

TRAIN MANAGEMENT GUIDELINES
TO APPLY TO
WESTNET RAIL

DETERMINATION OF
THE WESTERN AUSTRALIAN
INDEPENDENT RAIL ACCESS REGULATOR

IN ACCORDANCE WITH THE REQUIREMENTS OF
SECTION 43 OF THE RAILWAYS (ACCESS) ACT 1998

31 October 2002



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1. Introduction

WestNet Rail (WNR) is the principal provider of “below” non-urban rail infrastructure in Western Australia, covering approximately 5,000 kilometres of track in the southwestern corner of Western Australia. WNR is a subsidiary of the Australian Railroad Group (ARG), a company owned 50:50 by Wesfarmers and Genesee Wyoming. ARG also has another subsidiary company, Australian Western Railroads (AWR), which provides above rail services in Western Australia.

Section 3 of the *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, WNR is considered to be the railway owner for the Western Australian non-urban railway infrastructure.

Section 43 of the *Railways (Access) Code 2000* (“the Code”) requires the railway owner 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.

The WNR Train Management Guidelines (TMG) will be applied in the real time management of services. They will apply in a non-discriminatory way between all users of the network so as to maintain the order of priority of the scheduled train paths.

Under Section 43(3) of the Code, the railway owner is required to obtain the Regulator’s approval to the TMG it is proposing to implement. In November 2001, WNR submitted its proposed TMG to the Regulator. A copy of the WNR submission is available on the Office of the Rail Access Regulator’s website (www.railaccess.wa.gov.au).

In considering WNR’s proposed TMG, Section 45 of the Code requires that the Regulator publish a notice describing the requirements of Section 43(3) of the Code and a general description of the proposed arrangements in major newspapers, with details on where further information can be obtained and inviting submissions on the proposed arrangements.

To this effect, a notice was placed in *The West Australian* and *The Australian* newspapers on 17 November 2001. After granting an extension in the submission deadline, the closing date for submissions was 11 January 2002.

Eight (8) public submissions were received containing comments relating to WNR’s TMG proposal (refer to Appendix 1 for the list of respondents). These submissions are available on the Office of the Rail Access Regulator’s website

(www.railaccess.wa.gov.au) along with WNR's response, dated 15 February 2002, to some of the issues raised in the public submissions.

Associated with the TMG is the Train Path Policy (TPP) document. This document is a 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.

WNR, in its letter of 18 April 2002 to the Office of the Rail Access Regulator included a statement of priority of documentation. In this statement, WNR has advised that the order of precedence in the documents would be (1) Train Path Allocation Policy, (2) Train Management Guidelines, and (3) Access Agreements.

The Regulator envisages that the TPP and TMG will establish the policy and guidelines respectively within which the specific details of train paths and train management can be negotiated. The access agreement will document the negotiated details of the routes to which access is provided, the services to be provided by the operator, the allocation of train paths, prices and charges, route control and management, train control, operations and consultation procedures, and other such matters as detailed in Schedule 3 of the Code.

The Regulator understands that the approved TPP and TMG will be attached as an appendix to all access agreements negotiated under the Code.

In issuing the TMG Determination, the Regulator 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*.

On 15 August 2002, the Regulator released the Draft of the Determination on Train Management Guidelines to apply to WNR and invited interested parties to provide comments on the draft by 5 September 2002. The submission deadline was extended by a week at the request of stakeholders.

Six submissions on the Draft of the Determination were received, five from the public and one from WNR (refer to Appendix 2 for the list of respondents). One of the submissions was provided to the Regulator on a confidential basis. The remaining submissions are available on the Office of the Rail Access Regulator's website (www.railaccess.wa.gov.au).

2. The WA Legislative Context

The legislative requirements in relation to TMG are provided for in Section 43 of the Code and these are summarised as follows.

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 is 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.

Section 20(4) of the Act provides the framework within which the Regulator’s determination 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 43 of the Code 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 43 its application 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 interest for the railway owner, access seekers and the community.

3. Discussion Of Issues

Issues raised in public submissions which are considered significant are listed as follows:

- Application of the TMG for operators outside the regime.
- Terms and definitions used and relationship of the WNR Network Rules.
- Cost recovery to the operators where actions by WNR materially affect operator performance and have a cost impact on the operator.
- Broad powers of WNR in the management of trains due to the inclusion of “the exercise of reasonable care”.
- Lack of a completed train decision matrix within the TMG.
- Need for a long range possession management process.
- Key Performance Indicators and frequency at which the TMG will be reviewed.
- Additional issues raised in the public comments on the Draft of the Determination.

The following discussion commences with a summary of WNR’s position under each of the above headings and the comments received from the public consultation process. WNR’s response to the public comments and a summary of additional information from comments received on the Draft of the Determination considered relevant by the Regulator are then provided. This is followed by the Regulator’s views and comments.

The public submissions demonstrated the diverse and, at times, conflicting views of the various stakeholders when addressing what they considered to be deficiencies in the WNR proposal. As there is no consensus view among submissions, rather than presenting a summary of comments under the heading "*Comments from the public submissions process*" the Regulator has attempted to present the point of view of each submission on the relevant issue.

1. Application of the TMG for operators outside the regime

Summary of WNR’s Proposal (section 1)

- WNR indicated that the TMG will apply in a non-discriminatory way between all users of the network so as to maintain the order of the scheduled train paths.

Regulator’s views and comments

- The Regulator agrees that the TMG needs to be consistent and applicable for each allocated train path regardless of whether access applications are made inside or outside the Code. The Regulator understands that WNR will apply the TMG to all access agreements negotiated outside the Code. Accordingly, a statement to confirm this intent should be included in the TMG.

2. Terms and definitions used and relationship of the WNR Network Rules

Summary of WNR's Proposal (sections 2, 3, 4.6)

- The WNR TMG submission offers thirteen (13) definitions in Section 2 of the document.
- WNR states that daily issues (such as the imposition of temporary speed restrictions) will be managed in accordance with:
 - ◇ the WestNet Rules; and
 - ◇ the relevant Access Agreement.

Comments from the public consultation process

- In the definition of "Instructions" the words "WestNet considers upon the exercise of reasonable care" should be deleted.
- The definition of "Instruction" states "does not include instructions and directions which derogate from train paths". The meaning and application of this test is unclear and ill defined.
- The definition of "Network" refers to "areas" and should refer to "access". The definition should be consistent with other documents released under the Code.
- The definition of "Operator" appears to be incomplete. The reference to "see definition" is meaningless.
- In the definition of "Train Control Directions" delete "management" in line 2 and delete the words "considered by WestNet upon the exercise of reasonable care to be".
- There are a number of terms used in the TMG which are not defined. There are several problems with lack of definitions for terms that should be defined making the TMG ineffective. Clarification is also required of vague terms such as "temporary"; "ordinarily given"; "earliest possible time"; "WestNet Rules".
- Comments stated that there appeared to be an inconsistency between the concept intended by the use of the defined terms and the manner in which the terms are used within the document.

- The reference should be to “WestNet Network Rules” as this is the term used in the access agreement and the term should be defined. A copy should also be made available to access parties and prospective access parties. As a general principle, the Regulator should not approve the TMG unless all documents that are incorporated by reference to or form part of the TMG are available to all access seekers. In addition, “incorporated documents” must be approved by the Regulator in accordance with Section 43 of the Code, as must be any subsequent amendments to incorporated documents. The TMG should also set out an appropriate mechanism for the Regulator to approve any subsequent amendments to incorporated documents.
- The “WestNet Rules” should be clarified in an appendix to the TMG because it is a term that is not presently defined in the TMG. Any significant provisions contained in the access agreement should also form part of this policy. Without this requirement, operators will be forced to undertake arbitration in order to clarify their rights.
- “WestNet Rules” is an undefined term and is presumably whatever rules WNR decides it will operate to and can be changed at their discretion. It is recommended that as a minimum these rules be disclosed for stakeholder’s scrutiny and that the process by which they can be modified be elaborated. As the clause is currently written it suggests that apart from what is specified in the relevant access agreement WNR can manage daily issues in any way it wants.

