

# Train Path Policy



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## 1. INTRODUCTION

### 1.1 Background

WestNet Rail Pty Limited (“WestNet”), a wholly owned subsidiary of the Australian Railroad Group Pty Limited (“ARG”), is the manager of the leases of the freight rail infrastructure network in Western Australia, previously operated by the State Government owned Westrail.

The Railways (Access) Code 2000 (“the Code”) requires certain parts of the rail network managed by WestNet to be made available for access by third party rail operators. Schedule 1 of the Code lists the sections of the WestNet rail network covered by the Code.

With the appointment of an Acting Rail Access Regulator with effect from 1 September 2001 and the proclamation of the Code, the Code is now effective in all respects.

### 1.2 Relevance of Train Path Policy

The Train Path Policy is a statement of Policy in accordance with Section 44 (2) (a) and (b) of the Code relating to the allocation of train paths and the provision of access to train paths that have ceased to be used. The Regulator must approve or determine the Policy after a period of public consultation.

The Train Path Policy 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. This Policy will form an appendix to future Access Agreements.

The Policy will be managed in such a way as to encourage maximum use of the Network.

## 2. DEFINITIONS

1. “**Access Agreement**” means an agreement entered into by an Operator and WestNet governing access for the Operator to run Services on the Network.
2. “**Accredited Operator**” means an Operator who is Accredited or taken to be Accredited under the Rail Safety Act.
3. “**Government Lease**” means the Rail Freight Corridor Land Use Agreement (Standard Gauge) and Railway Infrastructure Lease dated 17 December 2000 and the Rail Freight Corridor Land Use Agreement (Narrow Gauge) and Railway Infrastructure Lease dated 17 December 2000 entered into by WestNet and other parties.
4. “**Code**” means the Railways (Access) Code 2000.
5. “**Conditional Train Paths**” means the entitlement of an Operator to use the Network between agreed locations at times which are not in conflict with the operator of Scheduled Train Paths that exist for that part of the Network and which are seasonal or vary over time because of the nature of the operations.



6. **“Leased Railway Infrastructure”** means that part of the Leased Railway Infrastructure (as defined in the Government Lease) associated with the Network.
7. **“Network”** means the track and infrastructure controlled by WestNet Access has been granted to an Operator to operate Services under an Access Agreement.
8. **“Master Control Diagrams”** cover specific parts of the Network and show;
  - (i) all train movements scheduled and included in the working timetable as permanent train movements (Scheduled Train Paths);
  - (ii) all train movements which have been proposed and agreed and for which there is a contractual agreement which reserves that path for a Network Operator (Conditional Train Path);
  - (iii) all planned train movements for which advice has been given to the Operator that the path for the train movement is available and able to be practically operated but for which no contractual agreement has been reached.
9. **“Operator”** means the Operator or Operator’s which have access to the WestNet Network.
10. **“Scheduled Train Paths”** means the entitlements of the Operator to use a Train Path on the Network between the times and between the locations set out in the Access Agreement (and as amended or varied permanently in accordance with the Access Agreement and may be published in the Working Timetables, in graphical form on a Master Control Diagram or an electronically or other printed form.)
11. **“Service”** means a Train run by the Operator using the Network by which the Operator provides railway freight or passenger service.
12. **“Train”** means a locomotive and with or without wagons used to operate Services.
13. **“Train Path”** is an entitlement to operate a Service on the Network and has departure, transit and arrival time between the entry and exit points on the Network. A Train Path will be described in the relevant Access Agreement.
14. **“WestNet”** means WestNet Rail Pty Limited.
15. **“Unscheduled Train Paths”** means Train Paths recorded on the Master Control Diagram which;
  - (a) Provide for the commencement of a Schedule Train Path within 6 months of it being placed on the Master Control Diagram; or
  - (b) Provide for the use of a Scheduled Train Path on a seasonal or agreed intermittent basis



### **3. MANAGEMENT OF TRAIN PATHS**

#### **3.1 Master Train Plan**

WestNet will maintain a Master Control Diagram for all routes subject to the Code. Initially these Master Control Diagrams will be those in existence at 1 September 2001 which recognize existing contractual arrangements for Access in place at that time.

#### **3.2 Allocation of Train Paths**

The Code provides a process for proponents to seek access to the Network for conducting train operations. There are various outcomes in relation to this process, one of which is that successful access seekers will obtain an entitlement to a train path. Access seekers are encouraged to review the Code including Sections 7, 8 and 9. It is also possible for proponents to seek a train path by negotiation with WestNet outside the provisions of the Code.

The Code provides for a process of negotiation and in certain circumstances, arbitration of a dispute can occur. Access seekers are encouraged to review Part 3 of the Code in this regard.

At the commencement of an Access Agreement the initial Scheduled Train Paths will have been negotiated between the parties in accordance with the Code or on a commercial basis. These will be recorded in a schedule to the Access Agreement and be amended from time to time in accordance with this Policy and the Access Agreement.

