



# Public Transport Authority Third Party Rail Access Standard Access Provisions

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**Document Authorisation and History**

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# 1. INTRODUCTION

## 1.1. Background

The Public Transport Authority of Western Australia (PTA) is a statutory authority that oversees the operation of all public transport in Western Australia. The PTA was established under the *Public Transport Authority Act 2003* with the responsibility to direct, manage, maintain and control the government railways in Western Australia.

The purpose of the [Railways \(Access\) Act 1998](#) (the Act) and the [Railways \(Access\) Code 2000](#) (the Code) is to establish a rail access regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for operations.

The Act requires nominated parts of the rail Network managed by the PTA to be made available for access by third party rail operators. Schedule 1 of the Code lists the sections of the PTA rail Network covered by the Code.

Part 5 of the Code requires relevant Railway Owners to prepare and maintain specified instruments that give effect to the provisions of the Code, which must be approved by the Regulator. The statement of the standard terms and conditions (Standard Access Provisions) that PTA would want to be included in an Access Agreement are a key document for the Regulator to approve.

## 1.2. Scope of the Standard Access Provisions

These Standard Access Provisions will be used to form the basis of an Access Agreement if an Access Seeker seeks access under the Code to PTA's Network. However, PTA will always first endeavour to negotiate an Access Agreement outside of the Code.

Section 47A(2) of the Code provides that the Standard Access Provisions must:

- (a) be reasonable; and
- (b) be sufficiently detailed and complete to form the basis of a commercially workable Access Agreement; and
- (c) not seek to restrict an Access Holder from disclosing the terms and conditions of an Access Agreement or proposed Access Agreement to —
  - i. the Regulator; or
  - ii. an arbitrator in relation to an arbitration under Part 3 Division 3.

These Standard Access Provisions have been prepared in accordance with Section 47A of the Code. Access Agreements formed on the basis of these Standard Access Provisions will contain further legal drafting in relation to these provisions.

# 2. Standard Access Provisions

## 2.1. Access Term

- (a) Term of an Access Agreement is 5 years.
- (b) Access Holder may request extension not less than 120 days before expiry.
- (c) Extension is at PTA's discretion.

## 2.2. Track Access Rights

- (a) Access Holder is granted non-exclusive rights to access the Network.
- (b) Access Holder is granted access to Scheduled Train Paths on the Network at agreed dates and times.

- (c) Access Holder must have required accreditation under the Rail Safety National Law (WA).
- (d) Rolling Stock must be approved on PTA's Approved Vehicle Register.
- (e) Access Holder must comply with PTA's Train Management Guidelines and Network Rules.
- (f) Access Holder must communicate scheduled departure times to PTA's Network Control.
- (g) PTA will provide its working timetables to Access Holder and will incorporate Scheduled Train Paths into PTA's Master Control Diagram.

### **2.3. Early and late services**

- (a) PTA may, in its discretion, accommodate services running early or late.

### **2.4. Light Locomotive Movements**

- (a) PTA may, in its discretion, grant train paths for Light Locomotive Movements.

### **2.5. Stabling of Rolling Stock**

- (a) Access Holder may only stable Rolling Stock with PTA's permission.
- (b) PTA may impose a charge for stabling of Rolling Stock for longer than 15 minutes.

### **2.6. Key Performance Indicators (KPIs)**

- (a) Access Holder to comply with KPIs, relating to usage of Scheduled Train Paths, safety and compliance with PTA Network Control Directors and Approved Vehicle Register registration.
- (b) KPIs to be reviewed each year.

### **2.7. Charges, invoices and payment**

- (a) PTA will impose charges for track access that are within the floor and ceiling prices calculated under the Code.
- (b) PTA will invoice Access Holder for charges on a monthly basis.
- (c) Charges payable within 30 days of invoice date.
- (d) Charges are calculated per train path.
- (e) Charges subject to annual CPI review.
- (f) Interest is payable on overdue charges.

### **2.8. PTA's obligations re access to and use of Network**

- (a) PTA retains control and management of access to the Network.
- (b) PTA undertakes function of Network Control and maintains and operates the Network Control Centre and communication system to communicate with the Access Holder.
- (c) PTA will collect and record information from the Access Holder in order to generate invoice and to exercise its functions.
- (d) PTA will advise Access Holder of incidents on the Network that could affect the train paths, or security or safety of freight, passengers or crew.

