

| PTA Train Management Guidelines | | | | | | | |
|---------------------------------|------------------------------------|--------|----------|-------------|---|--|---|
| # | Part | Clause | Clause # | Materiality | Issue | Proposed Drafting (deletions are in strike through , additions are in bold) | Rationale |
| 1 | Train Path Allocation Policy | | All | High | Fair and non-discriminatory application of TPAP | | <p>The Train Path Allocation Policy (TPAP) describe the PTA's approach to train path allocation 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.</p> <p>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. 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, in order 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).</p> <p>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 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.</p> <p>Finally, limiting the application of these terms to Code based access negotiations make the TMG ineffective in its description of how the PTA will apply the TMG 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.</p> <p>We consider that this is most easily addressed by amending the definitions to relate to all access, whether or not provided under the Code, and this is the approach that we recommend (see proposed amendments below). Alternately, it would be necessary to review all references to these terms, to specifically consider whether or not it is appropriate that they be limited to parties operating under the Code.</p> |
| 2 | Roles and Responsibilities | | 1.1 | Medium | Fair and non-discriminatory application of TPAP | <p>The PTA is responsible for the development, management, maintenance and control of the urban rail Network that has been made available for access by third party rail operators under the Act and in accordance with the Code (as relevant). Schedule 1 of the Code lists the sections of the PTA Network covered by the Code. Access-Related Functions are managed by the Network & Infrastructure Division (N&I) within the PTA.</p> <p>The PTA is also responsible for the provision of public transport services, including urban passenger rail services. The PTA has established a separate division – Transperth Train Operations (TTO) – that has responsibility for the provision of urban passenger rail services, including all operational activities associated with the provision of that service. TTO is a physically and functionally separate division to N&I within the PTA.</p> <p>For reasons of efficiency and safety, TTO carries out the Train Control function within the PTA. This function is performed by TTO within the policies and procedures defined by N&I, and which is also subject to the PTA's Segregation Arrangements. In making decisions regarding the allocation and management of Train Paths under this TPAP, TTO may be asked for advice on the potential impact on passenger services timetables when an application for access to a specific Train Path is received. However, TTO does not make access-related decisions, which remain the responsibility of N&I.</p> | <p>PTA's proposed amendments to the TPAP reduce the clarity around the roles and responsibilities within PTA in administering the TPAP in a way that provides confidence to all parties in its fair and non-discriminatory application of the TPAP. The TPAP previously specifically referenced the role of the Network and Infrastructure Division (N&I) in having control of Access Related Functions (as defined in the Segregation Arrangements). The TPAP provided for Train Control to be provided by Transperth Train Operations (TTO) for operational efficiency but it was clear that this was in accordance with the requirements of N&I.</p> <p>While Aurizon does not think that the previous TPAP provisions need be retained in their entirety, we consider that there needs to be a clearer statement of how the relevant Access Related Functions are provided within PTA, consistent with the approved Segregation Arrangements.</p> |
| 3 | Purpose and Scope | | 1.2 | High | Fair and non-discriminatory application of TPAP | <p>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 44(2) of the Code requires each Railway Owner to prepare and submit a statement of policy that it will apply in the allocation of Train Paths, as well as the provision of access to Train Paths that have ceased to be used. This TPAP is submitted in accordance with that requirement.</p> <p>The purpose of the TPAP is to ensure that the allocation of Train Paths is undertaken in a manner that ensures fairness of treatment in relation to all Access Holders and Access Seekers, taking into account existing contractual rights and any new contractual rights created in accordance with the Code.</p> <p>With the aim of maximising the efficient use of the Network, the TPAP establishes a set of principles under which an Access Seeker has an entitlement to access Train Paths on the PTA Network and the circumstances under which variations to those Train Paths may occur.</p> <p>This TPAP applies to all Train Paths allocated with respect to all Access Agreements made under the Code. This TPAP will be employed when PTA is negotiating all Access Agreements under the Code.</p> | <p>Refer Item 1.</p> |
| 4 | Associated Reference Documentation | | 2 | Low | Transparency and clarity of obligations | <p>This TPAP must be read in conjunction with the following associated reference documents, all of which are available on the PTA's website: publicly available and may be obtained from the PTA.</p> | <p>Providing for all of these documents to be available on the PTA's website (either directly or via link to the relevant document owner's website) improves the efficiency of accessing these documents, and helps operators easily confirm that they are referring to the correct and current documents at all times.</p> |

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| 5 | Priority of Urban Rail Public Transport Services | | 3 | Medium | Transparency and clarity of obligations | The operational demands of urban passenger services, and consequent capacity constraints on the Network, are at their highest in Peak Periods. For this reason, Train Paths are not available for allocation to Access Seekers for freight services that would allow or require Services to operate on the Network in Peak Periods. | Aurizon notes that, in its proposed amendments to the TPAP, the PTA has introduced a peak blockout period. We acknowledge that this is consistent with PTA's practical approach in allocating train paths, and that Aurizon has been able to successfully secure access to paths necessary for its business within this constraint. As a result, we have no objection to the peak blockout period being formally recognised in the TPAP. However, we consider that the PTA should be required to clearly define the times applicable to this peak blockout, either in the TPAP or clearly published on its website. This is consistent with the requirements on Queensland Rail, with the QCA requiring that its new access undertaking include a requirement that it publish peak blockout periods on its website. |
| 6 | Train Path Allocation | General Guidelines | 4.2.1 | Medium | Fair and non-discriminatory application of TPAP | The PTA has duties under the Code in allocating Train Paths to impose any necessary requirements in relation to operating standards and to not unfairly discriminate between: <ul style="list-style-type: none">the proposed rail operations of an Access Seeker and the railway operations of another Access Seeker (section 16(1)(b));the proposed rail operations of an Access Seeker and the PTA's railway operations (section 16(2)). | This paragraph refers to the PTA's obligations to not unfairly discriminate between Access Seekers (defined term), where Access Seekers are defined as parties seeking access under the Code. As noted in Item 1, Aurizon does not consider that this properly reflects PTA's non-discriminatory obligations under the Code section 16(1)(b), which cover access seekers, access holders and other entities that are seeking access, or to which access is provided, otherwise than under the Code. Accordingly, we consider that the description of the PTA's obligation to not unfairly discriminate should not be limited to being between parties who have sought access under the Code. This issue will be addressed by our recommended changes to defined terms. |
| 7 | Train Path Allocation | Competing Requests for Access | 4.2.2 | Medium | Fair and non-discriminatory application of TPAP | Where an Access Seeker desires a Train Path that is already being used by, or that is subject to an application from, another entity, including the PTA's own operating arms, the following principles will apply: <ul style="list-style-type: none">The safe, reliable and integrated operation of the urban public transport system is to be given priority.No Access Holder with a current Access Agreement who is not in breach of any of the terms and conditions of that agreement, will be obliged to relinquish an established Scheduled Train Path other than voluntarily.The PTA will use reasonable endeavours to enable the Access Seeker to acquire its desired Train Path.Where there is competition between Access Seekers for a particular Train Path, the available Train Path will be provided to the Access Seeker who first requested the Train Path and can establish that it has a requirement to use the Train Path, having regard to the factors set out in section 4.2.1. | The commitment to not oblige an entity to relinquish its contracted entitlements in order to meet a competing request should be extended to all parties who hold contracted access rights on the PTA network. This issue will be addressed by our recommended changes to defined terms. |
