

Western Australian rail access regime

Submission by Worsley Alumina in response to WestNet's proposed
Segregation Arrangements

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1 Introduction

The purpose of this submission is for Worsley Alumina (“Worsley”) to respond to the draft arrangements proposed by WestNet Rail Pty Ltd (“WestNet”) for ring-fencing of its access related (below-rail) and other (above-rail) functions pursuant to sections 28 through to 34 of the *Railways (Access) Act 1998* (the “Act”).

The objective of the Act is to:

“establish a rail access regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations.”¹

A key pre-requisite to the development of an effective rail access regime is the development of robust and transparent ring-fencing arrangements. In any industry in which there are vertical and horizontal ownership links between the below-rail market and the above-rail market, there is the potential that the provider of below-rail services will use the power it possesses through ownership and control of the below-rail facility to provide an unfair advantage to affiliate companies operating in the above-rail market.

This is particularly pronounced in the rail industry relative to other utility industries on account of the intensity of the interface between functional levels. For example, in the case of electricity, there is no differentiation between retailers for the purpose of servicing a customer – a customer changing retailer changes little other than metering and billing arrangements. However, in the case of rail, there are the complications from the wheel-rail interface, including possible implications for maintenance etc. Consequently, the role and importance of ringfencing assumes increased significance for a vertically integrated railway.

Not only can this directly inhibit the development of competition in the provision of above-rail services, by limiting the ability of non-affiliate above-rail providers to compete effectively with affiliates of the below-rail provider, but it can also have an indirect effect on the development of competition.

¹ Section 2A.

The indirect effect arises from the market's perception of the potential for competition in the provision of above-rail services. If there is a view that affiliated above-rail service providers will be advantaged relative to non-affiliate providers, it is less likely that there will be new entrants to the above-rail market.

Therefore, effective ring-fencing arrangements need to foster both the reality and the perception that above-rail competition will not be detrimentally affected by the actions of the below-rail provider and its affiliates. In this respect, it is important to note that the perception alone that WestNet will be in a position to favour its above rail affiliates will be sufficient to seriously distort the above rail market.

Section 28 of the Act requires that a railway owner make arrangements to segregate its access-related functions from its other functions, and that it have appropriate controls and procedures in place to ensure that this occurs, and that these operate effectively and are complied with.

Section 30 makes it clear that compliance with the provisions in sections 31, 32, 33 and 34 are a *minimum* requirement for a railway owner complying with section 28. Sections 31, 32, 33 and 34 deal with protection of confidential information, avoidance of conflict of interest, duty of fairness and maintenance of separate accounts and records respectively.

While WestNet does not perform functions other than the provision of access to the rail infrastructure network in Western Australia, it belongs to a corporate group, the Australian Railroad Group ("ARG"), which does contain entities involved in the provision of above-rail services.

In particular, Australian Western Railroad Holdings WA Pty Ltd ("AWR Holdings"), WestNet's parent company, also owns Australian Western Railroad Pty Ltd ("AWR"), a company involved in freight operations in Western Australia. AWR Holdings is wholly owned by the Australian Railroad Group Pty Ltd ("ARG").

Furthermore, while there are no directors of WestNet who are also directors of AWR, one of WestNet's directors is also a director of ARG. These management and ownership links create the potential for competition in the above-rail market to be compromised, either by anti-competitive conduct by firms in the ARG group, or because the market perceives that there is a risk of anti-competitive conduct in the ARG group.

The effectiveness of WestNet's proposed Segregation Arrangements needs to be assessed with a view to minimising these risks.

Worsley considers itself to be a potential operator on the rail network and as such the term "operator" is used to include both operators and proponents in this submission.

The submission is structured in the following manner:

- section 2 considers WestNet's policy for protecting confidential information, and presents Worsley's proposed amendments to the policy;
- section 3 examines the measures WestNet proposes for avoiding conflicts of interest, and highlights those matters that Worsley believes require modification;
- section 4 examines WestNet's duty of fairness, the procedures it has suggested for fulfilling this duty, and Worsley's response to these procedures;
- section 5 presents the issues Worsley has identified with respect to WestNet's proposals for maintaining separate accounts and records; and
- section 6 states Worsley's preferred mechanism for the assessment of WestNet's compliance with its Segregation Arrangements.

2 Protection of confidential information

Section 31 of the Act provides:

(1) There must be an effective regime designed for the protection of confidential information relating to the affairs of persons seeking access or rail operators from –

- (a) improper use; and
- (b) disclosure by relevant officers, or other persons, to other officers or employees of the railway owner or other persons, except for proper purposes.

