



Economic Regulation Authority

Public Transport Authority

Train Path Allocation Policy 2025 – approval decision

05 August 2025

Acknowledgement of Country

At the ERA we value our cultural diversity and respect the traditional custodians of the land and waters on which we live and work.

We acknowledge their continuing connection to culture and community, their traditions and stories. We commit to listening, continuously improving our performance and building a brighter future together.

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DECISION

On 30 April 2025, the Public Transport Authority (PTA) submitted a revised train path policy, along with the other four Part 5 regulatory instruments, for approval by the ERA. All Part 5 instruments were published for public comment on the ERA website on 8 May 2025. The initial consultation period of four weeks was extended by two additional weeks at the request of stakeholders.

Two submissions were received at the end of the six weeks consultation period, from Co-operative Bulk Handling Group (CBH) and Aurizon.

These submissions have been published on the ERA's website.

This decision applies to PTA's train path policy.

The ERA has considered PTA's Train Path Allocation Policy in conjunction with comments made by public submission and has made this decision as a final decision.

The ERA's final decision is to approved PTA's Train Path Allocation Policy, with seven amendments.

Summary of Required Amendments

Required amendment 1

In sub-section 4.2.1:

- a) In the first paragraph, second row, replace the wording "Train Path" with the wording "train path".
- b) In the third paragraph, replace the wording "Train Paths" with the wording "train paths" in both instances.

Required amendment 2

In section 4.3:

- a) replace the wording "Train Path" with the wording "Scheduled Train Path" in:
 - i) second dot point (1) and (2)
 - ii) fifth dot point (3)
 - iii) the paragraph after the last dot point
- b) add the following wording at the end of the fourth dot point: ", acting reasonably."
- c) replace the wording "Access Seeker" with "Access Holder" in the subsections titled 'Additional Train Paths' and 'Ad-hoc Services'.

Required amendment 3

In section 4.4:

- a) Amend the first sentence of the first paragraph by replacing "Scheduled Train Path" with "Train Path".
- b) In the first dot point of the first paragraph add the wording "associated with that Train Path" after the wording "Scheduled Train Path".

c) Include the following statement:

“Where the PTA has identified a Train Path as underutilised, the PTA may give notice in writing to the Access Holder about withdrawing the contractual entitlement for the Access Holder to utilise the Train Path.

Prior to PTA withdrawing the contractual entitlement of the Access Holder to utilise the Train Path, PTA will consult with the Access Holder and provide the Access Holder with an opportunity to:

- provide the reasons for the underutilisation
- demonstrate to PTA’s reasonable satisfaction a bona fide future requirement for that Train Path.”

Required amendment 4

In section 4.5:

a) In the fourth paragraph, replace the wording “Train Path” with “Scheduled Train Path” and add the following wording at the end of the sentence: “if there are reasonable grounds for withholding its consent”.

b) Replace the fifth paragraph with the following:

“The Access Holder will use best endeavors to vary its contractual obligations (if any) with adjoining rail networks and terminals to align with the varied Scheduled Train Path offered by the PTA, but is not required to accept a varied Scheduled Train Path offered by PTA under the review mechanism if:

- i) 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; or
- ii) if contractual obligations owed by the Access Holder to any person (including the PTA) would prevent it from doing so. Any amendments to one or more Train Paths agreed to following a review will be reflected in an amendment to the Access Agreement.”

c) Replace the sixth paragraph with: “Any amendments to one or more Scheduled Train Paths agreed to following a review will be reflected in an amendment to the associated Train Paths in the Access Agreement.”

Required amendment 5

In section 4.6:

a) Amend the title of section 4.6 to read “Cancellation of Services using Scheduled Train Paths”

b) Include provisions detailing the circumstances in which the Access Holder may cancel Scheduled Train Paths without penalty, consistent with those provisions existing in the currently approved Train Path Policy.

Required amendment 6

In section 6:

- a. replace the title of this section with the title “Compliance and Review”, and
- b. add the following wording:

“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. The ERA also has the power to commission special purpose compliance audits on any issue arising under the Train Management Guidelines as considered necessary.”

Required amendment 7

In section 7:

- a) in the definition for Access Holder, replace the word “described” with “assigned to access holder”.
- b) in the definitions for Access Seeker, replace the word “described” with “assigned to access seeker”.
- c) in the definitions for Network/Railway Network replace the word “described” with “assigned to railway networks”.
- d) in the definitions for Railway Owner replace the word “described” with “assigned to railway owner”.
- e) include a definition for the term Access-Related Functions which coincides with the definition of the term in section 3 of the Code.
- f) amend the definition of Force Majeure by replacing of the wording “this Agreement” with the wording “an Access Agreement”.

