



Public Transport Authority

Statement of Policy Relating to the Allocation of Train Paths

Statement of Policy

Relating to the Allocation of Train Paths

CONTENTS

1.	INTRODUCTION	3
2.	ASSOCIATED REFERENCE DOCUMENTS, INCLUDING PROCEDURES, RULES, STANDARDS, ACTS AND REGULATIONS	5
3.	PRINCIPLE GOVERNING THE USE OF THE PTA RAIL NETWORK	6
4.	DEFINITIONS	7
5.	MANAGEMENT OF TRAIN PATHS	10
5.1	Master Control Diagrams.....	10
5.2	Allocation of Train Paths.....	10
5.3	Request for Train Paths that would result in capacity constraints.....	11
5.4	Competition for Train Paths	11
5.5	Temporary variations of Train Paths.....	12
5.6	Permanent variations to scheduled Train Paths by agreement between the parties.....	14
5.7	Maintenance provisions	14
5.8	Removal of Train Path for under- utilisation.....	15
5.9	Review of Scheduled Train Paths.....	16
5.10	Cancellation of Services using scheduled Train Paths	16
5.11	Provision of access to Train Paths that have ceased to be used.....	17
5.12	Rights of an Operator to Sell a Train Path	17
6.	DISPUTES	19
7.	PERFORMANCE MONITORING	20
8.	REVIEW AND CONSULTATION	20

1. INTRODUCTION

The following Statement of Policy will be applied by the Public Transport Authority of Western Australia (PTA) in its performance of functions related to requirements imposed on PTA under the Railways (Access) Act 1998 (“the Act”) or the Railways (Access) Code 2000 (“the Code”).

PTA has established a Network and Infrastructure Division and a Transperth Train Operations Division.

These Divisions are organisationally separate. They are physically situated in different geographical locations. PTA staff are separately allocated to each Division.

The **Transperth Train Operations Division** has responsibility for operational aspects of the rail passenger Service.

The **Network and Infrastructure Division** (NETIND) is responsible for management of the rail system using the Network and Infrastructure which is under the control of PTA.

Applications for access are managed, and negotiations undertaken, by the General Manager, NETIND and persons authorised and reporting to him. The rail operating divisions are asked for advice on the potential impact on passenger services timetables when an application for access to a specific train path is received. However, they do not have the power to affect access-related decisions.

For reasons of efficiency and safety, the Transperth Train Operations Division, as the primary user of the Network, has been requested by NETIND to carry out the train control function. However, this function is performed by Transperth Train Operations Division within the policies and procedures defined by NETIND who have ultimate control over the way in which the function is performed. The policy and guidelines associated with that train control function are consistent with this Statement of Policy.

Within PTA responsibility for the formulation and implementation of this Statement of Policy rests with NETIND. Specifically, the function to which this Statement of Policy applies is the allocation of Train Paths by PTA, through NETIND, on the urban rail Network and the provision of access to Train Paths that have ceased to be used. This Statement of Policy applies to Train Paths allocated with respect to Access Agreements made under the Code and to Train Paths allocated with respect to access arrangements made other than under the Code.

The purpose of the policy is to ensure that the allocation of Train Paths is undertaken in a manner that ensures fairness of treatment in relation to all Operators and access seekers taking into account existing contractual rights and any new contractual rights created in accordance with the code.

With the aim of maximising the use of the Network, the policy establishes a set of principles under which an Operator has an entitlement to access Train Paths on the PTA Network and the circumstances under which variation to those Train Paths may occur.

An access seeker may engage a third party as its agent or contractor in relation to the acquisition of rights and the acceptance of obligations under this Statement of Policy.

This Statement of Policy is submitted to the Economic Regulation Authority (ERA) under section 44(2) of the Code. Under section 44(3), the ERA may approve this Statement of Policy as submitted by PTA either with or without amendments, or may reject it and determine what is to constitute the Statement of Policy. The ERA is required by section 45 of the Code to seek public comment before approving the Statement of Policy submitted by PTA. The Statement of Policy may be amended or replaced by the railway owner with the approval of the ERA. The ERA may direct PTA to amend the Statement of Policy or to replace them with another Statement of Policy determined by the ERA.

