



**Public Submission by
Alcoa World Alumina Australia
on the Train Path Policy
as submitted by WestNet Rail**

Prepared for:

Rail Access Regulator
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1. INTRODUCTION

Alcoa World Alumina Australia (Alcoa) has submitted this paper in response to the call for public submissions by the Regulator in relation to the Train Path Policy submitted by WestNet Rail (WestNet) in November 2001.

Alcoa operates some 13,000 train trips per annum on the South West mainline¹ and these operations occur 24 hours per day, 365 days per year. The movement of product by rail to the ports at Bunbury and Kwinana and also to the refinery at Kwinana are a critical part of our total production process and it requires rigorous planning and scheduling to meet both our needs to maintain stock pile levels at each facility and the needs of other users on that part of the rail network. Our task, being some 13.6 million tonnes last year makes Alcoa the largest single user of the network and highlights the need for careful management of train paths.

We see the requirement to prepare and approve a Train Path Policy under the Railways (Access) Code 2000 (the Code) as an important step in providing third party access in Western Australia and essential to ensure the allocation of paths to all users in an accountable and transparent way.

We do have some specific comments with regard to the Train Path Policy (TPP) as submitted by WestNet and we would seek the Regulator's review of our comments before granting any approval to the policy as submitted.

¹ Appendix A contains a brief overview of Alcoa's operations on the South West mainline.

2. OVERVIEW COMMENTS ON THE TRAIN PATH POLICY

Alcoa has reviewed the Train Path Policy (TPP) specifically in relation to our operations on the South West mainline and in particular to the needs of both Alcoa and other users on that line requiring additional or new train paths. In this regard, the issues which are critical to Alcoa include:

- The quantity of train paths which are managed on behalf of Alcoa;
- The continuous nature of our process and therefore the criticality of train path allocation and availability;
- Flexibility on scheduled paths; and
- The ability of Alcoa to obtain additional paths as our business expands.

We consider that the primary aim of the TPP should be:

- To provide a policy framework to satisfy all requests for train paths in a timely, fair and reasonable manner;
- To ensure that there is no discrimination in favour of WestNet or a related entity or any one operator in the allocation of train paths; and
- To maximise the utilisation of the network to the benefit of all users.

It is our view that three main issues which would be required to satisfy these aims are not currently satisfied in the TPP as submitted by WestNet and our comments on these are addressed in more detail in the following sections.

We have also included, in Section 3 of this submission, a detailed clause-by-clause response to the TPP document.

2.1. The Train Path Policy v Access Agreements

It is our view that the allocation of train paths using the TPP is a pre-cursor to any access agreement which may eventuate from a successful proposal for access under the Code. As such, any policy statements in the TPP cannot be later overridden by a conflicting clause in an Access Agreement. It would however be

acceptable to provide a greater degree of detail or clarification in an access agreement on the terms granted to a particular operator.

If this view is accepted, then there are several instances in the TPP where access agreement clauses have been used as policy statements. This leads to both confusion and inconsistency especially in relation to the definitions in the TPP and any defined terms which may be used in any access agreement.

In reviewing the document with this in mind, we would suggest that several sections of the TPP should be deleted as they reflect a degree of detail which is not required in the allocation of paths but is more related to the use of paths once they have been allocated.

2.2. The treatment of an Application

We consider that there is insufficient detail provided on the handling of an application for new train paths. The two critical aspects of any application are the availability of paths and the price charged for those paths. WE have responded separately to the latter issue of pricing under the Costing Principles and so restrict our comments here to the issue of train paths. There are number of potential issues here including:

- How train paths are negotiated;
- The allocation of train paths where available paths may be restricted;
- Direct conflicts between existing train paths and paths sought by access seekers;
- Applications for train paths which would create a capacity constraint;
- Applications for train paths which exceed capacity and therefore require infrastructure upgrade or investment in new infrastructure; and
- Optimisation of the network in relation to train paths.

We consider that these issues are not adequately addressed in the TPP. This could lead to ambiguity in the process necessitating frequent input from the Regulator or unnecessary disputes following an application for access. Providing more

guidance in the TPP to ensure that applications are treated in a consistent manner would be of benefit to both access providers and access seekers.

2.3. Consultation

Alcoa has reviewed the approach taken in other jurisdictions in relation to the consultation and dissemination of material on train path allocation. In particular, the Queensland Competition Authority (QCA) has explained at length in both its draft² and final³ decisions on the Queensland Rail (QR) Draft Undertaking that the allocation of train paths is a consultative process and often requires input from existing users as well as discussions between the access seeker and the access provider if there is a proposal which requires a revision of the master train plan.