| 8 | Temporary Variations to Scheduled Train Paths | | N/a | Low | Transparency and clarity of obligations Fair and non-discriminatory application of TPAP | The Train Paths may be temporarily varied by the giving of Instructions to an operator: (a) for the purpose of preventing any actual or reasonably likely: (1) breach of PTA's Network Rules by the operator, or of similar safety requirements by other operators on the Network; (2) damage to the Network; (c) injury to any person or material damage to any property; or (d) delay to the progress of Trains on the Network (but only insofar as any trains operated by an operator pursuant to a separate agreement have priority over a Train, having regard to the Train Management Guidelines); (b) for the purpose of preventing, or in response to, any actual or threatened breach by the Operator of any of its material obligations under an access agreement (whether or not under the Code). | The PTA has removed reference to temporary variations of train paths from the TPAP. Aurizon considers that it is important that PTA maintain a consistent approach to the circumstances in which it can require a temporary variation to train paths, and accordingly consider this should be retained in the TPAP. Aurizon further considerst that there is material efficiency benefit in the PTA applying a similar approach as Arc (the adjoining network owner) in defining their right to temporarily vary train paths, given that all freight services using PTA Network train paths will need to also access the Arc network to complete their journey. Our proposed drafting for temporary variations therefore reflects the circumstances in which we consider it reasonable that PTA can impose a temporary variation, and are consistent with the proposed provisions in the Arc Standard Access Provisions. |
| 9 | Permanent Variations to Scheduled Train Paths | | 4.3 | Low | Transparency and clarity of obligations | The Access Holder may only withhold its consent on reasonable grounds, as defined in the Access Arrangement. The Access Holder may not withhold its consent where the Variation Request is required by reason of PTA's obligations relating to an issue affecting the safety of the Network or for the purpose of maximising the reliability of the Network. | Aurizon considers that 'reasonable grounds' should be defined in the TPAP. Our proposed drafting is consistent with the proposed provisions in the Arc Standard Access Provisions (amended as per our comments on those Standard Access Provisions). |
| 10 | Permanent Variations to Scheduled Train Paths | | 4.3 | Medium | Transparency and clarity of obligations Fair and non-discriminatory application of TPAP | PTA may withhold its consent in its absolute discretion. on Reasonable Grounds. | Aurizon considers it inappropriate that PTA could withhold its consent in its absolute discretion, and this give customers and operators no confidence in the PTA applying this right in a consistent or non-discriminatory way. Accordingly, we believe that the PTA should only be able to withhold its consent on a reasonable basis, and consider further that the TPAP should provide guidance as to what is a reasonable basis. Our proposed drafting therefore reflects the circumstances in which we consider it reasonable that PTA can reject a proposed variation, and are consistent with the proposed provisions in the Arc Standard Access Provisions (amended as per our comments on those Standard Access Provisions). |
| 11 | Permanent Variations to Scheduled Train Paths | Additional Train Paths | 4.3 | Medium | Transparency and clarity of obligations Fair and non-discriminatory application of TPAP | An Access Seeker may provide PTA with a written notice requesting an additional Train Path with details of the additional Train Path. The parties will attempt to agree the additional Train Path, but PTA may withhold its agreement to these additional Train Paths on Reasonable Grounds the approval is in PTA's absolute discretion. | Aurizon considers it inappropriate that PTA could withhold its consent in its absolute discretion, and further consider that such a right is likely to be inconsistent with the PTA's obligation to negotiate for access under the Act and under the Code. Accordingly, we consider that PTA should only refuse additional train paths on reasonable grounds, with the same considerations applicable to this as to varied train paths above. |

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| 12 | Removal of Underutilised Train Paths | | 4.4 | High | Efficient supply chains | <div><p>The PTA has the right, by providing a notice in writing to the Access Holder identifying a Scheduled Train Path as under-utilised to amend an Access Agreement to remove a Scheduled Train Path from that Access Agreement if:</p><ul style="list-style-type: none">the Scheduled Train Path has not been operated at least once for more than three consecutive times; andafter the PTA has given the Access Holder notice of that fact, the Access Holder fails to utilise the Scheduled Train Path more than 6 times in aggregate in a twelve week period; at least 75% of the time in the period of three months from the date of the PTA's notice.the Access Holder fails to utilise the Scheduled Train Path more than 6 times in aggregate in a twenty-six week period; orthe Access Holder no longer has an entitlement for a necessary connecting train path on an adjoining network.<p>Other than if the parties agree to substitute an alternative Train Path, a Scheduled Train Path has not been utilised within the meaning of this clause if the Access Holder has failed:</p><ul style="list-style-type: none">to present a Train at the scheduled entry point onto the Network; orto operate the relevant Train so that it completes its full journey; orto operate a Train that is at least 50% of the length or weight of a Train that would usually run on the Scheduled Train Path (as determined by the PTA).<p>The PTA will take the following into account in assessing whether an Access Holder is underutilising one or more Scheduled Train Paths for the purpose of these provisions:</p><ul style="list-style-type: none">underutilisation attributable to Force Majeure;the failure of the PTA to make the relevant Train Path available, but only where the Access Holder is able to demonstrate that it was ready, willing and able to make use of the relevant Train Path; ortemporary variations or changes to Train Paths, including for possessions, Special Events or the actions of other Access Holders.<p>Where the PTA has identified a Scheduled Train Path as under-utilised, the PTA may give notice in writing to the Access Holder:</p><ul style="list-style-type: none">deleting the Scheduled Train Path from that Access Agreement; orvarying the Scheduled Train Path to the nearest otherwise available time.<p>Where the PTA's notice is to vary the Scheduled Train Path to the nearest otherwise available time:</p><ul style="list-style-type: none">The PTA will consult with the Access Holder on teh varied Train Path to be offered to the Access Holder;the Access Holder will use best endeavours to vary its contractual obligations (if any) with adjoining rail networks and terminals to align with the varied Train Path offered by the PTA;Subject to the above, the Access Holder is not required to accept a varied Train Path offered by the PTA if contractual obligations owed by the Access Holder to any person (including the PTA) would prevent it from doing so.</div> |
| 13 | Review of Scheduled Train Paths | | 4.3 | High | Efficient supply chains | <div><p>Scheduled Train Paths will be subject to a review in accordance with these provisions and the provisions contained in any relevant Access Agreement.</p><p>The PTA may at its discretion and following the provision of a written notice given to the Access Holder cause a Scheduled Train Path to be reviewed by the parties by comparing the stated departure and arrival times for the Train Path with the performance during the preceding continuous three month period of the actual Services using or purporting to use that Train Path (3-month history).</p><p>If on such a comparison of the Scheduled Train Path with the 3-month history, the departure or arrival times for a Train using or purporting to use the Scheduled Train Path differ in material respects, the parties must negotiate in good faith to vary the Scheduled Train Path so that it reflects, as closely as is reasonably practicable, the 3-month history.</p><p>PTA is not required to offer or agree any varied Train Paths under the review mechanism if there are Reasonable Grounds for withholding its consent.</p><p>The Access Holder will use best endeavours to vary its contractual obligations (if any) with adjoining rail networks and terminals to align with the varied Train Path offered by the PTA, but is not required to accept a varied Train Path offered by PTA under the review mechanism if:</p><ul style="list-style-type: none">there has been a material change in the operating pattern of the Service during that 3-month history which the Access Holder (acting reasonably) does not expect will continue; orif contractual obligations owed by the Access Holder to any person (including the PTA) would prevent it from doing so.<p>Any amendments to one or more Train Paths agreed to following a review will be reflected in an amendment to the Access Agreement.</p></div> |