This Statement of Policy will form a schedule to all Access Agreements made under the Code.

Because the Statement of Policy relates closely to Train Management Guidelines and provisions of the Access Agreement, PTA will use the following order of precedence of the documents:

- (a) Statement of Policy;
- (b) Train Management Guidelines; and
- (c) Access Agreements.

It is also noted that, should it ever become apparent that there is another operator seeking access in the same competitive market as PTA, then the ERA may review the Statement of Policy and may require changes to it.

2. ASSOCIATED REFERENCE DOCUMENTS, INCLUDING PROCEDURES, RULES, STANDARDS, ACTS AND REGULATIONS

This Statement of Policy must be read in conjunction with the following associated reference documents, all of which are publicly available and may be obtained from PTA, through NETIND.

- PTA Network Rules;
- Appendix to the PTA Network Rules;
- PTA Rail Infrastructure Codes of Practice and Procedures;
- PTA Operating Procedure for Traffic Management (4010-409-001);
- PTA Train Management Guidelines (8103-200-003);
- PTA Emergency Management Manual (9000-000-011);
- PTA Working Timetables;
- Rail Safety Act 1998 (WA);
- Rail Safety Regulations 1999 (WA);
- Railways (Access) Act 1998 (WA);
- Railways (Access) Code 2000 (WA);
- Australian Standard – Railway Safety Management (AS4292.1 (Part 1));
- Australian Dangerous Goods Code (Volume 1) (Requirements and Recommendations) comprising:
 - The Australian Code for Transport of Dangerous Goods by Rail and Road;
 - Dangerous Goods – Initial Response Guide (SAA/NZS HB76:1997);
 - Dangerous Goods (Transport) (Road and Rail) Regulations.

PTA is aware of and undertakes to comply with the requirements of all the above referenced and associated documents. All Operators seeking to run trains on the PTA Network must also be aware of and undertake to comply with the requirements of the above referenced and associated documents.

3. PRINCIPLE GOVERNING THE USE OF THE PTA RAIL NETWORK

The reason for the existence of the PTA urban rail Network, and its essential function, is to provide a safe, reliable and efficient rail-based public transport service within metropolitan Perth. Certain performance standards for the provision of that public transport service are required by Government, which funds the urban rail Network and the public transport service. PTA currently operates a rail-based public transport service that is close to world best practice in terms of on-time running (within three minutes of schedule) and the use of safe systems such as Automatic Train Protection. The Government and the users of the system have a right to expect that these standards will be maintained.

The State rail access regime requires that third party Operators be permitted to negotiate agreements to use the PTA Network and PTA, through NETIND, is committed to facilitating such use. However, PTA maintains that the safe and reliable operation of the rail-based urban public transport service is paramount and must not be compromised as a result of the presence of other Operators on the Network. This principle underlies PTA's approach to the allocation and management of Train Paths.

4. DEFINITIONS

“Access Agreement” means the railway access agreement entered into under the Railways (Access) Code 2000 between the railway owner (PTA) and an Operator, for access to the railway Network by that Operator.

“Automatic Train Protection” means an on-board electronic system which monitors the train speed and the status of signals, applying warnings and automatic braking to prevent the train going past a signal at danger or exceeding the speed limit.

“Economic Regulation Authority” means the Western Australian Independent Rail Access Regulator under Section 13 of the Act.

“Dangerous Goods Code” means the Australian Code for the Transport of Dangerous Goods by Road and Rail prepared by the National Road Transport Commission (or successor body) from time to time.

“Force Majeure” means any circumstances beyond the reasonable control of a party which occur without the negligence of that party and includes inevitable accident, storm, flood, fire, earthquake, explosion, peril of navigation, hostility, war (declared or undeclared), insurrection, sabotage, executive or administrative order or act of either general or particular application of any government prohibition or restriction by domestic or foreign laws, regulations or policies (other than laws specifically for that purpose passed by the Commonwealth), quarantine or customs restrictions, strike, lockout or industrial dispute, break-down or damage to or confiscation of property but does not include breakdown or delay of any Trains or Rolling Stock operated by the Operator.

