

WestNet Rail's Part 5 Instruments Review

Final Determination and Approval of the Proposed Train Management Guidelines

28 August 2006

Economic Regulation Authority



WESTERN AUSTRALIA

Copies of this final determination and approval and WestNet Rail's approved revised Train Management Guidelines are available from the Economic Regulation Authority website at www.era.wa.gov.au.

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EXECUTIVE SUMMARY

Final Determination

1. On 15 December 2005, WestNet Rail Pty Ltd (**WNR**) submitted its proposed Train Management Guidelines (**TMG**) to the Economic Regulation Authority (**Authority**) for approval. The submission of the proposed TMG resulted from a requirement for WNR to review the existing TMG two years after approval by the Independent Rail Access Regulator (**IRAR**) in February 2003.
2. The Authority has considered the proposed TMG in conjunction with comments made in submissions to the Authority by interested persons.
3. The draft determination of the Authority was to not approve the proposed TMG on the ground that it did not represent a fair balance of interests between the railway owner, operators (operators and customers) and access seekers as required under Section 20(4) of the *Railways (Access) Act 1998*. The detailed reasons for not accepting the proposed TMG were outlined in the draft determination which was released for public consultation on 10 May 2006.
4. Following a period of further public consultation, the Authority considered issues raised in submissions and prepared its final determination. The six amendments to the proposed TMG required by the Authority in its final determination are listed below.

Summary of Amendments

Required Amendment 1

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

Required Amendment 2

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

Required Amendment 3

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

Required Amendment 4

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

Required Amendment 5

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

Required Amendment 6

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

Approval

5. WNR submitted a revised TMG on 8 August 2006 which was in compliance with the Authority's final determination. The Authority has approved WNR's revised TMG and this document has been placed on the Authority's website www.era.wa.gov.au.

INTRODUCTION

Background

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

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

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

15. The TMG is applied in the real time management of services. While the TMG, as one of the Part 5 Instruments in the Code, is only required to apply to operators who negotiate inside the Code, WNR has indicated that it will apply similar arrangements to all operators who negotiate outside the Code so as to maintain the order of priority of the scheduled train paths.
16. In addition to the TMG, the other Part 5 Instrument which relates to the management and control of trains on the network is the Train Path Policy (TPP). The TPP is the statement of policy relating to the allocation of train paths and the provision of access to train paths that have ceased to be used. The TPP is designed to ensure that the allocation of train paths is undertaken in a manner that ensures fairness of treatment between operators, acknowledges existing contractual rights and any new contractual rights created under access agreements entered into under the Code.
17. To assist the Authority in the review of the issues raised in the public submissions, the Authority engaged a consultant Strategic design and Development Pty Ltd (SdD) to review the submissions and provide independent comment to the Authority on the issues raised in these submissions. The SdD report is available on the Authority's website (www.era.wa.gov.au).
18. The draft determination was released for public consultation on 10 May 2006.
19. Subsequent to the Authority issuing a notice on 10 May 2006 calling for submissions from interested parties on the draft determination, seven submissions were received as listed below.
 - Alcoa World Alumina Australia.
 - Australian Rail Track Corporation Ltd (**ARTC**).
 - Department for Planning and Infrastructure (**DPI**).
 - Goldfields Esperance Development Commission.
 - Great Southern Railway Ltd.
 - WestNet Rail Pty Ltd.
 - Worsley Alumina Pty Ltd (**Worsley**).

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

20. In making this final determination, the Authority is mindful of the legislative requirements of the *Rail Safety Act 1998* and the role of the Rail Safety Regulator in

TPP related areas. The TMG will need to comply with the requirements of the *Rail Safety Act 1998*.

21. It should be noted that some of the comments in the public submissions received during the course of this review fall outside the scope of the TMG review. The Authority's determination is limited to the scope of this review and consequently, comments from the public submissions which have been determined to fall outside this scope have not been considered by the Authority in making its determinations.
22. This final determination makes reference to a number of acronyms which are identified in the Glossary in Appendix 1.

