



# Revised Proposed Rail Access Segregation Arrangements

## The Pilbara Infrastructure Pty Ltd

July 2009

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**TPI RAIL ACCESS  
MANAGEMENT SYSTEM**

**DOCUMENT NUMBER**

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**TITLE**

**RAIL ACCESS SEGREGATION ARRANGEMENTS**

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
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	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

## 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).<sup>1</sup>

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.

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

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#### 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)

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

<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAJ		

	<u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u>	<u>DOCUMENT NUMBER</u> <u>R-PL-RA-0001</u>
	<u>SECTION</u> <u>PLANS</u>	<u>TITLE</u> <u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u>

- Avoidance of conflict of interest (section 32)
- 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. It is noted that section 29 of the Act allows the Regulator to impose other requirements on TPI, in addition to those covered under sections 31 to 34 of the Act, to further improve the effectiveness of TPI's Segregation Arrangements if required.

### 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 Act and the Code 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 Herb Elliot Port, Anderson Point, Port Hedland to serve FMG's mining operations in the region.

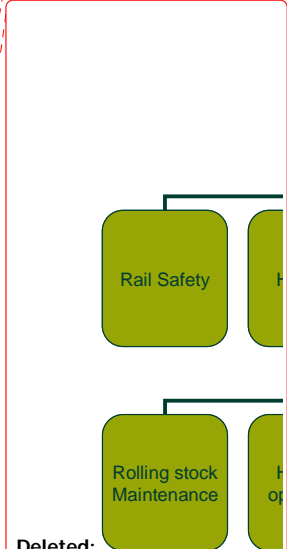
TPI will perform both the access-related rail functions specified in Section 2 of this paper and also perform the rail haulage functions associated with the operation of train services. TPI notes that the objective of the segregation arrangements is to ensure that it complies with the requirements of the Act to segregate its access-related functions from its other functions.

TPI's organisational structure is indicated below. Positions and classifications, reporting paths and physical locations of positions within TPI are provided in the Segregation Manual.

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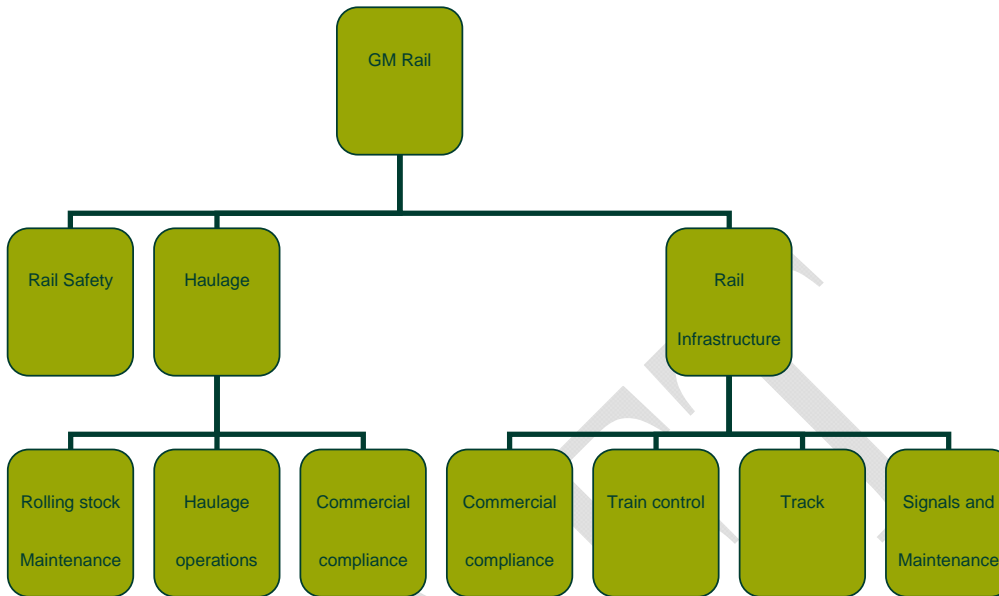
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<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>	
2	17/JULY/2009	G.DELLAJ	



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, <sup>2</sup> which applies to the Tarcoola to Darwin railway, the access provider is subject to the following segregation obligations:

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

REV NO.	ISSUE DATE	PREPARE BY:		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

- a requirement to protect confidential information, including information that could affect the competitive position of a Proponent;
- 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.

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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

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAF		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

arrangements for handling Proponents' confidential information outlined in section 4 of this paper.

