 40px;">Added the following in section 2: “The Act requires that a railway owner must make arrangements to segregate its access-related functions from its other functions. For the purposes of these segregation arrangements and to the extent that TPI and a third party choose to negotiate an agreement for access “otherwise than under the Code”, within the meaning of section 4A of the Code, those negotiations and the arrangements arising from any resulting agreement are not to be taken as “access-related functions”, or “other functions” within the meaning of section 28 of the Act.</p> <p>Section 3           Removed first paragraph</p> <p style="padding-left: 40px;">Removed fourth paragraph (including the two dot points)</p> <p>Section 7.1        Removed</p> <p>Appendix A        (Segregation Manual)</p> <p style="padding-left: 40px;">Removed entirely (except for Segregation Awareness Statement and Confidential Information Register). The Segregation Manual exists as a stand-alone document R-MA-RA-0001.</p>	
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## Segregation Arrangements

### 1 Introduction

#### 1.1 Background

Fortescue Metals Group Ltd (FMG) is developing iron ore mining operations in the vicinity of the Chichester Range in Western Australia's eastern Pilbara, through a wholly owned subsidiary, FMG Chichester Pty Ltd. FMG is also establishing port facilities at Anderson Point in Port Hedland and a railway link between the port and mine, via another wholly owned subsidiary, The Pilbara Infrastructure Pty Ltd (TPI).<sup>1</sup>

In December 2004, the State of Western Australia, TPI and FMG (as guarantor of TPI) entered into a State Agreement that included provisions for the railway and port infrastructure to be subject to third-party access arrangements. The *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* ratified the agreement and authorised its implementation.

The *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* amended the *Railways (Access) Act 1998* ("Act") and the *Railways (Access) Code 2000* ("Code") (the WA Rail Access Regime) to bring TPI's railway under the WA Rail Access Regime. Clause 16 of the State Agreement covers railway access matters specific to TPI's railway.


#### 1.2 WA rail legislative requirements

The WA *Railways (Access) Act 1998* establishes the following requirements for railway owners in relation to the segregation of access-related functions:

- Duty to segregate (section 28)
- Matters to be covered as part of duty to segregate (section 30)
- Protection of Confidential Information (section 31)

<sup>1</sup> TPI is a subsidiary of International Bulk Ports Pty Ltd, which itself is a wholly owned subsidiary of FMG.

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- Avoidance of conflict of interest (section 32)
- Duty of fairness (section 33)
- Maintenance of separate accounts and records (section 34)

The powers of the Regulator in relation to segregation are established in section 29. In particular, the railway owner must obtain the Regulator's prior approval for its segregation arrangements or variations to such arrangements. In this regard, the Regulator may provide written directions to the railway owner in relation to segregation and these directions are to be complied with. It is noted that section 29 of the Act allows the Regulator to impose other requirements on TPI, in addition to those covered under sections 31 to 34 of the Act, to further improve the effectiveness of TPI's Segregation Arrangements if required.

## 1.3 Implementation of segregation arrangements

### 1.3.1 Corporate structure of TPI and FMG


As previously noted, the rail assets subject to declaration under the Act and the Code are owned and will be operated by TPI, a wholly owned subsidiary of FMG.

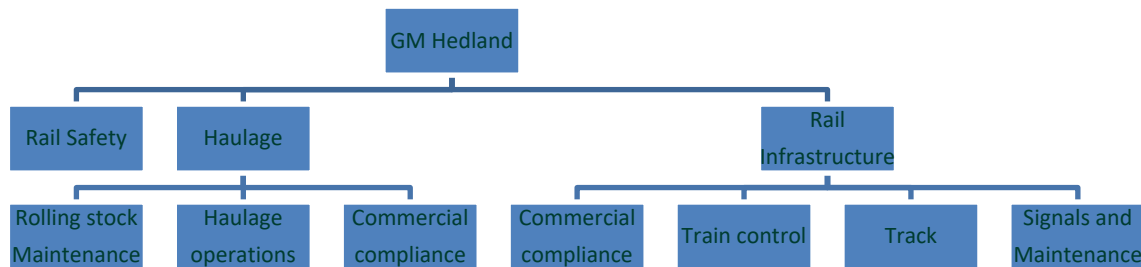
TPI is a transport and logistics provider in the Pilbara region, in particular, it is responsible for the construction of a railway from the Pilbara to Port Hedland and a port facility at Herb Elliot Port, Anderson Point, Port Hedland to serve FMG's mining operations in the region.