Regulator’s views and comments

- WNR needs to review and revise the definitions contained in the TMG to ensure that they:
 - ◇ include all terms which require a clear definition in order to understand and implement the guidelines by all parties;
 - ◇ are adequate in addressing the comments received from the public submissions and should be incorporated into the revised TMP; and
 - ◇ are consistent with the other documents under the Code, in particular the TPP and Access Agreements.
- Specifically, definitions should be included for the following terms:
 - ◇ Access Manager (section 4.1);
 - ◇ Access Term (section 7.1);
 - ◇ Dangerous Goods Code (section 7.2);
 - ◇ Environmental Condition (section 7.2);
 - ◇ Environmental Damage (section 7.2);

- ◇ Instruction 141 (section 7.1);
 - ◇ Late (section 3.1);
 - ◇ Operator's Procedures (section 7.1);
 - ◇ Rail Access Management System (section 4.1);
 - ◇ Special Train Notices (section 4.1);
 - ◇ Train Control Centre (sections 3.1, 7.1);
 - ◇ Train Controller (section 4.1);
 - ◇ Train Path (sections 3.1, 4.1, 4.2, 7.1.3, 7.1);
 - ◇ WestNet Customer Services Officer (section 4.1);
 - ◇ WNR's Network Rules (sections 3.1, 4.6, 7.1); and
 - ◇ Working Timetables (section 4.1).
- Specifically, definitions which should be modified are as follows:
 - ◇ "Instructions": delete the words "WestNet considers upon the exercise of reasonable care" in (b); WNR will need to provide examples of instructions to "prevent or to minimise the effect of a material breach of an Access Agreement" in (j);
 - ◇ "Network": substitute the word "access" for "areas";
 - ◇ "Operator": provide a definition; and
 - ◇ "Train Control Directions": delete the words "considered by WestNet upon the exercise of reasonable care to be" in (a).
 - There should be no need for WNR to refer to "Government Lease".
 - The words "policies and practices of these Guidelines" be added at the end of section 3(b).
 - A reference should be made to section 4.2 within section 3.1.
 - The reference should be 15 minutes and not 10 minutes in section 3.1(c).
 - The "WestNet Rules" are defined in WNR's access agreement to mean the WestNet's Rules and the Appendix to the Rules as issued in accordance with WestNet's Safety Management Plan approved under Section 10 of the *Rail Safety Act 1998*, together with any amendments, deletions or additions made in accordance with the Safety Management Plan and all policies and notices issue by WNR for the purpose of ensuring the safe use of the Network. The Regulator also understands that the WestNet Rules comply with the National Code of Practice, even though there are some differences in the terminologies used.

- As there is reference to the WestNet Rules in the TMG, the Regulator recommends that an appropriate definition of the “WestNet Rules” be included and that WNR ensure that access to these rules is provided to stakeholders.

3. Cost recovery to operators where actions by WNR materially affect operator performance and have a cost impact on the operator

Summary of WNR’s Proposal (section 3.2)

- WNR states that a train failure which fouls the network and blocks the passage of trains will be cleared using alternative locomotives and crews at the discretion of WNR. The strategy adopted will minimise the time the network will be blocked. As an example, assisting locomotives and crews may be from (a) other trains near the vicinity which are being delayed by the failure, or (b) the nearest locomotive depot.
- The actual source will be dependent on the location of the failure with the objective of minimum disruption to the network.
- The failed train will be cleared from the main line to the nearest location where it does not impact on train running and the operator will then be responsible for planning repairs and alternative pathways in conjunction with WNR.

Comments from the public consultation process

- While it is accepted that WNR must have the capacity to direct operators to clear blockages, compensation arrangements for that operator should be established in WNR’s guidelines.
- There must be some provision for cost recovery and charges to be imposed to support the arrangements set out in this clause, allowing the cost incurred by an access party whose locomotive and crew are used by WNR in clearing a network blockage to be recovered from WNR and, in turn, allowing WNR to charge for the service provided in assisting the clearing of the failed train.
- In deciding to use the crew and locomotive of a particular access party to clear a network blockage, WNR should be required to take into account relevant factors such as the cost of using the crew and locomotive of that access party instead of the crew and locomotive of another access party. WNR must, where possible, seek to minimise the loss and damages incurred by the access party providing locomotive and crew used to clear the blockage and the cost incurred by the access party whose train failure blocked the passage of trains.
- Each access party must provide an indemnity against all costs and damages incurred by other access parties (including consequential damages) as a result of a train failure and network blockage caused by that access party.

- To minimise disruption and ensure smooth running of the network, WNR should not issue an instruction involving “Call Back” – ie. no borrowing of locomotives from a train which has already passed the point of blockage except in emergencies or by agreement with the operator.
- WNR should take into account the relevant business criteria involved in making a decision to use the resources of one operator to clear the equipment of another operator from the network. For example, if two locomotives are equally suited to clear the network, but one train is more urgently required to deliver its cargo than the other, then such priorities should be considered. This necessarily means that there should be agreed processes for the management of such situations, including where appropriate, reasonable consultation.
- The operator should initially have responsibility for clearing any of its rolling stock which is blocking the network. WNR should have such powers only after, following a request, the operator does not act with reasonable promptness having regard to the circumstances.
- WNR should reimburse operators’ costs when locomotives and crews are directed to assist with line clearance. WNR should also indemnify operators against any claims which might arise following the issue of such directions.

Additional information from comments on the Draft of the Determination

- WNR should be required to consult with an operator prior to using their rolling stock and the operator has an obligation to provide reasonable assistance when necessary to facilitate the clearing of a blockage caused by a failed train. WNR has an obligation to clear a blockage where infrastructure failure is the cause of the incident and it should also supervise and assist in the clearing of blockage where an operator is at fault. WNR should not have the right to require a third party operator to assist in this process. Third party operators may offer to assist but the onus should be on the affected parties - the operator of the failed train and WNR to resolve the problem.
- The principles WNR proposes to include in the TMG with respect to priority of operations resuming after a major delay after the blockage has been cleared or the infrastructure repaired sufficient to resume safe train operations are:
 - ◇ all affected operators will be consulted as to their positions and needs including factors such as crewing arrangements, sensitive freight, and shipping or production requirements;
 - ◇ passenger trains will be given priority if passengers are stranded en-route;
 - ◇ otherwise the trains will resume service in the order that they were scheduled to run prior to the blockage if practical and taking account of issues raised in the consultation process.

- The public consultation process also raised the issue of costs and indemnities if an operator was forced by the terms of the access agreement to assist in clearing a network blockage. This provision of the access agreement has now been amended by WNR after negotiations with some access seekers to remove the obligation to assist as it becomes very difficult to determine applicable rules and to establish cross indemnities. Therefore, the proposed clause in the access agreement will read:

“provide reasonable assistance to WNR when necessary to facilitate the clearing of a blockage of the Network caused by a failed train”.

This clause would not prevent WNR and an operator (not the operator causing the blockage) reaching agreement on how they might assist in clearing the blockage. The access agreement contains an obligation of the operator who is causing the network blockage to clear the blockage.

Regulator’s views and comments

- Clause 3.2 covering network blockage and the process for clearing such blockages focuses only on a strategy to minimise the time the network will be blocked. It does not provide the detail sought by access seekers as to how this strategy will be achieved and what the obligations of the parties are in achieving the intended outcome.
- The TMG also does not discuss the cost of clearing the blockage, cost recovery, indemnity provisions, or consultation requirements. While the Regulator is aware that the WNR access agreement includes a section on network blockage, this section also does not include any provision for clearance of network blockages, but simply discusses Safety Standards and refers back to WNR’s Network Rules.
- WNR should address the details of:
 - ◇ how the network blockages will be cleared;
 - ◇ what parties are responsible for what aspects of the recovery process;
 - ◇ the principles by which costs are to be quantified and recovered, where appropriate;
 - ◇ what indemnities are required and provided; and
 - ◇ operators’ obligations.
- These details should be contained in both the TMG and the access agreement. Although the same level of detail is not required in both documents it is important that the information is consistent between the two documents.
- This is primarily a network management issue and should be addressed from that

perspective. The TMG should contain a description of the priority for implementing the clearance process, for example:

- ◇ trains and resources of the operator who has blocked the Network;
- ◇ other trains near the vicinity which are being delayed by the failure; or
- ◇ the nearest locomotive depot.