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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 a Proponent. 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 Operator's rail haulage operations, the obligations in Stage 2 will come into force no later than 6 months prior to the scheduled commencement of Operator's operations on TPI's Pilbara railway.

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- 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 Proponents. The segregation obligations established under Stage 1 provide sufficient protections for Proponents in entering into access negotiations with TPI, with the further segregation obligations proposed for TPI under Stage 2 appropriate in the event of an


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<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAFA		



	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

Operator 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 Act and the Code, TPI has identified the following access-related functions it will perform:

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### *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 Operators on the network;

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<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

- 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 as required under the Act and Code, 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.

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*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 Act and the Code requires that any segregation arrangements must ensure that a relevant officer does not have a conflict between his/her performance of

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<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

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.

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

*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 Proposals 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 Proponents.

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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 Proponent confidential information).

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

- the common role performed by the General Manager Rail, Director Operations and Chief Executive Officer (CEO) of FMG; and
- the common directors on the FMG and TPI Boards.

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLA		

	<b>TPI RAIL ACCESS MANAGEMENT SYSTEM</b>	<b>DOCUMENT NUMBER</b> <b>R-PL-RA-0001</b>
	<b>SECTION</b> <b>PLANS</b>	<b>TITLE</b> <b>RAIL ACCESS SEGREGATION ARRANGEMENTS</b>

As a result, TPI will develop control measures to manage potential conflicts of interest in handling Proponents' 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 General Manager Rail, who in turn reports to the Director Operations.

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Senior executives that have access to Proponent confidential information due to this convergence (ie. the General Manager Rail, Director Operations, 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 Proposal will apply.

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### 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 General Manager Rail, who in turn reports to the Director Operations. 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 Proponent'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 General Manager Rail and will disclose Proponent confidential information to this position only for the purpose of progressing an Access Proposal, negotiation of access or in support of administering an Access Agreement. Similarly, the General Manager Rail, in its direct reporting

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REV NO.	ISSUE DATE	PREPARE BY:
2	17/JULY/2009	G.DELLAFA

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

to the Director Operations on access-related matters, will be bound by the same framework.

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The General Manager Rail, Director Operations 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.

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Given that potential conflicts of interest in relation to the performance of access-related functions will be greatest when an Operator 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.

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Operators may prepare amendments to daily or weekly plans for services which experience variable demand or variable destinations provided that they do not interfere with other operators rights and subject to TPI having ultimate control over such changes.

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 Operator confidential information. That is, TPI will develop control measures to manage potential Board level conflicts of interest in handling Proponents' and Operators' 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 General Manager Rail, Director Operations and CEO.

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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 General Manager Rail, Director Operations and CEO or due to the nature of the task not presenting conflicts – as is the case for corporate services functions).


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## 4 Protection of confidential information (section 31)

This section provides a general summary of the measures that will be implemented by TPI. Further information and procedures are provided in the Segregation Manual.

<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAFA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

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.

TPI will include in its Segregation Manual a list of documents and other information, covering both input and output type information, that it would use to define how it distinguishes confidential information from information that is not specifically protected.

#### 4.1 Definition of confidential information

##### Stage 1

In Stage 1, confidential information will only include information disclosed as part of an Access Proposal 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.

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Examples of Stage 1 confidential information include:

- an Access Proposal and provision of preliminary information by a Proponent;
- correspondence related to the negotiation of the Access Agreement;

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The examples given will be included under TPI's Segregation Arrangements from the time these arrangements commence.


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

- responding to an Access Proposal;
- negotiating an Access Agreement; or
- as specifically authorised by a Proponent.

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<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

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, including Master Train Control Diagrams and Completed Train Control Diagrams and voice logging tapes from train control;
- 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.

The examples given will be included under TPI's Segregation Arrangements from the time these arrangements commence.

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 a Proponent's confidential information for the purpose of and to the extent necessary to progress an Access Proposal or respond to a Proponent's request.


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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

<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAFA		

	<b>TPI RAIL ACCESS MANAGEMENT SYSTEM</b>	<b>DOCUMENT NUMBER</b> <b>R-PL-RA-0001</b>
	<b>SECTION</b> <b>PLANS</b>	<b>TITLE</b> <b>RAIL ACCESS SEGREGATION ARRANGEMENTS</b>

understand TPI's segregation obligations under the Act and the Code, and specifically need to protect confidential information as defined in the Code (see section 4.4.1).

