



SEGREGATION ARRANGEMENTS

| Revised Submission

| February 2007.

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WESTNET RAIL

SEGREGATION ARRANGEMENTS

1. OBJECTIVES OF THE ARRANGEMENTS

WestNet is the “owner” as defined in the Railways (Access) Act 1998 (“the Act”) of a rail network in Western Australia which is subject to the provisions of the Act to the extent that the network is defined in Schedule 1 of the Railways (Access) Code 2000 (“the Code”) which is established under the Act.

WestNet recognises its obligation to comply with the Act and the Code and specifically Section 28 and Sections 30 to 34 of the Act. The objective of this segregation arrangement is to ensure that WestNet complies with the requirements of Sections 28 and 30 of the Act to segregate its access related functions and in particular gives effect to the obligations set out in:

- (i) Section 31 of the Act which requires an effective regime for the protection of confidential information arising from performing access related functions.
- (ii) Section 32 of the Act which requires the avoidance of conflict of interest between the duties of a relevant officer in performing access related functions and duties involved in other business of the railway owner.
- (iii) Section 33 of the Act relating to the duty of fairness which requires that relevant officers in performing their duties must not have regard for the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators.
- (iv) Section 34 of the Act which requires that accounts and records are maintained to ensure that it accurately records and distinguishes income, expenditure, assets and liabilities related to carrying out access related functions from other activities of the railway owner. This also requires that any apportionment required between its access related functions and other functions be done in a fair and reasonable way.

It is noted that Section 29 of the Act allows the Regulator to impose other requirements on WestNet, other than those covered in Sections 31 to 34 of the Act, to further improve the effectiveness of the segregation arrangements if and as required.

2. SEGREGATION OF ACCESS RELATED FUNCTIONS

WestNet defines Access Related Functions as:

- (i) Compliance with the provisions of the Act and Code and with requirements of the Regulator under that legislative framework including but not limited to:
 - calculating the floor and ceiling costs for approval by the Regulator, and applying the costing principles, the overpayment rules, the train management guidelines, and the train path allocation policy;

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- ensuring that suitable controls, measures and procedures are established to give effect to the segregation arrangements approved by the Regulator;
 - undertaking the steps defined in Parts 2 and 3 of the Code for the negotiation of Access Agreements.
- (ii) Negotiation of Access Agreements (either inside or outside of the Code) and granting of access rights.
 - (iii) Management of Access Agreements including performance monitoring and day to day operation issues.
 - (iv) Collection, use, and dissemination of train running data including manifest details, and access usage.
 - (v) Train scheduling, train path allocation, publication of working timetables, control planning, and the granting of ad-hoc train path entitlements.
 - (vi) Train control which includes provision of appropriate authorities for trains to use scheduled train paths (train orders or signals), real-time management of trains.
 - (vii) Emergency management of the network including co-ordination of emergency service responses.
 - (viii) Development, maintenance and monitoring compliance with appropriate rail safety standards for WestNet staff, its contractors and operators on the Network.
 - (ix) Development and authorisation of the WestNet's Rules (including the General Appendix and Working Timetables) and issue of special notices, instructions and warnings related to the rules.
 - (x) Development of train operating standards (to the extent they relate to the infrastructure) such as maximum braking distances, maximum train lengths etc., and the maintenance standards for the infrastructure itself.
 - (xi) Maintenance of the track and infrastructure including signalling and communications maintenance.

Where WestNet engages contractors or other parties to provide any part of the access related functions it will ensure that any contractor is aware of and complies with any obligations imposed by the Act or the Code and where appropriate have the contractor sign a Compliance Statement.

3. WESTNET RAIL SEGREGATION ARRANGEMENTS MANAGEMENT MANUAL

WestNet will prepare a Segregation Arrangements Management Manual. This manual will be the principal method by which WestNet will manage compliance with these arrangements.

It will be the vehicle by which the segregation arrangements and any changes to segregation procedures, practices and policies are communicated and formalised throughout the organisation.

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Therefore the Segregation Arrangements Management Manual will:

- (i) Be issued as a controlled document to the WestNet executive management team, who are then responsible to comply with the manual.
- (ii) Be reviewed and updated as required with changes being issued in accordance with procedures for controlled documents.
- (iii) Be used to develop the training requirements for new employees.
- (iv) Be the base document against which compliance audits are conducted.

