

SEGREGATION ARRANGEMENTS
TO APPLY TO
THE WESTERN AUSTRALIAN GOVERNMENT
RAILWAYS COMMISSION

DRAFT OF THE DETERMINATION OF
THE INDEPENDENT RAIL ACCESS REGULATOR

IN ACCORDANCE WITH THE REQUIREMENTS OF
SECTIONS 28 TO 34 OF THE RAILWAYS (ACCESS) ACT 1998

24 APRIL 2002



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Submissions received from the public consultation process

Opportunities for further comment

Interested parties are invited to examine the draft of this Determination and provide comments to the Regulator by 15 May 2002.

The Regulator will consider the comments received in finalising the Determination. It is anticipated that the Determination will be finalised by 31 May 2002.

When finalised, this Determination is the mechanism by which the Regulator intends to give effect to Section 29(2) of the *Railways (Access) Act 1998*. Under this Section, the Regulator may confer with the Australian Government Railways Commission (WAGR) on any matter which relates to the way in which WAGR's duty to segregate is to be carried out, with a view to the Regulator and WAGR reaching agreement on the matter

The Determination requires WAGR to address a number of issues and implement changes to its segregation arrangements to the satisfaction of the Regulator. In the event that agreement is not reached, the Regulator may give directions to effect the necessary changes in writing to WAGR under Section 29(3) of the *Railways (Access) Act 1998*.

In subsequent discussions, WAGR has already agreed to implement a number of the suggested changes. Even so, all of the required amendments have been fully documented in the Determination so that stakeholders can gauge the changes that are being required of WAGR on its segregation submission as lodged with the Regulator in December 2001.

As soon as it is approved, the segregation arrangements will be made publicly available on the Office of the Rail Access Regulator's website.

The Regulator will be developing a set of key performance indicators in consultation with WAGR to assess and monitor the effectiveness of segregation arrangements, and invites suggestions on the composition of these indicators.

1. Introduction

The Western Australian Government Railways Commission (WAGR) is a public sector entity that operates the suburban railway passenger services for the Department of Planning and Infrastructure under a formal arrangement.

WAGR has a major role in the Perth passenger transportation network of bus, train and ferry services, carrying 29.5 million passenger journeys in 1999-00 on 234,000 train services. These passenger journeys account for over 99 percent of WAGR's business. WAGR has management and control of 112 kilometres of track, of which 17 kilometres are dual purpose for both passenger rail and freight.

Section 3 of the *WA Railways (Access) Act 1998* ("the Act") defines a "railway owner" to mean the person having the management and control of the use of the railway infrastructure. Within this context, WAGR is considered to be the railway owner for the Western Australian suburban rail infrastructure.

Section 28 of the Act requires the railway owner to make arrangements to segregate its access-related functions from its other functions and to have appropriate controls and procedures to ensure that the arrangements in place operate effectively and are being complied with.

Segregation, which is often termed "ring-fencing", refers to the separation of access related functions from other activities, in particular train (or above rail) operations.

Under Section 29(1) of the Act, the railway owner is required to obtain the Regulator's approval to the segregation arrangements it is proposing to implement. In early December 2001, WAGR submitted its proposed segregation arrangements to the Regulator for his approval.

In considering WAGR's proposed segregation arrangements, Section 42 of the *Railways (Access) Code 2000* ("the Code") requires that the Regulator publish a notice describing the requirements of Sections 28 and 29(1) of the Act and a general description of the proposed segregation arrangements in major newspapers, with details on where further information can be obtained and inviting submissions on the proposed arrangements. To this effect, on 22 December 2001, a notice was placed in *The West Australian* and *The Australian* newspapers.

Two public submissions were received on WAGR's proposed arrangements (Appendix 1). They are available on the Office of the Rail Access Regulator's website (www.railaccess.wa.gov.au). The submissions did not raise any segregation issues but dealt mainly with train management guidelines and train paths policy matters.

