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Our Ref: LS-160-O-0006

3 July 2008

Mr Russell Dumas
Director, Gas and Rail Access
Economic Regulation Authority
Level 6, Governor Stirling Tower
197 St George's Terrace
PERTH WA 6000

Dear Russell

RAILWAYS (ACCESS) ACT 1998 – THE PILBARA INFRASTRUCTURE PTY LTD

Part 3 of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004 came into operation on 1 July 2008. As such, the railway constructed pursuant to the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement, by The Pilbara Infrastructure Pty Ltd ("TPI"), a subsidiary of Fortescue Metals Group Ltd, is now listed under Schedule 1 of the Railways (Access) Code 2000 ("Code").

As required under Clause 16(8) of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement, TPI is required to submit to the Regulator arrangements and statements in respect of:

- Section 29 of the Railways (Access) Act 1998;
- Section 43 of the Code;
- Section 44 of the Code;
- Section 46 of the Code; and
- Section 47 of the Code.

I have attached for your review, TPI's submissions in respect of the first three above listed submissions and statements; and advise that the remaining two will follow shortly.

Please contact me in the first instance if you have any questions on these documents or would like to discuss key matters.

Yours sincerely

FORTESCUE METALS GROUP LTD

GREG DELLAR

for
The Pilbara Infrastructure Pty Ltd



Segregation Arrangements

The Pilbara Infrastructure Pty Ltd

July 2008

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Segregation Arrangements

1 Introduction

1.1 Background

Fortescue Metals Group Ltd (FMG) is developing iron ore mining operations in the vicinity of the Chichester Range in Western Australia's eastern Pilbara, through a wholly owned subsidiary, FMG Chichester Pty Ltd. FMG is also establishing port facilities at Anderson Point in Port Hedland and a railway link between the port and mine, via another wholly owned subsidiary, The Pilbara Infrastructure Pty Ltd (TPI).¹

In December 2004, the State of Western Australia, TPI and FMG (as guarantor of TPI) entered into a State agreement that included provisions for the railway and port infrastructure to be subject to third-party access arrangements. The *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* ratified the agreement and authorised its implementation.

The *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* amended the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000* (the WA Rail Access Regime) to bring TPI's railway under the Western Australian rail access regime. Clause 16 of the State Agreement covers railway access matters specific to TPI's railway.

1.2 WA rail legislative requirements

The WA *Railways (Access) Act 1998* establishes the following requirements for railway owners in relation to the segregation of access-related functions:

- Duty to segregate (section 28)
- Matters to be covered as part of duty to segregate (section 30)
- Protection of confidential information (section 31)
- Avoidance of conflict of interest (section 32)

¹ TPI is a subsidiary of International Bulk Ports Pty Ltd, which itself is a wholly owned subsidiary of FMG.

- Duty of fairness (section 33)
- Maintenance of separate accounts and records (section 34)

The powers of the Regulator in relation to segregation are established in section 29. In particular, the railway owner must obtain the Regulator's prior approval for its segregation arrangements or variations to such arrangements. In this regard, the Regulator may provide written directions to the railway owner in relation to segregation and these directions are to be complied with.

