

WestNet Rail's Part 5 Instruments Review

Draft Determination on the Proposed Train Management Guidelines

10 May 2006

Economic Regulation Authority



WESTERN AUSTRALIA

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For further information, contact:

Michael Jansen
Assistant Director, Rail Access
Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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DRAFT DETERMINATION

1. On 15 December 2005, WestNet Rail Pty Ltd (**WNR**) submitted its proposed Train Management Guidelines (**TMG**) to the Economic Regulation Authority (**Authority**) for approval. The submission of the proposed TMG resulted from a requirement for WNR to review the existing TMG two years after approval by the Independent Rail Access Regulator (**IRAR**) in February 2003.
2. The Authority has considered the proposed TMG in conjunction with comments made in submissions to the Authority by interested persons.
3. The draft determination of the Authority is to not approve the proposed TMG on the ground that it does not represent a fair balance of interests between the railway owner, operators (operators and customers) and access seekers as required under Section 20(4) of the Railways (Access) Act 1998. The detailed reasons for this draft determination are set out in this document.
4. The seven amendments to the proposed TMG required by the Authority are listed below.

Summary of Amendments

Required Amendment 1

Part (b), page 6, section 2.1 of the proposed TMG to be reworded to state a specific period of time, for any temporary variation to the train path, consistent with the period required to remedy the matter relating to the instruction.

Required Amendment 2

The last paragraph (page 11) in section 3.5 of the proposed TMG should be amended to require WNR to notify operators in all situations of track possession, including emergencies and force majeure situations.

Required Amendment 3

Section 3.5 (iii) (page 12) of the proposed TMG be amended to indicate the notice period for track possessions of less than six hours duration be represented as a minimum of 2 days notice.

Required Amendment 4

Section 2.1 of the proposed TMG should be amended to include the objective of not deteriorating the performance of unhealthy trains.

Required Amendment 5

Section 3.3 (vi) of the proposed TMG should be amended to include the words 'would not allow the overall on-time objective for all trains to be met' in place of the words 'cannot be applied'.

Required Amendment 6

Section 3.3 (iv) (a) of the proposed TMG should be amended to clarify the intention of 'take account of' to reflect an intention to respect the needs of passenger trains to make stops even if they are late at the entry point to the network.

Required Amendment 7

Section 3.3, Rule 3 of the train decision matrix, of the proposed TMG should be amended with the words 'Train A may be given preference on the condition that Train B will still meet on-time objectives. In the event that giving preference to Train A will cause Train B not to meet its on-time objectives, then Train B is given preference'. For consistency, similar wording changes to Rule 1 should be made.

INTRODUCTION

Background

5. WestNet Rail (**WNR**) is the principal provider of “below” rail freight infrastructure, covering approximately 5,000 kilometres of track, in the south-west of Western Australia. WNR is a subsidiary company owned by Babcock & Brown Ltd, a publicly listed Australian company.
6. Section 3 of the Western Australian *Railways (Access) Act 1998* (**Act**) defines a “railway owner” to mean the person having the management and control of the use of the railway infrastructure. Within this context, WNR is considered to be the railway owner for the freight rail infrastructure.
7. The TMG is one of the four Part 5 Instruments set out in Section 40(3) of the *Railways (Access) Code 2000* (**Code**). Each of the Part 5 Instruments is currently being reviewed by the Authority.
8. The scope of the Part 5 Instrument reviews is limited to those matters specifically set out under Part 5 of the Code.
9. In the case of the TMG, Section 43(3) of the Code sets out the extent of the issues considered in this review, as follows:
 - 43(3) As soon as practicable after the commencement of this Code the railway owner is to prepare and submit to the Regulator a statement of the principles, rules and practices (“the Train Management Guidelines”) that are to be applied and followed by the railway owner-
 - (a) in the performance of the functions referred to in subsection (1); but
 - (b) only so far as that performance relates to requirements imposed on the railway owner by or under the Act or this Code.
10. In February 2003, the IRAR approved the TMG submitted by WNR following the introduction of the Code. The IRAR carried out a public consultation process during the course of its assessment in 2002. In its determination the IRAR stipulated the requirement for a review at the end of two years of operation of the TMG.
11. Following a request from WNR, the Authority approved an extension of time to 15 December 2005 for WNR to submit its proposed revisions to its TMG (proposed TMG) for the purpose of the review.
12. Under Part 5 of the Code, the Authority is required to undertake public consultation prior to making determinations on two of the Part 5 Instruments (Train Management Guidelines and Statements of Policy) but not in relation to the other two Part 5 Instruments (Costing Principles and Over-payment Rules). However, the Authority decided that a consistent approach to public consultation should be followed and invited public submissions on all four Part 5 Instruments. This approach is also consistent with the approach taken by the IRAR in 2002.
13. On 15 December 2005, the Authority issued a notice calling for submissions from interested parties on WNR’s proposed TMG. Four public submissions were received from:

- Alcoa World Alumina Australia Pty Ltd.
- Australian Rail Track Corporation Ltd.
- Great Southern Railway Ltd.
- Pacific National Pty Ltd.

