

Western Australian Government Railways

**Proposed Segregation
Arrangements**

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1 Introduction

The following Proposed Segregation Arrangements set out the mechanisms by which the Western Australian Government Railways Commission (WAGR) proposes to meet its obligations under Part 4, Division 3 of the Railways (Access) Act 1998 (“the Act”) to segregate its access related functions.

Under section 29 of the Railways (Access) Act 1998, before a railway owner puts in place or varies any arrangement for the purpose of carrying out its segregation obligations under section 28 of the Act it must obtain the Regulator's approval to the arrangement or variation. These Proposed Segregation Arrangements are submitted to the Regulator in compliance with section 29(1) of the Act.

Under section 41 of the Railways (Access) Code 2000, the Regulator, in considering whether to approve the Segregation Arrangements, must have regard to submissions made in accordance with the specified public consultation process (under section 42 of the Code), the requirements of the public interest and other relevant matters.

Under section 29 of the Act, in addition to approving segregation arrangements proposed by WAGR, the Regulator may confer with WAGR on any matter which relates to the way in which WAGR's obligations under section 28 are to be carried out, with a view to the Regulator and the railway owner reaching agreement on the matter. The Regulator may also give directions in writing to WAGR with respect to segregation arrangements.

2 Principle governing the use of the WAGR rail network

The reason for the existence of the WAGR urban rail network, and its essential function, is to provide a safe, reliable and efficient rail-based public transport service within metropolitan Perth. Certain performance standards for the provision of that public transport service are required by Government, which funds the urban rail network and the public transport service. WAGR currently operates a rail-based public transport service that is close to world best practice in terms of on-time running (within three minutes of schedule) and the use of safe systems such as Automatic Train Protection. The Government and the users of the system have a right to expect that these standards will be maintained.

The State rail access regime requires that third party operators be permitted to negotiate agreements to use the WAGR network and WAGR is committed to facilitating such use. However, WAGR maintains that the safe and reliable operation of the rail-based urban public transport service is paramount and must not be compromised as a result of the presence of other operators on the network. This principle underlies WAGR's approach to the provision of track access.

3 Factors Relevant to WAGR's Proposed Segregation Arrangements

WAGR is established under the Government Railways Act 1904 (as amended) to direct, manage, maintain and control the Government Railways in Western Australia. As a statutory authority, WAGR has certain statutory obligations with respect to its operation, and the management of the organisation. These include the accountability of its Chief Executive Officer (the Commissioner of Railways) for all aspects of the management of Government railways, and certain requirements with respect to its financial management and accounting, and its management of its staff.

As a Government agency, WAGR is also bound by the provisions of the Public Sector Management Act 1994, the Financial Administration and Audit Act 1985, the Freedom of Information Act 1992 and the Statutory Corporations (Liability of Directors) Act 1996, among other statutes. Administrative arrangements designed to meet the requirements of the Railways (Access) Act 1998 may not be in breach of other legislation governing the operation and management of WAGR as a Government agency and statutory authority.

WAGR operates the urban railway passenger public transport services (Transperth) for the Department for Planning and Infrastructure under a formal arrangement. These services are significantly subsidised by the State Government. Transperth services operate over 4 electrified lines (from Perth to Midland, Currabine, Fremantle and Armadale) which total 95 kilometres of narrow gauge, electrified, bi-directional track – the Urban Electrified System. In addition, WAGR owns, manages and controls a further 17 kilometres of non-electrified track from Armadale to Mundijong (narrow gauge) and from Robbs Jetty to Fremantle (dual gauge), for a total “Urban Network” comprising 112 route kilometres of track. The track from Midland to East Perth is also dual gauge, with standard gauge access to the East Perth terminal.

Realistically, it is likely that only a small portion of the WAGR Urban Network will be subject to access applications from third party freight rail operators, heritage/boutique train service providers, private passenger train operators and work train operators. Few, if any, of these prospective third party users of the WAGR Network will be operating train services that could be considered to be in the same competitive market as WAGR. Thus the usual potential for conflict of interest giving rise to the need for segregation of access related functions is not present to any significant degree.