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In assessing an Access Proposal, TPI's Commercial/Compliance Officer may need to disclose the Proponent'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 requested train services, evaluate operational requirements, timelines, train configurations, accreditations, wheel profiles and other rolling stock technical details. The Commercial/Compliance Officer will be the sole custodian of confidential information during Stage 1. Access to confidential information by other TPI staff will not occur, other than as described above and to line management for approval purposes.

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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 Proposal.

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

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TPI is required to provide management reports to both its own Board and to the General Manager Rail, Director Operations, CEO and FMG Board members only. Use and disclosure of any Proponent 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 Proposal and subject to Segregation Awareness Statements, is the best way of managing this convergence.

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REV NO.	ISSUE DATE	PREPARE BY:		
2	17/JULY/2009	G.DELLAFA		



	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

These management reports provide financial details at aggregate company level for TPI 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;
- 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; and
- monthly financial reports and commentary at aggregate levels.

When TPI is presenting reports to TPI or FMG management, directors and boards it will, if confidential information is to be presented, have in place a procedure which ensures that:

- The confidential information presented is clearly identified; and
- Recipients of the information have signed a Segregation Awareness Statement.


Where there is a need for TPI to brief the senior management of TPI or FMG outside of structured meetings and those briefings are likely to result in the disclosure of confidential information, particularly related to the identity of the Proponent, TPI will have in place a procedure that ensures that:

- The confidential information presented is clearly identified; and
- TPI or FMG management members have signed Segregation Awareness Statements.

The above control measures for management of information flow will be included in the Segregation Manual.

All TPI or FMG management, directors and other staff provided with confidential information will be recorded on the register. The register will record both names

<u>REV NO.</u>	<u>-1</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
	<u>2</u>	<u>17/JULY/2009</u>	<u>G.DELLA</u>		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

and position titles for each person. All such persons will be required to sign a Segregation Awareness Statement.

*Stage 2*

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

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Similar to Stage 1, TPI will require all of 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 Act and the Code, and specifically need to protect confidential information as defined in the Code.

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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 Operator confidential information.

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That is, the disclosure by TPI of Operators' 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 Operator may view these registers relating to disclosure of its confidential information.

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Custody of confidential information will be the responsibility of multiple staff members within TPI and FMG. Typically, such staff include the Commercial Compliance Officer, train control and track maintenance.


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Similar to Stage 1, the use and disclosure of Operator confidential information by TPI as part of management reports to both its own Board and to the General Manager Rail, Director Operations, 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

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<b><u>REV NO.</u></b>	-1	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
	2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

disclose Proponent confidential information for the purpose of progressing an Access Proposal.

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#### 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 Proposal, or negotiating an Access Agreement.

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The Commercial/Compliance Officer will also:

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

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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 Operator confidential information as well as Proponent confidential information.

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TPI staff involved in the access related functions listed in Section 2 are located at three locations, as below. The respective staff responsibilities for specific components of the access related functions during Stage 2 are listed below.

<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>
2	17/JULY/2009	G.DELLA

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

- Train Control Centre at 97 Great Eastern Highway, Rivervale (“Train Control Centre”), responsible for:
  - Management of Access Agreements; and
  - Regulatory compliance (partly).
- Rowley Marshalling Yard and office, 20 km south of Port Hedland (“Rowley Yard”), responsible for:
  - Negotiation of access agreements;
  - Regulatory compliance (partly);
  - Infrastructure maintenance;
  - Capacity management; and
  - Interface emergencies.
- FMG Head Office at the Hyatt Centre, 87 Adelaide Terrace, East Perth (“Hyatt Centre”), responsible for:
  - Regulatory compliance (partly) and;
  - Corporate services.

All information will be stored in a secured compactus or similar facility at each site, with respective storage areas referred to as “access management areas”. Such areas will be locked when not attended by TPI staff. The Train Control Centre will be secured with entry controlled by TPI. Entry to the access management areas will only be available to staff who have signed TPI’s Segregation Awareness Statement, and who are approved by TPI’s General Manager Rail.

Further information and procedures are provided in the Segregation Manual.


#### 4.2.2 Electronic access

##### Stage 1

TPI will share an IT system with FMG. To ensure Proponent’s confidential information is only accessed by the Commercial/Compliance Officer for the purpose of negotiating an Access Agreement, access to confidential information

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

held electronically will be subject to limited access, with password protection and other computer security controls in place to prevent unauthorised access.