EXECUTIVE SUMMARY

BACKGROUND

The ERA administers the Western Australian *Railways (Access) Act 1998* (Act) and the *Railways (Access) Code 2000*.

The Code is a requirement of the Act, and both became effective in September 2001. The rail network and types of infrastructure subject to the Code are defined in Schedule 1 of the Code and include the regional freight network in the south-west of the State and the urban passenger network.

Section 3 of the Act defines a 'railway owner' to mean the person having the management and control of the use of the railway infrastructure. In this context, the Public Transport Authority (PTA) is considered to be the owner of the urban passenger network, comprising routes listed under 'Urban Network' in Schedule 1 to the Code. Arc Infrastructure is the owner of the freight network.

The Urban Network described in Schedule 1 to the Code does not encompass the entire PTA network. Routes which are part of the PTA network and not included in Schedule 1 are:

- Claremont to High Wycombe (Airport line)
- Bayswater to Ellenbrook (Ellenbrook line)
- Thornlie to Cockburn
- Armadale to Byford

The PTA is a government owned enterprise with vertical integration of the above and below rail parts of the business and provides management and delivery of public passenger metropolitan and regional rail services in Western Australia. Transperth is the metropolitan passenger train operating division and uses the PTA urban network, and Transwa operates regional passenger train services which use both the PTA and Arc networks.

There are five regulatory requirements on railway owners defined in Part 5 of the Code which are referred to collectively as the 'Part 5 Instruments'. The railway owner must prepare documents outlining their proposed arrangements for each of these instruments with the Code requirements and submit these to the ERA for approval.

PART 5 INSTRUMENTS

The purpose of the Part 5 instruments is to establish access to infrastructure on reasonable terms and reasonable quality of service at fair prices, and to prevent recovery of monopoly rents. The instruments ensure that railway owners can facilitate operations on their networks and achieve fair and reasonable returns.

The five Part 5 instruments set out in the Code are:

- train management guidelines (section 43)
- statement of policy for the allocation of train paths (section 44)
- over-payment rules (section 47)
- costing principles (section 47H) and
- the applicable depreciation schedule section 47K(3)

Statement of policy

Section 44(2) of the Code requires that each railway owner prepares and submits to the ERA a statement of the policy that will apply in:

- (a) the allocation of train paths; and
- (b) the provisions of access to train paths that have ceased to exist.

The statement of policy is a high-level statement of policy relating to the allocation of train paths and the provision of access to train paths that have ceased to be used by other operators.

The statement of policy is designed to ensure that the allocation of train paths is undertaken in a manner that ensures fairness of treatment between access holders and acknowledges existing contractual rights, and any new contractual rights created under agreements for access entered into under the Code.

The PTA has titled its statement of policy as “Train Path Allocation Policy”.

The PTA’s Train Path Allocation Policy establishes a set of principles under which an access seeker has an entitlement to access train paths on the PTA network, and situations under which variations to those train paths can be made. PTA’s Train Path Allocation Policy applies to train paths allocated with regard to an access agreement made under the Code.

Section 44(4) of the Code states that the statement of policy may be amended or replaced by the railway owner with the approval of the ERA.

Code clarifications

1. Some comments in submissions related to the applicability of Part 5 Instruments to agreements for access made outside the Code and proposed that the ERA should ensure that these instruments apply to all agreements, inside and outside the Code. These comments are addressed below. The ERA's railway-related functions are defined by the Act and the Code. PTA's Train Path Allocation Policy is a requirement of section 44 of the Code. Section 4A(1)(b) of the Code provides that nothing in the Code applies to the negotiation or any resulting agreement made otherwise than under the Code.

Aurizon submission

2. Aurizon considers that the application of train path allocation policy only to agreements for access made under the Code is not appropriate and that the train path allocation policy should be applied to all train pathing on PTA's network in order for PTA to comply with its non-discrimination obligations under the Code. Aurizon recommends that several sections of PTA's train path allocation policy are amended to apply to all access agreements, whether or not provided under the Code.
3. The ERA considers that Aurizon's recommendation to amend parts of PTA's Train Path Allocation Policy so that it applies to agreements for access made outside the Code is inconsistent with the WA rail access regime as nothing in the Code applies to agreements made otherwise than under the Code. The ERA will not be requiring the change requested by Aurizon.