These submissions are available on the Authority's website (www.era.wa.gov.au).

14. The TMG will be applied in the real time management of services. While the TMG, as one of the Part 5 Instruments in the Code, is only required to apply to operators who negotiate inside the Code, WNR has indicated that it will apply in a non-discriminatory way to all operators (whether they negotiate inside or outside the Code) of the WNR network so as to maintain the order of priority of the scheduled train paths.
15. In addition to the TMG, the other Part 5 Instrument which relates to the management and control of trains on the network is the Train Path Policy (TPP). The TPP is the statement of policy relating to the allocation of train paths and the provision of access to train paths that have ceased to be used. The TPP is designed to ensure that the allocation of train paths is undertaken in a manner that ensures fairness of treatment between operators, acknowledges existing contractual rights and any new contractual rights created under access agreements entered into under the Code.
16. In making this draft determination, the Authority is mindful of the legislative requirements of the *Rail Safety Act 1998* and the role of the Rail Safety Regulator in TPP related areas. The TMG will need to comply with the requirements of the *Rail Safety Act 1998*.
17. This draft determination makes reference to a number of acronyms which are identified in the Glossary in Appendix 1.
18. To assist the Authority in the review of the issues raised in the public submissions, the Authority engaged a consultant Strategic design and Development Pty Ltd (SdD) to review the submissions and provide independent comment to the Authority on the issues raised in these submissions. The SdD report is available on the Authority's website (www.era.wa.gov.au).

Legislative Considerations

19. The key areas of the Code and the Act that have relevance to the formulation and application of the TMG are as follows:

Section 43 Railway owner to comply with approved train management guidelines

- (1) Subsection (2) applies to the railway owner in relation to a part of the railways network and associated infrastructure to which this Code applies when that owner is performing its functions in relation to that part.
- (2) The railway owner is to comply with the train management guidelines for the time being approved or determined by the Regulator under this section.
- (3) As soon as practicable after the commencement of this Code the railway owner is to prepare and submit to the Regulator a statement of the principles, rules and

practices (“the train management guidelines”) that are to be applied and followed by the railway owner-

- (a) in the performance of the functions referred to in subsection (1); but
 - (b) only so far as that performance relates to requirements imposed on the railway owner by or under the Act or this Code.
- (4) The Regulator may-
- (a) approve the statement submitted by the railway owner either with or without amendments; or
 - (b) if he or she is not willing to do so, determine what are to constitute the train management guidelines.
- (5) The train management guidelines may be amended or replaced by the railway owner with the approval of the Regulator.
- (6) The Regulator may, by written notice, direct the railway owner-
- (a) to amend the train management guidelines; or
 - (b) to replace them with other train management guidelines determined by the Regulator,
- and the railway owner must comply with such a notice.
20. The Act also provides a framework within which the Authority’s determination required under Section 46 of the Code is to be made. Subsection 20(4) states:

In performing functions under the Act or Code, the Regulator is to take into account-

- (a) the railway owner’s legitimate business interests and investment in the railway infrastructure;
- (b) the railway owner’s costs of providing access, including any costs of extending or expanding the railway infrastructure, but not including costs associated with losses arising from increased competition in upstream or downstream markets;
- (c) the economic value to the railway owner of any additional investment that a person seeking access or the railway owner has agreed to undertake;
- (d) the interests of all persons holding contracts for the use of the railway infrastructure;
- (e) firm and binding contractual obligations of the railway owner and any other person already using the railway infrastructure;
- (f) the operational and technical requirements necessary for the safe and reliable use of the railway infrastructure;
- (g) the economically efficient use of the railway infrastructure; and
- (h) the benefits to the public from having competitive markets.

The nature of the decision-making power given to the Authority under Section 43 of the Code is mandatory in that the Authority must take into account all the factors listed in Section 20(4) of the Act. However, the Authority has discretion to allocate such weight to each of the factors listed in Section 20(4) of the Act as it considers appropriate for each particular case.

Assessment Process

21. The Authority’s draft determination provides the railway owner, operators and access seekers with the proposed outcome of the Authority’s consideration of WNR’s proposed TMG. The draft determination also proposes amendments which are required to be made to WNR’s proposed TMG in order for the Authority to approve these guidelines.

22. The process for the review of the proposed TMG that the Authority has adopted is as follows:
- Public submissions on WNR's proposed TMG (January 2006).
 - Authority's draft determination published (April 2006).
 - Public submissions on draft determination (June 2006).
 - Authority's final determination published (June 2006).
 - Amended TMG submitted by WNR (June 2006).
 - WNR's amended TMG approved by the Authority (July 2006).