The Access Agreement should provide the detail of the conditions to be imposed, obligations of parties, insurance and indemnity, and cost recovery mechanisms.

- The Regulator has noted the additional information provided by WNR in its response to the Draft of the Determination on TMG in an attempt to address some of the issues raised by the Regulator and access seekers. While the additional information provided by WNR is generally consistent with the Regulator's Determination, WNR will need to incorporate these comments into its revised TMG for the Regulator's approval.

4. Broad powers of WNR in the management of trains due to the inclusion of "the exercise of reasonable care"

Summary of WNR's Proposal (section 4.4)

- WNR states that it may, without notice to the operator, perform repairs, maintenance or upgrading of the network, or take possession of any part of the network, at any time. If repairs, maintenance or upgrading of the network, or taking possession of the network are reasonably likely to materially affect the scheduled train paths, WNR must, prior to commencement of works:
 - ◇ take all reasonable steps to minimise any disruption to the scheduled train paths;
 - ◇ notify the operator of the works as soon as reasonably practicable; and
 - ◇ use its best endeavours to provide an alternative path, but need not obtain the operator's consent to such repairs, maintenance or upgrading, or possession of the network.
- WNR will at all times maintain the network (but only in so far as the network is relevant to the operator's scheduled train paths) to the highest of:
 - ◇ the standard existing as at the commencement date of the infrastructure lease; or
 - ◇ if WNR is required to be an accredited owner, the minimum standard required to maintain its accreditation as a track owner; or
 - ◇ any other standards as the parties may agree.

- When required by the condition of the network or any part of the network, WNR may (to the extent of such requirement only) give notice of speed and weight restrictions and the operator must comply with such a notice.

Comments from the public consultation process

- The clause should be amended to expressly require WNR to maintain the network to the standard required for WNR to maintain its accreditation as a track owner, whether or not WNR is technically required to be an accredited owner. WNR must be required to also undertake to, at all times, maintain accreditation as a track owner under the Rail Safety Act 1998 and all subordinate legislation.
- WNR's interference with scheduled train paths to conduct planned maintenance must be regarded as a breach of WNR's obligations to access parties. Planned maintenance must be taken into account and accorded when establishing scheduled train paths. To ensure that WNR complies with its obligations not to interfere with scheduled train paths, it should notify access parties well in advance of all such planned maintenance.
- The obligation upon WNR to maintain the network should be to the standard that is safe and fit for the purpose of meeting WNR's obligations under all existing and future access agreements. The standard is the standard which is required to maintain accreditation as a track owner and this should be specified as the maintenance standard under the Guidelines, whether or not WNR is technically required to be an accredited owner.
- The power of WNR to give notice of speed and weight restrictions must be exercisable only in response to an emergency or to ensure safety on the network. WNR must be under an obligation to restore the network, and to restore all trains to the scheduled train paths, as soon as possible.
- There should be a requirement for compensation for disruptions caused by maintenance, given that operators already effectively pay for these through higher access prices (ie. a new network forms the basis of the GRV valuation used for access pricing).
- As the infrastructure manager, WNR must have in place a possession management process which outlines what maintenance, upgradings, etc. and subsequent closedowns it intends to put in place. It would be expected that all operators in the network would be involved in its formulation and be aware well ahead of time what is planned.
- The current wording "WestNet may, without notice to the operator, perform repairs, maintenance or upgrading of the Network...at any time" does not require any consultation with the operators or end users. WNR should be obliged to give

notice of all maintenance possessions. The only exception should be safety related incidents where no advance notice is available and where immediate action is required. All but a few maintenance possessions would be planned and therefore notice to operators and end users should be a formality.

- There should be an additional level of consultation required where major works are planned and where scheduled train paths are affected. Advance notice of these possessions would provide an opportunity for users to increase stockpile levels prior to an outage to minimise the impact on all parties.
- WNR should be required to act with reasonable promptness in removing any infrastructure restrictions which it may impose. The imposition of weight restrictions can have major implications on the viability of an operator's activities and so should be allowed to be applied only as a matter of last resort.
- WNR should reimburse costs incurred by the operator when trains are cancelled or re-routed on account of track possessions.
- WNR's proposed maintenance provisions detailing the conditions under which WNR may take possession of the network for maintenance, the standard to which the infrastructure must be maintained and the ability of WNR to impose operating restrictions are similar to those incorporated in Australian Rail Track Corporation's (ARTC) indicative access agreement forming part of the Access Undertaking.

Regulator's views and comments

- Most of the public comments received concern themselves with a perceived lack of definition in the process of when interruptions to normal train path movements may take place due to maintenance, repair or upgrading activities by WNR. Opinions also indicated that the approach was intrusive and unreasonable from the perspective of the operator.
- This issue and the Regulator's decision thereof has been dealt with in the Regulator's Draft of the Determination on the TPP arrangements to apply to WNR. The Regulator's position to the issue, as outlined in the TPP, is repeated below.
- The Regulator's primary interest in relation to this matter is to ensure the Network is maintained to a standard which is safe and fit for purpose and that users are provided with an effective process for real-time management of services. In this regard, the Regulator is of the view that WNR's approach to track possession and track maintenance does not appear to be unreasonable by comparison with other railway owners' policies, such as the ARTC.

- WNR will need to provide operators with a time profile of its schedule of repair, maintenance or upgrading works to be undertaken and the length of potential disruptions. In instances when WNR is unable to meet an identified time commitment, it will need to advise the operators of the revised time profile as soon as possible. The Regulator expects that further detail of track possession and track maintenance practice will be addressed in individual access agreements if required.
- The Regulator has received advice indicating that the Regulator does not have the power to make determinations relating to the compensation of operators for adverse impacts of WNR track possession management. The Regulator would expect that these issues would be addressed in the relevant access agreement. Nevertheless, if it can be proven that WNR has unjustifiably disrupted the train paths of one operator more than another operator, the Regulator may consider whether WNR has breached the provisions of Section 34A of the Act which deals with conduct aimed at hindering or preventing access.
- The Regulator would expect that scheduled train paths to be minimally affected by planned track maintenance activities, but at this stage is of the view that it is not reasonable to require WNR to ensure that these train paths would not be affected. However, if through performance monitoring, the Regulator finds that certain train paths or individual operators are unacceptably affected, then consideration will be given to addressing this issue by either amending the TPP or reflecting the reduced service level in the ceiling for that route section. In any event, access seekers should be negotiating suitable arrangements with WNR as part of their access agreement.
- Access agreements provide for the establishment key performance indicators (KPIs) which are to be agreed between the railway owner and the operator. These KPIs include performance measures for both the operator and the railway owner. Reference should be included in the TMG to the fact that agreed KPIs in the access agreement will establish a method of measuring performance in this area by way of agreed standards to be achieved and through the monitoring and review of actual performance against these standards.

5. Lack of a completed train decision matrix within the TMG

Summary of WNR's Proposal (sections 4.2 and 4.3)

- Section 4.3 of the TMG is entitled “General Principles for Train Management” and consists of a Traffic Management Decision Making Matrix (“the Matrix”) with explanatory notes.

Comments from the public consultation process

- The clause sets out WNR's general principles for train management for WNR and operators on its network, however the Matrix appears to be incomplete and it is suggested that the remaining cells be completed.
- Rule 4 is listed under the Matrix but not referred to by the Matrix.
- To bring life to the principles in the Matrix, all train control operators need to be properly trained in the use of the agreed Matrix and shown to be conforming to it, before commencement of operations for third party operators on the WNR network. A statement to this effect should be included in the principles.
- The section requires significant expansion. It is noted that WNR have suggested a matrix solving approach to conflicts between healthy and unhealthy trains. This approach was also proposed by Queensland Rail (QR) and resulted in significant debate amongst stakeholders. The Queensland Competition Authority (QCA) in its final response to QR suggested amendments to both the train control principles and the definitions of healthy and unhealthy trains.