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The manual will include:

- (i) Specific details of the security arrangements in place to protect confidential information including details of the arrangements for securing paper and electronic records and for access to information systems.
- (ii) Details of the physical location of staff work places and the security systems in place in those workplaces and especially for the train control centres operated by WestNet and employees dedicated to providing network management and access related matters.
- (iii) A list of the types of behaviour which may breach segregation arrangements and the appropriate corrective arrangement for each breach.
- (iv) A compliance plan that will include external audit requirements. The compliance plan will be a key monitoring tool for the Regulator in assessing effectiveness of the segregation arrangements.
- (v) Controlled procedures required to give effect to these arrangements including:
 - the preparation by operators of amendments to daily or weekly plans for services which experience variable demand or variable destinations;
 - the identification and storage of, and access to, confidential information;
 - the report of a breach of segregation arrangements to the Regulator.
- (vi) A list of all positions of employees and contractors who must sign Compliance Statements and need to undertake training and orientation.

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Deleted: <#>the use of staff from AWR and other related entities by WestNet in an emergency;¶

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Deleted: <#>the provision, and type, of information to be given to the Board of Directors, and (outside of these structured meetings) to the CEO and/or other senior management of ARG;¶ the provision, and type, of information to be given to the ARG accountancy group for billing purposes;

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This manual will be approved by the Regulator and changes to the manual will also have to be approved by the Regulator.

4. CONFIDENTIAL INFORMATION

WestNet believes the definition of Confidential Information in the Act would mean that the following are examples of the types of information that would be deemed to be confidential:

- (i) Applications and preliminary information from an access seeker who is seeking access.
- (ii) Correspondence related to the negotiation of the Access Agreement.
- (iii) The Access Agreement itself and information exchanged in the management of the Access Agreement over time.
- (iv) Any data related to the recording of usage of the Access Agreement including the data held in RAMS.
- (v) Master Train Control Diagrams (to the extent they identify specific operations).
- (vi) Completed Train Control Diagrams and voice logging tapes from train control.

Where an employee of WestNet has prescribed duties which are managing or conducting access related functions, WestNet will, at the time of their permanent or temporary appointment, require the employee to sign a Compliance Statement that they are aware of their responsibilities and obligations under the Code and specifically as it relates to confidential information as defined in the Code and in these Arrangements.

WestNet has established a regime for protecting Confidential Information as defined in the Code including:

- (i) A system of securing access related information that only allows appropriate WestNet staff to access the records.

This information will be located in a secured compactus within the Access Management area of WestNet's head office premises.

WestNet will control access to its entire head office area and will be locked when not attended. Train control centres are secured and entry is controlled by WestNet.

- (ii) A security system on electronic records that allows only appropriate WestNet staff to access the records.

Access to electronic records that are confidential can only be given by the Commercial Manager and will only be given to persons who have signed a Compliance Statement.

WestNet has physically dedicated computer file servers. User Ids and passwords are set up and managed by the WestNet Information Technology Group. Authority to allocate passwords within an entity resides with the Commercial Manager of that entity.

There are further restrictions applying to the following primary stand-alone systems.

- (iii) Appropriate controls on data, including information in the Rail Access Management System (RAMS) and costing and pricing information to protect confidential information.

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The Commercial Manager must authorise all access to confidential data held in RAMS and will only grant access to persons who have signed Compliance Statements.

This process of granting access and usage is capable of being, and is, audited.

- (iv) Specific provisions in each Access Agreement providing contractual obligations on WestNet to protect confidential information.

(i)

5. CONFLICTS OF INTEREST

WestNet will manage its access related functions so that, for relevant officers, no conflicts of interest exist.

In the case of train scheduling and train control, these functions will be undertaken by WestNet staff who are subject to Compliance Statements.

Operators may prepare amendments to daily or weekly plans for services which experience variable demand or variable destinations providing they do not interfere with any other operators' rights and subject to WestNet having ultimate approval of such changes. This process will be covered by a procedure in the Segregation Arrangements Management Manual.