REASONS FOR THE DRAFT DETERMINATION

Discussion of Issues

23. Relevant issues raised in public submissions on WNR's proposed TMG are discussed below under the following headings:
 - Defined terms.
 - Track possession.
 - Disputes and performance monitoring.
 - General Principles for Train Management.
 - Operator's obligations.
24. There were some minor issues, related to definitional errors, raised in submissions which are being directly addressed with WNR and do not form part of this draft determination.
25. The Authority has taken the view that those sections of WNR's proposed TMG on which no comment has been made are acceptable to track users and access seekers. The proposed TMG are largely the same as the TMG approved by the IRAR in 2003 so operators and access seekers have had a considerable period to assess the effectiveness and suitability of these guidelines.
26. The discussion of each item below commences with a summary of WNR's position followed by an outline of relevant comments received in the public consultation process then the Authority's assessment and any amendments required.

Defined Terms

WNR's Proposal

27. In Section 2.1 of the proposed TMG, WNR has defined the use of the network in accordance with train paths. In particular, WNR will ensure that train services run according to train paths so that a service which enters the network on time will exit the network on time, subject to:
 - (a) safety considerations;
 - (b) matters outside the reasonable control of WNR, which affect the ability of WNR to provide the train paths;
 - (c) advice from the operator within 15 minutes of the scheduled departure time that it will be ready for departure on time;
 - (d) presentation of the operator's train on time; and
 - (e) emergencies affecting the train services.

WNR may issue Instructions to the track user and these Instructions may include, but are not limited to instructions or directions:

- (a) to cease use of a Train Path by the Service and for the Service to proceed over such a Train Path on the Network as WNR nominates;

- (b) to continue use by the Service of the Network subject to such variation of the applicable Train Path or the Service or the composition or quality of Trains as WNR nominates;

Under the proposed TMG, the operator is required to comply with all the Instructions and immediately inform the train crew of those Instructions and any changes to them. The operator is also required to inform all relevant train crew of WNR's network rules and any information notified to the operator by WNR and will promptly inform the operator of any changes made by WNR. If an Instruction is a Train Control Direction, it must be complied with immediately. Unless the WNR train control centre gives an Instruction that is a Train Control Direction, the operator need only comply with an Instruction if it was given a reasonable time before the required time for compliance.

Interested Party Submissions

28. Great Southern Railway (**GSR**) has expressed¹ concern that the proposed TMG provides WNR with extensive rights which can be abused. In particular, GSR indicates that this section of the TMG creates unnecessary risk and uncertainty for operators as WNR's rights, under this section, create the potential for it to impose significant additional cost on the operator by disrupting and delaying trains and requiring variation of the composition of train paths. GSR claims that the rights under this section have not been used by WNR to the extent permitted in the proposed TMG suggesting that such broad application is not necessary and should not be granted without good reason. GSR would like the proposed TMG to include criteria that must be satisfied before such rights can be exercised. It also suggests that the criteria should require that the rights should only be exercised to the extent necessary to avoid a safety risk or a breach of the access agreement by the operator. It is suggested that these alternatives will ensure WNR's rights are only used where appropriate and operator's services are not unnecessarily disrupted and WNR will retain the right to issue instructions where they are needed.
29. GSR also questions how the proposed TMG defines the instructions that WNR issues. GSR would like the definition of instructions changed to restrict the use of instructions that impact on train paths. GSR's area of concern with the definition are the words "*facilitating or encouraging the proper and efficient*" use of the network, which allows the issue of instructions in almost any situation. GSR argues that the instructions should only relate to ensuring safe and lawful operation of train services or to ensure compliance with the terms of the access agreement which would include the requirements for safety and lawful operation of services. Either of these two alternatives will ensure the rights are only used where appropriate and operator's services are not unnecessarily disrupted. WNR would still have the right to issue instructions where they are needed.
30. The condition identified in point (b) in paragraph 27 provides WNR with the right to issue an instruction varying an operator's train path. Such a variation can only become permanent after following appropriate procedures, such as a timetabling procedure and until such procedures have been followed the instruction will have a temporary effect. GSR suggests that the wording in this condition provides WNR with the right to make a permanent variation to a train path by issuing an instruction for an intermediate period. GSR argues that there is no situation that should justify the permanent variation of a train path without the usual timetabling procedure. It

¹ GSR, Submission on WestNet Rail's Part 5 Instruments, page 5.

recommends that WNR's right to issue an instruction to amend a train path be limited to temporary variations made for reasons of avoiding a safety risk or a breach of the access agreement by the operator and suggests that all permanent variations should be made in accordance with the procedure to vary the timetable which is outlined in access agreements.

