



**Public Transport
Authority**



Public Transport Authority Third Party Rail Access Over-payment Rules

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1. INTRODUCTION

The Public Transport Authority (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.

1.1. Purpose and Scope

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.

Section 47(1) of the Code requires each Railway Owner to prepare and submit to the Regulator a statement of rules (the Overpayment Rules) that are to apply where breaches of the Ceiling Price Test occur on the part of the Railway Owner that could not reasonably be avoided.

The Ceiling Price Test is defined under Schedule 4, Clause 8 of the Code, and refers to:

- a Ceiling Price Test that must be met for each Access Holder in isolation (subclauses 1 and 2); as well as
- a applying the Ceiling Price Test across the sum of Access Holders and Railway Owner(sub-clause 3).

Clause 8 provides that the Total Revenue earned on a particular Route, or part of the Route, must not exceed the Total Costs attributable to that Route, or that part of the Route, and that infrastructure.

In the event that over-payment occurs, these over-payments are deemed to be allowable within the Code provided the following applies:

1. The Railway Owner can show that over-payments could not be reasonably avoided;
2. The over-payment must be at all times within a percentage limit;
3. All over-payments must be cleared (reimbursed to Access Holders) within each successive three year period; and
4. The method of reimbursing Access Holders must follow rules set out in the Over-payment Rules.

This document outlines the Over-payment Rules that will apply to the PTA. These Over-payment Rules provide a mechanism to:

- calculate the amount by which Total Revenue earned on a particular Route Section exceeds the Total Costs attributable to the Route Section and infrastructure; and
- reimburse Access Holders who are provided with access under the Code to that Route Section and infrastructure in the event of an overpayment.

2. BASIS OF THE OVER-PAYMENT RULES

2.1. Definition of Route and Route Section

The Route Section is the basic unit to which the Over-payment Rules apply. The term Route Section referred to in this document means the sections of the Railway Network into which the Network is divided for management and costing purposes. The term Route means those parts of the Railways Network and associated infrastructure to which this Code applies and includes part of a Route. These definitions are set out in Part 1, section 3 of the Code. A negotiated Route could equate to a Route Section (or part thereof) or be a combination of several Route Sections.

The list of the PTA's Route Sections is contained in Appendix 1 of the PTA's Costing Principles.

2.2. One Regulatory Total Cost

Each Route Section has one Total Cost that will apply to all Access Holders when negotiating access prices and will be the basis of determining whether Total Revenue earned on a particular Route Section has exceeded allowable Total Costs.

Total Costs will be calculated by the PTA using methods set out in the Costing Principles as approved or determined by the Regulator as required by Schedule 4, Clauses 9 and 10 of the Code.

2.3. Revenue Under the Ceiling Price Test

In assessing the extent of over-payments under Section 47 and Schedule 4, Clause 8(3) of the Code, all Access and Non-Access Revenue received by the PTA for a Route Section and associated Railway Infrastructure will be included to calculate the Total Revenue attributable to that Route Section.

Total Revenue is the sum of Access Revenue and Non-Access Revenue:

- Access Revenue is deemed to be all income received by the PTA for the provision of rail access to Access Holders and entities with access outside the Code.
- Non-Access Revenue may include private and government contributions, in accordance with the PTA's approved Costing Principles.

The Code does not provide entities who have access negotiated outside the Code with a legal entitlement to any refund for any over-payment.

2.4. Breaches of the Ceiling Price Test

Section 47(1) of the Code states that these Over-payment Rules are to apply where breaches occur on the part of the Railway Owner that "could not reasonably be avoided."

The PTA will assess revenues earned on particular Route Sections on a periodic basis to determine whether there is likely to be a breach of the Ceiling Price Test. Where it is possible to forecast potential over-payments, the PTA will seek to negotiate new access prices with affected Access Holders to ensure that Total Revenue remains within the Total Cost.