2. The WA legislative segregation requirements

The legislative requirements in relation to segregation are provided for in Sections 28 to 34 of the Act and these are summarised as follows.

SUMMARY OF LEGISLATIVE REQUIREMENTS TO SEGREGATE ACCESS-RELATED FUNCTIONS

(summarised from Part 4 of Division 3 of Railways (Access) Act 1998)

Duty to segregate (Section 28)

A railway owner must make arrangements to segregate its access-related functions from its other functions, and have appropriate controls and procedures to ensure that the arrangements in place operate effectively and are being complied with.

Powers of Regulator in relation to segregation (Section 29)

The railway owner must obtain the Regulator's prior approval for its segregation arrangements or variations to such arrangements. The railway owner and the Regulator may confer to reach agreement on these arrangements. The Regulator may also provide written directions to the railway owner in relation to segregation and these directions are to be complied with. Railway owners who fail to comply with an arrangement, an agreement or a direction commit an offence (penalty: \$100,000).

Matters to be covered as part of duty to segregate (Section 30)

Without limiting Section 28, the railway owner must ensure that requirements specified in Sections 31 to 34 are met.

Protection of confidential information (Section 31)

There must be an effective regime to protect the confidential information of access seekers or rail operators from improper use and disclosure by officers of the railway owner. Confidential information is defined as information which has not been made public and by its nature is confidential; was specified as confidential by the person who supplied it; or it is known by a person using or disclosing it to be confidential.

Avoidance of conflict of interest (Section 32)

The segregation arrangements must ensure that relevant officers have no conflict in duties between the performance of access-related functions and other business of the railway owner.

Duty of fairness (Section 33)

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

Maintenance of separate accounts and records (Section 34)

A railway owner must ensure its accounts and records are in such form as to enable all income, expenditure, assets and liabilities relating to carrying out access related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities. Where necessary any income, expenditure, assets or liabilities that relate only in part to the access related function must also be apportioned in a fair and reasonable manner.

Section 20(4) of the Act provides the framework within which the Regulator's determination required under Section 29 of the Act is to be made.

Section 20(4) states:

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

- (a) the railway owner's legitimate business interests and investment in 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 benefit to the public from having competitive markets.*

The nature of the decision-making power given to the Regulator under Section 29 is such that it is mandatory in so far as the Regulator must exercise it by taking into account all the factors listed in Section 20(4). However, under Section 29 the application of Section 20(4) is discretionary in so far as the Regulator may allocate such weight to each of the factors listed in Section 20(4) as the Regulator considers appropriate to ensure a balancing of competing and sometimes conflicting interests for the railway owner, access seekers and the community.

3. The WAGR segregation proposal

The proposed segregation arrangements from WAGR are similar to those submitted by WestNet Rail (WNR), the State's other railway owner. For example, the Regulator notes that the definitions of "access related functions" are broadly equivalent. The

WAGR submission is available on the Office of the Rail Access Regulator's website (www.railaccess.wa.gov.au).

There are however significant differences in the approach taken to segregation and this is reflective of the differing business focus of WAGR and WNR.

WAGR is primarily concerned with the suburban rail passenger transportation network. It manages and controls a small amount of track and provides a rail passenger service within the Perth Metropolitan area. WAGR's operations are funded by the Western Australian State Government and, according to WAGR, without a Government subsidy its passenger business would, in its current form, be commercially unviable.

Certain performance standards for the provision of the public transport service are required by the State Government. WAGR maintains that the safe and reliable operation of the suburban rail passenger service is paramount and must not be compromised as a result of the presence of other operators on the network.

WAGR believes that only a small portion of the 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. WAGR considers that 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.

Accordingly, WAGR is of the view that the usual potential conflict of interests which exists with vertically integrated businesses is not present to any significant degree for WAGR.

The following is a summary of the WAGR proposed segregation arrangements:

General – duty to segregate (Section 28 of the Act)

- WAGR already complies with the Public Sector Code of Ethics which sets out the general statement of principles, values and behaviours applicable to all State public sector bodies and employees in Western Australia. 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 Act.
- WAGR reports annually to Parliament on its compliance with the Code of Ethics.

