



Public Transport Authority

# SEGREGATION ARRANGEMENTS

# Segregation Arrangements

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## 1. INTRODUCTION

The following Segregation Arrangements (“Segregation Arrangements”) set out the mechanisms by which the Public Transport Authority of Western Australia (PTA) will meet its obligations under Part 4, Division 3 of the Railways (Access) Act 1998 (“the Act”) to segregate its access related functions.

The Segregation Arrangements are intended to establish a rail access regime in respect of the Urban Rail Network controlled by PTA that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations, as required by the Act.

Under section 29 of the Act, before a railway owner puts in place or varies any arrangement it must obtain the Regulator's approval to the arrangement or variation. These Segregation Arrangements have been submitted to the Regulator and approved in compliance with section 29(1) of the Act.

Under section 41 of the Railways (Access) Code 2000 (“The Code”), 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 PTA, the Regulator may confer with PTA on any matter which relates to the way in which PTA'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 PTA with respect to segregation arrangements.

If it becomes apparent that an Operator or access seeker is seeking access to the same competitive market as PTA then the Regulator may review the Segregation Arrangements and may require changes to them.

The over arching principles relating to PTA's implementation of the segregation of its access related functions in accordance with Sections 31 to 34 of the Act are:

**Section 31** - protecting confidential information by the enforcement of confidentiality obligations by means of appropriate undertakings and agreements as well as through existing Codes of Conduct.

**Section 32** – avoiding conflicts of interest by ensuring that any potential conflicts of interest are identified as they arise and by following procedures to avoid conflicts arising.

**Section 33** – complying with a duty of fairness by ensuring that all relevant personnel are informed of the duty to act fairly and acknowledge that this duty must govern decision making.

**Section 34** – maintaining separate accounts and records by following procedures to ensure that separate accounts and records are maintained.

## **2. PRINCIPLE GOVERNING THE USE OF THE PTA RAIL NETWORK**

The reason for the existence of the PTA 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. PTA 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 PTA network and PTA is committed to facilitating such use. However, PTA 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 PTA's approach to the provision of track access.

## **3. FACTORS RELEVANT TO PTA'S PROPOSED SEGREGATION ARRANGEMENTS**

PTA is established under the Public Transport Authority Act 2003 section 5 to direct, manage, maintain and control the Government railways in Western Australia. As a statutory authority, PTA has certain statutory obligations with respect to its operation, and the management of the organisation. These include the accountability of its Chief Executive Officer 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, PTA 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 Act may not be in breach of other legislation governing the operation and management of PTA as a Government agency and statutory authority.

PTA operates the urban railway passenger public transport services for the Department for Planning and Infrastructure under a formal arrangement. These services are significantly subsidised by the State Government. The services operate over 4 electrified lines (from Perth to Midland, Currambine, Fremantle and Armadale) which total 95 kilometres of narrow gauge, electrified, bi-directional track – the Urban Electrified System. In addition, PTA owns, manages and controls a further 17 kilometres of non-electrified single line 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 PTA 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 PTA Network will be operating train services that could be considered to be in the same competitive market as PTA. 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 PTA 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 PTA must ensure as a minimum 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 as 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 railway access agreement entered into under the Railways (Access) Code, between the railway owner (PTA) and an Operator, for access to the railway network by that Operator.

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

“**Code**” means the code for the time being in force under section 4 of the Act.

“**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.

“**Contractor**” means any person who is contracted by PTA to undertake services which are, in any way, concerned in the performance of access-related functions.

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

“**Network Rules**” means the operating rules relating to PTA’s safeworking systems, needed to meet the requirements of the Rail Safety Act 1998.

“**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 Code, for the purpose of running trains.

“**PTA**” means the Public Transport Authority of Western Australia established by the Public Transport Authority Act 2003 section 5.

“**Regulator**” means the Economic Regulation Authority established by the *Economic Regulation Authority Act 2003*.

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

“**Safeworking Systems**” means an integrated system of operating procedures and technology for the safe operation of trains and the protection of people and property on, and in the vicinity of, the railway.

“**Working Timetable**” means the train time-tables and operating data, including general and local instructions which apply to PTA’s Rail Network.