Making an application under clause 8 of the Code which only details entry times and exit times required does not recognise the multitude of possibilities which may be achieved if existing users are prepared to be flexible with their train paths. This is surely an important part of network optimisation which may lead to benefits to all users through reduced access charges.

² QCA Draft Decision on QR Draft Undertaking Chapter 6 Capacity Management subheading Scheduling Principles p261

³ QCA Final Decision on QR Draft Undertaking Chapter 6, Section 6.3 Recommendations - Master Train Plan Principles Item 4 p175

3. COMMENTS ON THE TRAIN PATH POLICY

In the following sections, numbering in square brackets [] refers to the sections in the Train Path Policy submitted by WestNet in November 2001.

3.1. Definitions

Conditional Train Paths

There is an inconsistency between the definitions of conditional train paths and unscheduled train paths in Section 2 and Section 3.2 of the TPP. Alcoa's understanding of the definition of its current conditional paths was a path which was scheduled in the master train plan but only used as a result of an operational requirement to divert product to an alternate destination (usually resulting from an external event e.g. a delay in arrival or departure of a ship at the port). This requirement is presumably similar to a seasonal grain train path.

Network

Definition needs to be consistent with the other policy documents

Unscheduled train path

Definition needs to be rewritten. The definition and the use of the terms for an unscheduled path in the TPP appears to overlap with our understanding of a "conditional train path".

3.2. Allocation of train paths [section 3.2]

The allocation of new train paths as conditional for six months does not address the long lead times typically experienced by mining companies in the development or expansion of their business. For example, lead times for an expansion of our existing facilities at Pinjarra or Wagerup would be a minimum of two years but we would still need to have certainty around additional train paths before commencing expansion plans.

In this instance, Alcoa would seek conditional paths up to two years in advance of starting operations on a scheduled basis. Some greater degree of flexibility will be required here as the investment in new plant and equipment costs are significant and certainty of access would be a pre-requisite to any plant expansion approval process. Perhaps one solution would be to establish the basis for conditional paths in the TPP but not restrict the validity to 6 months to allow flexibility in cases where longer lead times are warranted.

Alcoa also uses conditional train paths in a separate context, similar to that referred to as "seasonal"⁴ use in the TPP, where conditional train paths are allocated to allow alternate port facilities to be used. For example, a train may normally be scheduled to run from the refinery at Pinjarra to the port of Kwinana but if there is a shortage of product at Bunbury or we are unable to unload at Kwinana, then rather than cancel the train, the train is diverted to Bunbury. This type of conditional path does not seem to be included in the TPP.

3.3. Examples of Temporary Variations of Train Paths... [Section 3.3]

It is Alcoa's view that this section should be deleted as it forms part of the standard access agreement and its duplication here serves no purpose.

3.4. Permanent Variations to Scheduled Train Paths by Agreement [Section 3.4]

As stated above, this section is also part of the standard access agreement and the wording is not in context here. This section should be reworded to address what happens internally within WestNet once a permanent variation request is received but only to the extent that it is not easily satisfied by available spare paths. In other words, how is a conflict of paths resolved, including if necessary dispute resolution of paths.

3.5. Repairs, Maintenance and Upgrading of the Network [Section 3.5]

This section should be changed as it currently deals with operational issues after the allocation of train paths, a topic which is more correctly addressed by the Train Management Guidelines or an access agreement.

⁴ WestNet Train Path Policy November 2001 Section 3.2 Paragraph 7

Perhaps the reference here should be around the need to incorporate possessions for repairs and maintenance as part of the overall allocation of train paths. There is a need to access the network for maintenance but these track possessions are typically allocated around scheduled train paths assigned to the Operators. Upgrades, which may require extensive possession times should be treated differently and these possessions should involve consultation with the existing users to ensure disruption is kept to a minimum.

New access seekers need to understand that train paths and maintenance possessions need to coexist within the total capacity of the track. Alcoa's 24 hour, 365 day operations does not make this task easy but nevertheless track capacity must take into account maintenance possessions.

3.6. Removal of Train Path for Under-utilisation [Section 3.6]

Again, this section duplicates a section in the standard access agreement and the references used do not work in this document as there are undefined terms used.

The policy presumably is aimed at repossessing train paths which are not being used in the event that they could be reassigned to another user. It would be useful to state the policy approach here - is the removal of a train path aimed at making it available to someone else because there is a demand or merely to identify it as unassigned. It would make sense to combine this review with the following definition in the TPP [Section 3.7] and review the history for both under-utilisation and actual performance over the same period.