The access of users across TPI/FMG's computer network will be restricted to immediate functional areas. User ID's, passwords and access to any given part of the network are allocated by line managers at the commencement of the staff member's employment. Access to areas of the network that apply to access related functions are automatically restricted to all staff, unless authorisation is given by the General Manager Rail. All such authorisations will be recorded in the register and authorised staff will be required to sign the Segregation Awareness Statement.

### Stage 2

A shared IT system between TPI and FMG will also apply in Stage 2. Under Stage 2, Operator'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.

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Over the course of an access agreement, TPI will also collect potentially confidential information in relation to an Operator'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 General Manager Rail, must authorise all access to Operator's confidential data held in the operations management system and will only grant access to persons who have signed Segregation Awareness Statements.

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### 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 contractors/consultants.

<b><u>REV NO.</u></b>	-2	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
	2	17/JULY/2009	G.DELLAFA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

### 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 Proponent's confidential information or the activities of the area could affect the Proponent's operations. In the case of a permanent transfer, this limitation would apply for a period of 3 months.

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#### 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 Proponents and Operators (ie. train control and track staff other than the Commercial/Compliance Officer). All such staff shall be signatories of the Segregation Awareness Statement. Further, under Stage 2, there will be a requirement that a staff member (at Manager level or senior) 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 a Proponent/Operator's confidential information or the activities of the area could affect the Proponent/Operator's operations. In the case of a permanent transfer, this limitation will apply for a period of 12 months.

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The limitations in this section 4.3.1 will not apply under emergency circumstances. If TPI believes there is an emergency and cannot obtain staff other than from its above rail team, then it may use such staff in these positions after it advises the Regulator of:

- The circumstances giving rise to the emergency;
- The expected duration of the emergency; and
- The steps TPI will take to protect confidential information and manage any conflict of interest in these circumstances, including those people who are proposed to be used signing a Segregation Awareness Statement.

<b>REV NO.</b>	-2	<b>ISSUE DATE</b>	<b>PREPARE BY:</b>		
	2	17/JULY/2009	G.DELLAFA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

### 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. Where it is necessary for TPI to disclose confidential information to a consultant, the consultant would be required to sign TPI's Segregation Awareness Statement. 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 Proponent 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, Proponents consent will be obtained prior to such disclosure.

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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 Act and the Code and specifically as it relates to confidential information as defined in

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

the Act and the Code 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. The Segregation Awareness Statement shall incorporate a commitment to safeguard confidential information in the form of a confidentiality agreement. A copy of the Segregation Awareness Statement, including the confidentiality agreement incorporated as part of this statement, will be included in TPI's Segregation Manual.

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*Stage 2*

Stage 1 obligations will also apply in Stage 2.

**4.4.2 Advice regarding confidentiality**

*Stage 1*

TPI will inform Proponents at the onset of negotiations (whether inside or outside of the Code) of their rights to confidentiality.

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

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*Stage 2*

TPI will inform Operators (whether negotiated inside or outside of the Code) of their rights to confidentiality in the administration of the agreement upon commencement of the Stage 2 arrangements.

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**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.

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAF		



	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

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

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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.

TPI will inform Proponents, negotiating within the Code, at the onset of negotiations of their rights to confidentiality under its Segregation Arrangements.

If negotiations have commenced outside the Code and a Proponent subsequently chooses to continue negotiations under the Code, through the processes set out under parts 2 to 4 of the Code, TPI and the Proponent will agree on what information previously supplied by the Proponent is subject to the confidentiality provisions of these arrangements.

Proponents can determine the fairness of prices negotiated through an application to the Regulator pursuant to Section 21(1) of the Code.

TPI's standard access agreement for Proponents will provide for specific consultation mechanisms, the provision of information and dispute resolution mechanisms.


### Stage 1

Under Stage 1 of these segregation arrangements, TPI will observe a duty of fairness in relation to access negotiations with Proponents. 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.

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

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

- Proponents 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 Proponents to test the duty of fairness in the provision of access.

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### 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 Proponents.

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## 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 Act and the Code 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.

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### Stage 1

In Stage 1, the separate accounts and financial records will be prepared by FMG's Finance Group, based on information supplied by TPI. 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.

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

TPI will control the information used to prepare its regulatory accounts. TPI will control the data used to generate invoices for access customers.

The collection of payments by FMG Finance staff will be based on information supplied by TPI. Detailed information supporting invoices will be provided directly to customers by TPI.

