



20 June 2025

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Dear Ms O'Connor

Aurizon Submission on PTA's Standard Access Provisions and Part 5 Instruments

I refer to the Economic Regulation Authority's (**ERA**) request for submissions regarding the Public Transport Authority's (**PTA**) proposed Standard Access Provisions (**Proposed SAP**) and amended Part 5 Instruments, submitted to the ERA in accordance with the Railways (Access) Code 2000 (**Code**).

Aurizon is Australia's largest rail operator, with its operations extending across Australia, including the large-scale bulk haulage of coal and iron ore, integrated supply chain services for other bulk products and inter-city containerised freight services. Aurizon has extensive operations across WA, including the use of the PTA network for freight services. Aurizon has strong ambitions to grow its containerised freight and bulk supply chains, which can only be achieved by driving new freight volumes to rail. Accordingly, the ability to efficiently access the national rail network – including the PTA network – is crucial to Aurizon's ability to offer attractive rail haulage services to its customers.

This letter and submission address the PTA's Proposed SAP, as well as its proposed amendments to its Train Path Allocation Policy (**TPAP**) and Train Management Guidelines (**TMG**), together referred to as the **Part 5 Instruments**.

Proposed SAP

Aurizon operates multiple weekly services across the PTA Network, with all services using both Arc Infrastructure (**Arc**) and PTA networks to complete their journey. Up until now, access to the PTA network has been included within Aurizon's access agreements with Arc. Hence, the same terms and conditions have applied to both networks. However, we have recently been advised that Arc and the PTA will cease this arrangement, with access agreements now to be negotiated directly with the PTA. The PTA's Proposed SAP will provide an important benchmark in the negotiation of terms and conditions to this network separate from the Arc network.

In this regard, we have two key concerns with the PTA's Proposed SAP, as outlined below.

1. Insufficient level of detail

Section 47A(2)(b) requires that the standard access provisions submitted by a railway owner must be “sufficiently detailed and complete to form the basis of a commercially workable access agreement”. The document submitted by the PTA is an abbreviated summary of standard access principles and, in Aurizon’s view, is not sufficiently detailed to comply with the requirements of section 47A(2)(b).

Aurizon considers that the requirement to be “sufficiently detailed and complete” requires that the standard access provisions set out the railway manager’s proposed approach in a way that allows an access seeker to fully understand the nature of its expected rights and obligations and clearly enunciates the risks that the railway manager expects will be borne by each party to the agreement.

In Aurizon’s view, section 47A(2)(b) will be most effectively complied with through a long form standard access agreement, similar in its level of detail to the standard access agreements approved in other Australian rail regulatory frameworks.¹ Even with agreement around the high level principles that should be addressed in an access agreement, there is inevitably a broad drafting scope available and the nature of the rights, obligations and risks for each party could vary substantially depending on the final drafting adopted. As a result, in the absence of standard contract drafting, a summary of standard access provisions, such as has been presented by the PTA, is unlikely to be effective in clearly setting out the expected rights, obligations and risks for each party to the access agreement and will therefore not be sufficiently detailed to form the basis of a commercially workable access agreement.

2. Reasonable and balanced approach to contracting for access

A key issue in assessing the reasonableness of the standard access provisions, as required by section 47A(2)(a), is that they provide a balanced approach to establishing the rights, obligations and risks of each party. From our initial review of the PTA’s Proposed SAP, we are concerned that they do not reflect a reasonably balanced approach.

Our issues of concern fall into four broad categories:

1. Performance transparency and accountability
2. Reasonable financial risk allocation
3. Balanced and reasonable terms
4. Transparency and clarity of obligations

A general explanation of these categories of concern is provided below, with our detailed comments on the Proposed SAP provided at Attachment A.

(a) Performance transparency and accountability

A critical role of the access agreement is to clearly establish the service being provided by the RIM, and to create a framework to hold the RIM accountable in providing that service. This includes creating transparency around the performance of both the RIM (in providing the service) and the rail operator (in how it uses the service).

We consider the PTA’s summary terms to be seriously deficient in terms of achieving performance transparency and accountability. The most notable examples are:

- PTA’s obligation to maintain the network does not include any indication that it will define the standard to which the network must be maintained.