If breaches of the Ceiling Price Test occur as a result of variations in traffic volume or revenue that are deemed to be temporary or unpredictable in nature, then the PTA will advise the Regulator of such circumstances and will follow the procedure set out in these Over-payment Rules to deal with such over-payments.

2.5. Over-payments and Under-recoveries

Over-payment is defined as the amount of Total Revenue received by the PTA for a Route Section that exceeds the Total Costs attributable to the Route Section for a one-year period.

Conversely, under-recovery refers to a situation where the Total Revenue to the Railway Owner on a Route Section for a one-year period is less than the Total Costs attributed to that Route Section.

Clause 47 of the Code provides that net over-payments will be assessed over each successive period of three years from the commencement of access by an Access Holder or group of Access Holders. This provides that any over-payments in a particular year may be balanced out by under-recoveries in a subsequent year. The net over-payment at the end of a three year period will be paid back to the relevant Access Holders according to these Over-payment Rules.

Where over-payment occurs in respect of an Access Holder or group of Access Holders as a result of a determination by the Regulator under section 47X(1)(b) of the Code, this over-payment must be paid back to the relevant Access Holder or group of Access Holders after the period of 60 business days beginning on the day on which the Regulator makes the determination.

Where under-recovery occurs an Access Holder is not required to pay the PTA compensation for such under-recovery. However, where a net under-recovery occurs in a particular three year period, there are circumstances under which the PTA will be allowed to carry-over this net under-recovery as an 'accounting balance' that may be used to offset over-payments in the subsequent three year period.

The circumstances where this will be allowed to occur are set out in Example 4 (Table 1) in Section 4 of these Over-payment Rules. Example 4 refers to a situation where, as a result of reimbursements to Access Holders during the three year period required because the breach is greater than 10% of the Total Cost (refer to the Over-payment Rule 4 in Section 3), there are insufficient funds in the interest bearing account for the PTA to recoup an under-recovery that has occurred during the same three-year period.

In this instance, the PTA will apply to the Regulator to carry the under-recovery credits over to the next three years up to the amount the PTA has been required to refund to Access Holders as a result of exceeding the 10% limit.

If allowed, the carry forward will only apply for that one additional successive three year period.

2.6. Allocation of Access Revenue

Under Section 9(1)(b) of the Code, the PTA is required to provide the floor price and the ceiling price for a proposed access, which may include multiple Route Sections.

Since the price is determined on a Route basis, and Total Costs are determined on a Route Section basis, it is necessary to allocate Access Revenue earned over a particular Route to the Route Sections comprising that Route. The distribution of such Access Revenue will be done according to the following rules:

1. Access Revenue derived from a Route can only be allocated to the Route Sections on that Route; and
2. The PTA will allocate Access Revenue to cover the costs attributed to the applicable Route Sections in the following order:

- a. Incremental Costs against all applicable Route Sections;
- b. up to the Total Cost on all applicable branch or feeder (dedicated) Route Sections; and
- c. up to the Total Cost on all applicable shared Route Sections.

The justification for the ordering of the allocation process is based on economic principles. First, to avoid cross subsidisation between Route Sections, Access Revenue allocated to each Route Section must at least cover the Incremental Cost. Second, the recovery of Total Costs on branch or feeder lines ranks ahead of shared lines on the basis that there is no other traffic on these lines to fund the dedicated infrastructure. Third, the recovery of Total Costs on shared Route Sections will be shared across Access Holders.

Where the PTA and the Access Holders have reached agreement to a different revenue allocation arrangement in an Access Agreement that arrangement would prevail.

2.7. Allocation of Non-Access Revenue

The allocation of Non-Access Revenue, private or government contributions will be only allocated to the Route Section for which the Non-Access Revenue or contribution was received.

Where a capital contribution is made, the value of the contribution to be used in the Ceiling Price Test is to be expressed as an annualised amount taking into account the Total Cost, life of the assets, and Weighted Average Cost of Capital (WACC) determined by the Regulator.