TPI will perform both the access-related rail functions specified in Section 2 of this paper and also perform the rail haulage functions associated with the operation of train services. TPI notes that the objective of the segregation arrangements is to ensure that it complies with the requirements of the Act to segregate its access-related functions from its other functions.

TPI's organisational structure is indicated below. Positions and classifications, reporting paths and physical locations of positions within TPI are provided in the Segregation Manual.

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The parent company, FMG, will be focused on the task of developing the mining operation and marketing of iron ore.

### 1.3.2 Timing of implementation

The greenfields nature of TPI’s railway and haulage operations, and the initial absence of another Operator on the railway, dictate that in a practical sense, access related activities are undertaken in stages. Therefore, in parts of this document, Stages 1 and 2 are used to differentiate access-related activities which are expected to be of particular relevance to the periods prior to, and subsequent to, the execution of the first Access Agreement.


## 2 Specification of access-related functions

For the purpose of satisfying the requirements of the Act and the Code, TPI has identified the following access-related functions it will perform:

### *Negotiation of access agreements*

- negotiation of access agreements, including satisfaction that TPI’s operational requirements for access are satisfied;
- pricing for the provision of access;

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*Management of access agreements*

- management of access agreements, including capacity assessment and allocation, performance monitoring and management of day-to-day operational issues;
- train scheduling, including train path allocation and the granting of ad-hoc train path entitlements;
- the collection, use, and dissemination of train running data including manifest details;
- train control, which includes provision of appropriate authorities for trains to use scheduled train paths (train orders or signals) and real-time management of trains;

*Regulatory compliance*

- development, maintenance and monitoring compliance with appropriate safety standards for TPI staff, its contractors and any Operators on the network;
- development and authorisation of TPI's operating Rules for the railway line and the issue of special notices, instructions and warnings related to these Rules;
- access-related legislative compliance matters as required under the Act and Code, including:
  - preparation of documents for the Regulator's approval in accordance with Part 5 of the Code;
  - ensuring that suitable policies, procedures and controls are established to give effect to, and facilitate compliance with, the segregation arrangements approved by the Regulator.

*Infrastructure maintenance*

- the maintenance of the track and infrastructure, including signalling and communications maintenance;


*Capacity management*

- capacity planning, including determining an efficient expansion path for the railway consistent with expected demand;

*Interface/emergencies*

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- emergency management on the railway line including co-ordination of emergency service responses;
- the development of operating standards for train services (to the extent they relate to the infrastructure), such as maximum braking distances, maximum train lengths, as well as maintenance standards for the rail infrastructure;

#### *Corporate Services*

- corporate support services for the performance of below rail functions.

The Act requires that a railway owner must make arrangements to segregate its access-related functions from its other functions. For the purposes of these segregation arrangements and to the extent that TPI and a third party choose to negotiate an agreement for access “otherwise than under the Code”, within the meaning of section 4A of the Code, those negotiations and the arrangements arising from any resulting agreement are not to be taken as “access-related functions”, or “other functions” within the meaning of section 28 of the Act.


### **3 Avoidance of conflict of interest (section 32)**

TPI recognises that organisational separation is a key means of preventing conflicts of interest arising in relation to the provision of access-related functions. TPI will manage its access related functions so that, for relevant officers, no conflict of interest exist.

Under these segregation arrangements, TPI commits that no person will perform duties concurrently for both TPI and FMG where a conflict of interest exists.

Relevant managers will report to the General Manager Hedland, who in turn reports to the Director Operations. TPI considers that this reporting arrangement is necessary because of the need to closely integrate the operation of the mine, rail and port logistics chain infrastructure owned by FMG and TPI. However, measures will be in place to ensure the protection of Interested Entity, Proponent and Operator Confidential Information where any convergence occurs. Specifically, the managers responsible for train control and track will liaise with the Commercial/Compliance Officer on access-related matters. Further, they will report directly to the General Manager Hedland and will disclose Interested Entity’s, Proponent’s and Operator’s Confidential Information to this position only for the purpose of progressing an Access Proposal, negotiation of access or in support of administering an Access Agreement. Similarly, the General

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Manager Hedland, in its direct reporting to the Director Operations on access-related matters, will be bound by the same framework.

The General Manager Hedland, Director Operations and the CEO will sign Segregation Awareness Statements (see Appendix A for associated document). They will be under an obligation to not disclose Interested Entity or Proponent Confidential Information to other areas or staff within TPI and FMG. TPI will implement control measures (as outlined below and in the Segregation Manual) to manage potential conflicts of interest in handling Proponents' and Operator's Confidential Information. These procedures will be in relation to the handling of the details of Access negotiations and Access Agreements.