“Instructions” means all instructions and directions, issued by PTA from time to time which:

- (a) ensure, facilitate or encourage the proper, efficient, safe and lawful:
 - i. use of land and access to the Network by all Network users; and
 - ii. management of the Network by PTA,
- (b) are consistent with the Train Management Guidelines; and
- (c) are given with a view to minimising the disruption to the Operator in a manner which is reasonable in the circumstances and taking into account the valid objectives of PTA in issuing the instruction or direction,

but does not include Instructions and directions which:

- (a) derogate from the Train Paths;
- (b) prevent the Operator from running a Service of the nature of the Services contemplated or as agreed between the parties from time to time;

unless the Instructions or directions:

- (a) are Train Control Directions properly given;

- (b) relate to safety;
- (c) are given to implement or support the Train Management Guidelines;
- (d) are necessary to prevent or to minimise the effect of a material breach of an Access Agreement (such as an Instruction resulting from the Operator's loss or suspension of accreditation, or the Operator not providing evidence of insurance or the Operator failing to comply with a prior Instruction); or
- (e) are otherwise authorised by an Access Agreement.

"Master Control Diagrams" cover specific parts of the Network and show:

- (a) all train movements scheduled and included in the working timetable as permanent train movements;
- (b) all train movements which have been proposed and agreed to between the parties to an Access Agreement and for which the agreement reserves that path for a train Operator; and
- (c) all planned train movements for which advice has been given to the train Operator that the path for the train movement is available and able to be practicably operated but for which no contractual agreement has been reached.

"Network" means that part of the urban railway network in Western Australia owned by or under the control of PTA, which is delineated, described or defined in Schedule 1 of the Railways (Access) Code 2000.

"Operator" means a person to whom access is provided to the Network under an Access Agreement, whether or not that agreement is made under the Railways (Access) Code 2000, for the purpose of running trains.

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

"Scheduled Train Paths" means the entitlements of the Operator to use the Network between the times and locations set out in the Access Agreement and as amended, or varied permanently in accordance with that agreement.

"Service" means a train operated by the Operator using the Network by means of which the Operator provides railway freight or passenger services.

"Special Events" are those occasions when there is exceptional demand for public transport services to and from specific locations on the urban passenger Network. Special Events include the Skyshow, the Perth Royal Show, the Perth Christmas Pageant, New Year's Eve and certain major sporting events.

"Standards" means the Australian Standard AS4292- Rail Safety Management (Part 1: General and Interstate Requirements), and any other principles and standards prepared, approved and published by the Standards Association of Australia in relation to rail safety.

"Train Path" is an entitlement to operate a Service on the Network and consists of departure, transit, and arrival times between the entry and exits points on the Network. A Train Path is described in the relevant Access

Agreement and may be published in the Working Timetables, in graphical form on a Master Control Diagram or electronically or other printed form.

“**Train**” means one or more units of rollingstock coupled together, at least one of which is a locomotive or other self-propelled unit.

“**PTA’s Network Rules**” means PTA’s rules (including the Appendix to the Rules and Working Timetables) issued in accordance with PTA’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 issued by PTA for the purpose of ensuring the safe use of the Network.

5. MANAGEMENT OF TRAIN PATHS

5.1 Master Control Diagrams

PTA, through NETIND, will maintain Master Control Diagrams for all routes under its control that are subject to the Code.

5.2 Allocation of Train Paths

PTA, through NETIND, will allocate Train Paths in accordance with the principles established under the Code.

Subject to the requirements of the Code, PTA, through NETIND, will apply the following methods in allocating Train Paths.

Priority will be given to Train Paths already allocated to or required by the operational arm of PTA, the Transperth Train Operations Division. These paths form an integrated system of public rail transport Services within the Perth metropolitan area. These paths are set out in published timetables and are integrated with other public transport Services, such as bus Services. At certain peak periods the Train Paths allocated to the Transperth Train Operations Division fill the available capacity of some routes having regard to section lengths, signalling capability and safety.