1.3 Implementation of segregation arrangements

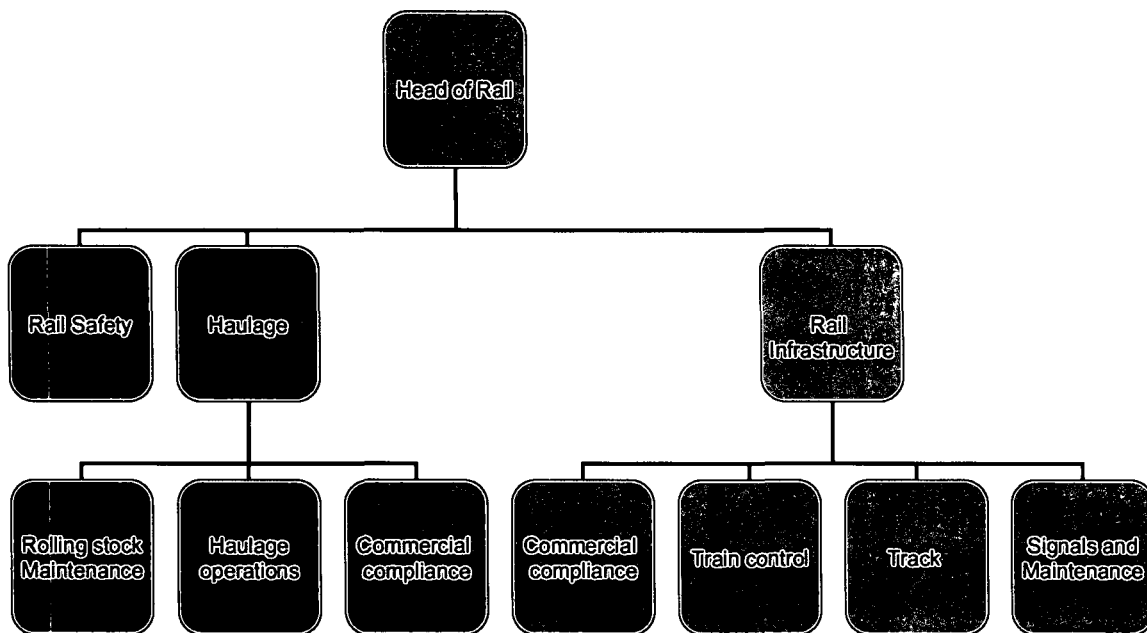
1.3.1 Corporate structure of TPI and FMG

As previously noted, the rail assets subject to declaration under the WA Rail Access Regime are owned and will be operated by TPI, a wholly owned subsidiary of FMG.

TPI is a transport and logistics provider in the Pilbara region, in particular, it is responsible for the construction of a railway from the Pilbara to Port Hedland and a port facility at Point Anderson to serve FMG's mining operations in the region.

TPI will perform both the access-related rail functions specified in Section 2 of this paper and also perform the rail haulage functions associated with the operation of train services.

TPI's organisational structure is indicated below.



The parent company, FMG, will be focused on the task of developing the mining operation and ultimately marketing iron ore.

1.3.2 Timing of implementation

As a greenfields operation, TPI is concerned that its early rail operations should not be adversely affected from a safety, operational or cost perspective, by the separation between rail infrastructure and rail haulage operations created by any segregation arrangements.

In this regard, TPI understands that full segregation arrangements have not been imposed on any new railways in Australia since the introduction of the National Competition Principles Agreement in April 1995. TPI considers that the relevant regulatory precedent is provided by the access regime applying to the Tarcoola to Darwin railway, a vertically integrated greenfields railway that commenced operations in 2004.

TPI is aware that under the AustralAsia (Third Party Access) Code,² which applies to the Tarcoola to Darwin railway, the access provider is subject to the following segregation obligations:

² The Code is a schedule to the AustralAsia Railway (Third Party Access) Act 1999 (SA & NT) .

- a requirement to protect confidential information, including information that could affect the competitive position of an access seeker;
- a requirement to keep separate accounts and records of its business consisting of the provision of railway infrastructure services so as to give a true and fair view of that business as distinct from other businesses carried on by the access provider or any related body corporate or associate of the access provider; and
- a general prohibition on hindering access to the rail infrastructure.

However, there is no legislative requirement for the access provider to separate its access-related and rail operator functions.

The National Competition Council recommended that the AustralAsia Railway Access Regime applying to the Tarcoola to Darwin railway was an effective access regime. The Commonwealth Treasurer subsequently decided to certify the regime until 31 December 2030.

In light of the greenfields nature of TPI's railway and haulage operations, and having regard to the regulatory precedent established by the certified access regime applying to the Tarcoola to Darwin railway, TPI proposes that its segregation arrangements be implemented in two stages.

Stage 1

Stage 1 will apply from the commencement of TPI's railway operations.

For this stage, TPI proposes that there will not be complete functional separation of access-related functions and haulage functions within TPI on a day to day basis. While the organisational structure, as provided in section 1.3, will be implemented from the outset, there will be considerable sharing of information between business units to support the effective and safe implementation of the rail and haulage operations, including on matters such as safety, maintenance and scheduling. This sharing of information will be subject to the ringfencing obligations set out below.