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| 14 | Cancellation of Services using Train Paths | | 4.6 | High | Financial risk allocation Performance transparency and accountability | 4.6.1 Cancellation by the PTA The PTA may, where required for operational reasons, vary, cancel or impose restrictions on Scheduled Train Paths by providing written notice to the Access Holder. Where the PTA cancels the operation of a Service on a Scheduled Train Path, no fixed charges are to be applied for that Scheduled Train Path under an Access Agreement. | Aurizon acknowledges the necessity for rail managers to impose operational restrictions and take possession of the network in order to undertake essential maintenance and upgrades. However, it remains the case that service delays and cancellations resulting from this impose considerable cost on rail operators, and can the loss of service also has material impact on end customers. Aurizon considers it important that PTA commit that, where it does not provide a scheduled train path, either due to PTA operational reasons or due to force majeure, that it will not apply fixed access charges for that service. This reflects: - efficient risk allocation principles, where risks are most appropriately allocated to the party that is best able to manage that risk. In this case, the PTA is the party best able to manage the non-provision of access (and should be accountable for when it does not provide access in accordance with its commitments), and should therefore bear any loss of access revenue associated with this; - an incentive for the PTA to minimise the impact of possessions on services, as it will only receive fixed access charges for paths actually provided. While we acknowledge this issue would normally be covered in an access agreement, the PTA's submitted Standard Access Provisions do not go to this level of detail, and therefore do not provide access seekers with confidence about how this issue will be treated. |
| 15 | Cancellation of Services using Train Paths | | 4.6 | High | Financial risk allocation | 4.6.2 Cancellation by access holder An Access Holder may, by notice to the PTA, cancel a Service on a Scheduled Train Path for any reason. The Access Holder may cancel up to five Services on each Scheduled Train Path per year, without requirement to pay any fixed charges for that Scheduled Train Path under an Access Agreement. | The PTA's current TPAP includes provisions around the access holder's ability to cancel services, including the ability to cancel up to five service per year without penalty. Aurizon believes that there is benefit in retaining guidance around access holder cancellations, but considers that these provisions can readily be condensed to a simple statement that an access holder can cancel a service on a scheduled train path for any reason. The ability to cancel up to five services per year without penalty is consistent with the arrangements applied by ARTC in its standard Interstate Track Access Agreement, and we consider this should be retained. |
| 16 | Disputes | | 5 | Low | Transparency and clarity of obligations | If an Access Agreement has been entered into, disputes will be resolved based on the terms of that Access Agreement. As a general rule, Access Agreements will provide for resolution of disputes by: <ul style="list-style-type: none">• first – negotiation by senior representatives of each party;• second – negotiation by the chief executive officers of the parties;• third – mediation by independent mediator; and• fourth – by legal proceedings. | Aurizon agrees that it is reasonable that all disputes are addressed either through the provisions of the Code or the access agreement (whichever is applicable). However, we note that, in order for an access holder to raise a dispute regarding PTA's compliance with the TPAP in an access agreement, that access agreement will need to include a clear obligation for the parties to comply with the TPAP. |
| 17 | Compliance Monitoring | | n/a | Medium | Performance transparency and accountability | Compliance Audits Where a party is seeking access to the PTA's Network under the Code, the ERA may require that PTA's compliance with this Statement of Policy may be subject to an independent external audit. The costs of such an audit would be the responsibility of PTA. The ERA will approve the scope of the audit and may select and manage the auditor. The final audit report will be made available to the ERA. The ERA may place the audit report, excluding any confidential component, on its web site. The ERA also has the power to commission special purpose compliance audits on any issue arising under this Statement of Policy as considered necessary. | Compliance monitoring obligations are a feature of the PTA's current TPAP, and Aurizon considers that these should be retained. The proposed drafting is consistent with the PTA's current obligations. |
| 18 | Definitions | | 7 | High | Fair and non-discriminatory application of TPAP | Access Agreement Has the meaning assigned to "access agreement" in Section 3 of the Code which is as follows:- "means an agreement in writing under this Code between the railway owner and an entity for access by that entity." Means an agreement in writing between the Railway Owner and an entity for access by that entity, whether or not negotiated under the Code. | Refer item 1 |
| 19 | Definitions | | 7 | High | Fair and non-discriminatory application of TPAP | Access Holder Has the meaning described in section 3 of the Code, which is as follows:- "means an entity to which access is provided under an Access Agreement" Means an entity to which access is provided under an Access Agreement. | Refer item 1 |
| 20 | Definitions | | 7 | Low | Transparency and clarity of obligations | Access-Related Functions Means the functions involved in arranging the provision of access to railway infrastructure under the Code and includes those functions set out in Clause 6 of the PTA's Segregation Arrangements. | Refer item 2 |
| 21 | Definitions | | 7 | High | Fair and non-discriminatory application of TPAP | Access Seeker Has the meaning described in section 3 of the Code, which is as follows:- "means an entity that has made a proposal" Means an entity that has made a proposal to the Railway Owner for access, whether or not under the Code. | Refer item 1 |

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| 22 | Definitions | | 7 | Low | Transparency and clarity of obligations | Force Majeure Means an event or circumstance which: (a) is beyond the reasonable control of the party claiming force majeure (Affected Party); (b) prevents the Affected Party from performing its obligations under this an Access Agreement ; this an Access Agreement ; (c) was not reasonably foreseeable; (d) was not caused or contributed to by the Affected Party; and (e) cannot be prevented, overcome or remedied by the exercise by the Affected Party of a reasonable standard of care and diligence, and may include:– a) named cyclone, earthquake, fire, explosion, lightning, flood (other than any flood which should have been reasonably anticipated) ; or b) acts of war, terrorist act (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth)), maritime or aviation disaster); or c) riot, sabotage, embargo, commotion or civil disturbance, blockade or picketing, except where the event arises in respect of any industrial action; or d) epidemics or pandemics other than COVID-19; or e) nuclear event, ionising radiations or contamination by radioactivity, but does not include: f) loss of customers or loss of market share; g) the failure of, or the breakdown of or other damage to plant, machinery or infrastructure other than as a direct result of a cause, event or circumstance set out in paragraph (a) or paragraph (c) of this definition; h) wet, hot or otherwise inclement weather (other than as described in paragraph (a) of this definition); i) any acts or omissions by the Access Holder’s personnel; or j) any event that results in the Affected Party having a lack of funds, including money, or inability to use, obtain or access funds, including money, for any reason. | |
| 23 | Definitions | | 7 | Low | Transparency and clarity of obligations | Master Control Diagrams Means a diagrammatic or electronic record covering specific parts of the Network which shows all train paths : <ul style="list-style-type: none">• all train paths for permanent train movements; and• all train paths agreed with, or reserved for, an operator; and including the Train Paths. | |
| 24 | Definitions | | 7 | Low | Transparency and clarity of obligations | Peak Periods Means weekday morning and evening time windows reflecting peak operational demands for passenger services, as reasonably determined by the PTA and published on its website. FTO. | Refer item 5 |
