

Public Transport Authority's Part 5 Instruments Review

Final Determination and Approval of the Proposed Train
Management Guidelines, Train Path Policy, Costing Principles
and Over-Payment Rules

29 May 2008

Economic Regulation Authority



WESTERN AUSTRALIA

Copies of this final determination and approval and the Public Transport Authority's approved revised Train Management Guidelines, Train Path Policy, Costing Principles and Over-payment Rules are available from the Economic Regulation Authority web site at www.era.wa.gov.au.

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FINAL DETERMINATION

1. Part 5 of the *Railways (Access) Code 2000* (Code) requires the railway owner to submit four regulatory instrument documents to the Economic Regulation Authority (Authority) for approval.
2. The four regulatory instruments are the Train Path Policy, the Train Management Guidelines, the Costing Principles and the Over-Payment Rules which are referred to collectively as the “Part 5 Instruments”.
3. The overall purpose of the Part 5 Instruments is to facilitate the provision of access to monopoly infrastructure with reasonable quality of service at fair prices.
4. The former Independent Rail Access Regulator (IRAR) approved the Public Transport Authority’s (PTA) four Part 5 Instruments, as required under the Code, in 2003.
5. The IRAR determined that PTA’s Part 5 Instruments be reviewed after five years of operation.
6. On 22 June 2007, the PTA submitted its proposed revised Train Management Guidelines, Train Path Policy, Costing Principles and Over-Payment Rules to the Authority for approval.
7. The Authority invited public submissions on the PTA’s proposed revised Part 5 Instruments over a six week period from 5 July to 17 August 2007. No submissions were received.
8. In December 2007, the Authority conducted a review of the compliance arrangements for the PTA. This review included a process of public consultation. As a result of this review, the Authority determined that PTA’s compliance regime should be modified by reducing some of the compliance obligations previously imposed.
9. On 28 March 2008 the PTA submitted a further proposed revised Part 5 Instruments submission with amendments to reflect the Authority’s determination on its compliance regime.
10. The Authority has reviewed each of the proposed revised Part 5 Instruments submitted by PTA on 28 March 2007, in conjunction with noting the public submissions received during the public consultation processes.
11. The Final Determination of the Authority is to approve all four proposed revised Part 5 Instruments submitted by the PTA on 28 March 2008.
12. The approved Part 5 Instrument documents have been placed on the Authority’s web site www.era.wa.gov.au.

REASONS FOR THE FINAL DETERMINATION

BACKGROUND

13. The Authority administers the Western Australian *Railways (Access) Act 1998* (Act) and the Code.
14. The Code is a requirement of the Act and both became effective in September 2001. The rail network and types of infrastructure subject to the Regime are defined in Schedule 1 of the Code and comprise the regional freight network in the south west of the State and the urban passenger network.
15. Section 3 of the Act defines a 'railway owner' to mean the person having the management and control of the use of the railway infrastructure. In this context, the PTA is considered to be the owner of the urban passenger network and WestNet Rail (WNR) is considered to be the owner of the regional freight railway network.
16. The PTA is a government owned enterprise with vertical integration of the above and below rail parts of the business and provides management and delivery of public passenger metropolitan and regional rail services in Western Australia. Transperth is the metropolitan passenger train operating division and uses the PTA urban network, and Transwa operates three regional passenger train services (the Australind, the Prospector and AvonLink) which use both the PTA and WNR networks.
17. There are four regulatory requirements on railway owners defined in Part 5 of the Code which are referred to collectively as the 'Part 5 Instruments'. The railway owner must prepare documents outlining their proposed arrangements for each of these instruments with the Code requirements, and submit these to the Authority for approval.

PART 5 INSTRUMENTS

18. The overall purpose of the Part 5 Instruments is to facilitate the provision of access to monopoly infrastructure with reasonable quality of service at fair prices thereby preventing below rail infrastructure owners from extracting monopoly rents from above rail operators whilst balancing the need for infrastructure owners to achieve fair and reasonable returns on their rail investments.
19. The four Part 5 Instruments set out in the Code are the Train Path Policy, Train Management Guidelines, Costing Principles and Over-Payment Rules.
20. The Train Path Policy is the high level statement of policy relating to the allocation of train paths and the provision of access to train paths that have ceased to be used. The Train Path Policy is designed to ensure that the allocation of train paths is undertaken in a manner that ensures fairness of treatment between operators and acknowledges existing contractual rights and any new contractual rights created under access agreements entered into under the Code.
21. The Train Management Guidelines is the other Part 5 Instrument that relates to the management of trains on the railway network. This document is more detailed than the statement of policy and sets out principles, rules and practices that will be applied in the real time management of train services. These principles, policies

and practices will also apply in a non-discriminatory manner between all operators on the railway network.

22. The Costing Principles is a statement of the principles, rules and practices that are to be applied by the railway owner in the determination of the floor and ceiling costs relevant to a route on the railway network. The floor and ceiling costs set the minimum and maximum prices that the railway owner can charge an operator for access to that route on the railway network. All costs referred to under the Code are those that would be incurred by adopting efficient practices in the provision and management of railway infrastructure.
23. The Over-Payment Rules is a statement of the rules that are to apply where the price ceiling for a route on the railway network is exceeded. The price ceiling, as stated in clause 8 of Schedule 4 of the Code, is the total cost attributable to that route and associated infrastructure.
24. The initial approval of the Part 5 Instruments was made by the IRAR, in accordance with the relevant provisions under Part 5 of the Code, in 2003. The IRAR determined that these instruments would be reviewed five years after their commencement. These documents and the IRAR determination are available on the Authority's web site.