The entirety of the access application/negotiation process will be undertaken by a Commercial/Compliance Officer within TPI. From time to time, as required, the Commercial/Compliance Officer will receive advice from other areas of TPI. The process of obtaining advice from other areas of TPI will be subject to the arrangements for handling access seekers' confidential information outlined in section 4 of this paper.

In terms of support services, there will be shared FMG/TPI staff in finance, IT, human resources and payroll functions. For these services, the arrangements regarding access to, and handling of, confidential information outlined in section 4 of this paper will also apply.

Importantly, TPI commits that FMG staff involved in the mining or marketing of iron ore will not perform access-related functions at any stage. This is a key element of ensuring officers performing access-related functions do not face any conflicts of interest in performing their duties.

Stage 2

TPI proposes that Stage 2 will be triggered by the signing of the first Access Agreement with an Access Seeker. TPI proposes that once this Access Agreement is signed, it will submit the relevant documentation to the Regulator to demonstrate how it will implement its Stage 2 obligations for the Regulator's approval. Recognising that there is usually a time lag between the signing of an Access Agreement and the commencement of an Access Holder's rail haulage operations, the obligations in Stage 2 will come into force no later than 6 months prior to the scheduled commencement of third party rail haulage operations on TPI's Pilbara railway.

- The key additional obligation TPI will bear under Stage 2 relates to more complete functional separation. Stage 2 obligations will ensure those staff performing access-related functions, such as train control and scheduling, will not perform any haulage-related functions. Consistent with the above organisational structure, TPI's rail business will have separate infrastructure and haulage operations.

The details of the proposed organisation segregation and reporting arrangements in Stage 2 are outlined in section 3.

TPI considers that this two stage process provides a reasonable balance between the interests of TPI and third party Access Seekers. The segregation obligations established under Stage 1 provide sufficient protections for Access Seekers in entering into access negotiations with TPI, with the further segregation obligations proposed for TPI under Stage 2 appropriate in the event of a third party Access Holder commencing its train services. The two stage process also minimises the potential disruption and associated additional costs to TPI under Stage 2 being imposed earlier than necessary.

TPI's commitments under Stage 1 and Stage 2 are further outlined in relation to its legislative segregation obligations in the following sections.

2 Specification of access-related functions

For the purpose of satisfying the requirements of the WA Rail Access Regime, TPI has identified the following access-related functions it will perform:

Negotiation of access agreements

- negotiation of access agreements (inside and outside of the WA Rail Regime), including satisfaction that TPI's operational requirements for access are satisfied;
- pricing for the provision of access;

Management of access agreements

- management of access agreements, including capacity assessment and allocation, performance monitoring and management of day-to-day operational issues;
- train scheduling, including train path allocation and the granting of ad-hoc train path entitlements;
- the collection, use, and dissemination of train running data including manifest details;
- train control, which includes provision of appropriate authorities for trains to use scheduled train paths (train orders or signals) and real-time management of trains;

Regulatory compliance

- development, maintenance and monitoring compliance with appropriate safety standards for TPI staff, its contractors and any third party operators on the network;
- development and authorisation of TPI's operating rules for the railway line and the issue of special notices, instructions and warnings related to these Rules;
- access-related legislative compliance matters including:

- preparation of documents for the Regulator's approval in accordance with Part 5 of the Code;
- ensuring that suitable policies, procedures and controls are established to give effect to, and facilitate compliance with, the segregation arrangements approved by the Regulator.

Infrastructure maintenance

- the maintenance of the track and infrastructure, including signalling and communications maintenance;

Capacity management

- capacity planning, including determining an efficient expansion path for the railway consistent with expected demand;

Interface/emergencies

- emergency management on the railway line including co-ordination of emergency service responses;
- the development of operating standards for train services (to the extent they relate to the infrastructure), such as maximum braking distances, maximum train lengths, as well as maintenance standards for the rail infrastructure;

Corporate Services

- corporate support services for the performance of below rail functions.

3 Avoidance of conflict of interest (section 32)

The WA Rail Access Regime requires that any segregation arrangements must ensure that a relevant officer does not have a conflict between his/her performance of access-related functions and his/her involvement in "other business" of the railway owner. TPI interprets "other business" as anything other than the management and control of the use of the railway infrastructure. Ringfencing procedures designed to avoid conflicts of interest require functional separation, affecting staff roles, information flows and decision-making responsibilities.