At the very least, this section should include:

- ◇ definitions of healthy and unhealthy trains including the scenario where the operator has not been to blame for a train becoming late;
 - ◇ a statement on train priority and how it applies on each route;
 - ◇ a more detailed statement of the general principles;
 - ◇ a definition of the tolerances allowed on various train paths including entry/exit times and running time tolerances;
 - ◇ a definition of the principles to apply to late running;
 - ◇ an upgraded matrix which identifies the default actions for all possible events and any special arrangements in place (eg. passenger trains);
 - ◇ the resolution of priorities following an incident or major delay; and
 - ◇ availability of all of the planning information and the decisions which result so that all parties acquire a better understanding of the conflicts that arise and the best way to resolve them.
- It is not clear how the master train plan is updated to a weekly or daily train plan or if these documents are used. It would seem important that information including the matrix, train control running data, train control diagrams, etc. should be available to all operators so that they understand the issues arising from train control decisions and to enable them to comment accordingly.
 - The TMG should include reference to train priority and how it applies particularly when conflict arises involving crossing of over-length trains and passenger trains. WNR should adhere to the timetables in the Access Protocol and in the event that

a scheduled service becomes unhealthy while under the control of WNR and at no fault of the operator, then WNR accept all cost over runs that the operator incurs.

- There would appear to be no commitment proposed by WNR not to 'deteriorate' unhealthy trains.
- The Matrix is deficient. There are no rules stated with respect to the treatment of conflicts between late and early trains, and between two late trains. It is considered important that rules are included with respect to these occurrences.
- The use of a decision matrix as proposed can provide a framework for some equity and transparency in the management process, but it is the specific application of the Matrix where anti-competitive behaviour can arise but is generally only observable following obvious or continual behaviour. It is requested that the Regulator consider this in assessing WNR's approach, particularly with respect to the need for performance indicators covering the network management activity.

WNR's Response to Comments from the public consultation process

- WNR has sent a letter dated 15 February 2002 to the Office of the Rail Access Regulator which included a revised Traffic Management Decision Making Matrix. A copy of this letter is available on the Office of the Rail Access Regulator's website.

Additional information from comments on the Draft of the Determination

- The train controller must be left with some discretion to operate outside of the matrix (where duly justified) to ensure safe and efficient operations. Expecting rigid adherence to the matrix is unrealistic, but any deviation should be reasonably justified.
- The train decision matrix should incorporate a "special condition" procedure. Currently the TMG states that the train controller shall use the train decision matrix (presumably without exception). If an operator has a late train due to a loading problem, it may be important to clear a route for that unhealthy train to make up as much time as possible to avoid a delay in ship departure time at the port. This movement could take precedence over another healthy train belonging to the same operator operating on its scheduled path. WNR should include additional wording in the TMG that allows the train controller to use alternative rules based on a one-off authorisation.

Regulator's views and comments

- The revised Matrix in its completed form should be incorporated into the TMG. A

statement dealing with appropriate training and conformance in the use of the Matrix should also be included in the TMG.

- Expansion of this section of the TMG should be undertaken to provide a clearer and more comprehensive coverage of the process. This will benefit the understanding of train management for all parties as part of the WNR network. Apart from the completed matrix, the following items should be included:
 - ◇ a definition of “on-time” (healthy), “late” (unhealthy), and trains running “ahead”;
 - ◇ a definition of the tolerances allowed on various train paths, including running time tolerances;
 - ◇ a statement of train priority;
 - ◇ any “special conditions” to be applied in the decision process:

The Regulator is agreeable to WNR having a degree of discretion to operate outside the train decision matrix (for events defined within the matrix) to ensure safe and efficient operations. However, these “special conditions” are to be the exception rather than the rule. WNR will need to detail its proposed authorisation process to manage these “special conditions” in the TMG, and will be required to report to the Regulator on the number and nature of these instances. Other than for reasons of safety, “special conditions” afforded to an operator with multiple trains must not impact on any other operators’ trains;
 - ◇ details on train priorities following an incident or major delay; and
 - ◇ the decision process for events which occur outside of those defined within the matrix.
- The TMG should include reference to train priority and how it applies particularly when conflict arises involving crossing of over-length trains and passenger trains.

6. Need for a long range possession management process

Summary of WNR’s Proposal (section 4.4)

- WNR states that it may, without notice to the operator, perform repairs, maintenance, or upgrading of the network, or take possession of any part of the network, at any time. If repairs, maintenance or upgrading of the network, or taking possession of the network, are reasonably likely to materially affect the scheduled train paths, WNR must, prior to commencement of works:
 - ◇ take all reasonable steps to minimise any disruption to the scheduled train paths;
 - ◇ notify the operator of the works as soon as reasonably practicable; and
 - ◇ use its best endeavours to provide an alternative train path, but need not

obtain the operator's consent to such repairs, maintenance or upgrading, or possession of the network.

Comments from the public consultation process

- The scheduled train paths should not be affected by any routine planned maintenance including both cyclical maintenance and fettling. Only where maintenance is required in response to an emergency, such as track flooding, etc. or to ensure safety after an incident, should any maintenance undertaken by WNR affect scheduled train paths.
- WNR's interference with a scheduled train path to conduct planned maintenance must be regarded as a breach of WNR's obligations to the access party, planned maintenance must be taken into account when establishing the scheduled train path.
- As the infrastructure manager, WNR must have in place a possession management process which outlines what maintenance, upgradings, etc. and subsequent closedowns it intends to put in place.
- WNR should be obliged to advise operators in advance of all maintenance possessions.

Additional information from comments on the Draft of the Determination

- WNR should provide a rolling twelve month forecast of schedule maintenance.
- WNR should provide annual plans and monthly updates on any possessions that are likely to affect scheduled train paths.
- WNR is aware that other track owners have extensive possession management policies and processes and notes for example that in NSW it is a very complicated process. This is largely driven by the fact that traffic density is high and there is no available windows for maintenance.
- WNR proposes a possession management policy as follows:
 - ◇ where the maintenance can be carried out without affecting use of train paths no notice is required;
 - ◇ where WNR has to take possession because of emergencies related to safety or natural events such as fire or flood WNR will advise affected operators as soon as practicable of the circumstance, the likely impact on train paths, and the likely duration of the possession;
 - ◇ where WNR requires possession for maintenance activities which will affect train paths for periods less than 48 hours it will provide a minimum of 2 weeks

notice and will negotiate with the operator(s) for temporary adjustments or changes to train paths to facilitate the possession;

- ◇ where WNR requires possession for either major maintenance activities extending beyond 48 hours or where an upgrading will require changes over a long period of time WNR will give at least six months notice of the works. WNR will also commence negotiations with affected operators from the date of the notice to ensure alternative arrangements are made; and
- ◇ any notice given under this policy will describe the extent and nature of the works, the potential effect on train paths, and what alternative arrangements are proposed.

Regulator's views and comments

- The Regulator requires WNR as the railway owner to have a documented long range possession management process and this should be clearly outlined within the TMG. This must be in a format that is acceptable to the Regulator.
- The long term planning process should include indicators as to the type of repair/ maintenance/ upgrade, anticipated duration of the work, anticipated nature and type of disruption to services, and the method for communication/ consultation on these issues between WNR and operators.
- An annual planning process should provide a more specific set of information regarding the timing, location, duration, disruption, and communication process for the planned work. Where specific train paths are expected to be varied, this information should be made available at the earliest practicable time to the effected parties.
- The Regulator has noted the proposed possession management policy provided by WNR in its response to the Draft of the Determination. The Regulator is of the view that there is an unacceptable disparity between the proposed period of notice to be given by WNR for a maintenance period greater than 48 hours and one that is less than 48 hours. The Regulator has since discussed the matter with WNR and it has been agreed that:
 - ◇ for maintenance periods that are beyond 48 hours – WNR will give at least six months notice;
 - ◇ for maintenance periods that are between 24 to 48 hours (inclusive) – WNR will give at least two months notice; and
 - ◇ for maintenance periods that are less than 24 hours – WNR will give at least two weeks notice.

These notice periods will not apply in an emergency or because of force majeure.

- While the additional information provided by WNR is generally consistent with the Regulator's Determination, WNR will need to incorporate these comments into its revised TMG for the Regulator's approval.