CBH submission

4. In relation to the CBH submission, CBH stated that they are not currently using the PTA's network and that their submission was provided on the basis that PTA's Train Path Allocation Policy may set a precedent for other railway network that submit Part 5 instruments. CBH has provided submissions relating to PTA's other Part 5 instruments on the same basis.
5. CBH has submitted that their comments on PTA's Part 5 instruments are high level and relate to:
 - a) the requirement for consistency across all railway owners' Part 5 instruments, and
 - b) the requirement for ERA to consider the matters mentioned in section 20(4) of the Act which the Regulator must take into account when approving Part 5 instruments. CBH submitted that ERA decisions must encourage the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations.
6. CBH commented that Part 5 instruments must be reasonable and appropriately balanced, and consistent with the matters the ERA must take into account.
7. The Code does not require consistency across all railway owners' Part 5 instruments.
8. The ERA has approved railway owners' Part 5 instruments on the basis of its requirement to consider the matters in section 20(4) of the Act.

PTA defined terms

9. The PTA has generally capitalised terms which appear uncapitalised in the Code. Some of these capitalisations relate to whether a relevant agreement is made inside or outside the Code. Train control activities which are described in industry standard terms are capitalised. The PTA has adequately referred to the relevant Code definition in all cases

(Section 7 Definitions). The Train Path Allocation Policy is a document which does not belong to the ERA and the ERA accepts the PTA's capitalisation convention.

PTA's Train Path Allocation Policy (by section)

Section 1. Introduction

10. This section establishes the role, responsibilities, purpose and scope of PTA's Train Path Allocation Policy in accordance with the requirements of the Act and the Code.
11. PTA included a new paragraph in section 1.2 stating that the Train Path Allocation Policy is submitted in accordance with the requirements of section 44(2) of the Code.
12. PTA also included a new paragraph section stating this Train Path Allocation Policy applies to Train Paths allocated with respect to an Access Agreement under the Code.
13. Section 1.1 states that the PTA has established a new division – Transperth Train Operations (TTO) – which is responsible for all operational activities associated with the provision of urban rail services, including Train Control.¹ Section 1.1 states that the PTA is responsible for the provision of public transport services and for development of, and compliance with the train management guidelines.
14. The Network and Infrastructure division which was previously responsible for access-related functions, is now responsible solely for network maintenance and safety. The PTA CEO now has direct oversight of approvals and dispute resolution associated with access-related functions.

Public submissions

Aurizon

15. Aurizon noted that the current version of PTA's Train Path Allocation Policy referenced the role of the Network and Infrastructure Division (N&I) in having control of the access related functions and that these references have been removed from the proposed train path policy.
16. Aurizon stated that there needs to be a clear statement on how the relevant access functions are provided within PTA.

ERA considerations

17. The ERA considers that the PTA has appropriately adjusted its Train Path Allocation Policy to reflect the naming of current responsible divisions within the PTA. The ERA does not consider that further amendment to section 1 of the train management guidelines is required.

Section 2 Associated Reference Documents

18. Section 2 of the proposed Train Path Allocation Policy provides a list of reference documents which have a practical or legal bearing on the operation of the policy. The reference documents are public documents.

¹ Train Control is a defined term in section 8 "Definitions" of the train management guidelines

Public submissions

Aurizon

19. Aurizon recommend that all documents listed in this section are made available by PTA on their website to improve efficiency of accessing the documents and to help operators easily confirm that they are referring to the correct and current documents at all times.

ERA considerations

20. The ERA does not consider that amendments to this section are necessary as it is stated that these are publicly available documents and may be obtained from PTA, or from the ERA, either as public documents, or on request.

Section 3 Priority of Urban Rail Public Transport Services

21. This section has been renamed (formerly Principle Governing the Use of PTA Rail Network) and amended by the addition of two new paragraphs to clarify the primary purpose of the urban rail network.
22. The PTA has provided this clarification to assert the primacy of urban passenger services over freight services in the context of the PTA's purpose. This section states that the primary purpose of the PTA is to provide a safe reliable and efficient urban passenger service, and that train paths are not available to access seekers for freight services during peak periods.

Public submissions

Aurizon

23. Aurizon commented that PTA has introduced a period which Aurizon has termed the "peak blackout period" in this section, and Aurizon considers that PTA should clearly define the times applicable to this period and publish this information on their website.

ERA considerations

24. The ERA does not agree that PTA's Train Path Allocation Policy introduced a peak blackout period as suggested by Aurizon.
25. Section 2 of PTA's proposed Train Path Allocation Policy references Peak Periods, and this term is clearly defined in Section 8 Definition of the document.²
26. The ERA also notes that first paragraph of Section 3 of PTA's Train Path Allocation Policy highlights that the purpose of the PTA urban rail network is to provide a safe, reliable and efficient rail-based public transport service.
27. The ERA considers that prioritising the passenger service does not preclude reasonable access to the urban network for the freight services.