Legislative Considerations

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

Section 43 Railway owner to comply with approved train management guidelines

- (1) Subsection (2) applies to the railway owner in relation to a part of the railways network and associated infrastructure to which this Code applies when that owner is performing its functions in relation to that part.
 - (2) The railway owner is to comply with the train management guidelines for the time being approved or determined by the Regulator under this section.
 - (3) As soon as practicable after the commencement of this Code the railway owner is to prepare and submit to the Regulator a statement of the principles, rules and practices ("the train management guidelines") that are to be applied and followed by the railway owner-
 - (a) in the performance of the functions referred to in subsection (1); but
 - (b) only so far as that performance relates to requirements imposed on the railway owner by or under the Act or this Code.
 - (4) The Regulator may-
 - (a) approve the statement submitted by the railway owner either with or without amendments; or
 - (b) if he or she is not willing to do so, determine what are to constitute the train management guidelines.
 - (5) The train management guidelines may be amended or replaced by the railway owner with the approval of the Regulator.
 - (6) The Regulator may, by written notice, direct the railway owner-
 - (a) to amend the train management guidelines; or
 - (b) to replace them with other train management guidelines determined by the Regulator,

and the railway owner must comply with such a notice.
24. The Act also provides a framework within which the Authority's determination required under Section 43 of the Code is to be made. Subsection 20(4) states:

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

 - (a) the railway owner's legitimate business interests and investment in the railway infrastructure;

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

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

Assessment Process

25. The process which has been followed for the review of WNR's proposed TMG is outlined below:
- January 2006 - Public submissions received on WNR's proposed TMG.
 - May 2006 - Authority's draft determination published.
 - June 2006 - Public submissions received on draft determination.
 - August 2006 - Authority's final determination and approval published.

REASONS FOR THE FINAL DETERMINATION

Discussion of Issues

26. The only issue raised in public submissions, during the second round of public consultation on the Authority's draft determination, related to General Principles for Train Management. This issue is discussed below.
27. The discussion of this item commences with the draft determination's required amendments followed by an outline of relevant comments received in the public consultation process on each amendment then the Authority's assessment and final determination.
28. The Authority has taken the view that those sections of WNR's proposed TMG on which no comment has been made are acceptable to track users and access seekers. The proposed TMG are largely the same as the TMG approved by the IRAR in 2003 so operators and access seekers have had a considerable period to assess the effectiveness and suitability of these guidelines.
29. Some submissions contained comments which were within the scope of the review but which did not specifically address the amendments outlined in the draft determination. These comments are addressed at the end of this section under "Other Relevant Matters Raised in Submissions".
30. The Authority received seven submissions on the Authority's draft determination. However, there were only two submissions (from WNR and Worsley) that addressed the amendments in the draft determination. WNR¹ indicated that it accepted six out of the seven amendments with its only objection being to Amendment 4. Worsley² provided comment only with respect to Amendment 4.
31. On the basis that WNR has accepted six out of the seven draft determination amendments (Amendments 1 to 3 and 5 to 7) and no comment has been made on these six amendments in submissions on the draft determination, the Authority does not consider that any change to these six amendments is necessary in the final determination.
32. It should be noted that of those final determination amendments listed on the following page, Amendments 4, 5 and 6 correspond with Amendments 5, 6 and 7 in the draft determination.

¹ WNR, Part 5 Instruments- Submission on the draft determination of Train Management Guidelines, page 1.

² Worsley, Draft Determinations on WestNet Rail's Part 5 Instruments- Submission by Worsley Alumina Pty Ltd, page 5.

Final Determination Amendments

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General Principles for Train Management

Draft Determination Amendment

33. One amendment was outlined in the draft determination relating to general principles for train management in the proposed TMG, as listed below.

Amendment 4

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

Interested Party Submissions

34. Two submissions were received (from WNR and Worsley) on the amendment.

35. WNR indicated³ the following:

Unhealthy services are treated on a best endeavours basis in an attempt to improve the transit of the unhealthy service through the network. By the very nature of an unhealthy service there will be the potential for “out of course” crossings to further delay the unhealthy service because the objective of the train controller is to ensure that the healthy services are not jeopardised to the point whereby they too become an unhealthy service. Where the opportunity exists to manage services to improve transit times, this will occur, but is largely dependent upon the frequency of other competing services on the route.