(2) In this section –

“confidential information” means information that has not been made public and that –

- (a) is by its nature confidential;
- (b) was specified to be confidential by the person who supplied it; or
- (c) is known by a person using or disclosing it to be confidential.

2.1 WestNet’s proposal

WestNet considers that there will be a limited amount of confidential information as defined by the Act, but that it would cover correspondence between WestNet and access seekers and operators, electronic records, costs and revenue data and information provided in the course of management reporting. WestNet has proposed a number of arrangements through which it will seek to protect confidential information – see Table 1.

Table 1 WestNet's policy on protection of confidential information

<i>Information</i>	<i>WestNet's policy</i>
Correspondence and electronic records	<p>All correspondence between WestNet and access seekers and operators is maintained on WestNet files within WestNet and WestNet files and correspondence are not available to any other party</p> <p>All records relating directly to access will be maintained in a separate area with restricted entry to WestNet staff</p> <p>A security system on electronic records that only allows appropriate WestNet staff to access the records – for example, information about access agreements stored in RAMS is password protected</p>
Costs and revenue	<p>An accountant within ARG's centralised accounting group will provide services to WestNet. Within this group, a specialist accountant will deal with WestNet's revenue and operating budgets</p> <p>The accountant dealing with AWR issues will not be involved in WestNet accounting service provision</p> <p>WestNet accounting staff will not be involved in dealing with access applications or negotiations with access seekers</p> <p>Employees dealing with access-related functions will be required to sign statements stating their awareness of their Code responsibilities at the time of their appointment</p>
Information provided in the course of management reporting	<p>Confidential WestNet matters "appropriate details of access contracts or negotiations" will only be reported to certain staff of ARG</p> <p>Where confidential information is provided from the WestNet Board to either ARG management or the ARG Board, it will be clearly identified</p> <p>Details of access contracts or negotiations will not be provided to the management of AWR – that is, reports to management of ARG are dealt with only in meetings where WestNet and ARG management are present and no representatives of related entities operating train services (for example, AWR) are present</p> <p>Financial and operating results of a specific company will not be disclosed to other relevant entities in the ARG group</p> <p>ARG related safety matters will be dealt with at the ARG Executive level</p>

Source: WestNet Rail (November 2001) *Segregation Arrangements*.

2.2 Worsley's response

Worsley supports generally the measures proposed by WestNet for protection of confidential information, but believes that significant improvements need to be made. Furthermore, WestNet needs to provide far more detail about how it proposes to implement many of these policies. Worsley submits that:

- WestNet should compile a list of matters that are likely to be confidential information, and provide this list to access seekers, operators, employees, directors, contractors, agents, etc, whenever confidential information is being provided, released, or otherwise dealt with:
 - without listing exhaustively the matters that could amount to confidential information, such matters are likely to include information relating to a party's financial position including its assets or liabilities, information relating to a party's internal management, organisational structure, personnel, policies and strategies, other information about the party that has actual or potential commercial value, and any information relating to the party's clients or suppliers (such as customer lists/location/usage, contract conditions, supply and purchase arrangements, etc);
 - at the same time, WestNet should also produce a document explaining its obligations under the Act, and list the occasions in which it is appropriate to release confidential information, with specific examples. The document should be approved by the regulator;²
- generally, information concerning an above rail operator should be presumed to be confidential in the WestNet systems:
 - there should also be a register, maintained by WestNet, for all information that might be confidential exchanged in the context of all access matters;

² An excellent example of the format such information should be presented is found in AGL Gas Networks Limited (March 1998) *Ringfencing Compliance Manual* and AGL Gas Networks Limited (November 1998) *Ringfencing Compliance Manual: Supplementary Questions and Answers*. Issues associated with education policies associated with ringfencing are considered in section 6 below.