Authority's Assessment

31. SdD has considered the issues raised by GSR regarding WNR's rights when granting instructions and considers that the rights may appear to be heavy-handed from the perspective of an operator. However, SdD considers it is reasonable for WNR to make it clear that it reserves the ability to direct the train activity across its assets in an unrestricted fashion in pursuit of both overall industry benefit and its own commercial interests. GSR notes that WNR has rarely, if ever, invoked many of these rights, and presumably has not therefore misused them.
32. SdD considers that WNR must have a clear right to issue instructions to operators in regard to train path variation, cancellation etc. It is impractical for an operator to have any right to question or ignore an instruction from the train controller. WNR's rights in this regard should not be constrained to situations where safety and breach of access agreement – this would arguably eliminate the vast majority of situations in which it is necessary to issue instructions, for example; to manage track possessions, incidents, speed restrictions etc. The risk that WNR would apply instructions unnecessarily or with the effect of damaging an operator's commercial interest is low, but must lie with the operator. Presumably each operator will seek to extract undertakings in their access agreements in regard to minimising these risks, measuring performance and settling disputes. SdD suggests that GSR's concerns may be addressed through a rewording of the definition of instructions, particularly to strengthen the obligation not to issue an instruction to "prevent the Operator from running a Service of the nature of the Services contemplated at the Commencement Date."
33. SdD considers that the definitions of instructions and train control directions are somewhat circular, self-referential and highly qualified. They leave some doubt as to interpretation and could be made more rigorous without unduly reducing WNR's powers to operate its network fairly and efficiently. There is no reason for any attempt by the regulator to reduce the authority of WNR over the use of its asset, in addition to powers already available to the regulator under the Act and the Code.
34. In regard to the second issue raised by GSR and outlined in paragraph 29, SdD suggests that GSR's concerns appear to have some validity. WNR should not have the right to introduce a permanent change to a path provided under an access agreement by way of the introduction of a temporary change for an indeterminate time. Both the TMG and TPP are unclear as to the circumstances in which a temporary change can be made. These circumstances should be limited to temporary events such as maintenance events, incidents involving track or train or other major disruptions to normal running. SdD considers It is hard to see any circumstance in which a temporary change should be allowed to become permanent without application of the procedures laid out in Section 2.4 of the TPP.
35. Implementing GSR's suggested change to these provisions may not be sufficient to address the problem. At the very least, the definition of a 'safety risk' would have to be laid out to cover access delays caused by track repairs or train defects and incidents. This issue is best resolved through tightening of the provisions in the

TPP at Section 2.3 for temporary variations to a train path. The overlap between the TMG and TPP on this issue should also be addressed and clarified.

36. The Authority has considered the issues raised by GSR in regard to WNR's rights to operate its rail network. SdD has suggested that WNR's rights to operate the network should not be limited by regulation. The Authority has considered the views and believes that these issues are best addressed by commercial negotiation in access agreements and performance measures can be provided for in access agreements to ensure both parties are meeting their obligations. In the event that there are any breaches to any terms of access agreements, there are mediation and arbitration mechanisms available in access agreements and the Code to resolve disputes. The Authority also notes that WNR has not to date invoked many of these rights and has not therefore misused them.
37. In regard to the issue of the ability of WNR to vary train paths, the Authority has considered the advice of SdD and believes that some change to the proposed TMG is necessary as there is some overlap between the TMG and TPP on this issue which needs to be clarified. The Authority will address the issue of variation of train paths through tightening of the provisions in the TPP at Section 2.3 for temporary variations to a train path as suggested by SdD.

Draft Determination

Required Amendment 1

Part (b), page 6, section 2.1 of the proposed TMG to be reworded to state a specific period of time, for any temporary variation to the train path, consistent with the period required to remedy the matter relating to the instruction.

Track Possession

WNR's Proposal

38. In Section 3.5 of the proposed TMG, WNR has identified that in performing repairs, maintenance or upgrading of the network, it will need to take possession of the network at any time. If these activities are likely to materially affect the train paths, WNR will, prior to the commencement of the work;
 - i. take all reasonable steps to minimise any disruption to the train paths; and
 - ii. use its best endeavours to provide an alternative train path but need not obtain the operator's consent to such repairs, maintenance or upgrading, or possession of the network. (Possession of the network means closure of the relevant part of the network to all traffic for the purpose of effecting repairs, maintenance or upgrading).

WNR will in all circumstances, except in the case of an emergency or force majeure, consult with operator's whose train paths may be affected by a possession of the network for repairs or maintenance.
39. WNR has also identified track possession notice periods to be:
 - i. where WNR requires possession for maintenance activities for periods less than six hours it will give 2 days notice;

- ii. where WNR requires possession for maintenance activities which will effect train paths for periods greater than six hours but less than 48 hours, it will provide a minimum of 2 weeks notice and will negotiate with the operator(s) for temporary adjustments or changes to train paths to facilitate the possession;
- iii. where WNR requires possession for either major maintenance activities extending beyond 48 hours or where an upgrading will require changes over a long period of time, WNR will give at least six months notice of the works. WNR will also commence negotiations with affected operators from the date of the notice to ensure alternative arrangements are made;

Interested Party Submissions

- 40. GSR has expressed² its concern that WNR is not required to consult with operators regarding a possession in the case of an emergency or force majeure event. It questions why WNR, in organising a track possession event to make repairs, cannot also consult operators via a prompt communication method. GSR also point out the lack of consultation with operators is inconsistent with the requirement of point (ii) of the track possession management policy which indicates that WNR will advise affected operators where it takes possession because of emergencies related to safety or natural events. GSR would like WNR to consult with operators for all track possessions.
- 41. GSR is of the view that the notice periods in the proposed TMG, as indicated in paragraph 39 above, are too short. It recommends that the time periods suggested remain but expressed as minimum requirements with an obligation to provide as much notice as practicable. For major possessions, it is suggested that 12 months notice be given to be consistent with the notice period in other jurisdictions.