Given that potential conflicts of interest in relation to the performance of access-related functions will be greatest when an Operator is running train services in competition with TPI train services, TPI staff performing train scheduling functions will sign Segregation Awareness Statements.

Operators may prepare amendments to daily or fortnightly plans for services which experience variable demand or variable destinations provided that they do not interfere with other Operator's rights and subject to TPI having ultimate control over such changes.

TPI also notes that there will be common directors on the FMG and TPI Boards. TPI will implement control measures (as outlined in this document and the Segregation Manual) to manage potential Board level conflicts of interest in handling Proponents' and Operators' Confidential Information. This will be in relation to the handling of the details of access negotiations and Access Agreements. These measures are similar to those outlined above for the General Manager Hedland, Director Operations and CEO.

No person (other than key management staff and corporate services) will perform duties concurrently for both TPI and FMG that would present an unnecessary risk of conflict. In effect, any person performing below-rail functions will be precluded from also performing above-rail functions (unless indirectly, whether by virtue of the position – such as is the case for the General Manager Hedland, Director Operations and CEO or due to the nature of the task not presenting conflicts – as is the case for corporate services functions).

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## 4 Protection of Confidential Information (section 31)

This section provides a general summary of the measures that will be implemented by TPI. Further information and procedures are provided in the Segregation Manual.

TPI proposes to protect Confidential Information as defined in the *Railways (Access) Act* meaning 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.

TPI will include in its Segregation Manual a list of documents and other information, covering both input and output type information, that it would use to define how it distinguishes Confidential Information from information that is not specifically protected.

### 4.1 Definition of Confidential Information

#### *Stage 1*

If an Interested Entity or Proponent discloses Confidential Information to TPI, then it is, and shall be taken to have always been, Confidential Information.

Examples of Stage 1 Confidential Information include:


- Preliminary Information;
- Access Proposals;
- correspondence related to the negotiation of the Access Agreement;

The examples given will be included under TPI's Segregation Arrangements from the time these arrangements commence.

TPI commits that access-related Confidential Information it receives in Stage 1 will only be used for the purpose of:

- responding to an Access Proposal;
- negotiating an Access Agreement; or
- as specifically authorised by an Interested Entity or Proponent.

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Requests for Access and the access negotiation process will be managed by TPI's Commercial/Compliance Officer.

### *Stage 2*

If an Operator discloses Confidential Information to TPI, then it is, and shall be taken to have always been, Confidential Information.

Examples of Stage 2 Confidential Information include:

- the Access Agreement itself and information exchanged in the management of the Access Agreement over time;
- train scheduling/planning data, to the extent it identifies specific haulage operations, including Master Train Plans and Fortnightly Train Plans and voice logging tapes from train control;
- plans to expand access rights to allow an increase in third party traffic;
- any data related to the running of haulage operations under an Access Agreement including the data held in TPI's Rail Access Management System;
- billing information.

The examples given will be included under TPI's Segregation Arrangements from the time these arrangements commence.

TPI commits that access-related Confidential Information it receives in Stage 2 will only be used for the purpose of administering an Access Agreement.


## **4.2 Confidential Information flows**

### *Stage 1*

TPI's Commercial/Compliance Officer will only disclose a Proponent or Interested Entity's Confidential Information for the purpose of and to the extent necessary to progress an Access Proposal or respond to a Proponent or Interested Entity's request.

TPI will require all staff managing or conducting access-related functions to sign a Segregation Awareness Statement, to the effect that they are aware of and understand TPI's segregation obligations under the Act and the Code, and specifically need to protect Confidential Information as defined in the Code (see section 4.4.1).

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In assessing an Access Proposal, TPI's Commercial/Compliance Officer may need to disclose the Proponent's Confidential Information to the train control and track managers, provided that disclosure to each recipient is limited to the sole purpose of negotiating an Access Agreement. Such disclosure will be necessary in order to determine whether there is sufficient capacity available for the requested train services, evaluate operational requirements, timelines, train configurations, accreditations, wheel profiles and other rolling stock technical details. The Commercial/Compliance Officer will be the sole custodian of Confidential Information during Stage 1. Access to Confidential Information by other TPI staff will not occur, other than as described above and to line management for approval purposes.

In the event that an officer from train control or track becomes aware of Confidential Information through this process, that officer will be required to sign a Segregation Awareness Statement and specifically acknowledge the confidential nature of the information disclosed to it for the purposes of progressing an Access Proposal.