If capacity is available for an additional Train Path between Train Paths already allocated to the Transperth Train Operations Division, NETIND will endeavour to allocate a Train Path preferred by an Operator or access seeker. Where possible, PTA, through NETIND, will consider rescheduling public rail transport Services if rescheduling would not be contrary to the public interest. However, additional Train Paths may not be able to be allocated to Operators or access seekers during peak periods.

In other circumstances, PTA, through NETIND, will allocate available Train Paths on a “first come” basis, subject to the Operator or access seeker being able to demonstrate that its rollingstock and operating procedure are appropriate for the Train Path.

Special requirements may be imposed for certain Train Paths. For example, for Train Paths with short headways PTA may require that Automatic Train Control devices be fitted to the Operator’s rollingstock, especially during peak periods.

The Scheduled Train Paths initially allocated to an Operator will be described in the Access Agreement entered into between the Operator and PTA, through NETIND, in accordance with the Code. The Train Paths initially allocated may be varied and additional Train Paths allocated by agreement in accordance with this Statement of Policy and the Access Agreement.

Negotiations will be conducted by PTA, through NETIND, in accordance with the Code. In particular, NETIND will endeavour to resolve disputes which arise in the course of negotiations in accordance with the dispute resolution procedures provided for in the Code.

In assessing whether a request for a Scheduled Train Path is warranted, PTA, through NETIND, will have regard to:

- (a) whether the Operator can demonstrate a contractual commitment to operate Trains or carry passengers on the Network;
- (b) whether the Operator can demonstrate increased demand or anticipated increased demand resulting from an expansion of Services or market growth generally;
- (c) whether the Operator can demonstrate a new project with committed funding; and
- (d) whether the Operator can demonstrate a fluctuating need for Train Paths, based on seasonal demand, surge requirements or similar factors.

PTA, through NETIND, will apply the following processes:

- (a) PTA will request adequate documentary evidence to support the Operator's request;
- (b) if PTA is not satisfied with information provided, PTA will seek further supporting information until satisfied; and
- (c) if PTA considers the request does not comply with the relevant criteria or is otherwise not warranted, PTA will promptly inform the access seeker or Operator and if any dispute results this will be resolved in accordance with the relevant Access Agreement or (if no agreement has been entered into) in accordance with the Code.

5.3 Request for Train Paths that would result in capacity constraints

Section 10 of the Code requires that, if a proposal for access is made that the railway owner considers would involve the provision of access to railway infrastructure to an extent that may preclude the provision of access to other entities, the railway owner may not enter negotiations with respect to that proposal for access without the approval of the ERA. The ERA is required to conduct a public consultation process before giving such approval.

If a proposal for access is made that PTA, through NETIND, believes triggers the provisions of section 10 of the Code, PTA will inform the access seeker of that belief prior to seeking the ERA's approval.

If section 10 applies, negotiations could take place in accordance with the Code, if approval is given by the ERA.

5.4 Competition for Train Paths

Where an Operator desires a Train Path that is already being used by, or that is subject to an application from, another Operator, including PTA's own operating arms, the following principles will apply:

- 1) The safe, reliable and integrated operation of the urban public transport system is to be given priority.
- 2) No Operator with a current Access Agreement, who is not in breach of any of the terms and conditions of that agreement, will be obliged to relinquish an established Scheduled Train Path other than voluntarily.

- 3) PTA, through NETIND, will use its best endeavours to enable the applicant to acquire its desired Train Path. These endeavours may include, but are not limited to, approaching the holder of the desired Train Path to seek a permanent variation of that Operator's Train Path, or offering compensation (to be funded by the applicant) for the relinquishment of a Train Path.
- 4) Where there is competition between Operators for a particular Train Path, the available Train Path will be provided to the Operator who first requested the Train Path and can establish that it has a requirement to use the Train Path.
- 5) PTA, through NETIND, will act consistently with its duty of fairness under the Act and will endeavour to ensure that in the allocation of Train Paths, PTA acts in a non-discriminatory manner, including in relation to pricing principles and considerations, the determination of other contractual terms and the application of PTA's Network Rules.