## 6. ACCESS-RELATED FUNCTIONS

Access related functions include:

- a) Negotiation of Access Agreements and approving of access rights;
- b) The various steps prior to negotiation as specified in the Code (e.g. provision of preliminary information, obtaining the Regulators approval under section 10 of the Code, assessing the access seekers managerial and financial ability).
- c) Management of Access Agreements including performance monitoring and reporting, and day to day operational issues;
- d) 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;
- e) Emergency management on the network including co-ordination of emergency service responses;
- f) Train control which includes provision of appropriate authorities for trains to use scheduled train paths;
- g) Train scheduling including train path allocation and variation, publication of working timetables, control planning and the approving of ad-hoc train path allocations;
- h) Development, maintenance and monitoring compliance with appropriate safety standards for PTA staff, its Contractors and Operators on the Network;
- i) The maintenance of the track and infrastructure including signalling and communications;
- j) The collection, use, and dissemination of train running data including manifest details and access usage;
- k) 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;
- l) Calculation of floor and ceiling prices for line sections, including calculation of inputs to those prices; and
- m) Compliance with the access legislation and Regulator's requirements.
- n) Ensuring suitable controls, measures and procedures are established to provide an effective system of segregation.

The Access-related functions apply to other parts of the Code ie – Costing Principles, Overpayment Rules and Regulator Approval of Costs.

PTA may perform the access-related functions in-house or contract them to external suppliers. In either case, PTA has the responsibility for the management of the function and must ensure that the Segregation Arrangements are complied with.



## **7. GENERAL OBLIGATIONS OF PTA 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 PTA. 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. PTA 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 Public Transport Authority Act 2003, the Public Transport Authority Regulations 2003 and Government Railways Act 1904.

If an allegation is made that a PTA employee has breached the provisions of the Code of Conduct, PTA will promptly investigate the suspected breach in an impartial, efficient and professional manner. The investigation of the suspected breach will be properly documented, setting out the evidence, the steps followed and the reasons for the recommendation(s) given to the Chief Executive Officer 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 with the Western Australian Public Sector Code of Ethics, and any agency-specific codes of conduct.



PTA will comply with the Regulators requirements for Segregation Arrangements, including the following:

- Preparation of a separate detailed annual independent external audit of compliance with other aspects of the Segregation Arrangements on a negative assurance basis. The Regulator may select and manage the auditor with costs paid by PTA. The scope of audit will be subject to the approval of the Regulator. The final audit report will be issued to the Regulator and will be made public.
- Allowing the Regulator to commission special audits on any issue or area where additional assurance is sought.
- Provision of an annual Compliance Report outlining a Compliance Plan with specific procedures for ensuring Segregation Arrangement compliance and measures for monitoring compliance. The Report is also to include reference to any instances of non-compliance and rectification strategies.
- Maintenance of a document register pertaining to Segregation Arrangements including the types of behaviour which breach Segregation Arrangements and the appropriate corrective action for each breach and notification procedure.
- Provision of staff training in implementing these Segregation Arrangements particularly for those staff covered by confidentiality undertakings.
- Reporting of breaches of Segregation Arrangements within five business days after the breach is discovered.
- Informing access seekers and existing users of their rights to approach the Regulator if they consider a breach may have occurred.

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

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

The PTA Code of Conduct states:

*“We will not divulge information about confidential dealings, transactions or affairs of the Public Transport Authority, 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.”*

The position titles of all PTA staff and contractors, who will handle confidential information and who will have responsibility for ensuring confidentiality by prohibiting any other non-authorised staff from accessing it are listed in Schedule 1. Those staff identified in the Schedule will be required to sign a confidentiality undertaking.

Confidential information on Access related functions will only be opened and assessed by an officer cited in Schedule 1.

Examples of documents which would be considered to be confidential information are contained in Schedule 2.

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 PTA Registry system, physically stored within

the Network and Infrastructure Division, and access to these files is restricted to the General Manager Network and Infrastructure and such other officers nominated and authorised by him.

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

Confidential information related to access-related matters will not be transmitted in electronic form to the Minister's office. All hard copy correspondence containing confidential access-related information will be transmitted via a designated correspondence bag between PTA's Manager Corporate Issues and Compliance and the Minister's office.

The Network and Infrastructure Division is physically located separately from the rest of PTA, and specifically is located in a different building to the Transperth Train Operations Division.

Where an employee is privy to significant levels of confidential information related to access seekers is transferred into a rail service operating division, the employee will be required to sign a formal confidentiality undertaking.

Reports on access - related functions to be provided to PTA management will include the types of information detailed in Schedule 3.

PTA Procedures for managing the forwarding of confidential information associated with access related functions to the Minister and Government are contained in Schedule 4.

PTA will inform access seekers of their respective rights to confidentiality when negotiating inside and outside the regime, and will establish a protocol for dealing with access seekers who move from negotiating outside of the regime to under the regime. A standard first response to access seekers is contained in Schedule 4.

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

PTA will ensure that proper measures are put in place to prevent conflicts of interest arising and to identify potential conflicts of interest which could arise.