TPI recognises that organisational separation is a key means of preventing conflicts of interest arising in relation to the provision of access-related functions. As discussed in Section 1 of this paper, TPI proposes a two stage process for these complete segregation arrangements which will achieve an operational separation of the performance of its train control and scheduling functions from its rail haulage operations for the second stage.

Stage 1

Under Stage 1 of these segregation arrangements, TPI commits that no person will perform duties concurrently for both TPI and FMG where a conflict of interest exists. That is, the Commercial/Compliance Officer responsible for responding to access applications and negotiating access agreements must not at the same time undertake duties for other areas of TPI or FMG which perform haulage related functions or which undertake activities that could affect the operations of Access Seekers.

While the organisational structure provided in section 1.3 will be in place during Stage 1, the flow of information between business units will be considerable to support safe and effective rail and haulage operations. The access to and interchange of information would be uncontrolled during this Stage, except under circumstances where it represents a conflict of interest or is otherwise prevented under these arrangements (such as the handling of access seeker confidential information).

TPI also notes that there will be a convergence of information arising from:

- the common role performed by the Head of Rail, Chief Operating Officer (COO) and Chief Executive Officer (CEO) of FMG; and
- the common directors on the FMG and TPI Boards.

As a result, TPI will develop control measures to manage potential conflicts of interest in handling Access Seekers' confidential information. These procedures will be in relation to the handling of the details of access negotiations. Specifically, the Commercial/Compliance Officer will report directly on access-related matters to the Head of Rail, who in turn reports to the COO.

Senior executives that have access to Access Seeker confidential information due to this convergence (ie. the Head of Rail, COO, CEO, plus the TPI and FMG Boards) will be required to sign a Segregation Awareness Statement. In addition, obligation to only disclose information for the purpose of and to the extent required to progress an access application will apply.

Stage 2

The key additional obligation TPI will bear under Stage 2 is a commitment to controlled management of information flow consistent with organisational separation. That is, TPI will ensure those staff performing access-related functions, such as train control and scheduling, will not perform any haulage-related functions and the restrictions on the internal flow of information will correspondingly increase. In terms of the above organisational structure, TPI will separate the following functions:

- rail infrastructure, comprising the functions outlined in section 2; and
- haulage related functions, being those other functions (including rollingstock operations and maintenance).

Relevant managers will report to the Head of Rail, who in turn reports to the COO. TPI considers that this reporting arrangement is necessary because of the need to closely integrate the operation of the mine, rail and port logistics chain infrastructure owned by FMG and TPI. However, measures will be in place to ensure the protection of Access Seeker's confidential information where any convergence occurs. Specifically, the managers responsible for train control and track will liaise with the Commercial/Compliance Officer on access-related matters. Further, they will report directly to the Head of Rail and will disclose access seeker confidential information to this position only for the purpose of progressing an Access Application, negotiation of access or in support of administering an Access Agreement. Similarly, the Head of Rail, in its direct reporting to the COO on access-related matters, will be bound by the same framework.

The Head of Rail, COO and the CEO will be subject to Segregation Awareness Statements. They will be under an obligation to not disclose access-seeker confidential information to other areas or staff within TPI and FMG.

Given that potential conflicts of interest in relation to the performance of access-related functions will be greatest when a third party Access Holder is running train services in competition with TPI train services, TPI staff performing the train scheduling and train control functions will be subject to Segregation Awareness Statements.

TPI also notes that there will be common directors on the FMG and TPI Boards. As a result, the control measures that apply in Stage 1 will be extended to cover Access Holder confidential information. That is, TPI will develop control measures to manage potential Board level conflicts of interest in handling

Access Seekers' and Access Holders' confidential information. This will be in relation to the handling of the details of Access Agreements at the time of negotiation and once an Access Agreement comes into effect. These measures will be similar to those outlined above for the Head of Rail, COO and CEO.

Under Stage 2, no person (other than key management staff and corporate services) will perform duties concurrently for both TPI and FMG that would present an unnecessary risk of conflict. In effect, any person performing below-rail functions will be precluded from also performing above-rail functions (unless indirectly, whether by virtue of the position – such as is the case for the Head of Rail, COO and CEO or due to the nature of the task not presenting conflicts – as is the case for corporate services functions).