² Peak Period is defined in section 8 as "Means weekday morning and evening time windows reflecting peak operational demands for passenger services, as reasonably determined by TTO."

28. The ERA does not consider that this section requires further amendment.

Section 4 Management of Train Paths

29. This section makes provisions for the daily management of services on PTA's network. Daily management requires allocating Train Paths, managing requests for Train Paths that are already allocated or subject to an application, removal of Train Paths that are underutilised, the review of Scheduled Train Paths and cancellation of Scheduled Train Paths.
30. This section has been amended by the removal of the sub-section dealing with maintenance provisions. These provisions are now detailed in section 5 (under 5.2.2 - Possession management) of the Train Path Allocation Policy.

4.1 Master Control Diagram

31. The section has been amended by removed references to its Network and Infrastructure Division (N&I). The N&I division is responsible for all access-related functions, including train control. Train control is now managed by a new division named Transperth Train Operations (TTO). N&I Division is now responsible solely for upkeep of PTA's infrastructure, and access-related functions are overseen directly by the PTA CEO.

4.2 Train Path Allocation

32. This section details the PTA's approach to allocating Train Paths to Access Holders for freight services.
33. This section has been amended by the addition of a new paragraph to clarify the PTA's duties under the Code in allocating Train Paths, including to impose the required operating standards and to not unfairly discriminate between the operations of the Access Holders and PTA's operations.
34. This section has been amended by including the assessment of historical usage of Train Paths in determining if a request for an additional Train Path is warranted.

4.2.2 Competing Requirements for Access

35. This section details the principles PTA uses when assessing an Access Seeker's request for access to a Train Path that is already being used. This section has not been amended.

4.2.3 Train Path Allocation – Other

36. This new section replaces the "Temporary variations of Train Paths" section and makes provisions for special circumstances in which PTA will allocate available Train Paths, apart from those stipulated in Access Agreements.
37. In this new section, PTA also clarifies that the provisions for temporary variations to Train Paths are now addressed in their train management guidelines.

Public submissions

Aurizon

38. Aurizon noted that PTA has removed reference to temporary variations of train path and considers that these provisions should be retained in the proposed Train Path Allocation Policy.

ERA considerations

39. ERA notes that PTA uses the wording “Train Path” (in capitals - which is defined in Section 7 Definitions, and relates to train paths negotiated under an access agreement) interchangeably with the wording “train path” (uncapitalised), that refers to an unspecified train path on PTA’s network (i.e. relating to an urban passenger rail service or a freight rail service that is negotiated outside the Code). The terms should not be used interchangeably as they have different meaning.
40. The ERA considers that the Train Path/train path wording convention is appropriate in the context of access agreements negotiated inside/outside the Code and should be retained throughout the document to ensure clarity of the document.
41. The ERA considers that to avoid duplication, reference to temporary variations of Train Path should not be retained in the proposed Train Path Allocation Policy. These references are adequately made in Section 5.3.2 of the Train Management Guidelines.

Required amendment 1

In sub-section 4.2.1:

- a) In the first paragraph, second row, replace the wording “Train Path” with the wording “train path”.
- b) In the third paragraph, replace the wording “Train Paths” with the wording “train paths” in both instances.

4.3 Permanent Variations to Scheduled Train Paths

42. This section details the procedure to be followed if a Scheduled Train Path is permanently varied.
43. This section has been amended with the addition of new provisions to clarify the obligations of the parties when a request for variation of a Scheduled Train Path is raised and to clarify the conditions for withholding the consent for such variation.
44. The section has been amended with the addition of new provisions for additional Train Paths and ad-hoc Services.

Public submissions

Aurizon

45. Aurizon submitted that it is inappropriate that PTA has absolute discretion to withhold its consent to permanent variations to Scheduled Train Paths and Additional Train Paths and that it should be able to withhold its consent only on reasonable grounds. Aurizon also considers that “reasonable grounds” should be defined in the train path policy.

CBH

46. CBH submitted that it is inappropriate that PTA has absolute discretion to withhold its consent to permanent variations to Scheduled Train Paths and Additional Train Paths and that it should be able to withhold its consent only on reasonable grounds.