TPI's Commercial/Compliance Officer will maintain a register of those staff, including external contractors/consultants, to who Confidential Information of an Interested Entity or Proponent is disclosed. The register will acknowledge receipt of the Confidential Information by the recipient. An Interested Entity or Proponent may view these registers relating to disclosure of its Confidential Information.

TPI is required to provide management reports to both its own Board and to the General Manager Hedland, Director Operations, CEO and FMG Board members only. Use and disclosure of any Interested Entity or Proponent's Confidential Information revealed through this reporting will be in accordance with these segregation arrangements, including direct reporting to the relevant senior executive only. In TPI's view, a level of convergence of internal Confidential Information flows is unavoidable in vertically integrated organisations. However, limiting the distribution of management reports to the small number of FMG's senior executives and board members specified above for the limited purpose of progressing an Access Proposal and subject to Segregation Awareness Statements, is the best way of managing this convergence.

These management reports provide financial details at aggregate company level for TPI and do not identify individual access customers, and reports on other operational and strategic issues. They also include statistics on overall network usage, and safety performance.

Typical reports would include:

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- operational matters related to the performance of the network and the maintenance work being carried out;
- seeking approval for or reporting progress on capital works;
- reports on significant incidents;
- contracts, including access agreements, that have been entered into but only at broad detail level without disclosure of full terms and conditions; and
- monthly financial reports and commentary at aggregate levels.

When TPI is presenting reports to TPI or FMG management, directors and boards it will, if Confidential Information is to be presented, have in place a procedure which ensures that:

- The Confidential Information presented is clearly identified; and
- Recipients of the information have signed a Segregation Awareness Statement.

Where there is a need for TPI to brief the senior management of TPI or FMG outside of structured meetings and those briefings are likely to result in the disclosure of Confidential Information, particularly related to the identity of the Interested Entity or Proponent, TPI will implement procedures (as outlined in the Segregation Manual) that ensure that:


- The Confidential Information presented is clearly identified; and
- TPI or FMG management members have signed Segregation Awareness Statements.

The above control measures for management of information flow are included in the Segregation Manual.

All TPI or FMG management, directors and other staff provided with Confidential Information will be recorded on the register. The register will record both names and position titles for each person. All such persons will be required to sign a Segregation Awareness Statement.

Where access-related Confidential Information is required to be disclosed during the course of management meetings involving representatives of the arm of TPI or related entities of TPI involved in operating train services, the same control measures as those outlined above for senior TPI or FMG management meetings will also apply to parties

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receiving Confidential Information. Disclosure of such Confidential Information will only occur in these meetings where necessary, such as for the purpose of improving productivity and safety performance of the rail network.

### *Stage 2*

TPI staff responsible for negotiating access will only disclose Interested Entity, Proponent or Operator Confidential Information for the purpose and to the extent necessary to progress an Access Proposal, respond to a request from an Interested Entity, Proponent or Operator, negotiate an Access Agreement or administer an Access Agreement.

TPI will require all of its staff managing or conducting access-related functions to sign a Segregation Awareness Statement, to the effect that they are aware of and understand TPI's segregation obligations under the Act and the Code, and specifically need to protect Confidential Information.


The Stage 1 obligation for TPI's Commercial/Compliance Officer to maintain a register of those staff, including external contractors/consultants, to whom Confidential Information is disclosed, will also apply in Stage 2 but will be extended to include disclosure of Operator Confidential Information.

That is, the disclosure by TPI of Operators' Confidential Information in the course of the operation/administration of an Access Agreement must be recorded on the register. The register will acknowledge receipt of the Confidential Information by the recipient and confirm the recipient's awareness of the confidential nature of the information through the acknowledgement of the Segregation Awareness Statement by the recipient. An Operator may view these registers relating to disclosure of its Confidential Information.

Custody of Confidential Information will be the responsibility of multiple staff members within TPI and FMG. Typically, such staff include the Commercial Compliance Officer, train control and track maintenance.

Similar to Stage 1, the use and disclosure of Operator Confidential Information by TPI as part of management reports to both its own Board and to the General Manager Hedland, Director Operations, CEO and FMG Board members will be in accordance with these segregation arrangements. It is intended to maintain a distribution list for such information that is strictly limited to the small number of FMG's senior executives and Board members identified as being necessary to disclose Proponent or Operator Confidential Information for the purpose of progressing an Access Proposal.

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#### 4.2.1 Hard copy access

##### *Stage 1*

Any written or electronic Confidential Information received by the Commercial/Compliance Officer in performing access-related functions will be kept on TPI files within TPI premises.

These files will only be accessible to the Commercial/Compliance Officer who will control access of other TPI staff for the purpose of processing an Access Proposal, or negotiating an Access Agreement.