- such a register would provide an on-going record of those persons to whom confidential information is disclosed, providing a higher level of transparency and accountability for the handling of access seekers' and operators' confidential information by WestNet;
 - the register for each access negotiation and agreement should record all marked pieces of hard-copy confidential information provided by the access seeker or operator and be signed by each receiving person outside of WestNet to record the oral or other exchange of confidential information relating to that access seeker or operator;³
 - it should also record all failures of WestNet's obligations in respect of handling of confidential information, and WestNet's response to such breaches;
 - AWR's access to RAMS should expressly be on the basis of it being an operator on the system and should be restricted to its own traffics accordingly. Moreover, it is important that AWR utilises its own above rail operating system (eg for crewing and rollingstock allocation) rather than RAMS;
- there is currently insufficient information about the system security procedures to be adopted by WestNet. WestNet's information system's administrator's process for setting and allocating passwords and protecting passwords should be detailed, along with details of how these arrangements conform to international best practice for system security;
 - details should be provided about the physical security arrangements that WestNet will have in place for preventing inappropriate access to records relating directly to access to staff other than WestNet staff (for example, use of "swipe-cards" for access to WestNet's offices and for access to records areas, protocols for movement of files from WestNet's offices);

³ This proposal is drawn from a similar requirement imposed by the Queensland Competition Authority on Queensland Rail ("QR"). See Queensland Competition Authority (2000) "Ring-fencing arrangements", Chapter 3, *Final Decision on QR's Draft Undertaking*, at 77.

- there should be additional system security applied within ARG's centralised accounting group:
 - currently, WestNet proposes that the accountant dealing with AWR issues will not be involved in WestNet's accounting service provision and that a specialised accountant within ARG's centralised accounting group will deal with WestNet's revenue and operating budgets;
 - measures should be put in place to prevent access by AWR and WestNet's specialist accountants to the files (both electronic and hard-copy) maintained by each other;
 - it should be clarified that the obligations in the policy apply to any person who is provided information either directly or indirectly by WestNet;⁴
- WestNet needs to detail the policy it will implement in relation to the potential sharing of confidential information received and considered by in-house legal advisers within the ARG group. Worsley is concerned that an in-house ARG legal adviser could disclose confidential information belonging to an access seeker or operator that could be commercially valuable to AWR if disclosed to it. Worsley considers that:
 - WestNet should detail the extent to which it proposes to employ its own in-house legal advisers and the extent, if any, to which it proposes to rely on ARG's legal advisers;
 - if WestNet proposes to utilise the services of ARG's legal advisers, it should detail the arrangements that will be implemented to ensure that legal advisers who advise on access-related matters will not be in a position to misuse information received in the course of providing legal advice. Worsley considers that the most appropriate solution to the problem of managing confidential information received by in-house legal advisers is to apply similar arrangements to those proposed for accountants within ARG

⁴ For example, section 1.2 of the policy assumes that it applies only to WestNet – however, it applies to the whole of the ARG group, as well as any person is provided information by any of those entities.

- that is, that there should be separate legal advisers within ARG devoted exclusively to WestNet and AWR matters respectively;
- while Worsley supports the proposal to require employees dealing with access-related functions to sign statements stating their awareness of their Code responsibilities, it considers that:
 - they should be required to sign statements on a periodic basis (annually);
 - the requirement to sign such statements should be extended beyond those employees dealing with access-related functions to all employees and contractors who are reasonably likely to receive or otherwise deal with information that would be regarded as confidential under the Act. It should also be extended to directors within the ARG group and to personnel from other entities within the ARG group who need access to confidential information to carry out their jobs. This is critical, since, in practice, it is those who receive confidential information but are removed from the daily rigours of compliance that are more likely to be apparent in WestNet itself;⁵
 - WestNet should periodically conduct compulsory information seminars to inform staff of WestNet's obligations under the Act;
- WestNet should develop, in conjunction with the Regulator, a standard confidentiality deed that either party (WestNet or the access seeker or operator) may enter into at their discretion, which would govern the use to which WestNet and its employees and contractors would deal with confidential information:
 - this confidentiality deed should set out the rights that either party can expect of the other in relation to the disclosure and management of confidential information, and should contain a liquidated damages clause for the inappropriate disclosure of confidential information, which the access seeker or operator could have enforced in an appropriate court;
 - the deed should state clearly the use to which confidential information may properly be put – for example, the parties would be free to specify that the information may only be used for the purposes of responding to an access

⁵ See, for example, AGL Gas Networks Limited (March 1998) *op cit*.

application, developing an indicative access proposal or executing or administering an access agreement;⁶