7. Key Performance Indicators and frequency at which the TMG will be reviewed

Summary of WNR's Proposal (sections 5, 6)

- WNR states that it has an on-going internal system for monitoring the compliance with the principles set out the TMG. In the event that an accredited operator has a dispute or complaint as to the interpretation of these guidelines, it will refer it to WNR for resolution.
- Not later than 90 days after the commencement of an access agreement, the parties will meet for the purpose of identifying and agreeing on the means of measuring the performance of each party under the agreement.
- When agreed, the KPIs must be set out in writing signed by both parties. The parties will also agree in writing:
 - ◇ the manner in which, and the frequency with which, the KPIs are to be monitored and recorded;
 - ◇ the consequences in relation to rights and obligations under the access agreement or otherwise of not meeting or of exceeding KPIs; and
 - ◇ any other relevant arrangements relating to the use of KPIs in connection with the access agreement.
- When recorded in writing and signed by the parties the agreed arrangements relating to KPIs will constitute part of an access agreement. The parties may in writing signed by each of them vary the terms of the KPIs. The KPIs are relevant to both parties and must be complied with during the access agreement unless a shorter period is specified. WNR and the operator will monitor the appropriateness of the KPIs.
- The parties must meet when agreed but not less than quarterly for the purpose of discussing and determining actual performance against the KPIs. The parties will jointly determine the appropriateness of the KPIs for the purpose of reward or penalty.
- WNR states that it will formally consult with the Regulator at the end of the initial two years of operation of the TMG to determine whether any amendments are required.

Comments from the public consultation process

- The TMG must set out universal KPIs relating to the network generally and should be required to report its performance as against those indicators to the Regulator on a regular basis. The indicators should deal with:
 - ◇ disclosure by WNR of speed restriction and/or axle load restrictions given by WNR;
 - ◇ disclosure by WNR of the number of delays to scheduled train paths caused by WNR in general operation;
 - ◇ the instances when WNR has used its emergency maintenance powers to affect scheduled train paths; and
 - ◇ a general obligation to report on the performance of WNR as lessee and operator of the track.
- These network wide KPIs should be available to all operators, users and the general public and show how the network is performing and identify any significant failures.
- The TMG should include a requirement to publish network KPIs by major routes on a regular basis. The views that all KPIs are specific to an access agreement is not shared.
- The TMG should be reviewed within one year or the later of the date on which they are first approved by the Regulator or the date on which an access party first commences operations on the Network. The review should include WNR, the Regulator and all parties operating on the network during that period.
- The reference in section 6 should be to “these Guidelines”, rather than “this Guideline”.
- Any amendments or replacement of the TMG must be approved by the Regulator as provided for in Section 43 of the Code.
- The proposal put forward by WNR concerning review of the guidelines is inadequate. The guidelines are in place to ensure equity between the incumbent vertically integrated operator and all third party operators. Any analysis of the effectiveness or otherwise of the guidelines can only be performed in light of a third party operator’s experience on the network. It is recommended that a review of the guidelines be carried out one year after commencement of a third party’s operation on the network. This review is to involve all operators on the network, WNR and the Regulator.
- Any material changes to the policies and procedures must be subject to a review process similar to that undertaken in the development of the National Codes and Australian Standards which includes dispute resolution involving expert

determination.

- It would be useful to establish an ongoing period of review beyond the first two years. It may also be necessary to look at the operation after one year or sooner if access seekers find that this policy is not working.

Regulator's views and comments

- The Regulator will be developing a KPI reporting system in consultation with stakeholders. For the purpose of this Determination it is suffice to note the following KPIs that the Regulator may use to assess the effectiveness of the TMG:
 - ◇ number and percentage of healthy services that exit the network within tolerance;
 - ◇ number and percentage of unhealthy services that do not deteriorate further, within tolerance;
 - ◇ number and percentages of unhealthy services that exit the network within tolerance;
 - ◇ number and percentage of services which are operated in a healthy manner; and
 - ◇ track quality measured by an index with component measures such as rail service level, alignment, twist cross level and gauge variation.
- The Regulator has a number of powers to monitor compliance by WNR with the TMG. Annual audit programs will be the key monitoring tool for assessing compliance.
- The annual independent external audit required for WNR's other access arrangements will include an assessment of WNR's compliance with the TMG. As mentioned in previous Determinations, WNR will need to advise the Regulator who it intends to engage for the purpose of conducting the annual audit at the appropriate time. The Regulator may select and manage the auditor. At the minimum, the Regulator's approval of the scope of the annual audit will be required and the final audit report will be made available to the Regulator and the public.
- The annual independent external audit may be supplemented by special audits, which would be commissioned following the identification of a material complaint.
- Schedule 3 of the Code requires KPIs to be included in WNR's access agreement. WNR has indicated in its draft access agreement that KPIs will be developed, agreed and documented within individual access agreements. These KPIs will be specific to the access agreement and are subject to measurement

and review.

- A statement to confirm the intended inclusion of operator specific KPIs within individual access agreements should be included in the TMG.
- Under Section 12(1)(a) of the Act, the Code must be subject to a full public consultative review process on the third anniversary of its commencement. The Code came into operation on 1 September 2001 and the Regulator intends using the review of the Code at that time to also trigger a review of, among others, the TMG.
- Under Section 43(5) of the Code, the TMG may be amended or replaced by WNR with the approval of the Regulator.
- Under Section 43(6) of the Code, the Regulator may, by written notice, direct the railway owner to amend the TMG; or to replace them with another TMG as determined by the Regulator; and the railway owner must comply with such a notice.
- Stakeholders have the ability to express any concern which may arise at any time. The Regulator will investigate such claims and if the need arises the Regulator will review the TMG prior to 1 September 2004. Equally, any recommendation from WNR to amend the TPP at the end of the initial two years will be considered by the Regulator.
- Delete the word “accredited” in the first paragraph of section 5 as it should not matter whether the operator is or is not accredited.

8. Additional issues raised in the public comments on the Draft of the Determination

Comments from the public consultation process

- A provision be added in the TMG to enable an access seeker to engage a third party as its agent or contractor to exercise the rights or the performance of any obligations required by the TPP, TMG and access agreement.
- In section 7.1.6(e), the reference to “this access agreement” is incorrect. The reference should be to “these Guidelines or any access agreement”.
- Section 7.1.6(h) makes no mention or provision in regard to the potential cost impact of changes to communication equipment. These costs can be substantial and stakeholders should be involved in a process of meaningful consultation in regards to any proposed changes that includes a consideration of the commercial effects of such changes.

Regulator's views and comments

- The Code defines an “operator” as an entity to which access is provided under an access agreement but requires the operator to show that either its management and staff have the necessary knowledge and experience, or it will be able to, and will, engage the services of another entity whose management and staff have the necessary knowledge and experience to carry on the proposed rail operations (Section 14(1)(a) of the Code).

In effect, the Code provides for the likelihood of an access seeker engaging a third party as its agent or contractor who is accredited to carry on the proposed rail operations. As a matter of clarification, WNR should, in section 1, acknowledge the right of an access seeker to appoint or engage a third party as its agent or contractor to exercise the rights or the performance of any obligations required by the TMG.

- Replace the reference to “this access agreement” in section 7.1.6(e) with “these Guidelines or any access agreement”.
- WNR should include a stakeholders consultation process in regards to any proposed upgrade of communication equipment which will require expenditure by the access parties in section 7.1.6(h).

4. Regulator's Required Amendments

The assessment in this Determination has addressed each section of WNR's proposed TMG dated November 2001. The refinements and additions that are being sought to WNR's Proposal have accordingly been directed to the appropriate section of the submission.

In subsequent discussions, WNR has agreed to implement a number of the suggested changes detailed below (refer to WNR's submission on the Draft of the Determination). Even so, these required amendments are provided in full in the following table so that stakeholders can gauge the changes that are being required of WNR on its Train Management Guidelines submission as lodged with the Regulator in November 2001.

It is the view of the Regulator that the required amendments below appropriately address and balances the differing needs of WNR, access seekers and the community under Section 20(4) of the Act. In addition, the required amendments detailed below have also taken into account the issues to be considered by the Regulator under Section 41(b) of the Code, being:

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

The adoption of these required amendments in the Train Management Guidelines 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.