Confidential information (Section 31 of the Act)

- All access agreements, associated correspondence and supporting documentation are secured within the WAGR registry system and physically located within the Network and Corridor Division. 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 password protected directories.
- 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.
- All employees of WAGR are bound by its Code of Conduct and Government Railways By-law 84 regarding confidential information.
- 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.

Avoidance of conflict of interest (Section 32 of the Act)

- There is separation of the infrastructure provider (Network and Corridor Division) from the rail operating divisions.
- For reasons of efficiency and safety, the train control function is performed by the Urban Passenger Division for the General Manager, Network and Corridor, who has ultimate control over the way in which the function is performed.
- WAGR does not intend to impose restrictions on internal transfer of employees between divisions. 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 Government Railways By-law 84.

Duty of fairness (Section 33 of the Act)

- 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 Act and Code.
- Allegations of unfair practices will be investigated and treated as a breach of the Code of Conduct.

Separation of accounts and records (Section 34 of the Act)

- Separation is maintained in accounting, information systems processing, recording and reporting of data.

- All income, expenditure, assets and liabilities relating in full or in part to the carrying out of WAGR's access-related functions is fairly attributed to those functions, properly recorded and can be distinguished from WAGR's other income, expenditure, assets and liabilities.
- WAGR's centralised Finance Division operates a Management Information Maintenance System (MIMS) that reports on revenue, assets, expenditure and liabilities and other performance measures. Access to this system is password protected and system secured. Divisional staff is restricted from access to other Divisions' information.

4. Regulator's views and comments

While the segregation arrangements proposed by WAGR appear to be similar to those for WNR, there are sufficient differences in WAGR's business focus to warrant a different approach being taken by the Regulator in relation to segregation requirements.

As it is unlikely that another operator will enter the suburban passenger market in the foreseeable future, requiring the same arrangements as those for WNR would impose unjustifiable costs on WAGR at this point in time.

The Regulator has also considered WAGR's statutory obligations with respect to its operation, and management of the organisation under the *Government Railways Act 1904*, the *Public Sector Management Act 1994*, the *Financial Administration and Audit Act 1985* and the *Statutory Corporations (Liability of Directors) Act 1996*.

In these circumstances, the Regulator has agreed with the reasons presented by WAGR and is prepared to support the following:

- WAGR's train scheduling to be undertaken by the Urban Passenger Division, rather than the Network and Corridor Division.

However, the service agreement pertaining to the provision of this service, and any future amendments to the agreement, between the Urban Passenger Division and the Network and Corridor Division will have to be approved by the Regulator.

- Staff from the rail operating divisions will not be precluded from acting or being seconded to Network and Corridor Division positions relating to access and dealing with confidential information.

However, such staff will be required to sign a confidentiality agreement.

- The Network and Corridor Division does not have to commit to being broadly self sufficient for finance staff.

If however it becomes apparent that operators are seeking access in the same competitive market as WAGR then the Regulator may review the segregation arrangements and may require changes to them.

Notwithstanding the above, there are several issues that will warrant some amendment to the proposed segregation arrangement:

- The Regulator accepts that WAGR and employees of WAGR are subject to the Public Sector Code of Ethics and WAGR's Code of Conduct. However, WAGR will need to demonstrate how the Code of Ethics and Code of Conduct principles are to be implemented as obligations of the Act and Code.

The Regulator will require the use confidentiality deeds to give effect to these principles.

- The Regulator understands that it may be necessary to exchange confidential access-related information between WAGR and WNR:
 - ◇ as co-railway owners providing access to an operator;
 - ◇ in their respective roles as lessor and lessee of the rail freight infrastructure.

There must be an obligation to ensure that the information passed between WAGR and WNR is treated in a confidential manner. This requirement can be met by the use of confidentiality deeds.

- As a Government agency, WAGR will need to support the Minister for Transport and the Rail Corridor Minister by way of provision of information and advice.

