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14 May 2002

Dr Ken Michael
WA Rail Access Regulator
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PERTH WA 6000

Dear Ken

**SEGREGATION ARRANGEMENTS FOR WA GOVERNMENT RAILWAYS
COMMISSION - DRAFT DETERMINATION**

Thank you for the opportunity to comment on your draft determination with respect to the segregation arrangements proposed for the WA Government Railways Commission. We will implement the requested changes in our documentation and procedures.

However, there are some matters in the determination on which we need some clarification:

1. On page 7 of the determination, there is a requirement for an annual independent external audit to assess the effectiveness of the segregation arrangements, and a statement that WAGR will need to advise the Regulator who it intends to employ for the purpose of conducting the annual audit at the appropriate time. On page 14 of the determination, in the summary table, the requirement is worded as “a separate detailed annual independent audit of compliance with other aspects of the Segregation Guidelines on a negative assurance basis” and there is a statement that the Regulator may select and manage the auditor with costs paid by WAGR. It is not clear whether the Regulator requires one audit or two. We suggest that the annual audit of WAGR’s compliance with all Code requirements, including the segregation requirements, be conducted by WAGR’s internal auditors, who already assess compliance with other regulatory requirements and internal procedures. The internal audit function is currently contracted to Hall Chadwick, which should satisfy the independence criterion. If the Regulator rejects WAGR’s auditor and seeks to employ a different firm at WAGR’s expense, I assume that State Supply Commission guidelines will be followed.
2. We need some idea of what the “Regulator approved format” for the accounts is, and an assurance that it will be consistent with the format required by the Auditor General. Otherwise WAGR will be required to incur duplication costs in presenting the same accounts in different formats (page 14).

3. If the Regulator has a statutory power to commission special audits on any issue, it is not clear what purpose is served by an acknowledgment of that power by WAGR (pages 14-15). The Regulator's power has not been disputed by WAGR.
4. Similarly, it is understood and not disputed that access seekers and users can approach the Regulator at any time to report a perceived breach of WAGR's statutory requirements, and that the Regulator has the power to investigate any alleged breaches (page 15). It is not clear what the determination requires WAGR to do with respect to this fact. It is a legal right unaffected by anything written in the WAGR documents.

WAGR will amend its document setting out its segregation arrangements as required in the determination, within 30 days of the final determination as stated (page 16). However, the preparation of all the necessary associated documents (service agreements, confidentiality deeds, policies and procedures, amendments to the Code of Conduct, training module) is going to require some time. We do not have the resources to provide these within 30 days. We have arranged to contract Mr Gary Thomas, of Deakins, to assist us. Gary has extensive experience in rail access issues and has advised both WAGR and WestNet on access matters. We will be speaking to him this week to set the scope of the work required and will be in a better position then to assess the time required to prepare all the necessary agreements, policies, procedures and training material. We would not expect it to take more than three months.

Yours sincerely

Reece Waldock
ACTING COMMISSIONER OF RAILWAYS