6. DUTY OF FAIRNESS

WestNet will treat all access seekers and train operators fairly in relation to prices, service quality, and paths and priority.

In addition, WestNet will ensure that the key terms and conditions of internal access arrangements will be broadly comparable to those provided or offered to third parties.

The mechanism for ensuring WestNet's duty of fairness is two-fold:

- (i) Access seekers can determine the fairness of prices negotiated under provisions of Section 21(1) of the Code.
- (ii) Provisions of WestNet's standard Access Agreement provide 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 other than price issues in the provision of access.

WestNet acknowledges that its duty of fairness applies to the application of the determinations made by the Regulator under Part 5 of the Code and particularly:

- (i) The Segregation Arrangements.
- (ii) The Train Management Guidelines.

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Deleted: WestNet is required to provide management reports to both its own Board of Directors and to ARG Management and members of the Board of its parent company, ARG.

These management reports provide financial details at aggregate company level for WestNet and do not identify individual access customers, and reports on other operational and strategic issues. They also include statistics on overall network usage, and safety performance. Typical reports would include: operational matters related to the performance of the network and the maintenance work being carried out; seeking approval for or reporting progress on capital works; issues related to the management of the leases under which WestNet operates; reports on significant incidents; contracts, including access agreements, that have been entered into but only at broad detail level without disclosure of full terms and conditions; monthly financial reports and commentary at aggregate levels. With respect to such management information:

- (i) Reports to ARG management are dealt with only in meetings where WestNet and ARG Management are present and no representatives of related entities operating train services, such as AWR, are present.
- (ii) Members of the WestNet Board are not members of the AWR Board.
- (iii) Where confidential informat...

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- (iii) The Train Path Policy.
- (iv) The Costing Principles.
- (v) The Overpayment Rules.

WestNet will also inform access seekers at the onset of negotiations (whether inside or outside of the Code) of their rights to confidentiality.

If negotiations have commenced outside the Code and an access seeker subsequently makes an access application under the Code, WestNet and the access seeker will agree on what information previously supplied by the access seeker is subject to the confidentiality provisions of these arrangements.

7. PREPARATION OF ACCOUNTS AND RECORDS

WestNet will maintain accounts and financial records for the purposes of complying with the Act and the Code. WestNet employees also control the data used to generate invoices for access customers.

WestNet will present the accounts or financial reports required to comply with the Act and Code or to assist the Regulator in the performance of the Regulator's duties under the Act or the Code in the manner approved by the Regulator.

In preparing such regulatory accounts or reports WestNet must have regard to the Costing Principles determined by the Regulator.

8. COMPLIANCE WITH THESE ARRANGEMENTS

Compliance with these arrangements will be achieved by;

- (i) WestNet providing an Annual Report to the Regulator on its compliance with its Segregation Arrangements Management Manual and any internal auditing it has undertaken. It will include a report on Key Performance Indicators agreed between the Regulator and WestNet to measure the effectiveness of these arrangements.
- (ii) Included with that report will be an independent external auditor's report on compliance on a negative assurance basis. The scope of that audit must be approved by the Regulator who may also choose to select and manage the audit at WestNet's cost. That report will be made public.
- (iii) WestNet will report any breach of the segregation arrangements of which it becomes aware to the Regulator in writing within five business days.

WestNet acknowledges that the Act and Code provide powers sufficient for the Regulator to commission special audits on any issue or area where the Regulator requires additional assurance.

WestNet will also undertake awareness training of the obligations under the Act or Code for all staff who are engaged in access related functions or who are required to sign Compliance Statements.

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Any financial information released by WestNet to the ARG finance group for normal internal reporting purposes will be aggregated to prevent disclosure of confidential information. To the extent any ARG finance staff or ARG auditors may require or be given access to Confidential Information those positions will be covered by Compliance Statements.