WAGR will need to detail the processes and procedures that it will follow in managing the transmittal of confidential information to the Minister and Government.

- The Regulator is of the view that an annual independent external audit is necessary to assess the effectiveness of the segregation arrangements. In this regard, WAGR will need to advise the Regulator who it intends to employ for the purpose of conducting the annual audit at the appropriate time.
- The Regulator also intends to develop key performance indicators (KPIs) in consultation with WAGR to assess and monitor the segregation arrangements. The development of KPIs is being undertaken in a comprehensive manner across several Determinations (Segregation, Train Path Policy, Train Management Guidelines, Costing Principles) and will be finalised when these Determinations are completed. Details of the KPIs that the Regulator will use will be identified in a separate report. Where appropriate, this information will be released on the Regulator's website.

For the purpose of this Determination it is suffice to note that the KPIs that may be used include:

- ◇ number of breaches referred by WAGR to the Regulator;
 - ◇ number of potential breaches referred by access seekers to the Regulator for assessment;
 - ◇ percentage of potential breaches referred by access seekers to the Regulator that are substantiated.
- WAGR's staff, particularly those covered by confidentiality deeds, should be trained in their segregation obligations including the protection of confidential information.

WAGR will also need to make a number of additions and refinements to improve its segregation document as tabled in section 5 of this Determination. For example, WAGR needs to clearly define the objective of its segregation arrangements, demonstrates how it links with the other aspects of the Code, such as costing principles and provide definitions to the terms that are used.

5. Required amendments

While for reasons of simplicity it would be preferred that only one set of segregation arrangements apply to all railway owners, this approach is likely to impose undue compliance costs on WAGR, without any likelihood of encouraging other operators to enter the suburban passenger transport market.

The Regulator is of the opinion that WAGR is different from WNR, the State's other railway owner. This difference has been reflected in the Regulator's approach to assessing the segregation arrangements for WAGR and WNR. Consideration has been given to WAGR's differing business focus and the likelihood of access being sought on the network.

As it is unlikely that an operator will enter the rail passenger market in the foreseeable future, the Regulator notes that issues concerning access to the WAGR network are likely to focus on the allocation of train paths and train management guidelines. These are the subjects of separate determinations.

In subsequent discussions, WAGR has agreed to implement a number of the suggested changes detailed below. Even so, these directions are provided in full in the following table so that stakeholders can gauge the changes that are being required of WAGR on its segregation submission as lodged in December 2001.

It is the view of the Regulator that the Determination below appropriately addresses and balances the differing needs of WAGR, access seekers and the community

under Section 20(4) of the Act. In addition the Determination below has taken into consideration the issues required to be assessed by the Regulator under Section 41(b) of the Code, being the need to take into account:

- the comments derived from public submissions;
- the “public interest” as determined by the Regulator;
- any other issues that the Regulator considers to be relevant.

The adoption of these required amendments in the segregation arrangements should ensure the effectiveness of the State’s Access Regime, in addition to meeting the requirements of Section 20(4) of the Act and Section 41(b) of the Code.

WAGR’s proposed segregation arrangements	Changes required to WAGR’s segregation arrangements
<p>Part 1</p> <p>Legislative context</p> <p>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.</p> <p>Section 30 of the Act requires that the Commission must ensure that the provisions of sections 31, 32, 33 and 34 are satisfied.</p>	<p>Part 1</p> <p>Within the opening section the following is required:</p> <ul style="list-style-type: none"> ▪ A clear and concise statement of the objective of the segregation arrangements. ▪ A summary of the over arching principles on how WAGR will segregate its access-related functions from its other functions.
<p>Part 2</p> <p>Segregation of Access Functions</p> <p>The following functions are defined as access related:</p> <p>(a) Negotiation of Access Agreements and approving of access rights;</p> <p>(b) Management of Access Agreements including performance monitoring and reporting, and day to day operational issues;</p> <p>(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;</p> <p>(d) Emergency management on the network</p>	<p>Part 2</p> <p>The following additions are required as part of the definition:</p> <ul style="list-style-type: none"> ▪ Specifically mention the other parts of the Code that such Access Functions apply to, ie. costing principles, overpayment rules, and Regulator approval of costs. ▪ Terms within Access Related Functions also need definitions eg. Contractor, Working Timetable, Ultimate Control, Network Rules. ▪ Include “ensure suitable controls, measures and procedures are established to provide an effective system of segregation” as an Access Related Function.