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
<p><i>Section 1</i> <i>Introduction</i></p> <p>WestNet Rail Pty Ltd ("WestNet") is the "manager" of the leases of the freight rail infrastructure network in WA. WestNet Rail recognises its obligation to make certain parts of the rail network available for access by third party operators.</p> <p>WestNet Rail has developed Train Management Guidelines in accordance with Section 43 of the Code as a statement of principles, rules and practices which will be applied in the real time management of services. These guidelines will apply in a non-discriminatory way between all users of the network so as to maintain the order of priority of the scheduled train paths. These guidelines will be an appendix to any future</p>	<p><i>Section 1</i></p> <ul style="list-style-type: none"> ▪ State that the TMG will apply to all users of the network regardless of whether access is made inside or outside the Code. ▪ Acknowledge the right of an access seeker to engage a third party as its agent or contractor to exercise the rights or the performance of any obligations required by the TMG.

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
access agreement.	
<p><i>Section 2</i> <i>Definitions</i> WestNet Rail provides definitions for thirteen (13) aspects related to Train Management Guidelines:</p> <ul style="list-style-type: none"> (i) Access Agreement (ii) Accredited Operator (iii) Government Lease (iv) Instructions (v) Leased Railway Infrastructure (vi) Network (vii) Operator (viii) Scheduled Train Paths (ix) Service (x) Train Control Directions (xi) Train Manifest (xii) Train (xiii) WestNet 	<p><i>Section 2</i></p> <ul style="list-style-type: none"> ▪ Review and revise additional definitions to ensure all terms which require a clear definition are included and are adequate in addressing the comments received from the public submissions. ▪ Ensure all terms and definitions are consistent with other documents under the Code, in particular the TPP and Access Agreement. ▪ Specifically, definitions should be included for the following terms: <ul style="list-style-type: none"> ◊ Access Manager (section 4.1); ◊ Access Term (section 7.1); ◊ Dangerous Goods Code (section 7.2); ◊ Environmental Condition (section 7.2); ◊ Environmental Damage (section 7.2); ◊ Instruction 141 (section 7.1); ◊ Late (section 3.1); ◊ Operator's Procedures (section 7.1); ◊ Rail Access Management System (section 4.1); ◊ Special Train Notices (section 4.1); ◊ Train Control Centre (sections 3.1, 7.1); ◊ Train Controller (section 4.1); ◊ Train Path (sections 3.1, 4.1, 4.2, 7.1.3, 7.1); ◊ WestNet Customer Services Officer (section 4.1); ◊ WNR's Network Rules (sections 3.1, 4.6, 7.1); and ◊ Working Timetables (section 4.1). ▪ Specifically, definitions which should be modified are as follows: <ul style="list-style-type: none"> ◊ "Instructions": delete the words "WestNet considers upon the exercise of reasonable care" in (b); WNR will need to provide examples of instructions to "prevent or to minimise the effect of a material breach of an Access Agreement" in (j); ◊ "Network": substitute the word "access" for "areas"; ◊ "Operator": provide a definition; ◊ "Train Control Directions": delete the words "considered by WestNet upon the exercise of reasonable care to be" in (a). ▪ Delete all references to "Government Lease". ▪ In the definition of "instructions", provide examples of instructions to prevent or to minimise the effect of a material breach of an access agreement.
<p><i>Section 3</i> <i>Infrastructure Issues</i></p>	<p><i>Section 3</i></p>

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
<p>Before a service can operate on the network there are two essential criteria:</p> <p>(a) The operator must have an access agreement and have fulfilled all the conditions in that agreement especially those related to insurance and is an accredited operator.</p> <p>(b) Provide WNR with the information required for a train manifest. Once these conditions are satisfied the service will be admitted to the network and managed in accordance with the principles.</p> <p>3.1 Use of the Network in accordance with the Scheduled Train Paths</p> <p>WNR will ensure that services run according to scheduled train paths so that a service which enters the network on time will exit the network on time, subject to:</p> <p>(a) safety considerations;</p> <p>(b) matters outside the reasonable control of WNR, which affect the ability of WNR to provide the scheduled train path;</p> <p>(c) advice from the operator within 10 minutes of scheduled departure time that it will be ready for departure on time;</p> <p>(d) presentation of the operator's train on time; and</p> <p>(e) emergencies affecting the services.</p> <p>A train which is late entering the network or delayed within the network will be managed with WNR's reasonable endeavours to make up time dependent upon:</p> <p>(a) the degree of lateness;</p> <p>(b) conformance to network operating requirements;</p> <p>(c) how the train has performed in relation to the section run times as it proceeds; and</p> <p>(d) WNR's obligations in relation to other trains.</p> <p>WNR will use its best endeavours to accommodate a service which is running early or late, is presented at the point of entry to the network late or is presented at the point of entry to the network more than 15 minutes early by providing a train path for that service at WNR's first available opportunity.</p> <p>Both WNR and the operator will use their best endeavours to:</p> <p>(a) ensure that such services which are running or presented late recover the lost time; and</p> <p>(b) ensure that such services which are presented more than 15 minutes early depart the network no later than the scheduled time.</p> <p>WNR may issue instructions to the operator and these instructions may include but are not limited to instructions or directions:</p>	<ul style="list-style-type: none"> ▪ The words "policies and practices of these Guidelines" be added at the end of section 3(b). ▪ A reference should be made to section 4.2 within section 3.1. ▪ The reference should be 15 minutes and not 10 minutes in section 3.1(c).

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
<p>(a) to cease use of a scheduled train path by the service and for the service to proceed over such path on the network as WNR nominates;</p> <p>(b) to continue use by the service of the network subject to such variation of the applicable scheduled train path or the service or the composition or quality of trains as WNR nominates;</p> <p>(c) to cause the service to proceed to a point on the network and stand there until WNR issues a further instruction or direction in relation to the service; or if the service operates outside of its scheduled train path, to delay or redirect the service to allow access to the network by another operator of a train (including if relevant, WNR) whose service would, not for the delay or redirection of the operator's service, be delayed or further delayed.</p> <p>In these circumstances, WNR will:</p> <p>(a) in giving any instruction endeavour to minimise disruption to the operator's services; and</p> <p>(b) other than in an emergency, consult with the operator in giving an instruction concerning the use of an operator's locomotive and its crew for the purpose of assisting in the clearing of a network blockage.</p> <p>(c) If an instruction which varies an operator's train paths is intended by WNR to be permanent, such permanent effect of the instruction will not take effect until the appropriate procedures for permanent variation of a train path has been satisfied. Until the procedure has been satisfied such instruction will have a temporary effect.</p> <p>(d) As soon as is reasonably practicable and in any event before an instruction becomes effective, WNR must give to the operator a written copy of the instruction if such instruction is ordinarily given in writing by WNR to operators.</p> <p>The operator will comply with all instructions and will promptly inform all relevant train crew of those instructions and any changes to them. The operator will also generally inform all relevant train crew of WNR's Network Rules and any general notices and other information notified to the operator by WNR and will promptly inform the operator of any changes made by WNR. If an instruction is a train control direction, it must be complied with immediately. Unless the train control centre gives an instruction that is a train control direction, the operator need only comply with an instruction if it was given a reasonable time before the required time for compliance.</p> <p>The operator must comply with all instructions in such a way as to reasonably minimise disruption</p>	