4 Protection of confidential information (section 31)

TPI proposes to protect confidential information as defined in the *Railways (Access) Act* meaning 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.

4.1 Definition of confidential information

Stage 1

In Stage 1, confidential information will only include information disclosed as part of an Access Application or access negotiation. It will cover confidential information disclosed under an Access Agreement for the 6 month period between when an Access Agreement is signed and Stage 2 comes into effect. .

Examples of Stage 1 confidential information include:

- an Access Application and provision of preliminary information by an Access Seeker;
- correspondence related to the negotiation of the Access Agreement;

TPI commits that access-related confidential information it receives in Stage 1 will only be used for the purpose of:

- responding to an Access Application;
- negotiating an Access Agreement; or
- as specifically authorised by an Access Seeker.

Requests for Access and the access negotiation process will be managed by TPI's Commercial/Compliance Officer.

Stage 2

In Stage 2, confidential information will include, in addition to the Stage 1 confidential information, confidential information disclosed as part of the operation of an Access Agreement.

Examples of Stage 2 confidential information include:

- the Access Agreement itself and information exchanged in the management of the Access Agreement over time;
- train scheduling/planning data, to the extent it identifies specific haulage operations;
- plans to expand access rights to allow an increase in third party traffic;
- any data related to the running of haulage operations under an Access Agreement including the data held in TPI's Rail Access Management System;
- billing information.

TPI commits that access-related confidential information it receives in Stage 2 will only be used for the purpose of administering an Access Agreement.

4.2 Confidential information flows

Stage 1

TPI's Commercial/Compliance Officer will only disclose an Access Seeker's confidential information for the purpose of and to the extent necessary to progress an Access Application or respond to an Access Seeker's request.

TPI will require all staff managing or conducting access-related functions to sign a Segregation Awareness Statement, to the effect that they are aware of and understand TPI's segregation obligations under the WA Rail Access Regime,

and specifically need to protect confidential information as defined in the Code (see section 4.4.1).

In assessing an Access Application, TPI's Commercial/Compliance Officer may need to disclose the Access Seeker's confidential information to the train control and track managers, provided that disclosure to each recipient is limited to the sole purpose of negotiating an Access Agreement. Such disclosure will be necessary in order to determine whether there is sufficient capacity available for the Access Seeker's planned train services.

In the event that an officer from train control or track becomes aware of confidential information through this process, that officer will be required to sign a Segregation Awareness Statement and specifically acknowledge the confidential nature of the information disclosed to it for the purposes of progressing an Access Application.

TPI's Commercial/Compliance Officer will maintain a register of those staff, including external contractors/consultants, to who confidential information of a third party Access Seeker is disclosed. The register will acknowledge receipt of the confidential information by the recipient. A third party Access Seeker may view these registers relating to disclosure of its confidential information.

TPI is required to provide management reports to both its own Board and to the Head of Rail, COO, CEO and FMG Board members only. Use and disclosure of any access seeker confidential information revealed through this reporting will be in accordance with these segregation arrangements, including direct reporting to the relevant senior executive only. In TPI's view, a level of convergence of internal confidential information flows is unavoidable in vertically integrated organisations. However, limiting the distribution of management reports to the small number of FMG's senior executives and board members specified above for the limited purpose of progressing an Access Application and subject to Segregation Awareness Statements, is the best way of managing this convergence.

Stage 2

As in Stage 1, TPI staff responsible for negotiating access will only disclose Access Seeker or Access Holder confidential information for the purpose and to the extent necessary to progress an Access Application, respond to a request from a Access Seeker, negotiate an Access Agreement or administer an Access Agreement.

Similar to Stage 1, TPI will require all its staff managing or conducting access-related functions to sign a Segregation Awareness Statement, to the effect that they are aware of and understand TPI's segregation obligations under the WA Rail Access Regime, and specifically need to protect confidential information as defined in the Code.

The Stage 1 obligation for TPI's Commercial/Compliance Officer to maintain a register of those staff, including external contractors/consultants, to whom confidential information is disclosed, will also apply in Stage 2 but will be extended to include disclosure of Access Holder confidential information.