Based on the above comments WNR considers that Amendment 4 is unreasonable and has not accepted the amendment.

36. Worsley did not consider that Amendment 4 adds any value and indicates that the existing objectives are clear and suggests that the rules for managing trains as contained in the general principles for train management and outlined in Table 1 of the proposed TMG will govern the outcomes for train management.

Authority’s View on Comments in Submissions

37. The Authority notes the comments from WNR and Worsley and considers that WNR as the railway owner is in the best position to manage the freight network effectively. WNR has indicated that, where possible, it will attempt to improve an unhealthy service but not to the detriment of a healthy service. As a consequence, the Authority has re-considered its position with respect to Amendment 4 and now considers that the two objectives as outlined in section 2.1 of the proposed TMG, in association with the general principles for train management, provide adequate guidance to ensure that WNR manages the freight network in an efficient manner.

38. Based on the above considerations, the Authority has removed the requirement for Amendment 4 in the final determination.

Other Relevant Matters Raised in Submissions

39. In regard to the issue of performance reporting, ARTC⁴ has indicated that WNR should be required to publicly report on a suite of key performance indicators (KPI) on a quarterly basis in addition to its existing requirement to publicly report, on an annual basis, the KPI’s. ARTC considers public reporting on an annual basis is inappropriate as any evidence of deterioration in performance up to twelve months after it occurs is too late and hence quarterly reporting is more appropriate.

³ WNR page 1.

⁴ ARTC, Submission on Draft Determinations on WestNet Rail’s Part 5 Instruments, page 2.

40. The Authority noted, in the draft determination, that in addition to the public reporting of KPI's on an annual basis, WNR is required to separately report, on a quarterly basis, on its associated company and third party use of the network, albeit on a confidential basis. The Authority also recognises that operators are free to negotiate, in access agreements, performance measures deemed appropriate for their individual circumstances with the frequency of this reporting being quarterly. On this basis, the Authority considered, in the draft determination, that the frequency of public reporting by WNR was satisfactory.
41. The Authority has noted that none of the existing operators of the freight network has raised any concerns about the frequency of public performance reporting in either of the two rounds of public consultation. This could be due to their satisfaction with the quarterly performance reporting requirements associated with the access agreements. The Authority believes that the frequency of public reporting by WNR is satisfactory and its position as outlined in the draft determination is appropriate.
42. ARTC has also again queried the content of the KPI's and suggested that WNR be required to report on additional KPI's to ensure consistency between the ARTC Access Undertaking and the WA Rail Access Regime.
43. The Authority noted, in the draft determination, that the KPI measures would be reviewed following the implementation of recommended Code changes resulting from the review of the Code undertaken in 2005. One of the Code changes required railway owners to publish an information package on their websites. The information package would contain some of the measures that ARTC has identified in its submission as mandatory performance measures. The Authority continues to hold the view, that was previously enunciated in the draft determination, that a separate review of the KPI measures is appropriate rather than have the measures included in the TMG. The Authority also noted that the proposed TMG does allow operators and WNR to agree specific KPI measures, in access agreements, to reflect individual train services which are reported on a quarterly basis. On this basis the Authority continues to hold the view that there is little merit in mandating performance measures in the proposed TMG and that it is more appropriate to undertake a separate review of the KPI's when the Code changes have been implemented.

APPROVAL OF WNR'S REVISED TRAIN MANAGEMENT GUIDELINES

44. Subsequent to release of the draft determination and receipt of WNR's submission on this determination, representatives of the Authority held discussions with WNR in relation to the amendments required by the Authority. On 8 August 2006, WNR submitted a further submission containing revised Train management Guidelines.
45. The Authority has reviewed the revised Train Management Guidelines and is satisfied that the changes made by WNR meet the requirements of this final determination.
46. The Authority, consequently, approves the revised Train Management Guidelines as submitted by WNR on 8 August 2006.
47. WNR's approved revised Train Management Guidelines has been placed on the Authority's website www.era.wa.gov.au.

APPENDICES

Appendix 1 Glossary

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