ERA considerations

47. The ERA notes that the provision for PTA’s absolute discretion for consent to permanent variations to Scheduled Train Paths and Additional Train Paths is a new addition to the Train Path Allocation Policy.
48. The ERA notes that PTA did not provide a rationale for this change. The ERA considers that PTA should act reasonably when withholding consent to any permanent variation to Train Paths.
49. The ERA notes that in this section PTA uses the wording Train Path and Scheduled Train Paths interchangeably.
50. Section 7 (‘Definitions’) of the Train Path Allocation Policy defines Train Paths as the entitlement of an access holder to use the PTA network between the times and locations set in the access agreement and that a Scheduled Train Path is the access holder’s entitlement to use a Train Path on the network between the times and locations set out in the access agreement.
51. A Train Path represents the capacity of the infrastructure to accommodate the Service negotiated in an Access Agreement, and the Scheduled Train Path represents the Train Path that has been timetabled in railway owner’s Master Control Diagram.
52. The ERA requires that PTA replaces the wording “Train Path” with Scheduled Train Path in this section. This is to ensure the correct use of terms as defined in section 7 of this document and to provide consistency with PTA’s train management guidelines.
53. Additionally, the ERA requires that PTA replaces the wording “Access Seeker” with “Access Holder” in the sub-sections titled ‘Additional Train Paths’ and ‘Ad-hoc Services’. This is because additional or ad-hoc train paths may only be provided to Access Holders.

Required amendment 2

In section 4.3:

- a) replace the wording “Train Path” with the wording “Scheduled Train Path” in:
 - iv) second dot point (1) and (2)
 - v) fifth dot point (3)

- vi) the paragraph after the last dot point
- b) add the following wording at the end of the fourth dot point “, acting reasonably.”
- c) replace the wording “Access Seeker” with “Access Holder” in the subsections titled ‘Additional Train Paths’ and ‘Ad-hoc Services’

4.4 Removal of Underutilised Train Paths

54. This section details the procedure for the removal of Train Paths that are not utilised in accordance with the provisions of the Access Agreement.

55. This section has been amended by altering the criteria for an underutilised Train Path from the service not being operated from:

“for more than three consecutive weeks at any time” and “after PTA through N&I, has given the Operator notice of the fact, Operator fails to operate the service for more than six weeks in aggregate in the period of six months from the date of PTA’s notice”, to

“at least once for more than three consecutive times” and “after PTA has given the Access Holder notice of that fact, the Access Holder fails to utilise the Scheduled Train Path at least 75% of the time in the period of three months from the date of PTA’s notice”.

56. This section has been amended with a new provision to clarify that a Scheduled Train Path is also considered underutilised if the Access Holder fails to operate a Train that is less than 50 per cent of the length or weight a Train that would usually run on the Scheduled Train Path (as determined by the PTA).

57. This section has been amended to include the following conditions that PTA will take into account when assessing whether an Access Holder is underutilising one or more Train Paths:

- a) “underutilisation due to force majeure;
- b) the failure of the PTA to make the relevant Train Path available, but only where an Access Holder is able to demonstrate that it was ready, willing and able to make use of the relevant Train Path; or
- c) temporary variations or changes to Train Paths, including for possessions, Special Events or the actions of other Access Holders.”

Public submissions

Aurizon

58. In its submission, Aurizon commented that PTA should amend the provisions to incorporate a nationally consistent approach to assessing underutilisation, and to establishing the actions that the PTA can take when a train path is identified as underutilised.

Aurizon advised that it has developed and proposed a consistent framework in numerous jurisdictional regulatory reviews, with the elements relating to path under-utilisation being:

- “a train path should be classified as under-utilised where the Operator fails to use at least 50% of scheduled paths over 3 months, or at least 75% of scheduled paths over

6 months, or where the Operator no longer has an entitlement for a necessary connecting train path on an adjoining network;

- a train path is treated as 'utilised' for the purpose of this framework where it is used for a train service of at least 50% of its usual length/weight and which completes its full journey;

- where a train path is under-utilised, the PTA should have an option to reschedule the path to the nearest otherwise available time rather than cancel it.”

59. Aurizon proposed amendments to this section to reflect the recommendations above.

ERA considerations

60. The ERA acknowledges Aurizon’s suggestion for defining and managing underutilised Train Paths and agrees with Aurizon’s recommendation that PTA detail the actions they take when a Train Path is determined as underutilised.

61. However, the requirement for the Access Holder to have a valid entitlement to an adjoining railway network is not required by the Code. The requirement to have a valid entitlement to an adjoining railway network is the Access Holder’s responsibility and the ERA considers that the railway owner’s definition of an underutilised Train Path, should not be dependent on an Access Holder’s negotiated entitlements on another (adjoining) network.