| 25 | Definitions | | 7 | Medium | Transparency and clarity of obligations | Reasonable Grounds Means reasonable grounds and where the PTA's consent is being sought, includes: (a) the varied Train Path not being available because it is already allocated to another access holder or customer; (b) the varied Train Path not being available because there is not sufficient capacity available on the Network to accommodate the varied Train Path; (c) the Access Holder being unable to demonstrate to PTA's reasonable satisfaction a bona fide requirement for the varied Train Path; (d) the varied Train Path not being able to be operated safely or effectively or efficiently in the opinion of PTA (acting reasonably); (e) the varied Train Path being exactly the same or similar to a train path that has already been removed from that Access Holder pursuant to its access agreement; or (f) where to consent to the proposal would, or is likely to, result in PTA breaching: (g) any obligations imposed by Law, including any Law relating to safety; (h) the Railways (Access) Act 1998 (WA) or the Rail Access Code; or (i) any agreement to which it is a party | Refer item 10 |

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| 1 | Train Management Guidelines | | All | High | Fair and non-discriminatory application of TMG | | <p>The Train Management Guidelines (TMG) describe the PTA's approach to 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.</p> <p>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 TMG. 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 consider that these guidelines must generally be applied to all Trains operating on the network, in order 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.</p> <p>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 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 train control priority, and then still meet the requirements of the TMG for remaining Trains.</p> <p>Finally, limiting the application of these terms to Code based access negotiations make the TMG ineffective in its description of how the PTA will apply the TMG 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 TMG.</p> <p>We consider that this is most easily addressed by amending the definitions to relate to all access, whether or not provided under the Code, and this is the approach that we recommend. Alternately, it would be necessary to review all references to these terms, to specifically consider whether or not it is appropriate that they be limited to parties operating under the Code.</p> |
| 2 | Roles and Responsibilities | | 1.1 | Medium | Fair and non-discriminatory application of TMG | <p>The PTA is responsible for the development, management, maintenance and control of the urban rail Network that has been made available for access by third party rail operators under the Act and in accordance with the Code (as relevant). Schedule 1 of the Code lists the sections of the PTA Network covered by the Code. Access-Related Functions are managed by the Network & Infrastructure Division (N&I) within the PTA.</p> <p>The PTA is also responsible for the provision of public transport services, including urban passenger rail services. The PTA has established a separate division – Transperth Train Operations (TTO) – that has responsibility for the provision of urban passenger rail services, including all operational activities associated with the provision of that service. TTO is a physically and functionally separate division to N&I within the PTA.</p> <p>For reasons of efficiency and safety, TTO carries out the Train Control function within the PTA. This function is performed by TTO within the policies and procedures defined by N&I, and which is also subject to the PTA's Segregation Arrangements. TTO must carry out this function using the policies and procedures determined by N&I the PTA, including these TMG. While TTO must implement and comply with the TMG, it is not responsible for their development, maintenance or the oversight of compliance, which remains the responsibility of N&I.</p> | <p>PTA's proposed amendments to the TMG reduce the clarity around the roles and responsibilities within PTA in administering the TMG in a way that provides confidence to all parties in its fair and non-discriminatory application of the TMG. The TMG previously specifically referenced the role of the Network and Infrastructure Division (N&I) in having control of Access Related Functions (as defined in the Segregation Arrangements). The TMG provided for Train Control to be provided by Transperth Train Operations (TTO) for operational efficiency but it was clear that this was in accordance with the requirements of N&I.</p> <p>While Aurizon does not think that the previous TMG provisions need be retained in their entirety, we consider that there needs to be a clearer statement of how the relevant Access Related Functions are provided within PTA, consistent with the approved Segregation Arrangements.</p> |
| 3 | Purpose and Scope | | 1.2 | High | Fair and non-discriminatory application of TMG | <p>Section 43(3) of the Code requires each Railway Owner to prepare and submit to the Regulator for approval a statement of the principles, rules and practices (the Train Management Guidelines) that are to be applied and followed by the Railway Owner in the performance of the functions in relation to a part of the railway Network and associated infrastructure to which the Code applies (but only so far as this performance relates to requirements imposed by or under the Act or Code). These TMG are submitted in accordance with that requirement.</p> <p>These TMG are a statement of principles, rules and practices that apply to the real-time management of all Services operating under Access Agreements between Access Holders and the PTA. The purpose of these TMG is to establish a common understanding between Access Holders and the PTA of the obligations required from both all parties to ensure that the management of Services is undertaken in the mutual interest of all users of the PTA Network.</p> | <p>Refer item 1</p> |
| 4 | Associated Reference Documentation | | 2 | Low | Transparency and clarity of obligations | <p>This TPAP must be read in conjunction with the following associated reference documents, all of which are available on the PTA's website: publicly available and may be obtained from the PTA or the Regulator's website.</p> | <p>Providing for all of these documents to be available on the PTA's website (either directly or via link to the relevant document owner's website) improves the efficiency of accessing these documents, and helps operators easily confirm that they are referring to the correct and current documents at all times.</p> |

| PTA Train Path Policy | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Drafting (deletions are in striketrough , additions are in bold) | Rationale |
| 5 | Priority of Urban Rail Public Transport Services | | 3 | High | Transparency and clarity of obligations | The operational demands of urban passenger services, and consequent capacity constraints on the Network, are at their highest in Peak Periods. For this reason, Train Paths are not available for allocation to Access Seekers for freight services that would allow or require Services to operate on the Network in Peak Periods. More generally, these operational demands influence the way in which the PTA manages Services, as outlined in these TMG. The State rail access regime requires that Access Seekers be permitted to negotiate agreements to use the PTA Network and the PTA is committed to facilitating such use. The safe and reliable operation of the rail-based urban public transport service is paramount and must not be compromised as a result of the presence of other Access Holders on the Network. This principle underlies the PTA's approach to Train management. | Aurizon notes that, in its proposed amendments to the TPAP, the PTA has introduced a peak blackout period. We acknowledge that this is consistent with PTA's practical approach in allocating train paths, and that Aurizon has been able to successfully secure access to paths necessary for its business within this constraint. As a result, we have no objection to the peak blackout period being formally recognised in the TPAP. However, we consider that the PTA should be required to clearly define the times applicable to this peak blackout, either in the TPAP or clearly published on its website. This is consistent with the requirements on Queensland Rail, with the QCA requiring that its new access undertaking include a requirement that it publish peak blackout periods on its website. Beyond this, while Aurizon understands and supports the need for a safe and reliable operation of the rail-based urban public transport system that meets the needs and expectations of Government and users, we would like to highlight that Government also has explicit expectations around the use of the PTA Network for providing freight services and supporting efficient freight supply chains. This is reflected in numerous instruments, including: - the inclusion of the PTA Network in Schedule 1 of the Code, which explicitly requires the PTA to negotiate access to the Network, including for freight services, on reasonable terms and conditions; and - the provision of a subsidy on all fully loaded containers moving between IMTs in Kenwick and Forrestfield and Fremantle Port (and using the PTA Network) in order to increase the proportion of container freight on rail in and out of the Inner Harbour. Reflecting Government's strong commitment to the use of the PTA Network, where required, to support efficient rail based freight supply chains, we consider that the priority of Urban Rail Public Transport Services cannot be absolute, and needs to be balanced with providing reasonable access for freight services. As a long term provider of freight services on the PTA Network, we consider that it is entirely feasible for PTA to meet the needs of both types of service, without the need for the TMG to place a paramount priority on passenger services. |