¹ See Australian Competition and Consumer Commission (ARTC Interstate Access Undertaking, ARTC Hunter Valley Access Undertaking) and the Queensland Competition Authority (Aurizon Network Access Undertaking, Queensland Rail Access Undertaking)

- The Proposed SAP indicates the need to establish KPIs, but the PTA's brief description of this provision does not imply a constructive performance regime.

(b) Reasonable financial risk allocation

Aurizon does not consider that the Proposed SAP provides for a reasonable allocation of financial risk, in particular:

- The requirement that charges are calculated per train path implies that charges will be applied on a fixed (per path) basis only. Aurizon does not consider it reasonable that the Proposed SAP specify that access charges be applied on a fully fixed basis.
- Aurizon considers that a balanced allocation of risk would also require the Proposed SAP to clearly specify, to the extent that the PTA does not provide the train paths as agreed for reasons that are within its control or because of force majeure, rail operators must not be required to pay access charges (including fixed charges) for those paths.

(c) Balanced and reasonable terms

The overall absence of balance in the PTA's Proposed SAP is perhaps the most concerning issue for Aurizon. This is evident across the entire document, but most notably:

- The apparent imposition of absolute and one-sided obligations regarding noise and vibration emissions, notwithstanding that these issues are contributed to by both parties, and there are established processes that seek to balance the allocation of responsibility between RIM and operator.
- A right of termination by the PTA for convenience, which we consider unreasonable given the essential nature of ongoing network access and the resulting unacceptable business continuity risk.
- Indemnities, which should be balanced and reciprocal.

(d) Transparency and clarity of obligations

Finally, Aurizon considers that the PTA's summary document does not provide adequate transparency and clarity of expected obligations on each party.

Recommended approach

Given the PTA Proposed SAP do not provide sufficient detail to properly comply with the requirements of section 47A(2)(b), and the concerns evident from some of the brief points that the PTA has included in their document, Aurizon considers that the Rail Operator Group's (**ROG**) detailed response to the Arc Proposed SAP reflects our view on a reasonably balanced approach to standard access terms applicable to the PTA network.

We consider the move away from combined access provision to the Arc and PTA networks to be retrograde. Elsewhere in Australia, there is recognition of the need to address coordination between interstate, intrastate and urban rail network managers, with efforts to harmonise standards for the management of safety and ensure interoperable systems, and minimise the complexity created by multiple interfaces, interactions and administration². The concept of a 'one-stop shop' for access across each state's networks, and more broadly across the national rail network, is one way to minimise transaction costs and reduce regulatory burden on rail operators.

Where multiple network management and regulatory arrangements cannot be reduced, or managed through a common portal, we consider there is a strong case for maximising alignment, to the extent possible, between the PTA and Arc standard access provisions. As

² See Transport for New South Wales, *Delivering Freight Policy Reform in New South Wales*, June 2025; pages 67-68.

noted above, to date, freight operators have generally contracted for access to the PTA network via their Arc access agreements, with the same terms and conditions applicable to both the Arc and PTA networks. Recognising the limited extent of PTA network used by freight operators, the requirement for materially different access terms (compared to Arc) will introduce complexity and cost to freight supply chains using the PTA network.

To the extent that there are issues where the PTA consider a different approach is required on its network, PTA should provide a full explanation of the reasons why a different approach is necessary on its network (noting that a different approach has not been taken in the past), and provide detailed drafting (rather than a dot point on the issue) to enable operators to fully understand the PTA's requirements.

The access provisions for Arc and the PTA should also reflect coordination and transparency between the PTA and Arc networks. A failure to do so has the potential to lead to inefficiencies for users in a variety of ways. For example, without consideration of impacts to a service occurring on adjoining networks, operators will be disadvantaged, whether through loss of priority in live run, misalignment in the scheduling of network possessions resulting in additional disruption, or a lack of price relief if a force majeure event on another network results in cancellation of a service.

Part 5 Instruments

Aurizon has reviewed in detail the PTA's proposed amendments to the TPAP and TMG. Our concerns are set out in detail in Appendix B and C, with key issues highlighted below.

Common concern on application of instruments

The TPAP and TMG describe the PTA's approach to train path allocation and train management with reference to Access Seekers and Access Holders using Train Paths under Access Agreements (each with defined terms) to reflect the requirements of the Code particularly in relation to PTA's obligations for non-discrimination. However, each of these defined terms are specific to Code based access negotiations.