62. The ERA considers that Aurizon’s recommendation for a Scheduled Train Path of an underutilised Train Path to be rescheduled to the nearest available time rather than being cancelled is already addressed in section 4.5 of PTA’s Train Path Allocation Policy.

63. The ERA advises that the first paragraph of this section should be reformulated to provide accuracy on the use of the terms. The ERA notes that a Scheduled Train Path cannot be removed from an Access Agreement as Access Agreements negotiate Train Paths rather than Scheduled Train Paths.

Required amendment 3

In section 4.4:

- a) Amend the first sentence of the first paragraph by replacing “Scheduled Train Path” with “Train Path”.
- b) In the first dot point of the first paragraph add the wording “associated with that Train Path” after the wording “Scheduled Train Path”.
- c) Include the following statement:

“Where the PTA has identified a Train Path as underutilised, the PTA may give notice in writing to the Access Holder about withdrawing the contractual entitlement for the Access Holder to utilize the Train Path.

Prior to PTA withdrawing the contractual entitlement of the Access Holder to utilize the Train Path, PTA will consult with the Access Holder and provide the Access Holder with an opportunity to:

- provide the reasons for the underutilisation
- demonstrate to PTA’s reasonable satisfaction a bona fide future requirement for that Train Path.”

4.5 Review of Scheduled Train Paths

64. This section details PTA's right to review Scheduled Train Paths to compare the scheduled departure and arrival times of a Train Path with its performance over the preceding three months.
65. In this section, PTA proposed to amend the wording to state that "PTA is not required to offer or agree to any varied Train Paths under the review mechanism".
66. The current approved version states that: "Nothing in this clause compels PTA, through N&I, to offer a Train Path to the Operator if:
- such a Train Path is unavailable by reason of scheduled public transport Services operated by PTA's Transperth Train Operations Division or contractual obligations by PTA to any person (including the Operator);
 - or to do so would adversely impact on PTA's ability or opportunity to efficiently and safely manage its Network."

Public submissions

Aurizon

67. Aurizon submitted that the tools used by PTA for managing scheduling of trains that consistently "operate late"³ must work effectively across adjoining networks (the Arc network) and should reflect an approach to path optimisation that includes:
- 3-month history to assess actual performance of a train against the Scheduled Train Path,
 - requirement for the railway owner to offer a varied train path that reflect the 3-month history, and
 - requirement for the access holder to use its best efforts to vary any contractual obligations with adjoining rail networks and terminals to align with the offered varied train path.

ERA considerations

68. In relation to Aurizon's submission, the ERA notes that PTA's proposed Train Path Allocation Policy already provides for a 3-month history to assess a train's deviation from its Scheduled Train Path.
69. The ERA notes that the proposed Train Path Allocation Policy does not require the Access Holder to vary its arrangements with the adjoining rail networks and terminals to align with the varied Schedule Train Path.

³ "operate late" is not a term used by PTA in its Train Management Guidelines

70. The ERA agrees with Aurizon's recommendation that the Access Holders should use best efforts to vary any contractual obligations with adjoining rail networks and terminals to align with an offered varied Train Path, if provided.
71. Similar to comments in sections above, the ERA also notes that in this section the wording Train Path and Scheduled Train Paths are used interchangeably in several instances. This is not correct as these terms have different meaning and the ERA requires PTA to ensure the correct use of terms, as defined in section 7 of this document.

Required amendment 4

In section 4.5:

- a) In the fourth paragraph, replace the wording "Train Path" with "Scheduled Train Path" and add the following wording at the end of the sentence: "if there are reasonable grounds for withholding its consent".
- b) Replace the fifth paragraph with the following:

"The Access Holder will use best endeavors to vary its contractual obligations (if any) with adjoining rail networks and terminals to align with the varied Scheduled Train Path offered by the PTA, but is not required to accept a varied Scheduled Train Path offered by PTA under the review mechanism if:

 - 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; or
 - if contractual obligations owed by the Access Holder to any person (including the PTA) would prevent it from doing so. Any amendments to one or more Train Paths agreed to following a review will be reflected in an amendment to the Access Agreement."
- c) Replace the sixth paragraph with: "Any amendments to one or more Scheduled Train Paths agreed to following a review will be reflected in an amendment to the associated Train Paths in the Access Agreement."