WestNet should also clarify if the use of the 3 week, 6 week, 6 month time frames are to be used in all cases or if these are just suggested time frames as used in the standard access agreement. In Alcoa's case, we essentially contract for a certain capacity on the line rather than individual train paths so scheduled train paths may go unused for 3 weeks but only because they are replaced by unscheduled train paths. We would not view this as under-utilisation. It is unclear from the TPP if Paragraph 2 of Section 3.6 is intended to deal with this outcome in that it reads "Other than if the parties agree to substitute an alternative Train Path"

The definition of a failure to utilise a scheduled train path requires clarification - it is more likely an operational issue (and therefore should be addressed in the

Train Management Guidelines) but if the train fails to complete its full journey (for example as a result of a locomotive or wagon failure which is not force majeure) then this hardly represents under-utilisation. The intent was to use the path even though the journey may not be completed or may be completed later.

3.7. Review of Scheduled Train Paths [Section 3.7]

The first two paragraphs of this section discuss the review of actual performance to planned performance with a view to updating the scheduled train paths. There is an important planning role here which has not been addressed. Poor utilisation of the network could be the undesirable outcome of applying this policy to the network as it reaches capacity.

If operators are obliged to perform within the scheduled train paths and the railway owner is obliged to provide track at an acceptable standard to ensure this performance, then the result will be a more efficient operation which would result in additional capacity either for expansion of existing services or the introduction of new services. Adopting the approach suggested here will only result in under-utilisation of the network based on reactionary rather than proactive planning.

It would also seem sensible to make the review period match the customer's task. If the task is seasonal, then a three month review would be meaningless.

The second half of this section then talks about the contractual obligations on both parties if there are any changes resulting from the review and this would seem to fit better in Section 4.2 "Variation to existing paths".

WestNet should explain the reason for this review process - presumably it is to update the working timetable to keep all trains running closer to schedule and minimise any delays to traffic on the network but this would most likely require the cooperation of all users on the route to agree to a change and would therefore lend itself to a more consultative process as outlined in Section 2.3 of this submission.

3.8. Cancellation of Services using Scheduled Train Paths [Section 3.8]

This section states in clause (b) that the Operator may cancel a service "... up to 5 times per year for regularly scheduled services...". Given that Alcoa uses more

than 13,000 train paths every year and that we do cancel services for legitimate business reasons frequently, we consider that a fixed 5 cancellations per year for no legitimate reason is an extremely low number. It would seem more appropriate to use a percentage of scheduled train paths or some other formula for this clause.

We would also suggest that the list of specified events is incomplete without an additional clause (f) for a Force Majeure event.

3.9. Compliance with Code and Train Path Policy [Section 4.1]

The Code is somewhat vague as to what is required when applying for access or more specifically for train paths. The allocation of train paths is a somewhat iterative process and does not therefore lend itself to a written application form. A more detailed explanation of what should be included in an application and the assistance available from WestNet either prior to or subsequent to an application would be useful, especially for new operators. Furthermore, an examination of the views expressed by the Queensland Competition Authority (QCA)⁵ with regard to the Queensland Rail Draft Undertaking may be applicable here and if that view is accepted, then a broader obligation to consult may be required as stated in Section 2.3 of this submission.

3.10. Variation to Existing Train Paths or Additional Paths

Variation to existing train paths should be addressed in the context of an Access Agreement unless this is a request for variation before an access agreement has been signed. Requests for additional train paths should be addressed here in the TPP especially with regard to:

- Establishing a consultative process between users;
- Capacity constraints;
- Requirements for additional capacity and who would fund augmentation of the network;

⁵ QCA Final Determination on QR Draft Undertaking November 2001 Chapter 6 Capacity Management pp170 - 173

- Lead times between application and start date for access (how long can a train path be reserved before use); and
- Vexatious reservations of train paths.

There should also be a reference to WestNet's obligations to provide additional paths - i.e. by addressing the optimum use of the network or expansion of the network.

3.11. Regulator's Approval Required [Section 5]

This comment would be best combined with section 4.2 of the TPP as it relates directly to the case where a capacity issue results from an application.

3.12. Rights of an Operator to sell a Train Path [Section 6]

The statement here (an operator may not sell the rights to use a train path) seems to be in conflict with the standard access agreement which includes a legal assignment clause. Given that WestNet has restricted the number of "Free" cancellations in Section 3.8 to five per year, it would only seem reasonable that an operator would try to resell spare paths if only to mitigate its loss on any flag fall charge. Presumably, any assignment would not relieve the operator from its obligations under its access agreement so it would seem that this section needs to be more flexible.

3.13. Competition for the same Train Path [Section 7]

It would be useful to extend this definition in relation to Conditional Paths. If we have reserved a conditional path (for example for an approved plant expansion) but it is not yet in use - does this take priority over a new application for a scheduled path at the same time. Will existing users be automatically advised of an application for a path on one of their routes?