If the nature of the business that the Operator seeks a Train Path is seasonal in nature, or for which the locations to and from which the Services may operate are also variable on a daily or less frequent basis, the Access Agreement may specify an entitlement to Unscheduled Train Paths.

This entitlement will describe those parts of the Network over which the Unscheduled Train Paths will apply and any conditions that will apply to those entitlements. The application of an Unscheduled Train Path entitlement cannot be used to alter or override a Scheduled Train Path.

WestNet may create Conditional Train Paths at the request of an Operator for two purposes. Firstly, if an Operator requests a Train Path and can demonstrate a contractual arrangement which would require the Operator to run Services within 6 months the Train Path will be added to the Master Control Diagram up to 6 months before the service is scheduled to operate as a Conditional Train Path.

Secondly, if an Operator requests a Train Path which is seasonal in nature (such as for grain services) the Train Path may also be added to the Master Control Diagram as a Conditional Train Path. In this case, the Access Agreement must specify the conditions required in terms of use and it will only remain as a Conditional Train Path if the conditions of the Access Agreement are met.



### **3.3 Examples of Temporary Variations of Train Paths by the giving of Instructions by WestNet**

The Operator's Train Paths may be temporarily varied by the giving of Instructions for the purpose of preventing any actual or potential:

- (i) breach of the WestNet's Network Rules by the Operator or of similar safety requirements by other Operators on the Network;
- (ii) material damage to the Network or any associated facility;
- (iii) injury to any person or damage to any property; or
- (iv) delay to the progress of Services on the Network (but only insofar as any trains operated by a third party have priority over the Operator's trains having regard to the Train Management Guidelines.); or
- (v) for the purpose of preventing, or in response to, any actual or threatened breach by the Operator of any of its material obligations under the Access Agreement.

The Instructions may comprise, but need not be confined to, Instructions in one or more of the following terms;

- (i) to cease use of a Train Path by the Service and for the Service to proceed over such path on the Network as WestNet nominates;
- (ii) to continue use by the Service of the Network subject to such variation of the applicable Train Path or the Service or the composition or quality of Trains as WestNet nominates;
- (iii) to cause the Service to proceed to a point on the Network and stand there until WestNet issues a further Instruction in relation to the Service; or
- (iv) 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 whose service would, but for the delay or redirection of the Operator's Service, be delayed or further delayed.



### **3.4 Permanent Variations to Scheduled Train Paths by Agreement**

The procedure to be followed by the parties if it is intended that a Scheduled Train Path is to be permanently varied is set out below.

A Scheduled Train Path may be varied for the remaining term of an Access Agreement (or for such other duration as may be agreed) if one party to the Agreement (“Requesting Party”) sends a notice to the other party (“Notified Party”) stating:

- (i) that the Requesting Party wishes to vary the use by the Operator of a Scheduled Train Path;
- (ii) the length of time such variation will be in force; and
- (iii) the reason or reasons for the proposal by the Requesting party; and
- (v) The Notified Party consents to the Requesting Party’s proposed variation, such consent to be withheld only upon reasonable grounds (save that the Operator cannot withhold consent in the case of variations required by reason of WestNet’s obligations relating to safety of the Network).

The Requesting Party must give not less than 30 days notice of a variation request.

The Notified Party’s response as to whether it consents or not to the Requesting Party’s notice given must be given to the Requesting Party within 28 days of such notice being received by the Notified Party or within such shorter time if reasonably practicable. If the Notified Party’s response is to refuse consent, the Notified Party must within such time also provide full reasons in writing to the Requesting Party.

### **3.5 Repairs, Maintenance and Upgrading of the Network**

WestNet 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, WestNet must, prior to commencement of the works:

- (i) take all reasonable steps to minimise any disruption to the Scheduled Train Paths;
- (ii) notify the Operator of the works as soon as reasonably practicable; and
- (iii) 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.



Possession of the Network means closure of the relevant part of the Network to all traffic for the purpose of effecting repairs, maintenance or upgrading. WestNet will consult with the Operator a reasonable time before taking possession of the Network (except in the case of an emergency) with a view to efficient possession planning and with a view to minimising disruption to Services.

### **3.6 Removal of Train Path for Under-utilisation**

WestNet has the right, by notice in writing to the Operator, to delete any Scheduled Train Path from the Schedule if the Service using that Scheduled Train Path is not operated for more than 3 consecutive weeks at any time and, after WestNet has given the Operator notice of that fact, the Operator fails to operate the Service for more than 6 weeks in aggregate in the period of 6 months from the date of WestNet's notice.

Other than if the parties agree to substitute an alternative Train Path, a Service has not been operated if the Operator has failed:

- (i) to present a Train at the scheduled entry point onto the Network; or
- (ii) to operate the relevant Train so that it completes its full journey,

in conformance with the locations, days and times set out in the Scheduled Train Paths applicable to such Service, in any circumstances other than because of Force Majeure.