| 6 | Principles of Train Management | | 5 | Medium | Fair and non-discriminatory application of TMG | The PTA has duties under the Code in managing Train Control, to impose any necessary requirements in relation to operating standards and to not unfairly discriminate between: • the proposed rail operations of an Access Seeker and the railway operations of another Access Seeker (section 16(1)(b)); • the proposed rail operations of an Access Seeker and the PTA’s own railway operations (section 16(2)). | This paragraph refers to the PTA's obligations to not unfairly discriminate between Access Seekers (defined term), where Access Seekers are defined as parties seeking access under the Code. As noted in Item 1, Aurizon does not consider that this properly reflects PTA's non-discriminatory obligations under the Code section 16(1)(b), which cover access seekers, access holders and other entities that are seeking access, or to which access is provided, otherwise than under the Code. Accordingly, we consider that the description of the PTA's obligation to not unfairly discriminate should not be limited to being between parties who have sought access under the Code. This issue will be addressed by our recommended changes to defined terms. |
| 7 | Principles of Train Management | General Principles | 5.1 | Low | Transparency and clarity of obligations | The Access Holder must ensure safely manage operating integrity, including crewing of Trains with experienced and trained crew, and provision of locomotives, railcars and other rollingstock that meets PTA’s specifications and is loaded, in order for Train schedules to be met, consistent with the requirements of its accreditation and Access Agreement . | Aurizon agrees with the intent of this clause, however for clarity, the obligations that an operator must meet are established through its accreditation requirements and its access agreement. |
| 8 | Principles of Train Management | Possession Management | 5.2.2 | High | Efficient supply chains Balanced and reasonable terms | The PTA may take Possession of any part of the Network, at any time. In doing so, if it is reasonably likely to materially effect Train Paths, and the Possession is required other than because of emergencies related to safety or natural events, the PTA will, prior to taking Possession: • take all reasonable steps to minimise disruptions to Train Paths; • consult with adjoining network owners with the objective of, where practicable, co-ordinating Possessions; • provide notification of the works to the Access Holder as soon as reasonably practicable and, in any case, in accordance with this Clause 5.2.2; and • use reasonable best endeavours to provide an alternative Train Path that is usable in respect of other elements of the Access Holder’s logistics chain, but the PTA need not obtain the Access Holder’s consent to such Possession of the Network. | Aurizon acknowledges the necessity for rail managers to impose operational restrictions and take possession of the network in order to undertake essential maintenance and upgrades. However, it remains the case that service delays and cancellations resulting from this impose considerable cost on rail operators, and the loss of service also has material impact on end customers. Accordingly, the way that possessions are managed and imposed is of critical importance to operators. In its revised TMG, the PTA has reduced its commitment to consult and work with operators to reduce the impact on them of possessions, creating the likelihood that PTA possessions will have a more significant impact on operator service levels. Aurizon does not consider this degradation of service to operators to be reasonable, and considers that the PTA should retain a best endeavours obligation to provide a suitable alternate train path. Refer Item 10 in relation to consultation with adjoining network owners. |
| 9 | Principles of Train Management | Possession Management | 5.2.2 | High | Efficient supply chains Balanced and reasonable terms | The policy that the PTA will apply to Possession management is as follows: • if Possession can occur without affecting use of Train Paths, no notice is required; • if the PTA has to take Possession because of emergencies related to safety or natural events such as fire or flood, the PTA will notify affected Access Holders as soon as practicable of: o the circumstances, o the likely impact on Train Paths, and o the likely duration of the Possession; • if the PTA requires Possession other than because of emergencies related to safety or natural events: o and the Possession will affect Train Paths for a continuous period of less than 6 hours, it will give 2 Business Days 30 days prior notice; o and the Possession will affect Train Paths for a continuous period of 6 hours but less than 48 hours, it will provide a minimum of 10 Business Days 3 months prior notice and will consult with any affected the Access Holder in relation to temporary adjustments or changes to Train Paths to facilitate the Possession; and o and the Possession will affect Train Paths for a continuous period of 48 hours or more, the PTA will give at least 30 business days 6 months prior notice of the work. The PTA will also commence consultation with any affected Access Holder from the date of the notice for alternative arrangements. | In the context of the Queensland Cross River Rail Project (which involves a large network possession requirement over an extended time frame, with significant impacts for freight operators), a review was undertaken of the best practice approach to possession management, in order to reduce the impact of essential possessions on operators. The key conclusions of this review were: - to provide operators with increased notice of possessions, to give them sufficient time to mitigate their impact or to advise customers and enable customers to mitigate their impact; and - the imperative to co-ordinate possessions with adjoining network owners, to minimise the overall impact of possessions on train services that cross multiple networks. Aurizon considers that the possessions framework in PTA's TMG should reflect these contemporary views of best practice possession management principles. Reflecting this, Aurizon considers that the PTA's notification timeframes should be extended as proposed in our drafting changes. These proposed timeframes extend the PTA's current notification period for possessions of up to 48 hours, and retain the existing 6 month notification requirement for possessions greater than 48 hours. We consider that infrastructure managers with robust asset management processes will plan their planned maintenance schedules well in advance, particularly for larger projects that require multiple day possessions. Therefore we expect that the PTA should have a clear understanding of all of its planned maintenance activities within these timeframes. |

| PTA Train Path Policy | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Drafting (deletions are in striketrough , additions are in bold) | Rationale |
| 10 | Principles of Train Management | Use of the Network in accordance with Train Paths | 5.3.2 | Medium | Balanced and reasonable terms | <p>The PTA will use reasonable best endeavours to ensure that Services are able to operate according to Train Paths so that a Service that enters the Network on time will exit the Network on time, subject to:</p> <ul style="list-style-type: none">• safety considerations;• matters outside the reasonable control of the PTA, which affect the ability of the PTA to provide the Train Path;• advice from the Access Holder 15 minutes prior to the scheduled departure time that the Service will be ready for departure on time;• presentation of the Access Holder’s Train on time; and• any other emergencies that may affect the operation of Services. <p>A Train that is Late entering the Network or is delayed within the Network will be managed with reasonable best endeavours by the PTA to make up time dependent upon:</p> <ul style="list-style-type: none">• the degree of lateness;• conformance to the Network operating requirements;• how the Train has performed in relation to the section running times as it proceeds; and• the obligations the PTA has in relation to the operation of other Trains on the Network. <p>The PTA may accommodate a Service that is running early or Late, is presented at the point of entry to the Network Late or is presented at the point of entry to the Network more than 15 minutes early by providing a Train Path for that Service at the PTA’s first available opportunity.</p> <p>Both the PTA and the Access Holder will use their reasonable best endeavours to:</p> <ul style="list-style-type: none">• ensure that such Services that are running or presented Late recover the lost time; and• ensure that such Services that are presented more than 15 minutes early depart the Network no later than the scheduled time;• mitigate the effects of any liability, loss or damage arising out of any Services which are running or presented Late. | <p>The PTA's proposed amendments to its TMG materially degrade the service level that it proposes to offer to access holders. For example, the PTA currently has an absolute oblgiation to ensure that Services are able to operate according to their scheduled path, and has a best endeavours obligation to accommodate early or late trains. In each of these cases, the PTA is now seeking to degrade these obligations to reasonable endeavours.</p> <p>Aurizon considers that the PTA should maintain a best endeavours obligation to manage trains in accordance with their schedule and to accommodate early and late trains. This is consistent with the approach typically adopted by railway owners, with both Arc Infrastructure's regulator approved Train Management Guidelines and ARTC's regulator approved standard Interstate Track Access Agreement incorporating best endeavours obligations on these actions.</p> |