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p>including co-ordination of emergency service responses;</p> <p>(e) Train control which includes provision of appropriate authorities for trains to use scheduled train paths;</p> <p>(f) Train scheduling including train path allocation and variation, publication of working timetables, control planning and the approving of <i>ad-hoc</i> train path allotments;</p> <p>(g) Development, maintenance and monitoring compliance with appropriate safety standards for WAGR staff, its contractors and operators on the Network;</p> <p>(h) The maintenance of the track and infrastructure including signalling and communications;</p> <p>(i) The collection, use, and dissemination of train running data including manifest details and access usage;</p> <p>(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;</p> <p>(k) Calculation of floor and ceiling prices for line sections, including calculation of inputs to those prices; and</p> <p>(l) Compliance with the access legislation and Regulator's requirements.</p> <p>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.</p>	
<p>Part 3</p> <p>Confidential Information</p> <p>The WAGR Code of Conduct states:</p> <p><i>"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."</i></p> <p>All Access Agreements, associated</p>	<p>Part 3</p> <p>The following requirements are required under Confidential Information:</p> <ul style="list-style-type: none"> ▪ List the position titles of all WAGR staff, including contractors who will handle confidential information and prohibit any other staff from accessing it. Individuals on this list are to be covered by confidentiality deeds. ▪ Specify the nature of the contents of management reports on WAGR's access-

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p>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.</p> <p>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.</p> <p>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.</p> <p>In addition, all employees of WAGR are bound by Government Railways By-law 84, section 39, which states:</p> <p><i>"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 -</i></p> <p style="padding-left: 40px;">(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;</p> <p><i>(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;</i></p> <p><i>(c) publicly comment on the administration of the Western Australian Government Railways; or</i></p> <p><i>(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."</i></p> <p>In exceptional circumstances, where an employee</p>	<p>related functions given to WAGR management. WAGR must detail the procedures it will follow for managing the transmittal of confidential information to the Minister and Government.</p> <ul style="list-style-type: none"> ▪ As part of Section 6 of the Code, inform access seekers of their respective rights to confidentiality when negotiating inside and outside the Regime, together with a protocol for access seekers who "move" from negotiating outside the Regime to under the Regime.

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p>privity 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.</p>	
<p>Part 4</p> <p>Conflicts of Interest</p> <p>WAGR's Code of Conduct states:</p> <p><i>"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."</i></p> <p>The organisational structure of WAGR provides for separation of the infrastructure provider (Network and Corridor Division) from the rail operating divisions.</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>Explanation of the Train Management Guidelines</p>	<p>Part 4</p> <p>The following change is required under Conflict of Interest:</p> <ul style="list-style-type: none"> ▪ Modify opening sentence to provide a commitment from WAGR to ensure no conflicts of interest exist. ▪ Employees transferring between the Network and Corridor Division and rail operating divisions will be required in all instances to sign a formal confidentiality agreement. ▪ The service agreement, and future amendments to the agreement, between the Urban Passenger Division and the Network and Corridor Division to carry out the train control function will have to be approved by the Regulator.