That is, the disclosure by TPI of Access Holders' confidential information in the course of the operation/administration of an Access Agreement must be recorded on the register. The register will acknowledge receipt of the confidential information by the recipient and confirm the recipient's awareness of the confidential nature of the information through the acknowledgement of the Segregation Awareness Statement by the recipient. An Access Holder may view these registers relating to disclosure of its confidential information.

Similar to Stage 1, the use and disclosure of Access Holder confidential information by TPI as part of management reports to both its own Board and to the Head of Rail, COO, CEO and FMG Board members will be in accordance with these segregation arrangements. It is intended to maintain a distribution list for such information that is strictly limited to the small number of FMG's senior executives and Board members identified as being necessary to disclose Access Seeker confidential information for the purpose of progressing an Access Application.

4.2.1 Hard copy access

Stage 1

Any written or electronic confidential information received by the Commercial/Compliance Officer in performing access-related functions will be kept on TPI files within TPI premises.

These files will only be accessible to the Commercial/Compliance Officer who will control access of other TPI staff for the purpose of processing an Access Application, or negotiating an Access Agreement.

The Commercial/Compliance Officer will also:

- keep a record of staff that have accessed an Access Seeker's confidential information and the purpose for which the information was used; and
- ensure relevant officers accessing Access Seeker's confidential information sign-in and sign-out confidential information each time it is utilised.

TPI may be required to disclose data, including confidential data, in relation to the following matters:

- the requirements of section 7(1)(b)(i) of the Code; or
- other legislative requirements, such as the *Rail Safety Act*.

In disclosing any confidential data for these reasons, TPI will protect the confidential basis of the source data.

Stage 2

Stage 1 obligations will also apply in Stage 2, however, will be extended to cover Access Holder confidential information as well as Access Seeker confidential information.

4.2.2 Electronic access

Stage 1

TPI will share an IT system with FMG. To ensure Access Seeker's confidential information is only accessed by the Commercial/Compliance Officer for the purpose of negotiating an Access Agreement, access to confidential information held electronically will be subject to limited access, with password protection and other computer security controls in place to prevent unauthorised access.

Stage 2

A shared IT system between TPI and FMG will also apply in Stage 2. Under Stage 2, Access Holder's confidential information is only accessed by the Commercial/Compliance Officer (or other staff in the TPI Network group responsible for negotiating access) for the purpose of either negotiating or administering an access agreement. The same limitations on access described in Stage 1 in terms of security measures will apply.

Over the course of an access agreement, TPI will also collect potentially confidential information in relation to an Access Holder's haulage operations,

including number and size of trains and tonnages carried. This information will be stored in an operations management system. Access to this information will be password protected and limited to relevant TPI staff. The Commercial/Compliance Manager, in liaison with the Head of Rail, must authorise all access to third party's confidential data held in the operations management system and will only grant access to persons who have signed Segregation Awareness Statements.

4.3 Staff issues

Effective segregation arrangements require policies and procedures to be in place to address the movement of staff with access to confidential information. This will apply to internal staff transfers as well as the use of external consultants.

4.3.1 Transfers

Stage 1

Under Stage 1, the Commercial/Compliance Officer is solely responsible for access negotiations. This officer must not undertake duties in other areas of TPI/FMG which place the officer in a position of conflict of interest. As such, the Commercial/Compliance Officer will not be permitted to work on matters for other areas of TPI/FMG, either on a temporary or permanent basis, in respect of which they have had access to Access Seeker's confidential information or the activities of the area could affect the Access Seeker's operations. In the case of a permanent transfer, this limitation would apply for a period of 3 months.

Stage 2

With functional separation of below and above rail business units under Stage 2, there will be more staff potentially with access to confidential information of Access Seekers and Access Holders (ie. train control and track staff other than the Commercial/Compliance Officer). Similar to Stage 1, under Stage 2, there will be a requirement that a staff member who transfers from the below rail area of the business to other areas of TPI/FMG on either a temporary or a permanent basis will not be permitted to work on matters in respect of which they have had access to Access Seeker/Holder's confidential information or the activities of the area could affect the Access Seeker/Holder's operations. In the case of a permanent transfer, this limitation will apply for a period of 3 months.

4.3.2 Consultants

From time to time in the course of access negotiations or in the duration of an Access Agreement it may be necessary for TPI to disclose confidential information to its external consultants and advisers. The following obligations will apply in these circumstances.