| 11 | Principles of Train Management | Network Blockage | 5.3.3 | Medium | Balanced and reasonable terms | <p>Access Holders, other than the Access Holder whose train has failed, will be required to provide reasonable assistance to the PTA as necessary to facilitate the clearing of a blockage of the Network caused by a Failed Train. As an example, assisting locomotives and crews may be sourced from:</p> <ul style="list-style-type: none">• other Trains near the vicinity that are being delayed by the failure; or• the nearest railcar/locomotive depot. <p>An Access Holder will not be required to provide assistance if it will incur cost and risk, unless agreement is reached on how the cost and risk will be allocated. Agreement on the terms and conditions for providing assistance may be negotiated within the Access Agreement.</p> | <p>Aurizon accepts that there will be times where the most efficient way of clearing a network blockage from one operator is through the use of locomotives and crew of another operator. However, we believe that the existing requirement that the allocation of costs and risks of such assistance be addressed in the access agreement should be retained.</p> <p>In the context of the ROG's comments on the Arc Standard Access Provisions, we have provided our views on how these costs and risks should be allocated, including that:</p> <ul style="list-style-type: none">- except in an emergency, the railway owner must consult with the operator prior to issuing an instruction to provide assistance using the operator's crew or locomotive;- the railway owner will reimburse the assisting operator's direct costs of providing such assistance- where the railway owner has organised assistance for the recovery of an operator's rollingstock, the rescued operator will reimburse the railway owner's direct costs of providing such assistance (including any payments to an assisting operator)- the assisting operator will be indemnified for any damage to the rescued party's rollingstock; and- the assisting operator cannot be required to do anything contrary to its accreditation. |
| 12 | Principles of Train Management | Real time allocation of Train Paths | 5.4.1 | | Transparency and clarity of obligations | <p>If an Access Holder requests an ad-hoc or alternative Train Path, in determining whether to grant such a Train Path, the PTA may withhold its consent to the request on Reasonable Grounds. will take many factors into consideration, including the need to ensure that established urban passenger Train schedules are maintained on the Network.</p> | <p>Aurizon considers it inappropriate that PTA could withhold its consent in its absolute discretion (as implied by this drafting), and this gives customers and operators no confidence in the PTA applying this right in a consistent or non-discriminatory way. Accordingly, we believe that the PTA should only be able to withhold its consent on a reasonable basis, and consider further that the TMG should provide guidance as to what is a reasonable basis. Our proposed drafting therefore reflects the circumstances in which we consider it reasonable that PTA can reject a proposed variation, and are consistent with the proposed provisions in the Arc Standard Access Provisions (amended as per our comments on those Standard Access Provisions).</p> |
| 13 | Disputes | | 6 | Low | Transparency and clarity of obligations | <p>If an Access Agreement has been entered into, disputes will be resolved based on the terms of that Access Agreement. As a general rule, Access Agreements will provide for resolution of disputes by:</p> <ul style="list-style-type: none">• first – negotiation by senior representatives of each party;• second – negotiation by the chief executive officers of the parties;• third – mediation by independent mediator; and• fourth – by legal proceedings (if raised by a party). | <p>Aurizon agrees that it is reasonable that all disputes are addressed either through the provisions of the Code or the access agreement (whichever is applicable). However, we note that, in order for an access holder to raise a dispute regarding PTA's compliance with the TMG in an access agreement, that access agreement will need to include a clear obligation for the parties to comply with the TMG.</p> |
| 14 | Compliance Monitoring | | n/a | Medium | Performance transparency and accountability | <p>Compliance Audits</p> <p>Where a party is seeking access to the PTA's Network under the Code, the ERA may require that PTA’s compliance with the Train Management Guidelines may be subject to an independent external audit. The costs of such an audit would be the responsibility of PTA. The ERA will approve the scope of the audit and may select and manage the auditor. The final audit report will be made available to the ERA. The ERA may place the audit report, excluding any confidential component, on its website.</p> <p>The ERA also has the power to commission special purpose compliance audits on any issue arising under the Train Management Guidelines as considered necessary.</p> | <p>Compliance monitoring obligations are a feature of the PTA's current TMG, and Aurizon considers that these should be retained. The proposed drafting is consistent with the PTA's current obligations.</p> |

| PTA Train Path Policy | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Drafting (deletions are in striketrough , additions are in bold) | Rationale |
| 15 | Definitions | | 8 | High | Fair and non-discriminatory application of TMG | <i>Access Agreement</i> Has the meaning assigned to "access agreement" in Section 3 of the Code which is as follows:- "means an agreement in writing under this Code between the railway owner and an entity for access by that entity." Means an agreement in writing between the Railway Owner and an entity for access by that entity, whether or not negotiated under the Code. | Refer item 1 |
| 16 | Definitions | | 8 | High | Fair and non-discriminatory application of TMG | <i>Access Holders</i> Has the meaning described in section 3 of the Code, which is as follows:- "means an entity to which access is provided under an Access Agreement" Means an entity to which access is provided under an Access Agreement. | Refer item 1 |
| 17 | Definitions | | 8 | Low | Transparency and clarity of obligations | <i>Access-Related Functions</i> means the functions involved in arranging the provision of access to railway infrastructure under the Code and includes those functions set out in Clause 6 of the PTA's Segregation Arrangements approved by the Regulator. | Refer item 2 |
| 18 | Definitions | | 8 | High | Fair and non-discriminatory application of TMG | <i>Access Seeker</i> Has the meaning described in section 3 of the Code, which is as follows:- "means an entity that has made a proposal" Means an entity that has made a proposal to the Railway Owner for access, whether or not under the Code. | Refer item 1 |
| 19 | Definitions | | 8 | Low | Transparency and clarity of obligations | <i>Force Majeure</i> Means an event or circumstance which: (a) is beyond the reasonable control of the party claiming force majeure (Affected Party); (b) prevents the Affected Party from performing its obligations under this an Access Agreement ; (c) was not reasonably foreseeable; (d) was not caused or contributed to by the Affected Party; and (e) cannot be prevented, overcome or remedied by the exercise by the Affected Party of a reasonable standard of care and diligence, and may include:– a) named cyclone, earthquake, fire, explosion, lightning, flood (other than any flood which should have been reasonably anticipated); or b) acts of war, terrorist act (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth)), maritime or aviation disaster); or c) riot, sabotage, embargo, commotion or civil disturbance, blockade or picketing, except where the event arises in respect of any industrial action; or d) epidemics or pandemics other than COVID-19; or e) nuclear event, ionising radiations or contamination by radioactivity, but does not include: f) loss of customers or loss of market share; g) the failure of, or the breakdown of or other damage to plant, machinery or infrastructure other than as a direct result of a cause, event or circumstance set out in paragraph (a) or paragraph (c) of this definition; h) wet, hot or otherwise inclement weather (other than as described in paragraph (a) of this definition); i) any acts or omissions by the Access Holder’s personnel; or j) any event that results in the Affected Party having a lack of funds, including money, or inability to use, obtain or access funds, including money, for any reason. | |
| 20 | Definitions | | 8 | Low | Transparency and clarity of obligations | <i>Peak Periods</i> Means weekday morning and evening time windows reflecting peak operational demands for passenger services, as reasonably determined by the PTA and published on its website. TTQ- | Refer item 5 |