These Segregation Arrangements are consistent with this background.

4 Summary of Legislative Requirements to Segregate access-related functions

Section 28 of the Act requires that the Commission must segregate its access-related functions from its other functions by having appropriate controls and procedures to ensure that the measures in place operate effectively and are complied with. Segregation arrangements are also sometimes termed “ring fencing”. Section 29 of the Act sets out the powers of the Regulator with respect to segregation arrangements.

Section 30 of the Act requires that the Commission must ensure that the provisions of sections 31, 32, 33 and 34 are satisfied.

4.1 Section 31 “ Protection of confidential information”

“There must be an effective regime designed for the protection of confidential information relating to the affairs of persons seeking access or rail operators from:

- (a) improper use; and
- (b) disclosure by relevant officers, or other persons, to other officers or employees of the railway owner or other persons, except for proper purposes”.

4.2 Section 32 “ Avoidance of conflict of interest”

“The arrangements under section 28 must be such as to ensure that a relevant officer does not have a conflict between his or her duties -

- (a) as a person concerned in the performance of access-related functions, on the one hand; and
- (b) as a person involved in other business of the railway owner, on the other. “

4.3 Section 33 “Duty of fairness”

“In performing their functions relevant officers must not have regard to the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators”.

4.4 Section 34” Maintenance of separate accounts and records”

“A railway owner must ensure that its accounts and records are in such form as to enable -

- (a) all income, expenditure, assets and liabilities relating to the carrying out of its access-related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities; and
- (b) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the carrying out of its access-related functions to be apportioned in a fair and reasonable manner. “

5 Definitions

“**Access Agreement**” means the track access agreement entered into under the Railways (Access) Code, between the railway owner (WAGR) and an Operator, for access to the railway network by that Operator. “**Code**” means the Code for the time being in force under section 4 of the Act

“**Access-related functions**” means the functions involved in arranging the provision of access to railway infrastructure under the Code.

“**Commission**” has the same meanings as in the Government Railways Act 1904.

“**Confidential Information**” means information that has not been made public and that:

- a) is by its nature confidential;
- b) was specified to be confidential by the person who supplied it; or
- c) is known by a person using or disclosing it to be confidential.

“**Network**” means that part of the rail permanent way, controlled by WAGR, which is delineated, described or defined in Schedule 1 of the Railways (Access) Code 2000.

“**Operator**” means a person to whom access is provided to the network under an access agreement, whether or not that agreement is made under the Railways (Access) Code 2000, for the purpose of running trains.

“**Regulator**” means the official provided for by Part 3 of the Railways (Access) Act 1988 (“Act”).

“**Relevant Officer**” means an officer of WAGR who is in any way concerned in the performance of access-related functions.

“**WAGR**” means the Western Australian Government Railways Commission as established under the Government Railways Act 1904 (WA).

6 Access-related functions

The following functions are defined as access related:

- a) Negotiation of Access Agreements and approving of access rights;
- b) Management of Access Agreements including performance monitoring and reporting, and day to day operational issues;
- c) Development and authorisation of the Network Rules (including the General Appendix and Working Timetables) and the issue of special notices, instructions and warnings related to the rules;
- d) Emergency management on the network including co-ordination of emergency service responses;
- e) Train control which includes provision of appropriate authorities for trains to use scheduled train paths;
- f) Train scheduling including train path allocation and variation, publication of working timetables, control planning and the approving of *ad-hoc* train path allotments;
- g) Development, maintenance and monitoring compliance with appropriate safety standards for WAGR staff, its contractors and operators on the Network;
- h) The maintenance of the track and infrastructure including signalling and communications;
- i) The collection, use, and dissemination of train running data including manifest details and access usage;
- j) The development of train operating standards (to the extent they relate to the infrastructure) such as maximum braking distances, maximum train lengths etc., and also the maintenance standards for the infrastructure itself;
- k) Calculation of floor and ceiling prices for line sections, including calculation of inputs to those prices; and
- l) Compliance with the access legislation and Regulator's requirements.