Authority's Assessment

- 42. SdD has reviewed GSR's comments and considers that it is a reasonable suggestion for WNR to advise operators in regard to emergencies and force majeure events in a timely manner possibly via email. SdD does not support WNR consults with operators as the term has a connotation of discussion and negotiation, which is not always appropriate and should not be mandated
- 43. In regard to track possession notice periods, SdD supports the requirement that for minor possessions WNR be required to at least give two days notice. However, the GSR requirement of 12 months notice for major possessions is not supported because SdD has indicated that the WNR network is much less complex than other jurisdictional rail networks and accordingly there is less time required to negotiate acceptable outcomes. It considers the six month notice period is reasonable.
- 44. The Authority has noted the comments by GSR and the advice from SdD and agrees there is some inconsistency in the proposed TMG on the issue of WNR's requirement to notify operators in emergency and force majeure situations. The Authority considers that there should not be any inconsistencies in regard to track possession in the proposed TMG and accordingly believes that WNR should provide operators notice of track possession in all circumstances.

² GSM page 8.

45. In regard to notice periods for track possessions, the Authority notes that the proposed TMG has minimum notice periods for track possessions of greater than six hours duration. However, for track possessions of less than six hours duration the proposed notice period has not been set as a minimum. In order to ensure consistency, the proposed TMG should indicate notice periods for minor possessions as a minimum period as well.

Draft Determination

Required Amendment 2

The last paragraph (page 11) in section 3.5 of the proposed TMG should be amended to require WNR to notify operators in all situations of track possession, including emergencies and force majeure situations.

Required Amendment 3

Section 3.5 (iii) (page 12) of the proposed TMG be amended to indicate the notice period for track possessions of less than six hours duration be represented as a minimum of 2 days notice.

Disputes and Performance Monitoring

WNR's Proposal

46. Section 4 of the proposed TMG specifies the arbitration process for access disputes to be provided in access agreements which is consistent with Part 3 of the Code. This section also sets out the process for WNR and operators to agree a suite of key performance indicators (**KPI**) in access agreements between the parties by which each party's performance will be measured and provision for variation of the KPI's if necessary. There is a requirement for WNR and the respective operators to meet on a quarterly basis to discuss and determine actual performance against the KPI's. The section also provides for WNR and the operator to monitor the appropriateness of the KPI's and provide for rewards and penalties on performance where appropriate.

Interested Party Submissions

47. ARTC has suggested³ that the provisions for KPI reporting by WNR are not satisfactory. In particular, as WNR is part of a vertically integrated business, ARTC suggests that KPI reporting should include separate reporting of the associated party and third party use of the network. ARTC also advocates consistency of reporting and measurement on the interstate network for interstate services where appropriate.
48. ARTC notes that public reporting is done on an annual basis and considers this unsatisfactory, as more timely quarterly reporting is considered an essential requirement of a vertically integrated business. ARTC also questions the type of

³ ARTC, Submission on the Review of WestNet Rail's Part 5 Instruments, page 5.

KPI's reported on as there are some measures, such as transit time, unit costs and speed restriction information, not reported.

Authority's Assessment

49. The Authority notes that with the recent change in ownership of WNR, the issues related to vertical integration may no longer be relevant. Nevertheless, the Authority has recognised the need for greater transparency in performance reporting and has required WNR to separately report, on a quarterly basis, on its associated company and third party use of the network, albeit on a confidential basis. The Authority also notes that operators are free to negotiate, in access agreements, whatever performance measures are deemed appropriate for their individual circumstances and the frequency of this reporting is quarterly. On this basis, the Authority considers that the frequency of public reporting by WNR is satisfactory.
50. The Authority, during the review of the Code, considered comments from ARTC and other interested parties on the appropriateness of the KPI measures agreed between WNR and the Authority. During that review the Authority indicated that the KPI measures would be reviewed following the acceptance of recommended Code changes, as one of the recommended changes required WNR to publish an information package on its website. The information package would contain some of the measures that ARTC has identified in its submission as mandatory performance measures. The Authority continues to hold the view that a separate review of the KPI measures is appropriate rather than have the measures included in the TMG. The Authority also notes that the proposed TMG does allow operators and WNR to agree specific KPI measures, in access agreements, to reflect individual train services which are reported on a quarterly basis. On this basis the Authority does not consider there is merit in mandating performance measures in the proposed TMG.