| 21 | Definitions | | 8 | Medium | Transparency and clarity of obligations | <i>Reasonable Grounds</i> Means reasonable grounds and where the PTA's consent is being sought, includes: (a) the varied Train Path not being available because it is already allocated to another access holder or customer; (b) the varied Train Path not being available because there is not sufficient capacity available on the Network to accommodate the varied Train Path; (c) the Access Holder being unable to demonstrate to PTA's reasonable satisfaction a bona fide requirement for the varied Train Path; (d) the varied Train Path not being able to be operated safely or effectively or efficiently in the opinion of PTA (acting reasonably); (e) the varied Train Path being exactly the same or similar to a train path that has already been removed from that Access Holder pursuant to its access agreement; or (f) where to consent to the proposal would, or is likely to, result in PTA breaching: (g) any obligations imposed by Law, including any Law relating to safety; (h) the Railways (Access) Act 1998 (WA) or the Rail Access Code; or (i) any agreement to which it is a party | Refer item 12 |

| PTA Train Management Guidelines | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Element | Issue |
| 1 | Standard Access Provisions | | All | High | Sufficient Detail | | While Aurizon agrees that many of the elements identified in the PTA's summary are necessarily addressed in an access agreement, the PTA summary document does not provide sufficient detail on how these elements will be addressed to form the basis of a workable access agreement as required under the Code. In these cases, Aurizon considers that the manner in which these issues have been addressed in Arc Infrastructure's proposed long form standard Track Access Agreement (as amended by the ROG's comments in its submission to the ERA on Arc's Standard Access Provisions) provides a reasonable approach to addressing these elements. The remainder of this document addresses elements identified in the PTA proposed Standard Access Provisions, where Aurizon does not consider that they should be included in a long form agreement, or where Aurizon considers they should be addressed in a way that differs from the PTA's summary point. |
| 2 | Access Term | | 2.1(a) | Low | Balanced and reasonable terms | (a) Term of an Access Agreement is 5 years. | The Standard Access Provisions should not prescribe a specific term, this should be based on the specific requirements of an individual access seeker. |
| 3 | Track Access Rights | | 2.2(3) | Medium | Transparency and clarity of obligations | (e) Access Holder must comply with PTA’s Train Management Guidelines and Network Rules. | The parties should also comply with PTA's Train Path Allocation Policy (TPAP). The PTA's proposed TPAP identifies that it is to be applied with respect to all access agreements made under the Code. Further, there needs to be a clear contractual obligation on the PTA to comply with the TPAP and the Train Management Guidelines (TMG), in order for the indended dispute resolution arrangements under these instruments to work effectively. |
| 4 | Early and late services | | 2.3(a) | High | Balanced and reasonable terms | (a) PTA may, in its discretion, accommodate services running early or late. | The PTA currently applies a 'best endeavours' commitment to accommodate services running early or late (through its current TMG). Aurizon considers a 'best endeavours' commitment is appropriate and should be maintained, particularly noting that this is consistent with the commitment currently offered by Arc (under its approved TMG) and by ARTC (under its regulator approved standard Interstate Track Access Agreement). |
| 5 | Light Locomotive Movements | | 2.4(a) | Medium | Balanced and reasonable terms | (a) PTA may, in its discretion, grant train paths for Light Locomotive Movements. | Ad hoc light engine movements, including for the purposes of locomotive maintenance and incident recovery, are an essential part of the operation of train services, but are unable to be predicted for the purpose of contracting capacity. A reasonable endeavours obligation to provide access for light engine movements better reflects the necessity of these movements, while continuing to ensure that the PTA does not have an obligation to accommodate light engine movements where it is not reasonable to do so given other network requirements. |
| 6 | Stabling of Rolling Stock | | 2.5(b) | Medium | Balanced and reasonable terms | (b) PTA may impose a charge for stabling of Rolling Stock for longer than 15 minutes. | A limitation of 15 minutes of stabling (prior to applying charges) is inappropriately restrictive, particularly when compared to typical practices from Rail Infrastructure Managers. Refer to the ROG's comments on Arc's proposed Standard Access Provisions for how we consider this issue to be more reasonably addressed. |
| 7 | Key Performance Indicators (KPIs) | | 2.6 | High | Performance transparency and accountability | (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. | Aurizon agrees that an Access Agreement should include provision for reporting and monitoring of performance, and a mechanism aimed at improving performance over time. However, the PTA's brief description of this provision does not imply a constructive performance regime: - While the Access Agreement is fundamentally about a service being provided by the PTA to the Access Holder, the KPIs appear to only relate to an Access Holder's performance, with no reporting of PTA's performance in providing the access service - the drafting implies a prescriptive KPI compliance process, however the PTA has provided no information on what the KPIs may be or how the required performance level would be set. Experience in other jurisdictions is that it is very difficult to establish and agree a required performance standard for KPIs, and we have strong reservations around whether this is a realistic expectation for the PTA Network. - given the complexity associated with developing and agreeing KPIs with a required performance standard attached, Aurizon considers a more constructive approach is to agree to report KPIs (which cover the performance of both parties), together with regular meetings aimed at identifying opportunities for improvement. Refer to the ROG's submission on Arc's Standard Access Provisions for further detail on the approach we consider should be adopted for KPIs and performance reporting. |

| PTA Train Management Guidelines | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Element | Issue |
| 8 | Charges, invoices and payment | | 2.7(d) | High | Financial risk allocation | (d) Charges are calculated per train path. | Access charges are typically applied with fixed and variable components. 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 standard access provisions specify that access charges be applied on a fully fixed basis. Consistent with the ROG's comments on the Arc Standard Access Provisions, we consider that the PTA should incorporate guidance in the Standard Access Provisions as to: - the proportion of access charges that can be applied as a fixed charge; and - the formula by which those fixed charges will be applied. The underlying principles for the application of fixed charges should be: - fixed charges must be clearly disclosed and demonstrably aligned with the PTA's underlying fixed/variable cost structure. - the split between fixed and variable charges must be explicitly documented - the fixed charge should not in any circumstances exceed the total access charge for operating a fully loaded service - fixed charges must not be imposed on paths not delivered by the PTA either due to its own cause (eg maintenance possessions) or Force Majeure, including both forward and return journeys. This reflects that if a forward path is not provided by the PTA, then the operator is unable to run either the forward or return journey (and vice versa) - the fixed charge should include a discount tied to contract term, to reward long-term contractual commitments. |
| 9 | Access Holder's obligations in relation to Rolling Stock | | 2.9 (e) | | Balanced and reasonable terms | (e) Rolling Stock must be maintained and operated in a way that minimizes noise and vibration emissions. | Noise and vibration emissions are a significant issue for the rail industry, particularly when operating in urban areas. Noise and vibration can be influenced by a wide range of factors, encompassing the construction and maintenance standards of both rollingstock and rail infrastructure. While the desire for lower noise and vibration emissions is clear, particularly in urban areas, the costs associated with achieving this can be very high, and may not be economically viable. Further, the environmental consequences of freight moving by road instead of rail may be similar or even higher, depending on the circumstances. For these reasons, there are established processes for addressing noise and vibration emissions which attempt to balance the allocation of responsibility between rail operators and railway owners. This is reflected in the processes described under 2.19(d) in relation to notification of an environmental condition and the required steps to eliminate the environmental condition or rectify the environmental harm (subject to our comments on 2.19(d)). The absolute (and non-reciprocal) obligation on an Operator to maintain and operate rollingstock in a way that minimises noise and vibration emissions is inconsistent with this process. |