WAGR may perform the above functions in house or contract them to external suppliers. In either case, WAGR has ultimate control and management of the function.

7 General obligations of WAGR and its employees with respect to matters covered under sections 31, 32, 33 and 34 of the Act

Section 9 of the Public Sector Management Act 1994 lists the general principles of official conduct:

- “The principles of conduct that are to be observed by all public sector bodies and employees are that they -*
- (a) are to comply with the provisions of -*
 - (i) this Act and any other Act governing their conduct;*
 - (ii) public sector standards and codes of ethics; and*
 - (iii) any code of conduct applicable to the public sector body or employee concerned;*
 - (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*
 - (c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.”*

The Commissioner of Public Sector Standards has published a Code of Ethics consistent with section 9(a)(ii) of the Public Sector Management Act. This Code of Ethics has been effective since 1 July 1996. The Code of Ethics sets out the general statement of principles, values and behaviours applicable to all State public sector bodies and employees in Western Australia, including WAGR. It includes matters such as practicing fairness and equity, impartiality and non-discrimination, honesty, accountability and confidentiality – all of which are relevant to the requirements of Part 4, Division 3 of the Railways (Access) Act 1998.

All public sector bodies and employees must comply with the Public Sector Code of Ethics and any code of conduct applicable to them. WAGR has a Code of Conduct which complements the Public Sector Code of Ethics. A member of a public sector body or employee who breaches the provisions of a Code may be committing a breach of discipline. They may be liable to the disciplinary procedures contained within the Act, or to other provisions that may govern their conduct, such as those within the Government Railways Act 1904 and the Government Railways By-laws.

If an allegation is made that a WAGR employee has breached the provisions of the Code of Conduct, WAGR’s Investigation Officer will promptly investigate the suspected breach in an impartial, efficient and professional manner. The investigation of the breach will be properly documented, setting out the evidence, the steps followed and the reasons for the recommendation(s) given to the Commissioner of Railways concerning the suspected breach.

All public sector bodies must include in their annual report a statement outlining the extent to which they have complied with the Code of Ethics. The Commissioner for Public Sector Standards reports annually to Parliament on compliance the Western Australian Public Sector Code of Ethics, and any agency-specific codes of conduct.

In addition to the above standard public sector requirements, WAGR proposes the following Segregation Arrangements specifically to address the matters provided for in sections 31, 32, 33 and 34 of the Railways (Access) Act 1998.

7.1 Confidential Information (covered by section 31 of the Act)

The WAGR Code of Conduct states:

“We will not divulge information about confidential dealings, transactions or affairs of the Western Australian Government Railways Commission, its employees, or any of its clients, unless obliged by law to do so. Where the law requires information to be supplied then the proper authorisation must be obtained from your supervisor or manager.”

All Access Agreements, associated correspondence and supporting documentation supplied by an access seeker or an Operator is maintained on specially designated files. A separate file is maintained for each access seeker. These files are secured within the WAGR Registry system, physically stored within the Network and Corridor Division, and access to these files is restricted to the General Manager, Network and Corridor and such other officers nominated and authorised by him.

Electronic files on the WAGR server are kept on individual and divisional password protected directories. Officers in one WAGR division can not access confidential electronic information on directories assigned to other divisions. The information technology support for WAGR is provided by a branch within the Network and Corridor Division, thus rail service operating divisions do not have global access to all WAGR electronic files.

The Network and Corridor Division is physically located separately from the rest of WAGR, and specifically is located in a different building to the Urban Passenger Division.

In addition, all employees of WAGR are bound by Government Railways By-law 84, section 39, which states:

“An employee of the Commission shall not except in the course of his official duty and with the express permission of the Commission or the Head of Branch -

- (a) give any person any information relating to the business of the Commission that has been furnished to him or obtained by him in the course of his official duty as an employee;*
- (b) disclose the contents of any official papers or documents that have been supplied to him or seen by him in the course of his official duty as an employee or otherwise;*
- (c) publicly comment on the administration of the Western Australian Government Railways; or*
- (d) use, for any purpose other than the discharge of his official duties, information gained by, or conveyed to, him as an employee of the Commission.”*

In exceptional circumstances, where an employee privy to significant levels of confidential information related to access seekers is transferred into a rail service operating division, the employee may be required to sign a formal confidentiality agreement.