The Commercial/Compliance Officer will also:

- keep a record of staff that have accessed Interested Entity or Proponent Confidential Information and the purpose for which the information was used; and
- ensure relevant officers accessing Interested Entity or Proponent Confidential Information sign-in and sign-out Confidential Information each time it is utilised.

TPI may be required to disclose data, including confidential data, in relation to the following matters:

- the requirements of section 7(1)(b)(i) of the Code; or
- other legislative requirements, such as the *Rail Safety Act*.

In disclosing any confidential data for these reasons, TPI will protect the confidential basis of the source data.

##### *Stage 2*


The obligations described above will also apply in Stage 2, however, will be extended to cover Operator Confidential Information under Access Agreements.

TPI staff involved in the access related functions listed in Section 2 are located at three locations, as below. The respective staff responsibilities for specific components of the access related functions during Stage 2 are listed below.

- Train Control Centre at 87 Adelaide Terrace, East Perth (“Train Control Centre”), responsible for:
  - Management of Access Agreements; and
  - Regulatory compliance (partly).

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- Thomas Marshalling Yard and office, 20 km south of Port Hedland (“Thomas Yard”), responsible for:
  - Negotiation of access agreements;
  - Regulatory compliance (partly);
  - Infrastructure maintenance;
  - Capacity management; and
  - Interface emergencies.
- FMG Head Office at the Hyatt Centre, 87 Adelaide Terrace, East Perth (“Hyatt Centre”), responsible for:
  - Regulatory compliance (partly) and;
  - Corporate services.

All information will be stored in a secured compactus or similar facility at each site, with respective storage areas referred to as “access management areas”. Such areas will be locked when not attended by TPI staff. The Train Control Centre will be secured with entry controlled by TPI. Entry to the access management areas will only be available to staff who have signed TPI’s Segregation Awareness Statement, and who are approved by TPI’s General Manager Hedland.

Further information and procedures are provided in the Segregation Manual.


#### **4.2.2 Electronic access**

##### *Stage 1*

TPI will share an IT system with FMG. To ensure that Interested Entity and Proponent Confidential Information is only accessed by the Commercial/Compliance Officer for the purpose of negotiating an Access Agreement, access to Confidential Information held electronically will be subject to limited access, with password protection and other computer security controls in place to prevent unauthorised access.

The access of users across TPI/FMG’s computer network will be restricted to immediate functional areas. User ID’s, passwords and access to any given part of the network are allocated by line managers at the commencement of the staff member’s employment. Access to areas of the network that apply to access related functions are automatically

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restricted to all staff, unless authorisation is given by the General Manager Hedland. All such authorisations will be recorded in the register and authorised staff will be required to sign the Segregation Awareness Statement.

### *Stage 2*

A shared IT system between TPI and FMG will also apply in Stage 2. Under Stage 2, Operator's Confidential Information will only be accessed by the Commercial/Compliance Officer (or other staff in the TPI Network group responsible for negotiating access) for the purpose of either negotiating or administering an access agreement. The same limitations on access described in Stage 1 in terms of security measures will apply.

Over the course of an access agreement, TPI will also collect potentially Confidential Information in relation to an Operator's haulage operations, including number and size of trains and tonnages carried. This information will be stored in an operations management system. Access to this information will be password protected and limited to relevant TPI staff. The Commercial/Compliance Manager, in liaison with the General Manager Hedland, will authorise all access to Operator's confidential data held in the operations management system and will only grant access to persons who have signed Segregation Awareness Statements.

## **4.3 Staff issues**


Effective segregation arrangements require policies and procedures to be in place to address the movement of staff with access to Confidential Information. This will apply to internal staff transfers as well as the use of external contractors/consultants.

### **4.3.1 Transfers**

#### *Stage 1*

Under Stage 1, the Commercial/Compliance Officer is solely responsible for access negotiations. This officer must not undertake duties in other areas of TPI/FMG which place the officer in a position of conflict of interest. As such, the Commercial/Compliance Officer will not be permitted to work on matters for other areas of TPI/FMG, either on a temporary or permanent basis, in respect of which they have had access to Proponent Confidential Information or the activities of the area could affect the Proponent's operations.

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## Stage 2

With functional separation of below and above rail business units, there will be more staff potentially with access to Confidential Information of Proponents and Operators (ie. train scheduling and track staff other than the Commercial/Compliance Officer). All such staff shall be signatories of the Segregation Awareness Statement. TPI will preclude the ability of senior staff to transfer between positions involved in performing access-related functions and positions involved in performing other functions where the occupant of the access-related position concerned is required to sign TPI's Segregation Awareness Statement, except where the person transferring from that access-related position first spends at least one year undertaking other access-related functions within the Rail Infrastructure Division which do not require the signing of TPI's Segregation Awareness Statement.