General Principles for Train Management

WNR's Proposal

51. In Section 3.3 of its proposed TMG, WNR has outlined the general principles for the management of trains which is presented in Table 1 below. In applying the guidelines, WNR has defined the following interpretations:
 - (i) a "healthy train" is a train that entered the network on time and there are no indications that it will not exit on time;
 - (ii) an "unhealthy train" is one that has entered the network more than 10 minutes after its scheduled entry time or loses time en-route due to a failure on the part of the operator or the rail infrastructure and is not expected to exit on time;
 - (iii) a train "running ahead" is one that has entered the network at least 10 minutes before its scheduled entry time or is making up time en-route and is expected to exit the network earlier than its scheduled exit time;
 - (iv) aside from the rules in the matrix no one train has priority over another except for
 - (a) trains operating on a Scheduled Train Path (passenger) where the Train Controller must take account of the fixed intervals for passenger stops en-route between exit and entry, and
 - (b) where the two trains concerned are operated by the same operator who has indicated a specific priority between the trains but only if it does not interfere with the train paths allocated to another operator;

- (v) where the infrastructure layout does not permit the planned operation (such as long trains crossing passenger trains who require to stop at the passenger facility) and the Train Controller will achieve the best crossing possible given the constraint; and
- (vi) where there is some constraint that means the matrix cannot be applied, the Train Controller will refer the issue to the Access Manager who will decide the course of action to be taken, taking into account the need to treat all operators fairly; the safe operation of the railway; and the on-time running objective of all trains.

The principle people concerned with the application of the matrix are the Access Manager and Train Controllers who manage the real time application of train paths.

Table 1 - General Principles for Train Management

- All** To ensure operational safety is maintained through compliance with safeworking rules, regulations and procedures.
- WesNet** To ensure the integrity of the track and other infrastructure so that the train plan be met.
- Operators** To ensure operating integrity, including train crewing, locomotives, wagons and loading so that the train plan can be met.
- WestNet** To manage the Network based on agreed entry/exit times.

		Train "A" - Current status				
				Train running "On Time" OT	Train running "Ahead"	Train running "Late"
		Train "A" - Objective				
Train "B" - Current status	Train Running "On Time"	Train "B" - Objective	OT Exit	Scheduled Cross	"A" or "B" Rule 2	B Rule 3
	Train Running "Ahead"		OT Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running "Late"		1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

- Rule 1. Train "B" may be given priority on condition Train "A" will still meet OT objective.
- Rule 2. Both trains must meet their OT objective.
- Rule 3. Train "A" may be given priority on condition Train "B" will still meet OT objective.
- Rule 4. Give priority to the train where performance indicates it will lose least or no more time, and even make up time and hold the gain.

Notes: The Traffic Management Decision Making Matrix is used as follows:

- [1] Train "A" and Train "B" are competing for priority in relation to traffic management decision by the train control, for example network entry, a cross or pass with another train in single line territory.
- [2] The controller compares the current "status" or performance of both trains in terms of running "On Time", "Ahead" or "Late".
- [3] The decision is given to the train and Rule indicated at the point of intersection.

Interested Party Submissions

- 52. ARTC⁴ considers the overarching objectives with regard to network management are similar to its own, but notes that one of the objectives should be made stronger to not deteriorate unhealthy trains rather than use "best endeavours to recover lost time". ARTC considers that one of WNR's objectives should be to not deteriorate unhealthy trains.

⁴ ARTC page 4.

53. ARTC has indicated that WNR's approach with respect to the use of the network in accordance with scheduled train paths, dealing with network blockage and recovery, consultation between itself and operators and prioritisation of train paths in the event of out-of-course running is largely consistent with ARTC's approach but cautions the application of some of these practices which may lead to anti-competitive behaviour as WNR is part of a vertically integrated business. ARTC asserts that the use of the proposed train decision matrix provides a framework for equity and transparency in the train management process, but the specific application of the matrix is where anti-competitive behaviour can arise.
54. Pacific National (**PN**) asserts⁵ that the train decision matrix is based on the common practice "on time" exit from the network for "on time" running trains as the objective and considers this reasonable to the extent that it is an appropriate set of rules for the management of trains. However, PN believes that this objective may not be the most appropriate objective for train management in all circumstances.
55. The use of "on time" exit may not be important for individual trains, with the priority changing from day to day, dependent on the particular circumstance of its markets. It may be the case that an "on time" train will not be required at its destination until some time after its scheduled arrival. In such a case, PN considers it inappropriate to delay other trains to ensure this train remained "on time". In this case, PN considers that WNR will not likely be in a position to know the particular facts for all trains on its network. PN, therefore, suggests that there should be an opportunity for each operator to inform WNR of its priorities on a "real time" basis so that the dynamics of the operator's business can be taken into account on the day. While it concedes that this proposal is supported to some extent in the proposed TMG by existing communications protocols, PN would like operators to have a greater ability to provide more input into decisions regarding train movements.
56. GSR claims that the train decision matrix does not fully recognise the principle of passenger priority.⁶ It claims the principle is well established on the basis that passengers are more sensitive to timeliness than freight and is more explicitly recognised in other jurisdictions. While the proposed TMG recognises some passenger priority in instruction (iv) (a) outlined in paragraph 51, GSR indicates *it is not clear what is expected of the Train Controller who must "take account of the fixed intervals for passenger stops"*. GSR would like passenger priority addressed by WNR in the same way as it is in the New South Wales rail access regime with a clear statement of passenger priority as a key principle. Alternatively, GSR suggests that wording used in the Public Transport Authority's (**PTA**) Train Management Guidelines would suffice with the words *"when making judgements with respect to the rules, a Train Controller.....will give priority to minimising disruptions to the passenger train timetables"*.
57. GSR believes that Rule 3 of the train decision matrix outlined in Table 1 which states *'Train "A" may be given priority on condition Train "B" will still meet the on-time objective'* could be clarified to make its meaning clearer. This rule stipulates that Train B is on time while Train A is the late running train. GSR suggests that while this rule may be true, it represents an exception to the general rule which should be expressed as Train "B" is given preference. GSR would like the words (*ie. "Train B is given preference"*) added to Rule 3 of the proposed TMG.