5.5 Temporary variations of Train Paths.

Train paths may be temporarily varied by PTA on the issuing of Instructions to the Operator. Depending on the particular circumstances of the need for an Instruction requiring the temporary variation of a Train Path, the Instruction could be issued by either NETIND or through the Transperth Train Operations Division which NETIND has allowed to carry out the train control function. In relation to foreseen circumstances, eg. to enable PTA's planned maintenance program to be carried out, NETIND would directly negotiate any required temporary variation to affected Train Paths.

All Instructions issued will be in accordance with the Statement of Policy and these can be given either orally or in writing for purposes which are consistent with this Statement of Policy and Access Agreement.

For example, instructions may be given for the purpose of preventing any actual or potential:

- (a) breach of PTA's Network Rules by the Operator or of similar safety requirements by other Operators on the Network; or
- (b) material damage to the Network or any associated facility; or
- (c) injury to any person or damage to any property; or
- (d) delay to the progress of trains 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
- (e) for the purpose of preventing, or in response to, any actual or threatened breach by the Operator of any its material obligations (ie, obligations which have or may have a significant adverse effect if breached) under the Access Agreement.

(Material obligations in this context means any requirement under the Access Agreement related to the Operator's obligations to comply with safety or operational standards or the Operator's ability to operate the service.)

Instructions may also be given when PTA's Transperth Train Operations Division is required to operate additional services in order to provide public

transport services for Special Events, and such additional services conflict with the Operator's Train Paths.

PTA, through NETIND, will inform access seekers of Special Events and Access Agreements will contain details of known Special Events. Access Agreements will make provision for Operators to be given notice of new Special Events and for NETIND to consult with Operators whose Train Paths are affected. Access Agreements will also contain provision for the variation of Train Paths.

The instructions may comprise, but need not be confined to, one or more of the following terms:

- (a) to cease use of a Train Path by the Service and for the Service to proceed over such a path on the Network as PTA nominates;
- (b) 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 PTA nominates;
- (c) to cause the Service to proceed to a point on the Network and stand there until PTA issues a further instruction in relation to the Service;
- (d) if the Service operates outside of its 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;
- (e) to change the entry and exit time of a Scheduled Train Path;
- (f) to issue notification of a temporary speed restriction on a section of track;
- (g) to cancel a Scheduled Train Path; or
- (h) to amend and clarify application of the PTA's Network Rules.

Train paths may also be temporarily varied by PTA, through NETIND, at the request of the Operator as follows:

- (a) if the Operator's train will be unavoidably delayed or otherwise unavailable for presentation at the agreed entry time; or
- (b) if the time of an event for which the Operator is providing a Service is changed due to circumstances beyond the control of the Operator.

In these circumstances, the Operator is to submit a request for such temporary variation to PTA at least 24 hours prior to the time at which the original Train Path was to commence. PTA, through NETIND, will not withhold its consent to such requests, unless the requested variation is likely to:

- (a) breach PTA's Network Rules or otherwise pose a risk to safety;
- (b) delay or otherwise conflict with the progress of other trains on the Network, having regard to the Train Management Guidelines.

5.6 Permanent variations to scheduled Train Paths by agreement between the parties

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 in this section.

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:

- (a) 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
- (b) 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 PTA's obligations relating to safety of the Network).

Examples of reasonable grounds on which consent may be refused are:

- (a) the proposed variation will threaten the safety of the Network;
- (b) the proposed variation will cause a party to be in breach of another Access Agreement; and
- (c) the proposed variation will result in an unfair advantage to one Operator to the detriment of other Operators.

The requesting party must give at least 30 days notice of a request for a variation to a Scheduled Train Path.

The notified party's response as to whether it consents or not to the requesting party's notice must be given to the requesting party within 28 days of such notice being received by the notified party or within 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 for the refusal to the requesting party.

NETIND will represent PTA in those discussions involving a potential permanent variation to a Train Path.

5.7 Maintenance provisions

PTA, through NETIND, has the right to effect repairs, maintenance or upgrading of the Network, or take possession of any part of the Network, at any time.

In doing so, if there is likely to be an effect on Scheduled Train Paths, NETIND will, prior to commencement of any works;

- (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 possession of the Network.

However, where practicable NETIND will consult with Operators affected by the proposed works and provide a time profile of the proposed works and the estimated length of any disruption to access. If circumstances change and the time profile or estimated length of disruption which has been provided is affected, NETIND will provide a revised time profile or estimate to Operators.