The limitations in this section 4.3.1 will not apply under emergency circumstances. If TPI believes there is an emergency and cannot obtain staff other than from its above rail team, then it may use such staff in these positions after it advises the Regulator of:

- The circumstances giving rise to the emergency;
- The expected duration of the emergency; and
- The steps TPI will take to protect Confidential Information and manage any conflict of interest in these circumstances, including those people who are proposed to be used signing a Segregation Awareness Statement.


Refer also to the Segregation Manual.

### 4.3.2 Consultants

From time to time in the course of access negotiations or in the duration of an Access Agreement it may be necessary for TPI to disclose Confidential Information to its external consultants and advisers. Where it is necessary for TPI to disclose Confidential Information to a consultant, the consultant would be required to sign TPI's Segregation Awareness Statement. The following obligations will apply in these circumstances.

A process will apply to manage the use of consultants so that consultants are not in a position to disclose Interested Entity, Proponent and Operator Confidential Information inappropriately. This will include an obligation to only use such information for the purpose for which it was provided and to not disclose it to other areas of TPI/FMG.

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Consultants who work for the company for a specified period of time will be included as a staff member for the purpose of the segregation arrangements.

## 4.4 Documentation

### 4.4.1 Segregation Awareness Statement

Where an employee, or contractor/consultant, of TPI has prescribed duties which include managing or conducting access-related functions (as defined in section 2 of this paper), TPI will, at the time of their permanent or temporary appointment, require the employee to sign a Segregation Awareness Statement that they are aware of their responsibilities and obligations under the Act and the Code and specifically as it relates to Confidential Information as defined in the Act and the Code and in these segregation arrangements. The Segregation Manual specifies the circumstances under which a staff member must sign a Segregation Awareness Statement. The Regulator will also endorse the Segregation Awareness Statement. The Segregation Awareness Statement shall incorporate a commitment to safeguard Confidential Information in the form of a confidentiality agreement. A copy of the Segregation Awareness Statement, including the confidentiality agreement incorporated as part of this statement, are included in TPI's Segregation Manual.

### 4.4.2 Advice regarding confidentiality

TPI will inform Interested Entities, Proponents and Operators of their rights to confidentiality.


## 5 Duty of fairness (section 33)

Duty of fairness reflects an obligation to negotiate for and provide access on a non-discriminatory basis. TPI commits to the obligation that, in performing their functions, relevant officers will not have regard to the interests of the railway owner in a way that is unfair to Interested Entities, Proponents or Operators.

To give effect to this obligation, TPI will treat all Proponents and Operators fairly in relation to prices, service quality, paths and priority.

TPI notes that its duty of fairness extends to the application of determinations made by the Regulator under Part 5 of the Code, including in relation to:

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- (a) the Segregation Arrangements;
- (b) the Train Management Guidelines;
- (c) the Train Path Policy;
- (d) the Costing Principles; and
- (e) the Overpayment Rules.

TPI will inform Interested Entities, Proponents and Operators of their rights to confidentiality under its Segregation Arrangements.

Proponents and Operators can determine the fairness of prices negotiated through an application to the Regulator pursuant to Section 21(1) of the Code.


TPI's standard access agreement for Proponents and Operators will provide for specific consultation mechanisms, the provision of information and dispute resolution mechanisms.

Under these segregation arrangements, TPI will observe a duty of fairness in relation to access negotiations and administration of Access Agreements with Proponents and Operators. In this regard, TPI will follow the steps specified in Parts 2 to 4 of the WA Rail Access Code for the negotiation of Access Agreements, as well as observe legislative confidentiality requirements.

Mechanisms for ensuring TPI meets its duty of fairness obligations also include that:

- Proponents may determine the fairness of prices negotiated under section 21(1) of the Code;
- provisions of TPI's Standard Access Agreement provide detailed guidance on non-price terms and conditions of access, which will allow Proponents and Operators to test the duty of fairness in the provision of access; and
- TPI will ensure that the key terms and conditions of internal access arrangements will be broadly comparable to those provided or offered to Proponents and Operators.

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## 6 Preparation of accounts and records (section 34)

In both Stage 1 and 2 of these segregation arrangements, TPI will prepare and maintain accounts and financial records for the purposes of complying with the Act and the Code or to assist the Regulator in the performance of the Regulator's duties under the Regime in the manner approved by the Regulator. Complying with this legislative obligation will entail the preparation and maintenance of separate accounts and records distinguishing income, expenditure, assets and liabilities of access-related functions from other TPI functions.