- WestNet employees having access to confidential information should, in addition to the statements they sign demonstrating their awareness of WestNet's responsibilities under the Act, be required to agree in writing that it is a condition of their employment that they will not misuse that information or disclose it to any other person:
 - additional to this requirement should be that it is a condition of their employment that employees comply with the procedures WestNet has in place for protection of confidential information, including (for example) that computer passwords not be disclosed, and other physical arrangements for the security of access to confidential information not be undermined;
 - similarly, WestNet should require, as a condition of engagement, that any consultants, contractors or agents who have access to confidential information, warrant that they will not misuse the information or disclose it to any other person;⁷
- WestNet should clarify what it considers to be "appropriate details of access contracts or negotiations" that it would report to relevant staff of ARG. Similarly, the full range of functions such as human resources and ARG safety matters to be performed by ARG or other entities in the ARG Group should be specified. Specific procedures should be incorporated where information is conveyed outside of WestNet, including the use of registers as set out above;
- where confidential information is provided from WestNet to either ARG management or the ARG Board, not only should it be clearly identified, but the recipients of the information should be required to sign additional statements

⁶ This proposal is drawn from a similar requirement imposed by the Queensland Competition Authority on QR. See Queensland Competition Authority (2000) *op cit*, at 77-78.

⁷ See, for example, AGL Gas Networks Limited (March 1998) *Ringfencing Compliance Manual*, at 3.3.1.

(containing liquidated damages clauses) demonstrating their understanding of the restrictions imposed on their dealing with the information and the consequences of their failing to adhere to these restrictions;

- additional to the policy that reports to management of ARG by WestNet will occur only in meetings where WestNet and ARG management are present (and not representatives of AWR) should be the policy that reports to management of ARG by AWR should occur only in meetings where WestNet's representatives are not present;
- where it is necessary to obtain the approval of an access seeker or operator to release confidential information, WestNet should complete for the access seekers' or operators' signature an "authorisation to release information" form;⁸
- where it is not necessary to obtain the approval of an access seeker or operator to release confidential information, details of the reason for the release of the confidential information, and the parties requesting and releasing the information should be entered onto the confidential information register (see above);
- where information is provided to external advisers, similar controls should be in place to those that apply for the internal dissemination of confidential information - this is important to maintaining the integrity of the arrangements. However, additional arrangements should be included where the adviser also assists AWR or ARG, including:
 - confidential information would only be released to named persons;
 - those persons would not release information to any other person unless otherwise agreed;
 - those persons would provide an assurance that they would not act for another entity in the ARG group on a related matter during the consultancy;
 - the person would execute a confidentiality deed;

⁸ See, for example, AGL Gas Networks Limited (March 1998) *op cit*.

- a formal threshold be established when a contractor is deemed to be an employee of WestNet for ringfencing purposes (eg working 30 hours per week over a continuous 3 month period);⁹ and
- the reporting responsibilities of the security officer mentioned in section 10 relating to the MIMS system etc should be clarified (ie that they are not to AWR officers);
- WestNet should appoint a Ringfencing Compliance Officer to review internal compliance with its obligations under the Act.¹⁰

⁹ See clause 3.3 of QR's final undertaking.

¹⁰ See, for example, AGL Gas Networks Limited (March 1998) *op cit*, at 3.3.2.

3 Avoidance of conflict of interest

Section 32 of the Act provides that:

The arrangements under section 28 must be such as to ensure that a relevant officer does not have a conflict between his or her duties –

- (a) as a person concerned in the performance of access-related functions, on the one hand; and
- (b) as a person involved in other business of the railway owner, on the other.

3.1 WestNet's proposal

WestNet has proposed a number of arrangements for the avoidance of conflict of interest relating to the separation of functions between AWR and WestNet and the roles of the Boards of WestNet and ARG – see Table 3.

Table 3 WestNet's policy on avoidance of conflict of interest

<i>Issue</i>	<i>WestNet's policy</i>
Separation of functions	<p>There is no conflict of interest in train control and scheduling because these functions are performed by WestNet</p> <p>WestNet's access functions are staffed separately by WestNet employees or by direct contract</p> <p>Contractors will be required by WestNet to be familiar with and comply with the Code</p> <p>If staff rotate between WestNet and AWR, WestNet will ensure they do not have access to confidential information, are familiar with the Code and are "appropriately supervised" in the event of a conflict of interest</p>
Boards of WestNet and ARG	<p>WestNet has a separate Board of Directors, (one of whom is a Director of ARG)</p> <p>WestNet has no other function than the provision of access</p> <p>The WestNet Board will recommend to the ARG Board for approval proposals involving access and the ARG Board will receive information it considers appropriate to discharge its obligations under the Corporations Act</p> <p>No directors of AWR will also be directors of WestNet</p> <p>Complaints can be made to the Regulator if it is felt that the Code has not been complied with</p>

Source: WestNet Rail (November 2001) *Segregation Arrangements*.