PTA is obliged by section 34A of the Act not to unjustifiably hinder or prevent access to a part of the Network to which the Code applies and the ERA may consider whether section 34A has been breached in any situation where access is hindered or prevented.

Possession of the Network means closure of the relevant part of the Network to all Services for the purpose of effecting repairs, maintenance or upgrading. PTA, through NETIND, 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.

Except when an emergency exists or when an event of force majeure applies, PTA will consult with Operators affected by any proposed retaking of possession of part of the Network before the closure occurs.

5.8 Removal of Train Path for under- utilisation

PTA 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 three consecutive weeks at any time and, after PTA, through NETIND, has given the Operator notice of that fact, the Operator fails to operate the Service for more than six weeks in aggregate in the period of six months from the date of PTA's notice.

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

- (a) to present a Service at the scheduled entry point onto the Network; or
- (b) to operate the relevant Service 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 a Service, in any circumstances other than those in clause 5.10 or because of force majeure.

Under-utilisation attributable to force majeure, which could include PTA's maintenance repair and upgrading activities or actions of other Operators, should not result in loss of Scheduled Train Paths.

PTA, through NETIND, will exercise any right to remove Scheduled Train Paths for under-utilisation with reasonable discretion and will make allowance, for example, for seasonal industries.

However, Scheduled Train Paths which are not used because of loss of a contract and which are required by another Operator will be subject to removal in appropriate circumstances.

5.9 Review of Scheduled Train Paths

- 1) Scheduled Train Paths will be subject to a review in accordance with this clause 5.9. (Review may also be undertaken under other provisions of any relevant Access Agreement, eg. under the provisions relating to key performance indicators.)
- 2) PTA, through NETIND, 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 three month period of the actual Services using or purporting to use that reviewable entitlement ("3-month history").
- 3) If on such a 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 (ie. there are significant and repeated discrepancies), 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. In making a comparison under this paragraph, PTA, through NETIND, will give due consideration to all factors which have affected use of the Scheduled Train Paths during the 3-month history, especially any factors outside the reasonable control of the Operator, such as maintenance repair and upgrading activities carried out by PTA.
- 4) Nothing in this clause compels PTA, through NETIND, to offer a Train Path to the Operator under clause 5.9 (3) if:
 - (a) such a Train Path is unavailable by reason of scheduled public transport Services operated by PTA's Transperth Train Operations Division or contractual obligations by PTA to any person (including the Operator); or
 - (b) to do so would adversely impact on PTA's ability or opportunity to efficiently and safely manage its Network.
- 5) Nothing in this clause 5.9 compels the Operator to accept a Train Path offered by PTA, through NETIND, under clause 5.9 (3) if contractual obligations by the Operator to any person (including PTA) would prevent it from doing so.

5.10 Cancellation of Services using scheduled Train Paths

Reasonable allowance will be made for Operators to cancel existing Services. Provisions relating to cancellation will be included in the relevant Access Agreement.

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:

- (a) where there are mechanical difficulties with the locomotives used or operated by the Operator;
- (b) where there is a failure of any part of the Operator's equipment used or to be used in connection with a Service; and
- (c) where 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 late running trains).

The Operator must give to PTA, through NETIND, as much notice of cancellation as possible in the relevant circumstances.

The Operator may cancel Services in accordance with the relevant Access Agreement to take account of Public Holidays which may impact on the ability to provide or operate the Service.

The Operator may in addition, cancel any Service no more than five times in respect of each separate scheduled Train Path in each year commencing from the date the path was first approved without penalty.

PTA, through NETIND, and the Operator may agree that there be an alternative method of cancellation such as a conditional pathway for seasonal Services. Allowance may also be made for irregular fluctuations in demand for Services. Specific arrangements for other cancellation rights may be included in the relevant Access Agreement.

5.11 Provision of access to Train Paths that have ceased to be used

Where, under any of the above provisions, a previously used Train Path ceases to be used, that path becomes available for allocation under the provisions of this policy. Notification of the cessation of a Service will be published in the Weekly Notices, which are provided to all Operators on the PTA system.