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
<p>to any other operator's use of the network. WNR is not responsible for any delay suffered or cost incurred by the operator in complying with a proper instruction of WNR, and the operator releases WNR from any claim arising from such compliance.</p> <p>The operator is not responsible for any delay suffered or cost incurred by WNR in the operator complying with a proper instruction of WNR, and WNR releases the operator from any such claim arising from such compliance.</p> <p>3.2 Network Blockage</p> <p>A train failure which fouls the network and blocks the passage of trains will be cleared using alternative locomotives and crews at the discretion of WNR. The strategy adopted will minimise the time the network will be blocked. As an example, assisting locomotives and crews may be from:</p> <p>(a) other trains near the vicinity which are being delayed by the failure; or</p> <p>(b) the nearest locomotive depot.</p> <p>The actual source will be dependent on the location of the failure with the objective of minimum disruption to the network.</p> <p>The failed train will be cleared from the main line to the nearest location where it does not impact on train running and the operator will then be responsible for planning repairs and alternative pathways in conjunction with WNR.</p> <p>3.3 Operators Recovery Plan</p> <p>In clearance of a failed operator's train from the network, the operator will be consulted to consider alternatives which may include:</p> <p>(a) a reduction of loading;</p> <p>(b) continuing at reduced speed;</p> <p>(c) arranging an alternative locomotive and continuing; or</p> <p>(d) amalgamating trains.</p> <p>3.4 Operator and Track Access Consultation Protocols</p> <p>In the event of WNR becoming aware of a network failure or potential deviation from the scheduled train path, whereby the predicted exit time from the network will be at variance to the scheduled exit time, the operator will be advised, at the earlier possible time, of the magnitude of the variance and revised time of exit from the network.</p> <p>The timing of this advice will be as agreed between the operators and WNR, and should at least take into account the magnitude of the</p>	<ul style="list-style-type: none"> ▪ Detail of how the strategy to minimise the time the network will be blocked needs to be provided together with the obligations of the parties in achieving the intended outcome. ▪ Discuss the cost of clearing the blockage, cost recovery, indemnity provisions, and consultation requirements. In particular, the details of: <ul style="list-style-type: none"> ◇ how the network blockages will be cleared; ◇ what parties are responsible for what aspects of the recovery process; ◇ the principles by which costs are to be quantified and recovered, where appropriate; ◇ what indemnities are required and provided; and ◇ operators' obligations. ▪ Consistency in this area between the TPP, TMG and the draft access agreement needs to be ensured.

WNR's proposed Train Management Guidelines	Changes required to WNR's Train Management Guidelines
<p>deviation from schedule and the duration of the remaining journey on the network.</p> <p>In the event of the operator becoming aware of a network failure or potential deviation from schedule, the operator shall advise WNR at the earliest possible time of the event and the magnitude of the deviation.</p> <p>To facilitate the above communications process, the operator and WNR shall provide for a 24 hour communications link unless otherwise agreed.</p>	
<p><i>Section 4</i> <i>Operations Conflict Resolution Procedures and Protocol</i></p> <p>4.1 Real Time Allocation of Train Paths</p> <p>Scheduled Train Paths will have been established under access agreements and will be promulgated by:</p> <p>(i) issuing of working timetables; (ii) issuing of special train notices via the Rail Management System (The WNR computer system records all train movements and related data on the network) where the train path is not permanently scheduled.</p> <p>If an operator requests an ad-hoc train path or an alternative train path the new train path will be issued under the authority of the Access Manager by a WNR Customer Services Officer or a Train Controller as appropriate.</p> <p>4.2 Resolution of Prioritisation scheduled to Train Paths or Trains</p> <p>In the event of a conflict with scheduled train paths arising from an unhealthy train (one which enters the network late or loses time en-route) the train controller shall use the matrix set out in Section 4.3</p> <p>4.3 General Principles for Train Management</p> <p>This section includes general responsibility statements for All; WNR; and Operators as well as a train management matrix.</p>	<p><i>Section 4</i></p> <ul style="list-style-type: none"> ▪ Incorporate the revised Matrix. A statement dealing with appropriate training and conformance with the use of the Matrix should also be included. ▪ Expand the section to take into account the need for a clearer and more comprehensive coverage of the process. The following items should be included: <ul style="list-style-type: none"> ◇ a definition of "on-time" (healthy), "late" (unhealthy), and trains running "ahead"; ◇ a definition of the tolerances allowed on various train paths, including running time tolerances; ◇ a statement of train priority; ◇ any "special conditions" to be applied in the train decision matrix. Detail WNR's proposed authorisation process to manage these "special conditions" and how it intends to report these instances to the Regulator; ◇ details on train priorities following an incident or major delay; and ◇ the decision process for events which

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<p>4.4 Maintenance Provisions</p> <p>WNR may, without notice to the operator, perform repairs, maintenance or upgrading of the network, or take possession of any part of the network, at any time. If these are likely to materially affect the scheduled train paths, WNR must, prior to commencement of works:</p> <ol style="list-style-type: none"> (a) take all reasonable steps to minimise any disruption to the scheduled train paths; (b) notify the operator of the works as soon as reasonably practicable; and (c) use its best endeavours to provide an alternative train path, but need not obtain the operator's consent to such repairs, maintenance or upgrading, or possessions of the network. <p>WNR will at all times maintain the network (but only in so far as the network is relevant to the operator's scheduled train path) to the highest of:</p> <ol style="list-style-type: none"> (a) the standard existing as at the commencement date of the infrastructure lease; or (b) if WNR is required to be an accredited owner, the minimum standard required to maintain its accreditation as a track owner; or (c) any other standards as the parties may agree. <p>When required by the condition of the network or any part of the network, WNR may (to the extent of such requirement only) give notice of speed and weight restrictions and the operator must comply with such a notice.</p> <p>4.5 Management of Emergencies</p> <p>In the event of an emergency which requires WNR to close all or part of the network, WNR will notify all affected operators as soon as practical of:</p> <ol style="list-style-type: none"> (a) the nature of the incident (b) the likely effect and duration of the effect on scheduled train paths (c) develop with the operator(s) a recovery plan in accordance with the provisions of the relevant access agreement(s) <p>4.6 Management of daily issues related to Train Operations</p> <p>Daily issues (such as the imposition of temporary speed restrictions) will be managed in accordance</p>	<p>occur outside of those defined within the matrix.</p> <ul style="list-style-type: none"> ▪ Include reference on train priority and how it applies particularly when conflict arises involving crossing of over-length train and passenger trains. ▪ Provide a more detailed description of WNR's maintenance and possession management process. ▪ State that WNR will provide operators with a time profile of the works to be undertaken and the length of potential disruptions in a format that is acceptable to the Regulator. In instances when WNR is unable to meet an identified time commitment to repairing, upgrading or maintaining the track, it needs to advise the operators of its revised time profile as soon as possible. <ul style="list-style-type: none"> ▪ Include an appropriate definition of "WestNet Rules" and advise where stakeholders can

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<p>with:</p> <p>(a) the WNR Rules; and</p> <p>(b) the relevant access agreement.</p>	<p>access a copy of these rules.</p>
<p><i>Section 5</i> <i>Disputes and Performance Monitoring</i></p> <p>WNR has an ongoing internal system for monitoring the compliance with the principles set out in the TMG. In the event that an accredited operator has a dispute or complaint as to the interpretation of these guidelines, it will refer it to WNR for resolution. In the event the accredited operator has been unable to resolve the dispute or complaint within 21 days of its lodgement with WNR, it will be referred to the Office of the Rail Access Regulator for that office to investigate as appropriate.</p> <p>No later than 90 days after the commencement of an access agreement, the parties will meet for the purpose of identifying and agreeing on the means of measuring the performance of each party under the agreement. The agreed means are referred to as key performance indicators.</p> <p>When agreed, the KPIs must be set out in writing signed by both parties. The parties will also agree in writing:</p> <p>(a) the manner in which, and the frequency with which, the KPIs are to be monitored and recorded;</p> <p>(b) the consequences in relation to rights and obligations under the access agreement or otherwise of not meeting or of exceeding KPIs; and</p> <p>(c) any other relevant arrangements relating to the use of KPIs in connection with the access agreement.</p> <p>When recorded in writing and signed by the parties the agreed arrangements relating to KPIs will constitute part of an access agreement. The parties may in writing signed by each of them vary the terms of the KPIs. The KPIs are relevant to both parties and must be complied with during the access agreement unless a shorter period is specified. WNR and the operator will monitor the appropriateness of the KPIs.</p> <p>The parties must meet when agreed but not less than quarterly for the purpose of discussing and determining actual performance against KPIs. The parties will jointly determine the appropriateness of the KPIs for the purpose of reward or penalty.</p>	<p><i>Section 5</i></p> <ul style="list-style-type: none"> ▪ Indicate that KPIs will be developed by the Regulator in consultation with stakeholders to assess the effectiveness of the TMG. ▪ Include a statement to confirm the intended inclusion of operator specific KPIs within individual access agreements. ▪ Explain that WNR's compliance with the TMG will be subjected to an annual independent external audit. The Regulator may select and manage the auditor with costs paid by WNR. At the minimum, the Regulator's approval of the scope of the audit will be required and the final audit report will be made available to the Regulator and the public. ▪ The Regulator can also commission special audits on any TMG issue or area where additional assurance is sought.
<p><i>Section 6</i> <i>Consultation and Review</i></p> <p>WNR will formally consult with the Regulator at the</p>	<p><i>Section 6</i></p> <ul style="list-style-type: none"> ▪ Add "Stakeholders have the ability to express