### *Stage 1*

In Stage 1, the separate accounts and financial records will be prepared by FMG's Finance Group, based on information supplied by TPI. In preparing access-related accounts and financial records, TPI will present the regulatory accounts in a Regulator approved format and comply with the Costing Principles approved by the Regulator.

### *Stage 2*

For Stage 2, TPI commits to being substantially self-sufficient for regulatory accounting, access pricing and revenue management purposes (noting that reliance upon FMG's Finance Group will be relied upon for information to inform the development of regulatory accounts). However, statutory accounting and cost accounting functions will still be performed by FMG's Finance Group.


TPI will control the information used to prepare its regulatory accounts. TPI will control the data used to generate invoices for access customers.

The collection of payments by FMG Finance staff will be based on information supplied by TPI. Detailed information supporting invoices will be provided directly to customers by TPI.

The provisions in this document for the protection of Confidential Information will apply to the billing process.

Financial information provided by TPI to FMG's Finance Group for normal internal reporting purposes will be aggregated to prevent disclosure of Confidential Information. FMG Finance Group staff and auditors given access to Confidential Information will be recorded on TPI's register and will sign the Segregation Awareness Statement.

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## 7 Compliance and Review

TPI's commitments to ensure compliance with these segregation arrangements encompass commitments to operate in accordance with its Segregation Manual, a commitment to undertake compliance auditing and to implement a complaints handling process.

Stakeholders have the ability to express any concern to the ERA which may arise at any time and the ERA will investigate such claims.

TPI acknowledges that the ERA has the power under the Act to require TPI to amend the Segregation Arrangements at any time and Interested Entities, Proponents and Operators can at any time request the ERA to consider amendments.

TPI's Segregation Manual has a compliance section, including identification of types of breach, corrective action and notification procedures. TPI will report any breach of the Segregation Arrangements of which it becomes aware to the ERA in writing within five business days and report on how the breach is being remedied. TPI notes that the Regulator has the ability to commission special audits on any issue or area where additional assurance is sought.

TPI will also undertake awareness training of its obligations under the Act or Code for all staff who are engaged in access related functions or who are required to sign Segregation Awareness Statements.


TPI agrees to the ERA monitoring TPI's compliance with the Segregation Arrangements through an audit of TPI's compliance with the segregation arrangements conducted not more than once every two years. This audit will be carried out by an Independent Auditor approved by the ERA, with TPI managing and funding the audit. The scope of the audit will be determined by the ERA.

The final audit report will be provided to the ERA. The ERA will publish this report on its web site (excluding Confidential Information).

### 7.1 Complaints handling

TPI commits to implement the complaints handling procedure detailed below as part of these segregation arrangements. TPI notes that Interested Entities, Proponents and Operators can approach the Regulator at any time they consider a segregation breach may have occurred. The Act provides wide powers for the ERA to investigate any alleged breaches of the segregation arrangements.

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If an Interested Entity, Proponent or Operator considers that TPI has breached its legislative segregation obligations, they may lodge a written complaint with TPI.


TPI will conduct an internal investigation of any complaint and advise the complainant in writing of the outcome of the investigation and TPI's proposed response, if any. TPI will advise the Regulator within 10 business days of any complaint it receives and the action it is taking to investigate the complaint. TPI will use reasonable endeavours to complete its internal investigation and advise the complainant and the Regulator of the result within 30 days of receiving its complaint.

## 8 Definitions

Access	Has the meaning given in the Code.
Access Agreement	Has the meaning given in the Code.
Access Proposal	Means a proposal as described in section 8 of the Code.
Act	Means the Railways (Access) Act 1998.
Code	Means the Railways (Access) Code 2000 established under the Act.
Confidential Information	Has the meaning given under Section 31(2) of the Act.
Contractor	Means a person or entity engaged by TPI to provide advice on or assist in carrying out its access-related functions.
Emergency	Means any event of temporary duration where TPI believes it requires TPI staff to attend and assist. Examples are: <ul style="list-style-type: none"> <li>• Any event or incident which by its nature requires immediate intervention or action;</li> <li>• A safety or operational incident. Under the Rail</li> </ul>

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Safety Management System, as approved under The Rail Safety Act, TPI is required to utilise TPI staff to attend to and investigate safety incidents.

**FMG** Means Fortescue Metals Group Ltd.

**Interested Entity** Means an entity that is interested in making an Access Proposal and who has made a request for information under section 7 of the Code.