### **2.9. Access Holder's obligations in relation to Rolling Stock**

- (a) Trains must be in a good and safe operational condition and comply with PTA's Network Rules.

- (b) Rolling Stock must be operated safely and all equipment used by the Access Holder must be maintained to sufficient standard of safety and operational efficiency.
- (c) Access Holder must comply with Rail Safety National Law (WA) and all other relevant laws, guidelines, codes and practices.
- (d) May only use Rolling Stock approved on the Approved Vehicle Register.
- (e) Rolling Stock must be maintained and operated in a way that minimizes noise and vibration emissions.
- (f) All wagons attached to trains must be loaded evenly and correctly.

#### **2.10. Access Holder's obligations in relation to Train Crew**

- (a) Train crew must be qualified under PTA's Network Rules, have appropriate track access permit and be qualified in the operation of Rolling Stock under the Access Holder's procedures.
- (b) Train crew must be medically fit.
- (c) Train crew must have current knowledge of the route to be travelled.
- (d) Train crew must have detailed knowledge of PTA's Emergency Management Manual.
- (e) Train crew must be contactable by the Network Control Centre using the PTA directed communications system.

#### **2.11. Access Holder's general obligations**

- (a) Must ensure that its use of the Network complies with train paths applicable to each service.
- (b) Must minimize obstruction of the Network and not hinder or prejudice PTA's or other user's use of the Network or their operations.
- (c) Must comply with all Network Control Directions and Train Management Guidelines.
- (d) Must not change or damage the Network.
- (e) Must provide and maintain communications equipment compatible with Network Control Centre.
- (f) Must provide information to PTA related to the operation of its services.
- (g) Must provide a train manifest to PTA for each service.
- (h) Must inform PTA of any cancellations of any service.
- (i) Must prevent leakages and spillages on the Network.
- (j) Must be certified under ISO4001 Environmental Management System and comply with PTA's Environmental Management System.
- (k) Must assist PTA will investigation and action of any complaints or enquiries in relation to the Access Holder's trains.
- (l) Must comply with the terms of the Interface Agreement.
- (m) Advise PTA of services that will not be operated within their scheduled time.
- (n) Must provide required information in relation to their train services requested by Arc Infrastructure Pty Ltd and agree that PTA may access such information.
- (o) Must provide location information to PTA.
- (p) Must properly dispose of waste, rubbish or debris.
- (q) Must have a current response plan approved by PTA to manage their blockages

caused by a failed train of the Network and co-operate with PTA to manage blockages.

## **2.12. Repairs and Maintenance of Network**

- (a) PTA continues to maintain the Network
- (b) PTA may impose speed and weight restrictions when required and Access Holder is not entitled to any compensation relating thereto.

## **2.13. Accreditation**

- (a) Each party must maintain their accreditations as required by law.
- (b) If accreditation is suspended or cancelled, must notify the other party and services must cease until accreditation reinstated.

## **2.14. Instructions**

- (a) PTA may issue instructions to the Access Holder who must comply with those instructions.
- (b) PTA must use reasonable endeavours to minimize disruption to the services in giving any instruction.

## **2.15. Variations, additions or cancellations of Train Paths**

- (a) PTA may temporarily vary Scheduled Train Paths to prevent breaches of PTA Network Rules, safety requirements, damage, injury, delay to PTA's trains or other trains on the Network.
- (b) Parties may agree to permanently vary Scheduled Train Paths by following variation procedures and notice requirements.
- (c) Access Holder may request additional train paths and Ad-hoc Services by following notice requirements and PTA has a discretion as to whether to approve.
- (d) Where PTA performs repairs, maintenance or upgrading of the Network or takes possession of the Network affecting the train paths, PTA will provide notice to the Access Holder (depending on the period of disruption).
- (e) PTA may cancel Scheduled Train Paths for under-utilisation.
- (f) PTA may vary or cancel Scheduled Train Paths for operational reasons by providing notice to the Access Holder.