5.12 Rights of an Operator to Sell a Train Path

An Operator may 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 should advise PTA, through NETIND, and request that the Train Path be cancelled in accordance with the Statement of Policy and Access Agreement.

An Operator may assign the rights granted under an Access Agreement subject to compliance with the assignment provisions of the Statement of Policy and Access Agreement.

The exception is for Train Paths which are granted to the Australian Rail Track Corporation (ARTC) under the Wholesale Access Agreement originally entered into between ARTC and the Western Australian Government Railways Commission.

Under this Agreement ARTC is able to grant contiguous Train Paths to operators seeking to operate interstate services requiring the joint use of the Network and ARTC's network.

For the purpose of this Statement of Policy if Train Paths are allocated to ARTC and then allocated by ARTC to an Operator, this would not constitute the sale of Train Paths by an Operator.

5.13 Non-Scheduled Train Paths

PTA, through NETIND, will normally only grant Scheduled Train Paths.

Any request for a non-Scheduled Train Path will be dealt with on a case by case basis, but so far as possible, in accordance with all relevant principles in this Statement of Policy and, in relation to any non-Scheduled Train Paths granted under an Access Agreement, in accordance with the relevant provisions of the agreement.

6. DISPUTES

PTA, through NETIND, will make decisions relating to Train Path allocation in accordance with this Statement of Policy and relevant statutory obligations, in particular the Act and the Code.

If, prior to an Access Agreement being entered into, a dispute arises between PTA, being NETIND, and any access seeker, relevant provisions of the Code will apply to the dispute.

Under section 25 of the Code a dispute may arise if:

- (a) there is a proposal for access;
- (b) the proposal complies, and the entity making the proposal has complied, with the Code;
- (c) any of the following situations exists:
 - i. PTA has refused to negotiate;
 - ii. the entity has given notice to PTA that there is a dispute between them;
 - iii. negotiations between the entity and PTA have commenced but agreement has not been reached.

If an Access Agreement has been entered into, the agreement should make provision for the means by which PTA, through NETIND, and the Operator will resolve disputes between them.

As a general rule, Access Agreements will provide for resolution of disputes by:

- (a) first – negotiation by senior representatives of each party;
- (b) second – mediation by an agreed means; and
- (c) third – by any other means available.

If a dispute related to Train Path allocation arises between the parties to an Access Agreement they must use reasonable endeavours and act in good faith to settle the dispute as soon as practicable in accordance with the dispute resolution procedures set out in the Access Agreement.

If such resolution is not achievable within the contractual framework of the Access Agreement, either party or both parties can notify the ERA of a dispute under the Code.

If an access seeker or an Operator has reason to believe that PTA, through NETIND, has not complied with this Statement of Policy relating to disputes, the access seeker or Operator may notify the General Manager, NETIND, in writing, as soon as practicable after forming this belief, with such evidence as supports the belief. The General Manager, NETIND will investigate the allegation and provide a written response to the Operator within 10 days, advising the outcome of the investigation. Such notification and investigation does not limit any rights available under the Code or otherwise at law.

7. PERFORMANCE MONITORING

KPI's will be developed by the ERA in consultation with relevant stakeholders and will be used by the ERA to assess the effectiveness of this Statement of Policy.

Access agreements will also make provision for the identification and implementation of KPI's in the context of the individual Access Agreement.

8. REVIEW AND CONSULTATION

PTA will formally consult with the ERA at the end of the five years of operation of the Train Path Policy to determine whether any amendments are required.

PTA's compliance with this Statement of Policy may be subject to an annual independent external audit under the supervision of the ERA. The costs of the audit will be the responsibility of PTA but the ERA may select and supervise the auditor. The ERA must approve the scope of the audit and the final audit report will be made available to the ERA and the public.

The ERA can also commission special audits on any issue arising under this Statement of Policy or in relation to the rights of an access seeker or Operator.

The ERA has power under the Code to require that this Statement of Policy be amended and access seekers and Operators may request the ERA at any time to consider amendments to this Statement of Policy.

Stakeholders have the ability to express any concern to the ERA which may arise at any time and the ERA may investigate such claims.