| 10 | Access Holder's obligations in relation to Train Crew | | 2.10(b) | Medium | Transparency and clarity of obligations | (b) Train crew must be medically fit. | Aurizon agrees that it is essential that its train crew are medically fit. We would like to ensure, however, that any obligation in an Access Agreement about the standard of medical fitness for our train crew is aligned with our obligations under our safety accreditation (including if these change from time to time). Otherwise, there is a risk that an obligation in the PTA Access Agreement may, in future, conflict with the requirements of our accreditationm, creating the potential for duplicative and inefficient obligations. We further believe that the medical fitness standards accepted by the rail safety regulator should be acceptable to PTA. |
| 11 | Access Holder's obligations in relation to Train Crew | | 2.10(d) | | Transparency and clarity of obligations | (d) Train crew must have detailed knowledge of PTA’s Emergency Management Manual. | The operator’s obligations for managing emergencies and incidents should be dealt with under 2.17, with the Operator required to maintain an incident (including emergency) response plan which must be approved by the PTA. It is the Operator's obligation to ensure that it complies with this incident response plan, including having mechanisms in place for ensuring that train crew understand their requirements. Beyond this, we do not consider it reasonable to expect that all train crew will have a detailed knowledge of PTA's Emergency Management Manual. Train crew will have route specific training and training around the Operator's emergency response plans. In the event of an emergency on the PTA Network, this should be managed by PTA's Network Control and train crew will be obliged to follow PTA Instructions. Aurizon would not expect train crew to need to rely upon their own knowledge of PTA's emergency response procedures in these instances, and assuming that each train crew acts based on its own knowledge of these procedures (rather than in accordance with PTA Instructions) would create increased risk. |
| 12 | Access Holder's general obligations | | 2.11(b) | Medium | Transparency and clarity of obligations | (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. | This obligation should be subject to the compliance with the TMG, which establish the principles for train management by the PTA. |

| PTA Train Management Guidelines | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Element | Issue |
| 13 | Access Holder's general obligations | | 2.11(j) | Medium | Transparency and clarity of obligations | (j) Must be certified under ISO4001 Environmental Management System and comply with PTA's Environmental Management System. | Rail access agreements usually apply a consistent approach to managing environmental obligations, where the Operator is required to comply with its own Environmental Management System, with provisions for it to address potential Environmental Conditions or Environmental Harm for which the Railway Owner becomes aware. This framework is reflected in 2.19 and should be sufficient to address any environmental concerns known to the PTA. We do not consider it reasonable to also impose an obligation on an Operator to comply with the PTA's Environmental Management System. Not only would this implications of this obligation be uncertain and subject to unilateral change by the PTA, it would also create the risk of duplicative or inconsistent procedures. We do not agree with a requirement in the Access Agreement for an Operator to have its Environmental Management System certified under ISO4001. Compliance with its environmental management obligations is the responsibility of the Operator, and decisions around certification of its Environmental Management System should be left to the Operator. Consistent with this position, no other railway manager requires ISO certification as part of a Standard Access Agreement. |
| 14 | Access Holder's general obligations | | 2.11(j) | Medium | Transparency and clarity of obligations | (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. | Aurizon acknowledges that in practice, information on its train services (such as train manifests) is provided to Arc Infrastructure, and accessed by PTA, and we have no concern with the PTA Access Agreement permitting this practice to continue. However, we are concerned about creating an uncertain obligation in the PTA Access Agreement to provide unspecified information to Arc. Further, to the extent that the PTA accesses information, such as train manifests, from Arc, the PTA Access Agreement should not include a separate obligation to provide that information, potentially in a different form, to the PTA (such as could be required under 2.11(g)). |
| 15 | Access Holder's general obligations | | 2.11(j) | Medium | Balanced and reasonable terms | (o) Must provide location information to PTA. | The nature and purpose of the obligation on an Operator from this element is unclear. The PTA will have information on train location available to it under its train control systems. If this obligation is intended to refer to GPS tracking information, we are concerned about the practical requirements of transmitting this information to PTA, including the costs of setting up a transmission method. Further detail on the purpose and nature of this obligation is essential. |
| 16 | Repairs and Maintenance of Network | | 2.12(a) | High | Performance transparency and accountability | (a) PTA continues to maintain the Network | It is essential that the PTA's obligation to maintain the Network be accompanied by a definition as to the standard to which the Network is to be maintained. Refer to Clause 6.1 of Arc's proposed Standard TAA (amended by the ROG's comments on this clause) for an appropriate definition of standard. |
| 17 | Variations, additions or cancellations of Train Paths | | 2.15 | Medium | Transparency and clarity of obligations | (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. | These entitlements should explicitly be subject to PTA's compliance with its TPAP and TMG which will clearly establish the way in which these entitlements can be exercised. |
| 18 | Inspection and Audit | | 2.16(a) | Medium | Balanced and reasonable terms | (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. | The rights to audit, including the circumstances in which an audit can be required and the matters for which compliance can be assessed through audit, should be balanced and reciprocal and should be clearly defined. This is not the case for the agreement elements proposed by the PTA. The purpose of the PTA's proposed right of inspection is unclear (given its right of audit) and should be deleted. |

| PTA Train Management Guidelines | | | | | | | |
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| # | Part | Clause | Clause # | Materiality | Issue | Proposed Element | Issue |
| 19 | Environmental requirements and dangerous goods | | 2.19(d) | High | Balanced and reasonable terms | (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. | Aurizon generally supports the PTA's proposed approach, subject to further detail in relation to noise and vibration. Refer to the Arc Standard Access Provisions Clause 13.4(b)-(c) for the appropriate treatment of this issue. |
| 20 | Suspension or termination | | 2.22(a) | High | Balanced and reasonable terms | (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. | It is unreasonable for the PTA to have a right to terminate the Access Agreement for its convenience, and given the essential nature of ongoing network access, this places an unacceptable business continuity risk on Operators. Any termination rights should incorporate a reasonable cure period to allow the other party an opportunity to rectify the breach prior to termination. |
| 21 | Indemnities | | 2.23 | High | Balanced and reasonable terms | (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. | Indemnities should be balanced and reciprocal. |
| 22 | Limit of liability | | 2.24(c) | High | Balanced and reasonable terms Performance transparency and accountability | (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. | Any exclusion of liability for the PTA should be subject to it complying with an obligation to maintain the network to an appropriate standard in accordance with good industry practice. Refer to item 16. |
| 23 | Assignment | | 2.28 | Medium | Balanced and reasonable terms | (a) Access Holder must not assign, mortgage, charge etc the Access Agreement without PTA prior consent. | Assignment provisions should be balanced and reciprocal. |
| 24 | Anti-corruption and Modern Slavery | | 2.30 | Low | Balanced and reasonable terms | (a) Access Holder must comply with anti-corruption and modern slavery provisions. | Clauses requiring Operator compliance with Anti-Corruption and Modern Slavery laws is not necessary for an Access Agreement. In any event, the Operator is required to comply with all Laws applicable to the operation of the Services or its use of the Network. |
| 25 | Security, cyber and privacy | | 2.32 | Low | Balanced and reasonable terms | (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). | Aurizon is not aware of any data that would be exchanged that would be relevant to these obligation. This should be deleted. |