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p>and an emphasis on compliance with the Guidelines will be included in courses of in-house training for train controllers.</p> <p>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.</p>	
<p>Part 5</p> <p>Duty of Fairness</p> <p>WAGR's Code of Conduct states that:</p> <p><i>"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:</i></p> <ul style="list-style-type: none"> • <i>giving persons the right to be heard;</i> • <i>being unbiased in the decision we make; and</i> • <i>ensuring the decision is based on facts."</i> <p>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.</p> <p>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.</p>	<p>Part 5</p> <p>The following additions are required under Duty of Fairness:</p> <ul style="list-style-type: none"> ▪ The opening acknowledgment to contain a commitment to treat all access seekers and train operators (associates and third parties) equitably in relation to prices, service quality, paths and priorities. ▪ In addition, pro-active mechanisms should be established to reinforce the duty of fairness for third parties, such as: <ul style="list-style-type: none"> - A commitment that the key terms and conditions of internal access agreements for all existing services will be broadly comparable to those provided to or offered to third parties. - Key performance indicators, (ie. service quality, cost efficiency, etc) which indicate the effectiveness of segregation arrangements to be developed by the Regulator in consultation with WAGR. - Access seekers can determine fairness of prices negotiated under Section 21(1) of the Code. - WAGR should refer to Part 5 of the Code on its commitment to train management guidelines, statement of policy, costing principles and over-payment rules.
<p>Part 6</p>	<p>Part 6</p>

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p>Separation of Accounts and Records</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>	<p>This part should also contain a commitment to:</p> <ul style="list-style-type: none"> ▪ Present the regulatory accounts in a Regulator approved format.
<p>Part 7</p> <p>Compliance with these principles</p> <p>Section 9 of the Public Sector Management Act 1994 lists the general principles of official conduct:</p> <p><i>"The principles of conduct that are to be observed by all public sector bodies and employees are that they -</i></p> <p><i>(a) are to comply with the provisions of -</i></p> <p><i>(i) this Act and any other Act governing their conduct;</i></p>	<p>Part 7</p> <p>The following is to be included in the WAGR's segregation arrangements:</p> <ul style="list-style-type: none"> ▪ A separate detailed annual independent audit of compliance with other aspects of the Segregation Guidelines on a negative assurance basis. The Regulator may select and manage the auditor with costs paid by WAGR. ▪ An acknowledgment of the Regulator's ability

WAGR's proposed segregation arrangements	Changes required to WAGR's segregation arrangements
<p><i>(ii) public sector standards and codes of ethics; and</i></p> <p><i>(iii) any code of conduct applicable to the public sector body or employee concerned;</i></p> <p><i>(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</i></p> <p><i>(c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees."</i></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>	<p>to commission special audits on any issue or area where additional assurance is sought.</p> <ul style="list-style-type: none"> ▪ Provide an annual Compliance Report detailing a Compliance Plan with specific procedures for ensuring segregation arrangement compliance and measures for monitoring compliance. This report will also detail all instances of non-compliance and rectification strategies. ▪ Maintain a register of documents pertaining to its segregation arrangements including the types of behaviour which breach segregation requirements and the appropriate corrective action for each breach and notification procedure. ▪ Staff training in segregation be undertaken, particularly those staff covered by confidentiality deeds. ▪ WAGR will report any breach of the segregation arrangements of which it becomes aware to the Regulator in writing within 5 business days. ▪ Access seekers or existing users can approach the Regulator at any time they consider a breach may have occurred. The Act and Code provide wide powers for the Regulator to investigate any alleged breaches of the segregation arrangements.

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reports annually to Parliament on compliance with the Western Australian Public Sector Code of Ethics, and any agency-specific codes of conduct.	

6. Determination

The proposed segregation arrangements submitted by WAGR dated December 2001 are not approved. WAGR will be required to make the amendments as tabled in section 5 of this Determination and resubmit them for the Regulator's consideration within 30 days of the receipt of the Determination. The Regulator notes that in the event that agreement is not reached on the required amendments, the Regulator may give directions in writing to effect the necessary changes under Section 29(3) of the Act.

Should it ever become apparent that there is another operator seeking access in the same competitive market as WAGR then the Regulator may review the segregation arrangements and may require changes to them.

Ken Michael

ACTING RAIL ACCESS REGULATOR

24 April 2002

Appendix 1 – Submission received from the public consultation process

1. Keith Jones
2. Leisure Rail WA Ltd