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Economic Regulation Authority  
Level 4, Albert Facey House  
469 Wellington Street  
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Submitted online via: [Current Consultations - Economic Regulation Authority Western Australia](#)

### **Public Transport Authority - Standard Access Provisions (SAP)**

Co-operative Bulk Handling Limited (**CBH**) acknowledges that the Public Transport Authority (**PTA**) has submitted SAP to the ERA as required under Section 47A of the *Railways (Access) Code 2000* (WA) (the **Code**).

CBH is Australia's largest co-operative and is owned and controlled by around 3,500 Western Australian Grain Growers. CBH's core purpose is to create and return value to WA growers, both current and future. CBH operates a bulk handling supply chain which manages the complexities of accumulating, transporting and exporting grain from growers utilising both road and rail infrastructure.

While the majority of grain exports transported via rail to CBH's bulk terminals utilises the Freight Rail Network (currently managed by Arc Infrastructure), CBH have previously utilised the PTA network to access maintenance facilities and containerised grain is currently transported via a contractor to Fremantle Port.

CBH may therefore be impacted by PTA's SAP as an indirect user of the PTA network and also provides this submission on the basis that PTA's SAPs might set a precedent for other rail network owners that submit SAPs to the ERA for approval, including those that CBH currently accesses or intends to access in the future.

CBH's commentary on PTA's SAP is high level, raising three overarching points for the ERA's consideration:

1. The requirement for SAP to be 'reasonable' under section 47A(1)(2)(a) of the Code.

- CBH considers that for provisions to be considered 'reasonable' they must appropriately balance the interests of, and provide appropriate protections to, both access seekers and railway owners. The ERA should look at each clause in PTA's SAP on its merits and determine if, on their own and taken in the context of the broader agreement, they are reasonable.
- CBH considers that some of the PTA's SAPs are not consistent with section 47A(1)(2)(a). For example, clause 2.22 in the SAP articulates a unilateral right for termination at the railway owner's convenience. CBH considers this is not consistent with section 47A(1)(2)(a) as it exposes access holders to the risk of access being revoked without being at fault and without recourse.
- Another example is clause 2.24(c). This clause excludes liability of the network owner for injury, death, damages or loss arising from or in connection with the condition and maintenance of the rail network, despite this being a responsibility of the PTA under clause 2.12.

2. The requirement that SAP are “sufficiently detailed and complete to form the basis of a commercially workable agreement” under section 47A(1)(2)(b) of the Code.
  - CBH considers the Code requires a “long form” statement of SAP, albeit with placeholders for those provisions that are specific to the access being sought. While the Code merely requires “principles” in respect of Costing Principles, it requires the more fulsome “provisions” in respect of standard access. The latter is intended to mean “long form” in CBH’s view.
  - CBH considers the requirement to publish a long form set of SAP is consistent with the legislative intent of the Code and the ERA’s approach in other regulated markets such as in respect of the regulation of natural gas pipelines. It is also consistent with the approach adopted in the regulation of other rail networks in Australia, such as in respect of the Australian Rail Track Corporation (ARTC) and Queensland Rail networks.
  - CBH considers PTA’s proposed SAP do not have sufficient detail to form the basis of a commercially workable agreement.
3. The value of consistency across SAPs for adjoining networks in promoting fairness, efficiency and certainty of access.
  - There are several rail users that require access to both the PTA network and the adjoining Freight Rail Network to operate their required services.
  - Having a level of consistency across standard agreements will support rail users having to negotiate multiple access agreements, promoting broad efficiency and certainty of access to rail infrastructure. It will also mitigate the ability of a rail network owner (or manager) to exercise power over a rail user that requires access to multiple networks.
  - CBH acknowledges that unique network characteristics may necessitate differences across some standard terms.

CBH submits that the ERA, in exercising its power under section 47A(4) of the Code, should not approve PTA’s proposed SAP without considering the comments made by CBH in this submission. Furthermore, the ERA’s approval of PTA’s SAP should not set a precedent for other rail network owners that have submitted SAPs given the different circumstances which apply to PTA and other rail network owners.

Please note, if CBH has not made a comment in respect of a specific term in the SAP, that should not be interpreted to mean CBH endorses that term. CBH’s commentary on the SAP is high level and for the purpose of ensuring that, when considering rail networks in respect of which CBH is a current or likely access holder, the ERA will ensure that the network’s SAP are reasonable, sufficiently detailed and, where appropriate, consistent with other networks’ SAP.

The establishment of Code-compliant, ERA approved SAP is important as they provide a set of independently reviewed and approved foundational terms and conditions for the purpose of supporting negotiations between railway owners and access seekers. They are fundamental to ensuring the access regime achieves its objectives. Having sufficiently balanced, detailed and, where appropriate, consistent terms, is critical to supporting the achievement of the intended outcomes of the Code with respect to transparency, certainty, and efficiency.

The opportunity to make a submission is greatly appreciated and we encourage you to contact the undersigned or CBH’s Network Planning Manager, Kristina Primus on 08 9237 9590 or [kristina.primus@cbh.com.au](mailto:kristina.primus@cbh.com.au), to discuss this matter further.

Yours sincerely,

**For: Co-operative Bulk Handling Limited**



**Rob Dickie**  
**Head of Government & Industry Relations**