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<p>end of the initial two years of operation of this Guideline to determine whether any amendments are required.</p>	<p>any concern to the Regulator which may arise at anytime and the Regulator will investigate such claims".</p> <ul style="list-style-type: none"> ▪ State that the Regulator has the power under the Code to amend the TMG at any time and access seekers and operators can at any time request the Regulator to consider amendments.
<p><i>Section 7</i> <i>Annexures</i></p> <p>7.1 Control and Management of Access to the Network</p> <p>7.1.1 Network management Control of the network and management of access to the network subject to the Act and Code, remains at all times with WNR.</p> <p>7.1.2 WNR's Warranty of Entitlement to grant access Subject to the provision of the Government Lease WNR will warrant that it is entitled to grant to the operator the rights of access to the network as specified in an access agreement.</p> <p>7.1.3 Network Access Provider's Obligations WNR will at all times during the term of an access agreement:</p> <ol style="list-style-type: none"> (a) undertake the function of train control over the network; (b) comply with the TMG; (c) safely and efficiently operate the network so that any permitted use of the network by the operator is facilitated promptly and effectively in accordance with the access agreement; (d) make the network available to enable the operator to use the scheduled train paths granted by WNR on agreed terms; (e) maintain and operate the train control centre and a communication system for the purpose of communication with the operator and other users of the network, and to facilitate the operator's access to that communication system; (f) use its reasonable endeavours to provide the operator with details, as soon as reasonably practicable, of all operating incidents (including an Incident) which has affected or could potentially affect the ability of any train to retain its train path, or else affect its security or safety or the security and safety of the freight or passengers; (g) comply with all applicable Acts of the Commonwealth and State Parliaments, subordinate legislation, municipal by-laws and other laws in any way applicable to WNR's management and control of the network. 	<p><i>Section 7</i></p>

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<p>7.1.4 Operator's Warranty in relation to rolling stock standards The operator will warrant at all times during an access agreement that:</p> <p>(a) each train operated by the operator on the network is at all times in a good and safe operational condition; and</p> <p>(b) all of the equipment used by the operator on or in connection with the network is maintained to a sufficient standard of safety and to a sufficient level of operational efficiency;</p> <p>(c) but in any case to standards at least as high as those set out in all relevant volumes as amended or superseded from time to time of:</p> <p>(i) the "Railways of Australia Manual of Engineering Standards and Practices"; or</p> <p>(ii) the draft code of practice on Rolling Stock issued or published by the Australian Railways Association; or</p> <p>(iii) if that draft code of practice on rolling stock is subsequently endorsed by the Commonwealth of Australia (including without limitation any of its governmental departments or authorities) for national implementation on the network, then such code of practice once it is so endorsed.</p> <p>7.1.5 Operator's Warranty in Relation to Train Crew The operator will warrant at the commencement date and at all times during an access term that each train operated by the operator on the network will be operated by a train crew consisting of a person or persons who:</p> <p>(a) are qualified under WNR's Network Rules and have an appropriate track access permit in accordance with WNR's Network Rules and in particular instruction 141; and</p> <p>(b) have knowledge of the route over which the train crew will operate the train in accordance with the operator's procedures; and</p> <p>(c) be qualified in the operation of the rolling stock used to operate the train in accordance with the operator's procedures.</p> <p>7.1.6 Operator's Obligations The operator must at all times:</p> <p>(a) use its best endeavours to ensure that its use of the network complies with the train paths applicable to each service;</p> <p>(b) comply with all WNR's train control directions immediately;</p> <p>(c) conduct itself in accordance with instructions issued;</p> <p>(d) if it becomes aware that material non-compliance by a service with the applicable scheduled train path (or any other train path which is provided) has occurred or is a reasonable possibility, notify the train control</p>	<ul style="list-style-type: none"> ▪ Replace the reference to "this access agreement" in section 7.1.6(e) with "these Guidelines or any access agreement". ▪ Include a stakeholders consultation process in regards to any proposed upgrade of communication equipment which will require expenditure by the access parties in section 7.1.6(h).

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<p>centre immediately;</p> <p>(e) ensure that its use of the network is carried out in such a way as to minimise obstruction of the network and so that use of the network by any other user authorised by WNR is not prevented or delayed (other than through use of the network in accordance with this access agreement or through proper compliance with an instruction validly given);</p> <p>(f) comply with all applicable Acts of the Commonwealth and State Parliaments, subordinate legislation, municipal by-laws and other laws in any way applicable to operation of the services or its use of the network;</p> <p>(g) not materially change, alter, repair, deface, damage or otherwise affect any part of the network;</p> <p>(h) provide and maintain communications equipment which is compatible with the equipment used in the train control centre and use such equipment to communicate with the train control centre. If WNR proposes to change communications equipment in the train control centre and the proposal will result in the operator having to replace or upgrade its communications equipment, WNR will give reasonable notice to the operator and the operator will replace or upgrade the communications equipment to be compatible with the equipment used in the train control centre;</p> <p>(i) provide WNR any information related to the operation of the services (excluding commercial information) as WNR reasonably requires to enable it to properly perform its functions and discharge its obligations to the operator, other operators, its owner and the public;</p> <p>(j) provide to WNR a train manifest in a format acceptable to WNR for each service not less than 15 minutes prior to that service commencing use of the network and provide written notice of any detail of the train manifest which changes during the course of the operation of the service over the network; and</p> <p>(k) inform WNR as soon as reasonably practicable of any cancellation or intended cancellation by the operator of any service.</p> <p>7.2 Environmental and Dangerous Goods</p> <p>Each party must comply with all environmental laws and with their respective environmental policies (in so far as they comply with the law), including all applicable laws and lawful policies dealing with dangerous goods.</p> <p>7.2.1 Notification of Carriage of Certain Materials Other than in the case of trains which are wholly</p>	

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<p>passenger trains, the operator must include in all train manifests such detail in relation to the identification of dangerous goods as is required by the Dangerous Goods Code and as is otherwise reasonably required by WNR (on terms not inconsistent with the Dangerous Goods Code)</p> <p>7.2.2 Notification of Incident involving Dangerous Goods Other than in the case of trains which are wholly passenger trains, the operator will provide to WNR details, at the earliest practicable time after the operator becomes aware of all incidents (including non-compliance with relevant codes, regulations, by-laws or other statutory provisions, whether or not an Incident) involving dangerous goods including but not limited to any spillage, leakage or container or package damage associated with the movement of any train on the network.</p> <p>7.2.3 Notification of Environmental Condition Where:</p> <p>(a) WNR becomes aware that, as a result of the activities of the operator under this agreement, an environmental condition exists or has occurred and WNR reasonably considers that action or intervention is required to prevent, mitigate or remedy that environmental condition; or</p> <p>(b) WNR is given a direction by competent authority that some action or intervention is required to prevent, mitigate or remedy an environmental condition resulting from the activities of the operator under this agreement,</p> <p>then WNR must inform the operator of the relevant requirements and, where practicable, any steps which WNR reasonably considers will be necessary to prevent, mitigate or remedy the situation, and the operator must immediately, or as soon as reasonably practicable after receiving such notice, implement such requirements and steps and any other necessary action so that the environmental condition is no longer present or the environmental damage is rectified.</p>	

5. Determination

The proposed Train Management Guidelines submitted by WNR dated November 2001 is not approved. WNR will be required to make the amendments as tabled in section 4 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 43(4) of the Code.

Ken Michael

ACTING RAIL ACCESS REGULATOR

31 October 2002

Appendix 1 – Submissions received from the public consultation process

1. Alcoa World Alumina Australia
2. Australian Rail Track Corporation
3. AWB Ltd. - The Grain Pool of Western Australia
4. Freight Corp
5. National Rail
6. Portman Iron Ore Ltd
7. WAGR
8. Worsley Alumina

Appendix 2 – Submissions Received On The Draft Of The Determination

1. Alcoa World Alumina Australia
2. Australian Rail Track Corporation
3. Pacific National
4. Portman Iron Ore Ltd
5. WestNet Rail
6. Worsley Alumina