3.2 Worsley's response

Worsley is concerned that WestNet believes that because it alone in the ARG group performs access-related functions, there is no conflict of interest in train control and scheduling. The potential conflict of interest arises because WestNet is affiliated through a common parent company with a company (AWR) that provides above-rail services. There is a danger that WestNet will conduct train control and scheduling in a manner that is more favourable to AWR than other access seekers and/or operators. Indeed, to the extent that those in WestNet have an obligation to maximise the profitability of the ARG Group, there remains a clear conflict of interest.

Moreover, it is clear that AWR will perform train scheduling and control on crucial parts of the network, including on parts of the narrow gauge network and in yards, although the extent of this is unclear. This presents an unacceptable allocation of functions – this function is so critical to the operation of a railway that it should not be accepted under any circumstances. WestNet must perform all train scheduling and control operations on its network itself rather than contract AWR to perform them.

Accordingly, it is submitted that the assertion that “the test for separation of functions has been adequately met” is erroneous – not until there is complete functional separation between WestNet and AWR could this be said to be met. Moreover, Worsley does not consider it appropriate that ARG perform safety related functions where it does so for AWR as well. This represents another breach of the separation of functions requirement.

Worsley makes the following comments in relation to WestNet's proposed policy for avoiding conflicts of interest:

- the best way to effectively avoid a conflict of interest is for WestNet to commit to standardised access arrangements to apply in a non-discriminatory way to AWR and other access seekers and providers and to commit to applying its Train Management Guidelines and Train Path Policy to these parties in a non-discriminatory way;
- accordingly, Worsley considers that WestNet's commitment to non-discriminatory application of its Train Management Guidelines and Train Path Policy should be a key aspect of its Segregation Arrangements – in particular, its commitment to avoid conflicts of interest;
- consequently, WestNet's conformity to non-discriminatory application of its Train Management Guidelines and Train Path Policy should be subjected to independent audit (see section 6) along with all other

dimensions of WestNet's Segregation Arrangements. This conformity should extend to an assessment of whether AWR gained preferential treatment in relation to train scheduling and train control decision-making;

- WestNet should acknowledge the potential for conflicts of interest to arise in respect of other aspects of its business, apart from train control and scheduling:
 - in particular, WestNet should acknowledge the potential for AWR to obtain preferential treatment from WestNet in relation to the provision of information about WestNet's infrastructure services, and undertake to provide comparable information to all access seekers and operators;
 - the inappropriateness of AWR's role in relation to train control and scheduling is discussed above;
 - a conflict of interest is not avoided by simply appointing a contractor or an agent to perform a function – especially if that contractor itself has a conflict of interest (eg AWR);
- Worsley does not consider that WestNet's proposed arrangements to avoid conflicts of interest in relation to staff rotation between AWR and WestNet are adequate:
 - in relation to staff rotations from AWR to WestNet and back, Worsley considers that where a staff rotation may involve access or exposure to confidential information relating to any of WestNet's access-related functions, the AWR employee should be required to sign a confidentiality deed identical to those required to be signed by WestNet's staff and contractors;
 - whenever staff move between AWR and WestNet on a temporary or full-time basis, their computer access profiles must be varied to reflect their new position;¹¹
 - there should be an absolute prohibition on senior WestNet staff occupying positions in AWR or elsewhere in the ARG Group where they work on a matter about an operator or end customer in respect of which they had

¹¹ See, for example, AGL Gas Networks Limited (March 1998) *op cit*.

access to confidential information about that operator or end customer for a defined period of at least 6 months;¹² and

in addition to the policy that no directors of AWR will be directors of WestNet should be a policy that no directors of WestNet should be directors of AWR. It should also be noted that there will be common directorship representation by virtue of ARG board representation on both entities (WestNet and AWR). Moreover, the directors of the ARG group are subject to a fiduciary obligation to maximise the value of that business.

These common directorships therefore highlight the inherent and inevitable weakness of ringfencing arrangements - even if managers are unaware of the information possessed by others, they are subject to direction of another person who is aware of that information.

This limitation highlights the failure of ringfencing to address the incentives for WestNet to maximise corporate value for the ARG group as a whole and continue to use its control in the below rail business to provide commercial advantages to its related above rail business operating in the contestable sector. This incentive is only checked by express prohibitions accompanied by a creditable threat that transgressions will be discovered and penalised sufficiently to discourage such behaviour.