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Definitions:

Access Agreements	Means an agreement between WestNet and an entity for access by that entity.
Act	Means the Railways (Access) Act 1998.
Code	Means the Railways (Access) Code 2000 established under the Act.
Compliance Statement	Means a statement signed by a WestNet employee <u>or</u> contractor, indicating their understanding of the obligations imposed under the Act or Code and specifically as those obligations relates to the protection of confidential information.
Confidential Information	Has the meaning ascribed to it in Section 31(2) of the Act
Contractor	Means a person or entity engaged by WestNet to provide advice about or to perform part of its access related functions.
Master Train Control Diagrams	Means diagrams for train working which show: <ul style="list-style-type: none"> (i) all train movements scheduled and included in the working timetable as permanent train movements; (ii) all train movements which have been proposed and agreed and for which there is a contractual agreement which reserves that path for a train operator; (iii) 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 practically operated but for which no contractual agreement has been reached.
RAMS	Means Rail Access Management System, the computer system operated by WestNet for the purpose of preparing train consists and monitoring train progress on the Network and generally for the purpose of Train Control, including for the provision of information relating to timetables, special train notices, temporary speed restrictions, and track warnings.
Regulator	Means the person appointed as the Western Australian Independent Rail Access Regulator under Section 13 of the Act. <u>In this context the West Australian Independent Rail Access Regulator is the Economic Regulation Authority.</u>

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- Deleted: Means the Australian Railroad Group Pty Ltd.
- Deleted: ARG Management
- Deleted: Means the persons holding the positions of Chief Executive Officer, General Manager Finance and Administration, Manager Human Resources, Manager Safety and Environment, Chief Accountant of ARG.
- Deleted: AWR
- Deleted: Means Australian Western Railroad Pty Ltd.
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Segregation Arrangements Management Manual	Means the internal manual used by WestNet to give effect to these arrangements.
WestNet	Means WestNet Rail Pty Ltd.
WestNet Rules	Means WestNet's Rules (including the Appendix to the Rules and Working Timetables) issued in accordance with WestNet's Safety Management Plan approved under Section 10 of the Rail Safety Act together with any amendments, deletions or additions made in accordance with the Safety Management Plan and all policies and notices issued by WestNet for the purpose of ensuring the safe use of the Network.
Working Timetable	Means the train timetables and operating data for all or part of the network issued as part of the WestNet rules and as amended from time to time.

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WestNet is required to provide management reports to both its own Board of Directors and to ARG Management and members of the Board of its parent company, ARG.

These management reports provide financial details at aggregate company level for WestNet and do not identify individual access customers, and reports on other operational and strategic issues. They also include statistics on overall network usage, and safety performance.

Typical reports would include:

- operational matters related to the performance of the network and the maintenance work being carried out;

- seeking approval for or reporting progress on capital works;

- issues related to the management of the leases under which WestNet operates;

- reports on significant incidents;

- contracts, including access agreements, that have been entered into but only at broad detail level without disclosure of full terms and conditions;

- monthly financial reports and commentary at aggregate levels.

With respect to such management information:

- (i) Reports to ARG management are dealt with only in meetings where WestNet and ARG Management are present and no representatives of related entities operating train services, such as AWR, are present.
- (ii) Members of the WestNet Board are not members of the AWR Board.
- (iii) Where confidential information is provided from WestNet to either ARG Management or the ARG Board it will be clearly identified.

When WestNet is presenting reports to ARG Management and directors it will, if confidential information is to be presented, have in place a procedure which ensures that:

- The confidential information presented is clearly identified.

- Recipients of the information have signed a Compliance Statement.

Where there is a need for WestNet to brief the CEO of ARG or other senior management of ARG outside of structured meetings and those briefings are likely to result in the disclosure of confidential information, particularly related to the identity of the access seeker or their train operator, WestNet will have in place a procedure that ensures that:

- The confidential information presented is clearly identified.

ARG Management members have signed Compliance Statements.

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Staff will not be rotated between WestNet and related entities into positions that have been identified in the Segregation Arrangements Management Manual as requiring Compliance Statements.

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No person can be shared by WestNet and AWR if the duties being undertaken for WestNet are duties that would require the person to sign a Compliance Statement.

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If WestNet believes there is an emergency and cannot obtain staff other than from AWR then it may use AWR staff in these positions after it advises the Regulator of:

- (i) The circumstances giving rise to the emergency.
- (ii) The expected duration of the emergency.

The steps WestNet will take to protect against a conflict of interest in these circumstances including those people who are proposed to be used signing a Compliance Statement.