Stage 1

A process will apply to manage the use of consultants so that consultants are not in a position to disclose access seeker confidential information inappropriately. This will include an obligation to only use such information for the purpose for which it was provided and to not disclose it to other areas of TPI/FMG. Additionally, access seekers consent will be obtained prior to such disclosure.

Consultants who work for the company for a specified period of time will be included as a staff member for the purpose of the segregation arrangements.

Stage 2

The same obligations as in Stage 1 will apply, but they will also apply to information disclosed during the operation of an Access Agreement.

4.4 Documentation

4.4.1 Segregation Awareness Statement

Stage 1

Where an employee, or contractor/consultant, of TPI has prescribed duties which include managing or conducting access-related functions (as defined in section 2 of this paper), TPI will, at the time of their permanent or temporary appointment, require the employee to sign a Segregation Awareness Statement that they are aware of their responsibilities and obligations under the WA Rail Access Regime and specifically as it relates to confidential information as defined in the WA Rail Access Regime and in these segregation arrangements. The Segregation Manual will specify the circumstances in which a staff member must sign a Segregation Awareness Statement. The Regulator will also endorse the Segregation Awareness Statement.

Stage 2

Stage 1 obligations will also apply in Stage 2.

4.4.2 Advice regarding confidentiality

Stage 1

TPI will inform Access Seekers at the onset of negotiations (whether inside or outside of the WA Rail Access Regime) of their rights to confidentiality.

If negotiations have commenced outside the Regime and an Access Seeker subsequently makes an Access Application under the Regime, TPI and the Access Seeker will agree on what information previously supplied by the Access Seeker is subject to the confidentiality provisions of these segregation arrangements.

Stage 2

TPI will inform Access Holders (whether negotiated inside or outside of the WA Rail Access Regime) of their rights to confidentiality in the administration of the agreement upon commencement of the Stage 2 arrangements.

5 Duty of fairness (section 33)

Duty of fairness reflects an obligation to negotiate for and provide access on a non-discriminatory basis. TPI commits to the obligation that, in performing their functions, relevant officers will 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.

To give effect to this obligation, TPI will treat all Access Seekers fairly in relation to prices, service quality, paths and priority.

TPI notes that its duty of fairness extends to the application of determinations made by the Regulator under Part 5 of the Code, including in relation to:

- (a) the Segregation Arrangements;
- (b) the Train Management Guidelines;
- (c) the Train Path Policy;

- (d) the Costing Principles; and
- (e) the Overpayment Rules.

Stage 1

Under Stage 1 of these segregation arrangements, TPI will observe a duty of fairness in relation to access negotiations with Access Seekers. In this regard, TPI will follow the steps specified in Parts 2 to 4 of the WA Rail Access Code for the negotiation of Access Agreements, as well as observe legislative confidentiality requirements.

Mechanisms for ensuring TPI meets its duty of fairness obligations also include that:

- Access Seekers may determine the fairness of prices negotiated under section 21(1) of the Code; and
- provisions of TPI's Standard Access Agreement provide detailed guidance on non-price terms and conditions of access, which will allow Access Seekers to test the duty of fairness in the provision of access.

Stage 2

Under Stage 2 of these segregation arrangements, TPI will ensure that the key terms and conditions of internal access arrangements will be broadly comparable to those provided or offered to third party Access Seekers.

6 Preparation of accounts and records (section 34)

In both Stage 1 and 2 of these segregation arrangements, TPI will prepare and maintain accounts and financial records for the purposes of complying with the WA Rail Access Regime or to assist the Regulator in the performance of the Regulator's duties under the Regime in the manner approved by the Regulator. Complying with this legislative obligation will entail the preparation and maintenance of separate accounts and records distinguishing income, expenditure, assets and liabilities of access-related functions from other TPI functions.

Stage 1

In Stage 1, the separate accounts and financial records will be prepared by FMG's Finance Group. In preparing access-related accounts and financial records, TPI will present the regulatory accounts in a Regulator approved format and comply with the Costing Principles approved by the Regulator.

Stage 2

For Stage 2, TPI commits to being substantially self-sufficient for regulatory accounting, access pricing and revenue management purposes (noting that reliance upon FMG's Finance Group will be relied upon for information to inform the development of regulatory accounts). However, statutory accounting and cost accounting functions will still be performed by FMG's Finance Group.