Where capital is spent over multiple Route Sections the actual expenditure will be split into each Route Section at the time the expenditure is incurred. The allocation principles for Access Revenue do not apply to Non-Access Revenue.

2.8. Allocation of an Over-payment

Where an over-payment on a Route Section results from the Ceiling Price Test, all Access Holders who have negotiated their Access Agreement inside the Code and who have contributed to the Total Revenue on that Route Section will be entitled to a share of the over-payment.

The proportion of over-payment due to each Access Holder will be determined by:

- each Access Holder's annual Access Revenue and Non-Access Revenue above the Incremental Cost accumulated on a Route Section; divided by
- the aggregate of all Access Holders' Access Revenue and Non-Access Revenue above the Incremental Cost recorded on the Route Section,

over the preceding twelve month period from July to June.

The repayment will be apportioned based on the total annual payments above the Incremental Cost for access by each Access Holder on the Route as a proportion of the Total Revenue. An Access Holder paying only the Incremental Cost on the Route will not be considered for any refund as this would compromise the Floor Price Test in the Code.

3. THE OVER-PAYMENT RULES

1. The Over-payment Rules apply where breaches of the ceiling could not be reasonably be avoided.
2. The PTA is to calculate over-payment in respect of each Route Section for a financial year.
3. In these Over-payment Rules, financial year is the year beginning on 1 July and ending on 30 June.
4. Where an over-payment is greater than the 10% amount allowable for breaches of the Total Cost for that Route Section for the financial year, the PTA must reimburse the Access Holders on that Route Section for the amount of the over-payment calculated according to the pro-rata formula in Over-payment Rule 5 by 30 September of the following financial year.
5. Payments to Access Holders will be apportioned based on the total annual Access Revenue above the Incremental Cost for each Access Holder on the route. The following formula is to apply:

$$\left\{ \frac{[An\ Operator's(b)annual\ Access\ Revenue\ above\ the\ Incremental\ Cost] + [Annual\ Non - Access\ Revenue\ received\ from\ that\ Operator\ for\ the\ route\ section]}{[Total\ annual\ Access\ Revenue\ (a)above\ the\ Incremental\ Cost] + [Total\ annual\ Non - Access\ Revenue\ for\ the\ route\ section]} \right\} \times \left\{ \begin{array}{l} \text{Amount of} \\ \text{net overpayment} \\ \text{plus interest accrued} \\ \text{for the route section} \end{array} \right\}$$

Notes:

- (a) Includes Access Holders who have negotiated an Access Agreement within the Code and entities whose access is negotiated outside of the Code
 - (b) Only Access Holders who have negotiated an Access Agreement within the Code are eligible for a share of the net over-payment
 - (c) Non-regime entities are entitled to a share of the net over-payment provided provisions in their agreement entitle them to any over-payment. Accordingly, their share will be calculated using the same formula outlined above.
6. The PTA is to establish in its accounting records an account to be known as the Over-payment Account.
 7. The Over-payment Account is to be credited with all over-payments that are equal to or less than the 10% amount allowable for breaches of the Total Cost level for the financial year.
 8. Any over-payment for the previous financial year shall be calculated by 31 July of each year and credited to the Over-payment Account. The over-payment will be treated as if it was credited to the Over-payment Account on 1 July of each year.
 9. The PTA will also credit to the Over-payment Account interest calculated daily on the balance from time to time standing to the credit of the Over-payment Account.
 10. Interest is to be credited at a rate equal to the 10 year bond rate as at 30 June each year but if 30 June falls on a day that is not a business day then the rate published on the first day after that date.
 11. At the end of the three year period the amount standing to the credit of the Over-payment Account must be distributed by the PTA to Access Holders (who have negotiated their Access Agreement within the Code) for the amount of the over-payments calculated according to the pro-rata formula in Over-payment Rule 5 by 30 September.