3.14. Dispute Resolution [Section 8]

There are two separate issues here which need to be addressed. The first is adequately addressed in that once an access agreement is in place, then the dispute resolution process is clear and will be stated in the access agreement as stated in Section 8 Paragraph 2 of the TPP.

What is not clear is how a dispute over train paths is resolved during an application. Part 3 of the Code and in particular section 25 states in part that "...an entity is in dispute with the railway owner if(b) the proposal complies, and the entity has complied, with this Code; and (c) any of the situations in subsection (2) exist." For a proposal to have complied under (b), it must have met Section 15 of the Code which requires the proponent to show that its train path requirements "can be accommodated on the route having regard to its capacity". This could lead to a situation where the access seeker is unable to comply under Section 15 and therefore cannot trigger a dispute with the railway owner under Section 25.

Under these circumstances, the TPP should include a means of dispute resolution as referencing Part 3 of the Code does not provide any recourse for the access seeker.

3.15. Consultation and Review [Section 9]

It would be useful to establish an on-going 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. Presumably, under the Code, the Regulator can elect to change the policy at any time and WestNet can submit a new or amended policy at any time for approval by the Regulator.

4. SUMMARY

We would submit that the Train Path Policy proposed does not fully address the requirements of Section 44 of the Code and we propose that the Regulator should exercise his powers to amend or to request amendments to the Train Path Policy as submitted by WestNet to address the following concerns:

- The TPP should be a pre-cursor to any agreement for access for an access seeker. The decisions made as a result of this policy should be reflected in more detailed contractual terms written into the Access Agreement to be signed later between the two parties;
- The TPP should address the issues of how train paths can be obtained and how they are allocated in the case where available paths are restricted;
- It should also address allocations where there are conflicts between existing users and access seekers;
- It should detail the approach which will be taken in the event of a capacity constraint explaining the process to be followed after the Regulator has ruled under Section 10 of the Code;
- It should demonstrate that WestNet has a policy which results in the optimum use of the network to the benefit of all users;
- It should address how disputes on train paths are resolved if they occur prior to an access agreement being in place;
- It should define the precedence of clauses between the TPP and any subsequent access agreement;
- It should consider the broader issue of consultation for the allocation of train paths by involving existing users and new access seekers in the process; and
- It should not address issues which are already addressed in other policy documents eg train management guidelines or segregation arrangements.

APPENDIX A

Alcoa's Rail Haulage Task - Western Australia

Alcoa's Rail Haulage Task in Western Australia

Alcoa World Alumina Australia (Alcoa) is the world's largest producer of alumina and a significant aluminium producer with mines and refineries in Western Australia and two aluminium smelters in Victoria. Operations in Australia are managed by Alcoa's corporate office at Booragoon in Perth. The company has 3700 employees in Western Australia.

Alcoa operates three refineries and two ship loading facilities in Western Australia. Refineries are located at Kwinana, Pinjarra and at Wagerup. Alcoa has two port berth operations which are exclusively for alumina/caustic ship loading/unloading operations – one at Kwinana and one at Bunbury. Three major commodities are hauled by rail to support the refining and shipping process. These are:

- bauxite from the Pinjarra stockpile site to the Kwinana Refinery;
- alumina from Pinjarra and Wagerup refineries to either Kwinana or Bunbury Ports; and
- caustic from either Kwinana or Bunbury ports to either Pinjarra or Wagerup refineries.

Bauxite is railed to Kwinana to be used as the main input into the refining process in the plant at Kwinana to produce alumina for export from the berth at Kwinana. Alumina is produced at both Pinjarra and Wagerup refineries and is railed to either Kwinana or Bunbury ports for export. Caustic Soda solution is imported for use in the refining process at all three refineries and is transported by rail in special containers to both Pinjarra and Wagerup refineries.

Under the State Agreement with the Government of Western Australia, Alcoa is obliged to haul these commodities by rail.

These commodities are hauled over 3 routes:

- Kwinana to Pinjarra via Mundijong Junction (referenced in the Code as part of route Route 7 and part of Route 9);
- Pinjarra and Wagerup to Bunbury Harbour (referenced in the Code as part of Route 9 – the South-West mainline track between Mundijong Junction and Picton); and

- Pinjarra to Alumina Junction (referenced in the Code as Route 11 – the track between Pinjarra and Alumina Junction and between Alumina Junction and Pinjarra South).

Alcoa's annual rail haulage tonnages are currently averaged at:

- 7.9 million tonnes for Bauxite;
- 5.1 million tonnes of Alumina; and
- 0.6 million tonnes of Caustic.

These tonnage represent approximately 80% of the traffic on the south west mainline which is shared with passenger trains (the Australind), other bulk haul users such as Western Power and Worsley Alumina and some general freight traffic.