PTA will comply with its Code of Conduct which 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 PTA provides for separation of the infrastructure provider (Network and Infrastructure Division) from the rail operating divisions.

Applications for access are managed, and negotiations undertaken, by the General Manager, Network and Infrastructure and persons authorised by and reporting to him. The rail operating divisions 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 Transperth Train Operations Division, as the primary user of the Network, has been requested by the General Manager, Network and Infrastructure, to carry out the train control function. However, this function is performed by the Transperth Train Operations Division within the policies and procedures defined by the General Manager Network and Infrastructure who has ultimate control over the way in which the function is performed. The Protocol for the Provision of Train Control Services is contained in Schedule 4. Amendments to the Protocol will be submitted to the Regulator for approval.

The Job Description Form for train controllers includes compliance with the Train Management Guidelines as a principal responsibility, and includes as an essential criterion a sound knowledge of the Train Management.

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.

PTA 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 Infrastructure Division and rail operating divisions will be required, in all instances, to sign a formal confidentiality undertaking.

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

PTA will treat all access seekers and train operators (Associates and Third Parties) fairly in relation to prices, service quality, train paths and priorities in accordance with the requirements of the Act and the Code.

PTA will comply with its Code of Conduct which 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.”*

In addition, PTA will put in place the following mechanisms to reinforce the duty of fairness for third parties –

- a) 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.
- b) PTA will work with the Regulator to develop key performance indicators in order to indicate the effectiveness of Segregation Arrangements.
- c) Access seekers will be referred to their rights under section 21 (1) of the Code to determine the fairness of prices.

PTA acknowledges the provisions of Part 5 of the Code in relation to Train Management Guidelines, Statement of Policy, Costing Principles and Overpayment Rules. PTA's Train Management Guidelines, Statement of Policy, Costing Principles and Overpayment Rules have been approved by the Regulator.

Officers responsible for Access related functions will be obliged to be familiar with the requirements of the Public Sector Code of Ethics, PTA's Code of Conduct, their obligations under the Act and the Code.

PTA will immediately investigate allegations that any employee engaged in access-related functions has unfairly advanced the interests of PTA 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, in addition to a breach of the Act.

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

The Access related functions are managed by the Network and Infrastructure Division, which is separate from the train operating Divisions, 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 PTA's Access-related functions is properly recorded and can be distinguished from PTA's other income, expenditure, assets and liabilities.

In some cases, all income, expenditure, assets and liabilities associated with a branch within the Network and Infrastructure Division 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 PTA'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)**

PTA'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 Division's information.

PTA will present the regulatory accounts in a format approved by the Regulator subject to meeting the requirements of the Office of the Auditor General and other applicable legal and accounting requirements.

## ***Schedule 1. Position Titles of All PTA Staff and Contractors Handling Confidential Information.***

The following positions are required to sign confidentiality undertakings:

### **Corporate Group:**

Chief Executive Officer, Legal Officer, Director Policy, Manager Corporate Issues and Compliance, Records Management Controller, Records Officer,

### **Network and Infrastructure Division:**

General Manager, Personal Assistant to GM, Manager Track & Civil, Manager Track Maintenance, Project & Standards Engineer, Senior Projects Engineer, Standards Controller, Document Controller, Finance Officer.

### **Finance Division:**

Executive Director Finance and Contracts, Management Accountant, Finance and Administration Manager, N & I Accountant, Asset & Tax Accountant.

### **Transperth Train Operations Division.**

Manager Operations, Assistant Operations Manager, Manager Train Control, Suburban Operations Coordinator, Scheduling Officer, Train Controllers (11), Relief Staff (3).

## ***Schedule 2. Examples of Documents Considered to be Confidential Information.***

- Submissions from operators and prospective access seekers.
- Access Agreements.
- Document Register pertaining to Segregation Arrangements.

## ***Schedule 3. Management Reports on Access Related Functions.***

- Periodic summary of activities conducted.
- Revenues from access charges. Costs of providing access.
- Revenues and costs will be both shown in aggravated form in Management Reports.

## ***Schedule 4. Policies, Procedures and Protocols for Access Related Functions.***

- Policy / Procedure for Providing Confidential information associated with Railway Access related functions to the Minister and Government.
- Protocol for Provision of Train Control Services by the Transperth Train Operations Division to the Network and Infrastructure Division.
- A standard “first response” to access seekers setting out the information required on the Code and also informing access seekers of their rights to confidentiality.

## ***Schedule 5. Deeds and Undertaking for Access-Related Functions.***

Confidentiality Undertaking for staff associated with access related functions (positions as shown in schedule).

Confidentiality Agreement between Westnet Rail Pty Ltd, WNR, and PTA concerning access information shared or exchanged between the organisations.