12. Where over-payment occurs in respect of an Access Holder or group of Access Holders as a result of a determination by the Regulator under section 47X(1)(b) of the Code, this over-payment must be paid back to the relevant Access Holder or group of Access Holders after the period of 60 business days beginning on the day on which the Regulator makes the determination.
13. Payments in respect of entities with access outside of the Code will be retained by the PTA, subject to the terms of any agreement to the contrary.
14. The following provisions are to be included in Access Agreements with Access Holders:
 - Within seven business days of the date of this agreement the PTA must, in accordance with Over-payment Rule 6, establish within its books of account an account to be styled “Over-payment Account” and must maintain that account at all times during the continuation of this agreement.
 - The PTA must at all times operate the Over-payment Account in a manner consistent with the requirements of the Over-payment Rules and must make payments to the Access Holder in a manner and at the times contemplated by the Over-payment Rules.

4. APPLICATION OF THE OVER-PAYMENT RULES

The examples shown in Table 1 below demonstrate how the Over-payment Rules apply. Years 1, 2 and 3 show over-payments and under-recoveries (denoted by a minus sign) for a Route Section. All Access Holders are also assumed to have negotiated their Access Agreements within the Code and have met their Incremental Costs.

The annual interest rate assumed is 5% compounded, which given the deposit occurs annually would only apply to Year 1 and Year 2 deposits. It is also assumed that the Total Cost for the Route Section in the examples below is \$100,000, and over-payments in excess of \$10,000 are reimbursed immediately.

Example 4 refers to the one exception where the carrying over of under-recovery credits to the next three-year period may apply:

- In this example, the PTA incurred a breach of 20% above the Total Cost in Year 1.
- At the end of Year 1, it has to reimburse Access Holders \$10,000 and deposit \$10,000 into the Over-payment Account.
- However, in Year 2, PTA incurred an under-recovery of 15%.
- Assuming that the revenue from access is exactly equal to the Total Cost in Year 3, there are now insufficient funds to compensate the PTA in the Over-payment Account for the three-year period.
- In this example, the Regulator may approve a carry-over in under-recovery credits of \$5,000.

If an entity has negotiated access outside of the Code then its share of the over-payments would go to the PTA. For instance, if in **Example 3** that Route Section comprised of only entities with access negotiated outside of the Code, then the total accrued principal in the Over-payment Account, i.e. \$15,000, and the interest earned, i.e. \$1,275, would go to the PTA.

Table 1 Examples illustrating operation of the Over-payment Account

	Example 1	Example 2	Example 3	Example 4
Net annual over or under payment				
Year 1	\$ 10,000	\$ 10,000	\$ 10,000	\$ 20,000
Year 2	-\$ 10,000	-\$ 30,000	\$ 5,000	-\$ 15,000
Year 3	\$0	\$0	-\$ 10,000	\$0
Total of the 3 year period	\$0	-\$ 20,000	\$ 5,000	\$ 5,000
Reimbursed to operators	\$0	\$0	\$0	\$ 10,000
Accrued Principle in account	\$ 10,000	\$ 10,000	\$ 15,000	\$ 10,000
Accrued Interest in account	\$ 1,025	\$ 1,025	\$ 1,275	\$ 1,025
Refund to PTA	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
Refund to Operators	\$ 1,025	\$ 1,025	\$ 6,275	\$ 1,025
Carry forward of credit	\$0	\$0	\$0	\$ 5,000

5. REVIEW AND CONSULTATION

These Over-payment Rules may be amended or replaced by the PTA with the approval of the Regulator (section 47(4)). The Regulator may direct the PTA to amend these Over-payment Rules or to replace them with other Over-payment Rules determined by the Regulator (section 47(5)). Access Seekers or Access Holders may request that the Regulator consider amendments to these Rules.