⁵ PN, Submission on the Review of WestNet Rail's Part 5 Instruments, page 5.

⁶ GSR page 7.

Alternatively, GSR suggests the rule could be expressed as “*Train A may be given preference on the condition that Train B will still meet on-time objectives. In the event that giving preference to Train A will cause Train B not to meet its on-time objectives, then Train B is given preference*”.

Authority’s Assessment

58. SdD suggests that, while there may be occasions where it is necessary to further reduce an unhealthy train’s performance in order to minimise disruption to a whole range of other trains, the overall objective of not deteriorating unhealthy trains is a reasonable requirement and should be included in the proposed TMG.
59. The Authority’s view is that, in regard to the issue of including as an additional objective not further deteriorating unhealthy trains, it should be the goal for all railway owners to try and maintain or improve the quality of train services. Whilst it is acknowledged this may not always be achievable, nevertheless it is an objective worth aspiring to.
60. On ARTC’s suggestion that the proposed TMG include more intrusive processes to guard against anti-competitive behaviour, SdD does not consider it necessary to add to the detail of the provisions in the train decision matrix to protect against perceptions of bias by train controllers towards any operator. Train control is the art of keeping all trains on a complex network running with minimal overall disruption. Daily operational events are unpredictable and do not usually stand up well to retrospective analysis, while recording of train control decisions is usually minimal. The application of a small number of simple, accepted principles is the most reasonable approach for train controllers.
61. SdD considers the PN requirement for the proposed TMG recognise the “real time” communication for train management is unreasonable. There is no need to alter the matrix to accommodate the “real time” communication objective. However, there may be a case to reword the matrix rules to allow greater decision-making flexibility within the overall objectives. It is noted that the principles do not grant great latitude to train controllers seeking to engineer the most equitable result with minimal consequential loss for all operators. In reality, it is not known whether WNR precludes its train control staff from using their discretion in the application of the principles for the best overall result. If KPI reporting were to reach down to the level of individual train crossing decisions, there might be some reluctance to depart from the matrix for fear of attracting complaint or censure.
62. In practice, it is unreasonable to build these requirements into the matrix and job descriptions of the controllers. Astute train operators build relationships with train controllers and hope to educate them as to their general priorities for their own services in the event of disruptions. Good communication protocols also provide the capacity for operators to guide train controllers in managing their traffic.
63. The Authority has considered the requirement for the proposed TMG to recognise the “real time” communication for train management as proposed by PN. The Authority recognises that this issue has only been raised by PN. Following advice from SdD, the Authority believes that operators could avail themselves of specific communication protocols within individually negotiated access agreements with the railway owner. These provisions could include performance measures to ensure the protocols are being adhered to. Consequently, the Authority will not be seeking an amendment to the proposed TMG on this issue.

64. In regard to GSR's comments regarding passenger priority, SdD considers that passenger priority is a tradition which is continued by ARTC and other public sector railway owners. SdD also noted that WNR may have a lower commitment to this principle as freight activity increases. SdD considers that it may be prudent for the WA Government to seek similar commitments from WNR to those given by ARTC in regard to the EGR in relation to passenger priority but it is not considered necessary to duplicate the PTA wording in relation to urban passenger services.
65. The Authority recognises that the issue of passenger priority is important to the operators of passenger services. The Authority understands that the requirement for the operators of passenger services to have priority train paths in other jurisdictions, such as New South Wales, results from government policy mandated on the railway owner. The Authority considers all operators and access seekers should be treated equitable by railway owners and for any preferential treatment to be granted would be the result of government policy or via commercial arrangements between the operator and railway owner in access agreements and not have mandated requirements which may be anti-competitive.
66. SdD, in relation to the second issue, on the call for clarity of intent of the phrase "take account of" supports the need for wording change to provide more clarity. Presumably the intention is to respect the needs of passenger trains to make stops even if they are late at the entry point, but it is certainly unclear. WNR should be asked to clarify this point.
67. The Authority considers that there is some ambiguity on what the term, "take account of", means and considers some wording change is necessary to clarify the intention.
68. In regard to Rule 3 of the train decision matrix, SdD considers the rewording request by GSR, as outlined in paragraph 57, is reasonable since it would clarify the full intent of the rule to avoid confusion.
69. The Authority has considered the clarity of the intention of Rule 3 of the train decision matrix. GSR has suggested some minor changes to the words to indicate train priority in the train decision matrix. The Authority agrees that some wording change is needed to improve the clarity of the intent in Rule 3.
70. SdD following its review of WNR's section 3.3 (vi) considers that the words 'cannot be applied' should be altered to 'would not allow the overall on-time objective for all trains to be met' to improve clarity.
71. The Authority has considered the advice from SdD to seek changes to the wording of "cannot be applied" of section 3.3 (vi). The Authority agrees that in the interests of improving the clarity of this interpretation, the proposed TMG needs some minor wording changes.