### **3.7 Review of Scheduled Train Paths**

WestNet may at its discretion by written notice given to the Operator cause a Scheduled Train Path to be reviewed in a bona fide manner by the parties by comparing the stated departure and arrival times for the Scheduled Train Path with the performance during the preceding continuous 3 month period of the actual Trains using or purporting to use that reviewable entitlement ("3 month history").

If on such comparison of the Scheduled Train Path with the 3 month history the departure or arrival times for a Train using or purporting to use the Scheduled Train Path differ in material respects, the parties will negotiate in good faith to amend the Scheduled Train Path so that the Scheduled Train Path reflects, as closely as is reasonably practicable, the 3 month history.

Nothing compels WestNet to offer a Train path to an Operator if;

- (i) such Train Path is unavailable by reason of contractual obligations owed by WestNet to any person (including the Operator); or
- (ii) to do so would materially adversely impact on WestNet's ability or opportunity to efficiently and safely manage the Network.

Nothing compels the Operator to accept a Train path offered by WestNet if contractual obligations owed by the Operator to any person (including WestNet) would prevent it from doing so.



### **3.8 Cancellation of Services using Scheduled Train Paths**

The Operator may cancel any Services for Scheduled Train Paths if any of the following circumstances occur, but only if the occurrence of those circumstances is beyond the reasonable control of the Operator;

- (i) There are mechanical difficulties with the locomotives used or operated by the Operator;
- (ii) There is a failure of any part of the Operator's equipment used or to be used in connection with a Service;
- (iii) Repair, maintenance or upgrading of the Network is being carried out or there is some other event which materially affects the Operator's use of all or any part of the Network (including, without limitation, derailment, collision or later running trains) which occurs in Western Australia.

The Operator must give to WestNet as much notice of cancellation as is possible in the relevant circumstances.

WestNet and the Operator may agree that there be an alternative method of cancellation such as conditional pathway for seasonal traffic.

The Operator may cancel Services in accordance with the relevant Access Agreement to take account of;

- (a) Public holidays which may impact on the ability to provide or operate the service; or
- (b) Up to 5 times per year for regularly scheduled services; or
- (c) The inability for the customer to provide product for transport from a mine; refinery or other similar facility; or
- (d) The inability to unload the product at discharge points or ports not caused by the Operator; or
- (e) Because of the seasonal nature of the Services.

## **4. INFORMATION REQUIRED FOR THE ALLOCATION OF TRAIN PATHS**

### **4.1 Compliance with Code and Train Path Policy**

The Code provides for the provision of information between the access proponent and WestNet. Where access applications are made outside the Code, the allocation of the Train Path shall be made in accordance with the Train Path Policy.



#### **4.2 Variation to Existing Train Paths or Additional Paths**

An Operator seeking a variation to an existing Train Path must do so in accordance with the provisions of the Access Agreement and the information supplied by the Operator should;

- (a) Specify the route for which the Train Path is requested;
- (b) The times when the Train Path is required;
- (c) The nature of the Service which will use the Train Path.

If WestNet is unable to comply with a request from an Operator to vary a Train Path WestNet will, at the request of the Operator, provide written reasons as to why it is not available.

WestNet will, in seeking to accommodate a request for a varied or additional Train Path from an Operator undertakes to negotiate with other Operators seeking their agreement to amend their Scheduled Train Paths which will allow WestNet to accommodate the request for a varied or additional Train Path.

#### **5. REGULATOR'S APPROVAL REQUIRED**

Where a request for a Train Path or Train Paths or a request for additional Train Path may preclude other entities from gaining access to that infrastructure the Train Path(s) will not be granted without the approval of the Regulator in accordance with Section 10 of the Code.

#### **6. RIGHTS OF AN OPERATOR TO SELL A TRAIN PATH**

An Operator may not sell the rights to use a Train Path to another Operator.

If an Operator no longer requires a Train Path to operate a Service the Operator will advise WestNet and the Train Path will be cancelled in accordance with the Access Agreement.

An Operator may assign the rights to entitlements under an Access Agreement in accordance with the assignment provisions of the Access Agreement.

#### **7. COMPETITION FOR THE SAME TRAIN PATH**

If two Operators request the same available Train Path and it is not possible to satisfy both requests by using alternative but similar Train Paths, the available Train Path will be provided to the Operator who first requested the Train Path.

#### **8. DISPUTE RESOLUTION**

As noted in Section 3.2, Part 3 of the Code provides for arbitration of access disputes in certain circumstances in relation to the provisions to be contained in a proposed Access Agreement.



Any dispute arising between WestNet and an Operator after the signing of an Access Agreement shall be resolved in accordance with the dispute management provisions of that Agreement.

## **9. CONSULTATION AND REVIEW**

WestNet will formally consult with the Regulator at the end of the initial two years of operation of this Policy to determine whether any amendments are required.