## **2.16. Inspection and audit**

- (a) PTA may arrange audits of the Access Holder's Rolling Stock and compliance with the Access Agreement.
- (b) Access Holder may at its cost audit the railway track and lines relevant to its Scheduled Train Paths where it has reasonable grounds to believe that PTA is not properly maintaining that track and lines.
- (c) PTA may inspect Access Holder's Rolling Stock and train configuration to ensure compliance with Access Agreement and relevant laws.

## **2.17. Emergencies and Incidents**

- (a) Parties must maintain, review, update and comply with their incident response plans. Access Holder's incident response plan must be approved by the PTA.
- (b) If Access Holder's Rolling Stock derails on the Network, Access Holder is responsible for re-railing (including contractors and costs) and must also comply with PTA's directions and Network Rules and must ensure its contractors obtain necessary track access permit. If non-compliance, PTA may undertake the re-railing at Access Holder's



cost.

- (c) Parties must notify each other of incidents as soon as possible of becoming aware of the incident. Parties must consult and co-operate in investigation of incidents. Parties must provide report of incidents where requested.
- (d) Until fault can be properly determined or agreed in relation to an incident, PTA will be responsible for recovery costs in relation to the Network and the Access Holder will be responsible for recovery costs in relation to all above-rail matters.

## **2.18. Safety Standards**

- (a) Parties must comply with applicable safety standards and laws, Rail Safety National Law (WA), PTA's Network Rules and Dangerous Goods Code.
- (b) PTA will provide notice to the Access Holder of any breach of PTA's Network Rules and instructions for remedying the breach.

## **2.19. Environmental requirements and dangerous goods**

- (a) Parties must comply with all environmental law, their environmental policies and applicable dangerous goods laws.
- (b) Dangerous goods details must be included in train manifests.
- (c) Access Holder must notify PTA of incidents involving dangerous goods.
- (d) Where PTA informs the Access Holder of environmental conditions, Access Holder must implement steps and actions to eliminate the environmental condition or rectify the environmental harm.

## **2.20. Insurance**

- (a) Parties must maintain public liability insurance and worker's compensation insurance.

## **2.21. Force Majeure**

- (a) Parties' obligations are suspended during force majeure events.
- (b) Access Agreement may be terminated after prolonged force majeure event.

## **2.22. Suspension or termination**

- (a) PTA may terminate Access Agreement for standard termination events, such as breach, insolvency, failure to run services for a period of time, suspension or cancellation of accreditation, assignment without consent, failure to comply with interface agreement etc. PTA may also terminate for convenience.
- (b) If PTA is entitled to terminate, it may elect to suspend the Access Agreement instead.
- (c) Access Holder may terminate Access Agreement for breach, insolvency or suspension or cancellation of accreditation.

## **2.23. Indemnities**

- (a) Access Holder indemnifies PTA for claims/liabilities in respect of death or injury, any loss of, damage to or loss of use of, any real or personal property or any act error or omission caused by, contributed to, or arising out of or as a consequence of, the Access Holder's breach or any negligent act or omission, fraud or wilful default.
- (b) Indemnity is reduced proportionally to the extent any negligent act or omission of PTA has contributed to the loss, damage, injury or death.
- (c) Access Holder indemnifies PTA from all claims arising out of or in connection with the Access Agreement in respect of damage to or loss of any property being transported on their services.

#### **2.24. Limit of liability**

- (a) Neither party is liable for consequential loss.
- (b) Minimum limits on claim amounts against each other, except in case of loss or damage arising from fraud or wilful default.
- (c) Exclusion of liability for PTA in relation to injuries, death, damages or loss arising out of or in connection with the condition and maintenance of the Network.

#### **2.25. Dispute resolution**

- (a) Disputes to be resolved by negotiation, then mediation and finally litigation.

#### **2.26. Confidentiality**

- (a) Standard confidentiality obligations.

#### **2.27. Interface Agreement**

- (a) Parties must comply with the interface agreement.
- (b) Parties must review and amend interface agreement to ensure all interface risks are covered.

#### **2.28. Assignment**

- (a) Access Holder must not assign, mortgage, charge etc the Access Agreement without PTA prior consent.

#### **2.29. Governing law**

- (a) Governing law is Western Australia.