4.6 Cancellation of Services Using Train Paths

72. This section states that for operational purposes, the PTA may vary, cancel or impose restrictions on Scheduled Train Paths.
73. This section has been amended by deleting the circumstances under which an Access Holder may cancel a Scheduled Train Path. PTA did not provide a reason for deleting of these provisions.
74. In the proposed Train Path Allocation Policy, the Access Holder can no longer cancel a Scheduled Train Path. The current approved Train Path Allocation Policy allows the Access Holder to cancel up to five times without penalty.

Public submissions

Aurizon

75. Aurizon considers that if PTA does not provide a scheduled train path, either due to operational reasons or due to force majeure, PTA should not apply fixed access charges for that service.
76. Aurizon commented that the access holders should retain their ability to cancel up to five Scheduled Train Paths without penalty, as provided in the previous Train Path Policy.

ERA considerations

77. The ERA considers that the charges for access to PTA's network are outside the scope of the Train Path Allocation Policy. The charges for access to the rail network should be detailed in an access agreement.
78. The ERA agrees with Aurizon's submission that the Train Path Allocation Policy should include provisions for circumstances in which the Access Holder may cancel Scheduled Train Paths without penalty, consistent with the provisions existing in the previous version of the document. This is consistent with the approved Train Path Allocation Policy of the other railway owners under the Code.
79. The ERA considers title of section should be corrected to "Cancellation of Services using Scheduled Train Paths" to ensure the correct usage of the terms defined in section 7 of this Train Path Allocation Policy.

Required amendment 5

In section 4.6:

- a) Amend the title of section 4.6 to read "Cancellation of Services using Scheduled Train Paths"
- b) Include provisions detailing the circumstances in which the Access Holder may cancel Scheduled Train Paths without penalty, consistent with those provisions existing in the currently approved train path policy.

4.7 Provision of Access to Train Paths That Have Ceased to be Used

80. This section stated that previously used Scheduled Train Paths that cease to be used on a permanent basis become available for allocation to other users. PTA did not amend this section.

Public submissions

81. There were no comments in submissions relating to sub-section 4.7.

4.8 Access Holder May Not Sell or Assign a Train Path without consent

- 82. This section does state that Access Holders may not assign the rights to a Train Path granted under an Access Agreement without the prior consent of the PTA.
- 83. The section has been amended by the change of the title. The current title is Rights of an Operator to Sell a Train Path.
- 84. The section has been amended by replacing the entire wording of this to state that an Access Holder may not assign the rights granted under an Access Agreement without prior consent of the PTA and subject to compliance with the assigned provisions in the Access Agreement.
- 85. The current wording states that the Access Holder can assign the rights granted under an Access Agreement subject to compliance with the provisions of the Access Agreement.

Public submissions

- 86. There were no comments in public submissions relating to section 4.8.

Section 5 Disputes

- 87. This section details the process to be followed if a dispute arises in relation to the compliance with this train path policy.
- 88. The section has been amended by removing the words referring to section 25, Division 3 of the Code, which deals with the instances when a dispute arises and the process for managing a dispute.

Public submissions

Aurizon

- 89. Aurizon submitted that in order for an Access Holder to raise a dispute regarding PTA's compliance with the Train Path Allocation Policy, the Access Agreement will need to include a clear obligation for both parties to comply with PTA's Train Path Allocation Policy.

ERA considerations

- 90. The ERA considers that this proposed change is unnecessary. The PTA is required by the Code to comply with its Train Path Allocation Policy and an access agreement under the Code is subject to compliance with the railway owner's train path policy.
- 91. The Train Path Allocation Policy provides for an Access Holder have the ability to express any concerns in relation to the Train Path Allocation Policy with the Regulator, and the Regulator may investigate such claims.
- 92. Part 3 Division 3 of the Code "Arbitration of Disputes" may also apply to the train path policy.

Section 6 - Review

93. This section describes the process for the review of this train path policy.
94. The wording of the section has been amended to state that the Train Path Allocation Policy can be amended or replaced in accordance with section 44(4) of the Code.

Public submissions

95. There were no comments in public submissions relating to section 6.
96. However, Aurizon noted that PTA has deleted section 7 “Compliance Monitoring” of the current Train Management Guidelines and recommends that the compliance monitoring obligations should be retained.

ERA considerations

97. ERA agrees with Aurizon’s recommendations for PTA to reinstate the compliance monitoring obligations in its train management guidelines. This is consistent with the monitoring provisions previously approved by the ERA for all railway owners. Compliance monitoring is not mandatory and may be requested by operators or the ERA.

Required amendment 6

In section 6:

- a) replace the title of this section with the title “Compliance and Review”, and
- b) add the following wording:

“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. The ERA also has the power to commission special purpose compliance audits on any issue arising under the Train Management Guidelines as considered necessary.”