6. DEFINITIONS

Term	Meaning
Access Agreement	Has the meaning assigned to “access agreement” in Section 3 of the Code, which, as at the date of these Overpayment Rules: <i>means an agreement in writing under this Code between the railway owner and an entity for access by that entity.</i>
Access-related Function	Means the functions involved in arranging the provision of access to Railway Infrastructure under the Code.
Access Holder	Has the meaning described in section 3 of the Code, which is as follows: <i>means an entity to which access is provided under an access agreement.</i>
Access Revenue	Means revenue received by the PTA from Access Holders and other entities for rail access.
Access Seeker	Has the meaning described in section 3 of the Code, which is as follows: <i>means an entity that has made a proposal.</i>
Ceiling Price Test	Means an Access Holder (or group of Access Holders) that is provided with access to a route and associated Railway Infrastructure must pay for the access not more than the Total Costs attributable to that route and infrastructure.
Costing Principles	Means the current PTA Costing Principles as approved by the Regulator, including any amendments to, or replacement of, those guidelines made pursuant to the Code.
Floor Price Test	Means an Access Holder that is provided access to a route and associated Railway Infrastructure must pay for the access not less than the Incremental Costs resulting from its operations on that route and use of that infrastructure.
Incremental Costs	Has the meaning described in clause 1, Division 1 of Schedule 4 of the Code, as follows: <i>Incremental costs, in relation to an access holder or a group of access holders, means the following that the railway owner or an associate would be able to avoid if it were not to provide access to that access holder or group of access holders –</i> <i>(a) the operating costs;</i> <i>(b) where applicable</i> <i>(i) the capital costs; and</i> <i>(ii) the overheads attributable to the performance of the railway owner’s access-related functions whether by the railway owner or an associate.</i>
Non-access Revenue	Means revenue received by the PTA that may include private and government contributions in accordance with the Regulator’s approved Costing Principles that apply to the PTA.

Term	Meaning
Railway Infrastructure	<p>Has the meaning described in section 3 of the Code, which is as follows:</p> <p><i>means the facilities necessary for the operation of a railway, including:</i></p> <ul style="list-style-type: none"> (a) <i>railway track, associated track structures, over or under track structures, supports (including supports for equipment or items associated with the use of a railway); and</i> (b) <i>tunnels and bridges; and</i> (c) <i>stations and platforms; and</i> (d) <i>train control systems, signalling systems and communication systems; and</i> (e) <i>electric traction infrastructure; and</i> (f) <i>buildings and workshops; and</i> (g) <i>associated plant machinery and equipment,</i> <p><i>but not including —</i></p> <ul style="list-style-type: none"> (h) <i>sidings or spur lines that are excluded by section 3(3) or (4) of the Act from being railway infrastructure; and</i> (i) <i>rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, and terminal yards and depots.</i>
Railway Network, Network	<p>Has the meaning described in section 3 of the Code, which, as at the date of these Overpayment Rules, is as follows:</p> <p><i>means —</i></p> <ul style="list-style-type: none"> (a) <i>all the railways that were Government railways when the Act received the Royal Assent; and</i> (b) <i>all the railways that are on land that is corridor land as defined in the Rail Freight System Act 2000; and</i> (c) <i>the railway constructed pursuant to the TPI Railway and Port Agreement; and</i> (d) <i>any railway declared under section 3(2) of the Act to be part of the railways network.</i> <p>In respect of these Overpayment Rules, means the Railway Network managed by the PTA.</p>
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 Overpayment Rules, Railway Owner means the PTA.</p>
Route	Means those parts of the Railway Network and associated infrastructure to which the Code applies, and includes part of a Route.
Route Section	Means the sections of the Railway Network into which the Network is divided for management and costing purposes
Total Costs	Has the meaning described in Schedule 4, clause 1 of the Code, as follows: <p><i>means the total of all –</i></p>

Term	Meaning
	<p>(a) <i>operating costs;</i></p> <p>(b) <i>capital costs; and</i></p> <p>(c) <i>the overheads attributable to the performance of the railway owner's access-related functions whether by the railway owner or an associate.</i></p>
Total Revenue	Means the sum of Access Revenue and Non-Access Revenue.