#### **2.30. Anti-corruption and Modern Slavery**

- (a) Access Holder must comply with anti-corruption and modern slavery provisions.

#### **2.31. Security**

- (a) Access Holder may be required to provide security in the form of a bank guarantee.

#### **2.32. Security, cyber and privacy**

- (a) Access Holder acknowledges that PTA is a responsible entity for a critical infrastructure asset (as that term is defined in the Security of Critical Infrastructure Act 2018 (Cth) (SOCI Act)) and the Access Holder may be storing or processing business critical data for a critical infrastructure asset on a commercial basis. Access Holder agrees to SOCI Act obligations.
- (b) Access Holder must comply with PTA data security requirements, security breach reporting obligations and privacy obligations (including compliance with Privacy Act (Cth) and WA state government privacy obligations).

### **3. REVIEW AND CONSULTATION**

These Standard Access Provisions may be amended or replaced by the PTA with the approval of the Regulator (section 47A(6)). The Regulator may direct the PTA to amend these Standard Access Provisions or to replace them with other standard access provisions determined by the Regulator (section 47(7)). Access Seekers or Access Holders may request that the Regulator consider amendments to these Standard Access Provisions in accordance with section 41A of the Code.



## 4. DEFINITIONS

| Term                       | Meaning  |
|----------------------------|--|
| Access Agreement           | Has the meaning described in Section 3 of the Code, which is as follows:<br><i>means an agreement in writing under this Code between the railway owner and an entity for access by that entity.</i>  |
| Access Holder              | Has the meaning described in section 3 of the Code, which is as follows:<br><i>means an entity to which access is provided under an access agreement.</i>  |
| Access Seeker              | Has the meaning described in section 3 of the Code, which is as follows:<br><i>means an entity that has made a proposal.</i>   |
| Ad-hoc Service             | The operation of a train on the Network utilising a train path other than:<br>(a) a train operating on a Scheduled Train Path; or<br>(b) a Light Locomotive Movement.  |
| Approved Vehicle Register  | PTA's register of vehicles approved by PTA to operate on the Network.  |
| Light Locomotive Movement  | The movement of a train instigated by an Access Holder for a primary purpose other than the transport of passengers or freight (eg. for repairs, testing, relocation)  |
| Master Control Diagram     | A diagrammatic or electronic record covering specific parts of the Network which shows all train paths.  |
| Network Control            | The control of trains on the Network by PTA or its agents  |
| Network Control Directions | All instructions issued by PTA or its agents relating to management, continuity and safe operation of train movements on the Network, including instructions concerning the actual movement, deployment or placement of trains.  |
| Network Rules              | PTA's Safeworking Rules and Procedures together with PTA's safety management system and all policies and notices issued by PTA from time to time for the purpose of ensuring the safe use of the Network.  |
| Railways Network, Network  | Has the meaning described in section 3 of the Code, which is as follows:<br><i>means —</i><br>(a) <i>all the railways that were Government railways when the Act received the Royal Assent; and</i><br>(b) <i>all the railways that are on land that is corridor land as defined in the Rail Freight System Act 2000; and</i><br>(c) <i>the railway constructed pursuant to the TPI Railway and Port Agreement; and</i><br>(d) <i>any railway declared under section 3(2) of the Act to be part of the railways network.</i><br><br>In respect of these Standard Access Provisions, means the urban Railways Network and associated infrastructure in Western Australia under the ownership or control of PTA. |

| Term                 | Meaning  |
|----------------------|--|
| Railway Owner        | <p>Has the meaning described in section 3 of the Code, which is as follows:</p> <p><i>means the person having the management and control of the use of the railway infrastructure concerned.</i></p> <p>In respect of these Standard Access Provisions, Railway Owner means the PTA.</p> |
| Regulator            | <p>Has the meaning described in section 3 of the Code, which is as follows:</p> <p><i>means the person who holds, or is acting, in, the office provided for by Part 3 of the Act.</i></p> <p>This is currently the Economic Regulation Authority (Western Australia)</p>                 |
| Rolling Stock        | a locomotive, wagon, coaching stock or on track plant permitted for use on the Network, as set out in the Approved Vehicle Register  |
| Scheduled Train Path | Access to an agreed train path on the Network granted to an Access Holder under an Access Agreement.   |