Section 7 - Definitions

98. Section 7 provides definitions for terms used in the Train Path Allocation Policy. Each capitalised defined term should refer to the uncapitalized Code term. (see Access Agreement below). The following definitions have been added or altered:
- a) Access Agreement – assigned the meaning given to “access agreement” in Section 3 of the Code
 - b) Access Holder – new definition to align with the wording of the Code, as amended in 2023; it has the meaning given to “access holder” in section 3 of the Code

- c) Access Seeker – new definition to align with the wording of the Code, as amended in 2023; it has the meaning described in section 3 of the Code
- d) Force Majeure – reworded the definition to clarify the instances in which an event constitutes force majeure, the meaning of “Affected Party”, and the examples of force majeure.
- e) Deleted the definition for Instruction – the term is not used in this document anymore
- f) Master Control Diagram – amended to clarify it can be diagrammatic or electronic record that shows all train paths, inclusive Train Paths.
- g) Network, Railway Network – amended to give the meaning provided in section 3 of the Code
- h) Deleted the definition for Operator – this term has been replaced by “Access Seeker” following the amendment of the Code in 2023
- i) Deleted the definition for PTA
- j) Included definitions for the following terms: Network Rules, Peak Period, Possession, Railway Owner, Regulator, Segregation Arrangements
- k) Scheduled Train Path – replaced the wording “to use the Network” with “to use a Train Path on the Network”
- l) Service – added the wording “under an Access Agreement” to clarify that the term refers to a service regulated by the Code
- m) Train – amended to read that it is a locomotive with or without wagons used to operate Service
- n) Train Path – amended the wording to clarify that a Train Path represents the entitlement of the Access Holder to use the Network between the times and locations set out in an Access Agreement, and it includes Scheduled Train Paths, ad-hoc Services and any other ad-hoc entitlements provided by PTA to the Access Holder
- o) Included definition for Train Control and Train Path Allocation Policy
- p) Deleted the definition for PTA’s Safeworking Rules and Procedures – replaced by PTA Network Rules

Public submissions

Aurizon

- 99. Aurizon submitted that the following definitions are amended to include all operators and all agreements for access, whether or not negotiated under the Code: Access Agreement, Access Holder, Access Seeker, Force Majeure
- 100. Aurizon submitted that new definitions are included for the following terms: Access-Related Functions, and Reasonable Grounds.
- 101. Aurizon submitted that point (b) of the Force Majeure definition is amended by replacing the wording “this Agreement” with the wording “an Access Agreement” and by deleting the wording “other than any flood which should have been reasonably anticipated”.
- 102. Aurizon submitted that the Peak Period definition is amended to include publication of the Peak Periods on the PTA’s website.

ERA considerations

103. As detailed in the Code Clarifications section of this determination, the ERA cannot accept Aurizon's submission to make changes to section 7 of this Train Path Allocation Policy to include agreement for access to PTA's Network done outside the Code.
104. The ERA notes that the definitions for Access Holder, Access Seeker, Network/Railway Network and Railway Owner do not reference the respective words in small letters listed in definitions provided in section 3 of the Code.
105. The ERA agrees with Aurizon's submission to include a definition for the term Access-Related Functions as provided in the Code but does not consider it necessary to define the term Reasonable Grounds as there is a common usage of the term in PTA's Train Path Allocation Policy.
106. The ERA agrees with the replacing of the wording "this Agreement" with the wording "an Access Agreement" to enhance the clarity of the Force Majeure definition.
107. However, the ERA does not agree with the deletion of the wording "other than any flood which should have been reasonably anticipated". Force majeure is by definition an unforeseeable circumstance and the ERA agrees that any flood that can be reasonably anticipated should be discounted as force majeure.
108. The ERA notes that Aurizon did not explain why the Peak Periods, as defined in this section, should be published in PTA's website. Moreover, appears to be unreasonable to list two intervals of peak periods for 260 weekdays per year.

Required amendment 7

In section 7:

- a) in the definition for Access Holder, replace the word “described” with “assigned to access holder”.
- b) in the definitions for Access Seeker, replace the word “described” with “assigned to access seeker”.
- c) in the definitions for Network/Railway Network replace the word “described” with “assigned to railway networks”.
- d) in the definitions for Railway Owner replace the word “described” with “assigned to railway owner”.
- e) include a definition for the term Access-Related Functions which coincides with the definition of the term in section 3 of the Code
- f) amend the definition of Force Majeure by replacing of the wording “this Agreement” with the wording “an Access Agreement”