PUBLIC CONSULTATION

25. On 22 June 2007, the PTA submitted its proposed revised Part 5 Instruments (Train Management Guidelines, Train Path Policy, Costing Principles and Over-Payment Rules) to the Authority for approval. These instruments were consistent, where appropriate, with WNR's Part 5 Instruments which had been approved by the Authority in August 2006.
26. The Code, under Section 45, requires the Authority to undertake public consultation prior to the approval of the Train Management Guidelines and the Train Path Policy. There is no legislative requirement for public consultation prior to the Authority's approval of the Over-Payment Rules or the Costing Principles. The Authority made a decision previously, when undertaking its review of WestNet Rail's Part 5 Instruments in 2006, that public consultation should be undertaken on all four Part 5 Instruments at the time such instruments were reviewed.
27. In accordance with Section 45 of the Code, the Authority sought public comment on the PTA's proposed revised Part 5 Instruments through the placement of a notice seeking public comment on the Authority's web site and in The Australian and The West Australian newspapers. The Authority provided a six week period for public submissions, from 5 July to 17 August 2007.
28. The Authority did not receive any submissions during this six week public consultation period.
29. In December 2007 the Authority undertook a review of the compliance arrangements for the PTA. The objective of this review was to examine whether the regulatory compliance requirements for the PTA should be modified in order to reduce the regulatory compliance costs imposed on the PTA in light of the limited potential for third party access to the PTA rail network.

30. To assist in its decision on the appropriate level of compliance arrangements for the PTA, the Authority sought public comment on this issue. This process involved the Authority preparing a background paper, outlining the changes to the PTA's compliance arrangements being considered by the Authority, and placing a notice on the Authority's web site seeking public comment on this paper. The Authority invited public submissions over the period 3 January to 25 January 2008.
31. The Authority received two submissions, one from the Chamber of Commerce and Industry Western Australia (CCIWA) and the other from the Australian Rail Track Corporation Ltd (ARTC). These submissions are available on the Authority's web site.
32. The CCIWA submission indicated its support for initiatives designed to reduce the administrative burden associated with regulatory compliance and did not object to the Authority's proposed changes to the PTA's compliance requirements.
33. The ARTC submission noted that ARTC's business in WA is only focused on that part of the regional railway network that connects with the national interstate railway network and therefore its involvement in regulatory reviews to date had focused entirely on the WNR network. ARTC noted that the regulatory compliance arrangements imposed on the urban network operated by the PTA were unlikely to have any direct impact on the activities on the interstate rail network.
34. In addition, the Authority sought comment on its background paper from the PTA and the Minister for Planning and Infrastructure. Both the PTA and the Minister supported the proposed changes to PTA's compliance arrangements.
35. As a result of this review, the Authority determined that PTA's compliance arrangements should be modified by reducing some of the compliance obligations previously imposed. The changes to these compliance arrangements reflect the nature of the PTA's urban rail network and the limited extent to which third party access to PTA's rail network is likely to be an issue in the future.
36. On 28 March 2008 the PTA submitted a further proposed revised Part 5 Instruments submission with amendments to reflect the Authority's determination on the modification of the PTA's compliance regime.

MODIFICATION OF COMPLIANCE ARRANGEMENTS

37. Under the previous compliance requirements determined by the IRAR, the PTA was required to undertake the following:
 - Prepare and submit detailed information on Key Performance Indicators (KPIs) to the Authority on a quarterly and annual basis.
 - Commission independent annual audits of compliance with the Part 5 Instruments, Segregation Arrangements and selected KPI information.
 - Undertake reviews of the Part 5 Instruments and the floor and ceiling costs at set intervals.
38. Under the modified compliance requirements approved by the Authority the PTA will be required to undertake the following:

- Provide KPI information to the Authority only in the case where a third party approaches the Authority seeking access under the Regime and the Authority decides that KPI information is necessary to monitor the service quality of the PTA.
 - Commission and submit compliance audits only in the case where a third party approaches the Authority seeking access under the Regime and the Authority decides that a compliance audit is required.
 - Undertake future reviews of the Part 5 Instruments and floor and ceiling costs (after completion of the current reviews) only in the case where access seekers approach the Authority seeking access under the regime and the Authority decides that a review is required.
39. The modifications to the PTA's regulatory compliance arrangements do not involve any amendments to the existing rail legislation.
40. These changes to the regulatory compliance requirements should serve to substantially reduce the compliance burden on the PTA. Should future access seekers not be able to negotiate commercial access agreements with the PTA and make a request to the Authority for access to the PTA's network then the Authority has the ability to reinstate appropriate compliance arrangements.

LEGISLATIVE REQUIREMENTS

41. The Train Management Guidelines, Train Path Policy, Costing Principles and Over-Payment Rules are required to be approved by the Authority pursuant to Sections 43, 44, 46 and 47 of the Code respectively.
42. Under the Code, the Authority may approve each of the Part 5 Instruments submitted by the railway owner either with or without amendments.

CONCLUSION

43. The Authority has reviewed each of the proposed revised Part 5 Instruments submitted by PTA on 28 March 2008, in conjunction with considering the submissions received during the public consultation processes.
44. The Final Determination of the Authority is to approve all four proposed revised Part 5 Instruments as submitted by PTA on 28 March 2008.
45. The approved Train Path Policy, Train Management Guidelines, Costing Principles and Over-Payment Rules have been placed on the Authority's web site www.era.wa.gov.au.