**Operator** Means an entity to which access is provided under an Access Agreement.

**Preliminary Information** Means information received by TPI from an Interested Entity which is Confidential Information.

**Proponent** Means an entity who has submitted an Access Proposal for access under the Code.


**Non-Senior Staff** Means staff in roles below Manager level, such as Superintendent, Supervisor or Operator. For the purposes of these segregation arrangements, Non-Senior Staff do not have significant exposure to Interested Entity, Proponent and Operator information.

**Rail Access Management System (RAMS)** Means the system comprising secured Confidential Information associated with Access such as Access Proposals, Access Agreements, correspondence with Interested Entities, Proponents and Operators, Master and Fortnightly Train Plans and Audit/Compliance reports.

**Regulator** Means the Economic Regulation Authority.

**Rules** Means TPI's rules governing safe operation of trains on the railway in accordance with the Safety Management System approved under Section 10 of


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the Rail Safety System together with any amendments, deletions or additions made in accordance with the Safety Management System and all policies and notices issued by TPI for the purpose of ensuring the safe use of the railway.

Segregation Awareness Statement	Means a statement signed by a TPI or FMG employee, director, contractor or consultant indicating their understanding of the obligations imposed under the Act or Code and specifically as these obligations relate to the protection of Confidential Information.
Segregation Manual	Means the internal manual used by TPI to give effect to these arrangements.
Senior Staff	Means staff at Manager level or above, and includes the Commercial Compliance Officer. For the purposes of these segregation arrangements, Senior Staff are staff having significant exposure to Interested Entity, Proponent and Operator information.
Stage 1	Means the period commencing on the Variation Approval Date.
Stage 2	Means the period commencing on the date when the first person to execute an Access Agreement with TPI executes that Agreement and third party trains are operational on TPI's railway.
TPI	Means The Pilbara Infrastructure Pty Ltd
Train Control Centre (TCC)	Means the TPI Train Control Centre located at 87 Adelaide Terrace, East Perth.
Variable Services	Means services which experience variable demand or variable destinations.
Variation	The variation of these arrangements proposed by TPI, pursuant to s29(1) of the Act

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Variation Approval Date Means the date the Regulator approved the Variation.

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# **Appendix A**

## **Associated Documents**

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### **SEGREGATION AWARENESS STATEMENT**

1. As required in Section 31 of the Railways (Access) Act 1998, this statement provides for the person who is signatory to this agreement to maintain confidentiality and not to disclose to persons or organisations outside of the TPI organisation, any “Confidential Information” on rail Access related functions.

“Confidential Information” as defined in Section 31 Clause (2) of the Act 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 the person using or disclosing it to be confidential

2. For the purposes of this statement, Confidential Information also includes ny written, verbal or electronic information relating to Access Proposals, Access negotiations, Access agreements, correspondence on Access, Access invoices and payments and train planning functions dealing with pathways and train consists.

3. The signatory to this statement also commits to complying with the Act as it applies to Access related functions with respect to Section 28 – Duty to Segregate, Section 31 – Protection of Confidential Information, Section 32 – Avoidance of Conflict of Interest, Section 33 – Duty of Fairness and Section 34 – Maintenance of Separate Accounts and Records.


4. The signatory must not use any Confidential Information for his or her own advantage or act in any manner which could cause regulatory non-compliance to The Pilbara Infrastructure Pty Ltd.

5. The signatory must immediately upon demand, deliver to TPI all material including documents, papers, plans, drawings, tapes, disks, computer files or any other medium for storing or recording information, comprising any Confidential Information, including all copies thereof.

### **AGREEMENT**

In signing this statement, I hereby agree to maintain confidentiality and not to disclose Confidential Information as specified in Section 2.3 of the Segregation Manual. I further understand that I cannot breach the requirements and

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obligations specified in the Railways (Access) Act 1998 and the Railways (Access) Code 2000.

NAME

POSITION


SIGNATURE

DATE

WITNESS NAME

WITNESS SIGNATURE

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### Confidential Information Register

***Confidential Information Register***

This register has been prepared as part of TPI's obligations under the Railways (Access) Act 1998, in particular, the segregation arrangements approved under S29 of that Act. The provision of Confidential Information, as defined in the Segregation Arrangements, to any TPI and FMG staff, management, directors, contractors and consultants, must be recorded in this register. Recipients must sign the register to acknowledge both receipt of this information and their acceptance of appropriate obligations under the above Act.

Date	Officer	Contractor/ Consultant	Title	Information provided	Purpose	Segregation Awareness Statement Signed (Y/N)	Signature

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