Whilst it is acknowledged that the Act recognises the duty of fairness, it is submitted that the segregation arrangements should expressly acknowledge that the obligation to observe this duty explicitly overrides any corporate objective or fiduciary duty to maximise the value of the ARG Group as a whole.

¹² See clause 3.3 of QR's final undertaking.

4 Duty of fairness

Section 33 of the Act provides:

In performing their functions relevant officers must not have regard to the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators.

4.1 WestNet's proposal

WestNet's only proposals in response to this duty of fairness are that:

- it is up to the Regulator to determine whether access prices and other terms and conditions are fair; and
- the provisions of WestNet's standard access agreement provides for specific consultation mechanisms, the provision of information and dispute resolution mechanisms which would allow access seekers to test the duty of fairness related to non-price issues in the provision of access.

4.2 Worsley's response

In Worsley's view, this is an inadequate response to the duties imposed upon WestNet under the Act. In Worsley's view, WestNet is obliged to demonstrate that it acts fairly in relation to:

- the negotiation of access agreements – both in terms of price and non-price terms and conditions;
- the operation and administration of access agreements, such as in the allocation of train paths and the performance of train control; and
- in the enforcement of access agreements, such as the resumption of paths .

Moreover, the relevant terms of the proposed standard access agreement should form part of the segregation arrangements so that interested parties have an opportunity to comment and that the terms are enforceable against WestNet. Similarly, the terms of any dispute resolution arrangement should be clarified – ie is it independent of and external to WestNet, does it require resolution within a defined period, is WestNet required to provide information to it etc.

5 Separate accounts and records

Section 34 provides that:

A railway owner must ensure that its accounts and records are in such form as to enable
—

- (a) all income, expenditure, assets and liabilities relating to the carrying out of its access-related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities; and
- (b) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the carrying out of its access-related functions to be apportioned in a fair and reasonable manner.

5.1 WestNet's proposal and Worsley's response

WestNet's response to its obligation to maintain separate accounts and records is that "by definition", WestNet is complying with section 34 because it has no other functions besides those that are access related, and that the accounting services employees of the ARG group have been "well briefed" on the process of segregation and are not permitted to provide group information back to the business units. Also, WestNet will have a designated accountant within ARG who performs no other accounting functions. Finally, WestNet proposes that its policies in respect of the protection of confidential information address its obligations to provide separate accounts and records.

Without specific information about the way in which WestNet proposes to apportion income, expenditure, assets and liabilities relating to the carrying out of its access-related functions and other functions, it is difficult for Worsley to comment on WestNet's conformity to the requirements in section 34. However, Worsley believes that WestNet needs to provide information on the apportionment of a number of costs between companies within the ARG group. WestNet's proposed obligations in this regard are set out in its submission on the Costing Principles.

6 Measuring the effectiveness of Segregation Arrangements

WestNet proposes that the effectiveness of its Segregation Arrangements should be measured through compliance audits performed by its internal auditors (currently outsourced to Ernst & Young) and that these audits would be submitted to the Regulator on an annual basis. However, the scope of these audits is not defined nor is Ernst and Young's powers to require the provision of information in relation to compliance.

Worsley considers this to be an inadequate means to monitor the on-going effectiveness of WestNet's compliance with its obligations to maintain effective Segregation Arrangements.

Audits of WestNet's compliance with its Segregation Arrangements should be conducted by an independent auditor appointed by the Regulator, but paid for by WestNet. The audits should apply to the entire ARG Group. WestNet (and the ARG Group) should be obliged to comply with information requirements of the auditor in the time frames specified by the auditor.

Furthermore, the results of the annual external audit should be made public, with a commitment by WestNet to address any identified shortfalls in performance. An independent and public audit is important because it will provide a higher degree of transparency to all potential participants and other interested parties as to WestNet's success at adopting and implementing its Segregation Arrangements over time.¹³

Worsley also considers that it is vital that WestNet commit to regular staff training in relation to ring-fencing. Training should be compulsory for all new employees and all employees who rotate between AWR and WestNet, but in any event, should take place at least every six-months.¹⁴

¹³ A requirement for independent audits of this type was a key aspect of the Queensland Competition Authority's requirements for ring-fencing of QR's above- and below-rail business activities. See Queensland Competition Authority (2000) *op cit*, at 95-96. It is also a common feature of other ring-fencing regimes. See, for example, AGL Gas Networks Limited (March 1998) *Ringfencing Compliance Manual*.

¹⁴ See, for example, the requirements for staff training in AGL Gas Networks Limited (March 1998) *op cit*, at 4.1.