Draft Determination

Required Amendment 4

Section 2.1 of the proposed TMG should be amended to include the objective of not deteriorating the performance of unhealthy trains.

Required Amendment 5

Section 3.3 (vi) of the proposed TMG should be amended to include the words 'would not allow the overall on-time objective for all trains to be met' in place of the words 'cannot be applied'.

Required Amendment 6

Section 3.3 (iv) (a) of the proposed TMG should be amended to clarify the intention of 'take account of' to reflect an intention to respect the needs of passenger trains to make stops even if they are late at the entry point to the network.

Required Amendment 7

Section 3.3, Rule 3 of the train decision matrix, of the proposed TMG should be amended with the words 'Train A may be given preference on the condition that Train B will still meet on-time objectives. In the event that giving preference to Train A will cause Train B not to meet its on-time objectives, then Train B is given preference'. For consistency, similar wording changes to Rule 1 should be made.

Operator's Obligations

WNR's Proposal

72. Under Section 6.1.6 of the proposed TMG, WNR has outlined obligations that operators must, at all times, follow. These include to:
- (h) provide and maintain communications equipment which is compatible with the equipment used in the Train Control Centre and use such equipment to communicate with the Train Control Centre. If WNR proposes to change communications equipment in the Train Control Centre and the proposal will result in the operator having to replace or upgrade its communications equipment, WNR will give reasonable notice to and consult with, the operator and the operator will replace or upgrade the communications equipment to be compatible with the equipment used in the Train Control Centre;

Interested Party Submissions

73. ARTC has supported the provisions in relation to "Obligations of Operators" in the proposed TMG as they are largely consistent with ARTC's Indicative Access

Agreement.⁷ However, ARTC points out that the section should also contain an obligation for operator compliance with the Code of Practice in the TMG.

74. GSR, while acknowledging the merits of upgrading communications equipment as outlined in paragraph 72 above, believes there should be a procedure which prevents WNR from making such a decision without a sound basis.⁸ GSR considers that WNR's decision to upgrade the communications equipment should be based on a business case which includes the costs imposed on the operators and showing the financial and other benefits to result from the upgrade.

Authority's Assessment

75. SdD considers that if operators warrant compliance with the draft Code of Practice in Section 6.1.4 of the proposed TMG, it may not be necessary to restate compliance as an Obligation at Section 6.1.6 of the proposed TMG.
76. In regard to the issues raised by GSR and outlined in paragraph 62, SdD view GSR's concern over cost as valid to a degree. SdD asserts that there are some sections of the WNR network where improved communication systems would have a beneficial impact on operators' costs, but the capital costs involved might be prohibitive to WNR. Similarly, introduction of new systems by WNR may have disproportionately high cost impacts on operators. The TMG provides for WNR to give reasonable notice and consult with operators on replacement or upgrade of communications equipment. It would be impractical to go much further than this in the TMG, given the range of future technological outcomes. The GSR suggestion is not supported by SdD, as operators should not have any right to view commercial business cases developed by an independent track manager in support of its business. Operators will also have the ability under their access agreements to negotiate improvements to communications capability on certain lines, particularly where they are in a position to contribute to the capital cost (for instance, as the dominant, or sole, user of such a track section).
77. The Authority has considered the issues raised by ARTC and GSR in the matter of operator's obligations. The advice from SdD suggests that the Authority should not require any changes as there are other sections in the proposed TMG that addresses ARTC's concern. In addition, the requirement for WNR to prepare detailed business cases to reflect operator's costs for upgrading communication equipment is not supported by SdD. On the basis of the advice from SdD, the Authority is of the view that no changes are required to section 6.1.6 of the proposed TMG.

⁷ ARTC page 6.

⁸ GSR page 9.

APPENDICES

Appendix 1 Glossary

Act	Railways (Access) Act 1998
Alcoa	Alcoa World Alumina Australia Pty Ltd
ARTC	Australian Rail Track Corporation Ltd
Authority	Economic Regulation Authority
ARG	Australian Railroad Group Pty Ltd
Code	Railways (Access) Code 2000
CPI	Consumer Price Index
DORC	Depreciated Optimised Replacement Cost
GRV	Gross Replacement Value
GSR	Great Southern Railway Ltd
GTK	Gross Tonne Kilometres
KPI	Key Performance Indicator
MEA	Modern Equivalent Asset
Operator	Train Operators and end user customer
PN	Pacific National Pty Ltd
PTA	Public Transport Authority
SdD	Strategic design and Development Pty Ltd
WACC	Weighted Average Cost of Capital
WNR	WestNet Rail Pty Ltd