Aurizon does not consider these limitations to Code based access negotiations to be appropriate given the context in which the terms are used in the TPAP and TMG.

- The TPAP describe processes for the allocation of Network capacity, and how the PTA will prioritise Trains in the event of conflict. We consider that these guidelines must generally be applied to all Trains operating on the network, for PTA to comply with its non-discrimination obligations under the Code (with 16(b)(1) now prohibiting discrimination between Access Seekers and Access Holders (under the Code) and other entities who have or are seeking access outside the Code).
- The TMG describe processes for safe operation of Trains on the Network and how the PTA will prioritise Trains in the event of conflict. We again consider that these guidelines must generally be applied to all Trains operating on the network, for PTA to comply with its non-discrimination obligations under the Code.

In any case, while the Code permits the PTA to deviate from Part 5 Instruments in non-Code negotiations, we consider that consistent application of the TPAP and TMG to all Trains is essential so that the PTA can comply with these obligations to Code based Access Seekers.

For example, it is not possible for the PTA to negotiate with an entity to provide it with path allocation priority, and then still meet the requirements of the TPAP for remaining Trains. Similarly, the PTA cannot negotiate to provide a train with train control priority, while still meeting the TMG obligations to all other Access Holders.

Finally, limiting the application of these terms to Code based access negotiations make the TPAP and TMG ineffective in its description of how the PTA will apply these instruments to its own services. This is because train paths required for urban public rail transport services do not fall within the definition of Train Paths under the TPAP and TMG.

Train Path Allocation Policy

In addition to the above comment, Aurizon considers that there is a strong need for a nationally consistent approach to train path optimisation arrangements, including the tools available to address under-utilised train paths, and the review of train paths for consistently late running services. Particularly for the PTA network, where all freight services also require complementary access to the adjoining Arc network to complete their full journey, the schedule optimisation tools need to work effectively across both networks. A nationally aligned approach, which addresses the issues of trains using multiple networks, has been developed and consistently sought by the ROG in jurisdictional regulatory reviews, and Aurizon considers that this should also be applied by the PTA. The key principles sought are set out in our detailed response to the TPAP.

Train Management Guidelines

In addition to the above comment, Aurizon has two key areas of concern with the PTA's proposed TMG:

- Aurizon considers that the PTA's amendments to the TMG reduces clarity in how the PTA will treat passenger and freight services, and the level of priority to be given to passenger services. The PTA has proposed to include a statement to the effect that the safe and reliable operation of passenger services is paramount and must not be compromised because of the presence of other Access Holders on the Network. It is unclear how this will influence the application of the TMG, as the principles of train management continue to apply the well accepted approach of prioritising an on-time train relative to a train running behind schedule. While Aurizon understands and supports the need for a safe and reliable urban passenger transport system and supports priority for passenger services in some circumstances (such as applying a peak period blackout), this should not allow the PTA to avoid providing a commitment to freight services around the service level that will be provided to them. This is a requirement of the WA Rail Access Regime, which obliges the PTA to negotiate for access to its network on fair and reasonable terms. Further, the WA Government has a clear objective to promote the use of rail for freight to the Port of Fremantle (which requires access to the PTA network). Aurizon considers that the PTA needs to take a balanced approach to the passenger/freight issue, rather than placing a 'paramount' priority on passenger services.
- A critical issue addressed in the TMG is the PTA commitments around possession planning and consultation with operators. In its draft amendments to the TMG, the PTA proposes to reduce the notice to be given to operators around planned possessions. Aurizon considers this to be inappropriate. The best practice approach to possession management is to plan these in a way that reduces the impact of essential possessions on operators and freight supply chains. This requires providing operators with increased notice of possessions, to give them and their customers sufficient time to mitigate their impact, and to ensure possessions are co-ordinated with adjoining networks. These principles must be reflected in PTA's possession planning and consultation obligations.

If you would like any additional information on any of the matters raised in this submission, please do not hesitate to contact Fiona Emery on 0455 312 377. In addition, Aurizon would welcome the opportunity to meet with the ERA to discuss and provide further context to the issues addressed in this submission.

Yours sincerely



David Steele
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