7.2 Conflict of Interest (covered by section 32 of the Act)

WAGR's Code of Conduct states:

"We are committed to providing reliable, efficient, safe and cost-effective services to both our internal and external customers. We will treat all customers professionally and courteously, with due consideration for their genuine concerns and legitimate interests."

The organisational structure of WAGR provides for separation of the infrastructure provider (Network and Corridor Division) from the rail operating divisions.

Applications for access are managed, and negotiations undertaken, by the General Manager, Network and Corridor and persons authorised by and reporting to him. The rail operating divisions, specifically the Urban Passenger Division, are asked for advice on the potential impact on passenger service timetables when an application for access to a specific train path is received. However, they do not have the power to affect access-related decisions.

For reasons of efficiency and safety, the Urban Passenger Division, as the primary user of the network, has been contracted by the General Manager, Network and Corridor, to carry out the train control function. However, this function is performed by the Urban Passenger Division within the policies and procedures defined by the General Manager, Network and Corridor, who has ultimate control over the way in which the function is performed.

The Job Description Form for train controllers is in the process of being amended to include compliance with the Train Management Guidelines as a principal responsibility, and to include as an essential criterion a sound knowledge of the Train Management Guidelines (the form currently refers to a sound knowledge of network principles).

Explanation of the Train Management Guidelines and an emphasis on compliance with the Guidelines will be included in courses of in-house training for train controllers.

WAGR does not intend to impose restrictions on internal transfer of employees between divisions, which would be contrary to good human resource management principles and the Public Sector Management Act and Standards. However, employees transferring between the Network and Corridor Division and rail operating divisions will be reminded of their responsibilities under the Public Sector Management Act, WAGR's Code of Conduct and By-law 84.

7.3 Duty of fairness (covered by section 33 of the Act)

WAGR's Code of Conduct states that:

"We will use procedural fairness and follow the principles of natural justice in all dealings to ensure that fair and equitable decision making procedures are applied. These procedures would include:

- *giving persons the right to be heard;*
- *being unbiased in the decision we make; and*
- *ensuring the decision is based on facts."*

Officers responsible for access related functions will be obliged to be familiar with the requirements of the Public Sector Code of Ethics, WAGR's Code of Conduct, their obligations under the Railways (Access) Act 1998 and the Railways (Access) Code 2000.

WAGR will immediately investigate allegations that any employee engaged in access-related functions has unfairly advanced the interests of WAGR at the expense of the interests of persons seeking access or of other rail operators. This will be treated as a breach of the Code of Conduct.

7.4 Maintenance of separate accounts and records (covered by section 34 of the Act)

The access related functions are managed by a separate Division (Network and Corridor Division) from the train operating Division, and this separation is maintained in accounting, information systems processing, recording and reporting of data.

All income, expenditure, assets and liabilities relating to the carrying out of WAGR's access-related functions is properly recorded and can be distinguished from WAGR's other income, expenditure, assets and liabilities.

In some cases, all income, expenditure, assets and liabilities associated with a branch within the Network and Corridor Divisions is entirely attributable to access-related functions. Where an item of income, expenditure, assets or liabilities relates only in part to the carrying out of WAGR's access-related functions, an internal assessment has been made as to what proportion of that item can be fairly attributed to those functions.

7.4.1 Management Information Maintenance System (MIMS)

WAGR's centralised Finance Division operates a Management Information Maintenance System (MIMS) which provides reliable, soundly based and timely reports on revenue, assets, expenditure and liabilities and other performance measures. This information is captured and reported at a Divisional level, and internal control procedures ensure appropriate cost allocations and approvals are followed.

Access to this system is protected through user identification and logon process, which is password protected and system secured. Divisional staff are restricted from access to other Divisions' information.