7 Compliance

TPI's commitments to ensure compliance with these segregation arrangements encompass commitments to develop a Segregation Manual, a commitment to undertake compliance auditing and to implement a complaints handling process.

7.1 Development of Segregation Manual

In order to meet its legislative segregation obligations, TPI commits to develop a Segregation Manual, which will give effect to the these segregation arrangements and be the primary tool used to manage segregation compliance within TPI. The Segregation Manual will apply in both Stages 1 and 2. However, it will need to be modified to reflect the complete organisational separation between above and below rail functions that will occur under Stage 2.

Stage 1

The Segregation Manual will be:

- (a) issued as a controlled document to all TPI Board members and employees, FMG Board members and senior executives, and all new employees who are required to comply with the manual.

- (b) reviewed and updated regularly with changes being issued in accordance with TPI's procedures for controlled documents.
- (c) used in training of all relevant employees and also for orientation of new employees.
- (d) used as the base document against which compliance audits are conducted.

The Segregation Manual and any subsequent amendments will be submitted to the Regulator for its approval.

Stage 2

The Segregation Manual will also apply in Stage 2. However, it will need to be modified to reflect the organisational separation that will occur in Stage 2. Prior to the commencement of Stage 2, TPI commits to submitting a revised Segregation Manual to the Regulator for approval.

7.2 Audit and compliance

Auditing and reporting of TPI's compliance is a key element of TPI's commitments under these segregation arrangements.

Stage 1

Under Stages 1 of these segregation arrangements, TPI commits to undertake annual compliance audits of its separated access-related financial accounts and non-financial segregation obligations. These audits will be undertaken by independent external bodies on a negative assurance basis. The Regulator will approve the scope of the audits and may choose to select the bodies to undertake the audits. TPI will bear the cost of the audit.

TPI will provide an Annual Report to the Regulator on the results of these external compliance audits. These reports will be made public.

TPI will also develop a compliance section in its Segregation Manual, including identification of types of breach, corrective action and notification procedures.

TPI will report any breach of the segregation arrangements of which it becomes aware to the Regulator in writing within 10 business days. TPI notes that the Regulator has the ability to commission special audits on any issue or area where additional assurance is sought.

TPI also commits to undertake awareness training of TPI's and its staff's obligations under the WA Rail Access Regime for all staff who are engaged in access-related functions or who are required to sign Segregation Awareness Statements.

In order to provide confidence in the integrity of its segregation arrangements, TPI commits to report the following key performance indicators to the Regulator:

- number of breaches referred by TPI to the Regulator;
- number of potential breaches referred by Access Seekers to the Regulator for assessment; and
- percentage of potential breaches referred by Access Seekers to the Regulator that are substantiated.

Stage 2

Stage 1 commitments to auditing will also apply under Stage 2.

7.3 Complaints handling

TPI commits to implement the complaints handling procedure detailed below as part of these segregation arrangements. TPI notes that Access Seekers and Access Holders can approach the Regulator at any time they consider a segregation breach may have occurred. The WA Rail Access Regime provides wide powers for the ERA to investigate any alleged breaches of the segregation arrangements.

Stage 1

If a third party Access Seeker considers that TPI has breached its legislative segregation obligations, they may lodge a written complaint with TPI.

TPI will conduct an internal investigation of any complaint and advise the complainant in writing of the outcome of the investigation and TPI's proposed response, if any. TPI will also use reasonable endeavours to:

- advise the Regulator within 30 days of any complaint it receives.
- complete its internal investigation and advise the complainant of the result within 30 days of receiving its complaint.

Stage 2

The complaints handling procedure in Stage 1 will also apply in Stage 2. However, it will be extended to cover possible breaches of these segregation arrangements in relation to Access Holder confidential information as well as Access Seeker confidential information.

Definitions

Access Agreement	Means an agreement between TPI and an entity for access to the rail infrastructure by that entity
Access Application	Means an application made in accordance with the Act and Code for access to the rail infrastructure
Access Holder	A person who holds access rights in relation to the rail infrastructure
Access Seeker	A person who has submitted an Access Application
Regulator	The Economic Regulation Authority (Western Australia)