The provisions in this document for the protection of confidential information will apply to the billing process.

Financial information provided by TPI to FMG's Finance Group for normal internal reporting purposes will be aggregated to prevent disclosure of confidential information. FMG Finance Group staff and auditors given access to confidential information will be recorded on TPI's register and will sign the Segregation Awareness Statement.

## **7 Compliance and Review**

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.


TPI agrees to the ERA reviewing the Segregation Arrangements in 2012 through a public consultation process. This review will commence on 1 October 2012 and TPI will provide the ERA with its proposed revision of its Segregation Arrangements on this date.

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

TPI acknowledges that the ERA has the power under the Act to amend the Segregation Arrangements at any time and Proponents and Operators can at any time request the ERA to consider amendments.

TPI will report any breach of the Segregation Arrangements of which it becomes aware to the ERA in writing within five business days and report on how the breach is being remedied.

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

TPI 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.

TPI agrees to the ERA monitoring TPI's compliance with the Segregation Arrangements through an audit of TPI's compliance with its Act and Code obligations conducted every two years. This audit will be carried out by an Independent Auditor approved by the ERA, with TPI managing and funding the audit. The scope of the audit will be determined by the ERA.

The final audit report will be provided to the ERA. The ERA will publish this report on its web site (excluding confidential information).

TPI acknowledges that the ERA can also commission special audits at any time on any Segregation Arrangements issue where additional assurance is required

## 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 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.

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TPI acknowledges that its Segregation Manual and Segregation Arrangements are both required to be submitted to the Regulator in order for the Regulator to assess TPI's compliance with the segregation requirements under Part 4, Division 3 of the Act.

TPI acknowledges that the Regulator will undertake public consultation on TPI's Segregation Manual prior to making a final determination pursuant to Section 29(1) of the Act.

### Stage 1

The manual will include:

- A description of each position in TPI's organisational structure, the classification of these positions according to whether they perform access - related functions and the physical location of these positions.

<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAF		



**TPI RAIL ACCESS  
MANAGEMENT SYSTEM**

**DOCUMENT NUMBER**


**R-PL-RA-0001**

**SECTION  
PLANS**

**TITLE  
RAIL ACCESS SEGREGATION ARRANGEMENTS**

- 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.
- Details of the physical location of staff and the security systems in place in those workplaces and especially for the train control centres operated by TPI and employees dedicated to providing network management and access related matters.
- A list of the types of behaviour which may breach segregation arrangements and the appropriate corrective arrangement for each breach.
- A compliance plan, including the preparation of an annual report for internal and external audit requirements. The annual report will include details of all instances of non-compliance and rectification strategies. The compliance plan will be a key monitoring tool for the Regulator in assessing effectiveness of the segregation arrangements.
- Controlled procedures required to give effect to these arrangements including:
  - the use of staff by TPI from the above rail team of TPI or other TPI or FMG entities, in an emergency;
  - the preparation by operators of amendments to daily or weekly plans for services which experience variable demand or variable destinations;
  - the provision, and type, of information to be given to the TPI or FMG Board of Directors, and (outside of these structured meetings) to the CEO and/or other senior management of TPI or FMG;
  - the provision, and type, of information to be given to the FMG accountancy group for billing purposes;
  - the identification and storage of, and access to, confidential information;
  - the report of a breach of segregation arrangements to the Regulator.

<b>REV NO.</b>	-2	<b>ISSUE DATE</b>	<b>PREPARE BY:</b>		
	2	17/JULY/2009	G.DELLAJ		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

- A list of all positions of employees and contractors who must sign Segregation Awareness Statement and need to undertake training and orientation.
- A copy of the register for recipients of confidential information and a copy of the Segregation Awareness Statement.

The Segregation Manual will be:

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

The Segregation Manual will have the following headings:

## **1 CONTEXT**

### **1.1 Purpose**

### **1.2 Terms and Definitions**

### **1.3 TPI Railway Network**

### **1.4 Railway Access Segregation Policy**

### **1.5 Segregation Objectives and Strategies**

### **1.6 Hierarchy of Documentation**

## **2 MANAGEMENT OF SEGREGATION ARRANGEMENTS**


### **2.1 Overview of Access Related Roles and Locations**

### **2.2 Overview of Non-Access Related Roles and Locations**

### **2.3 Location Overview**

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAFA		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

2.4 Types of Confidential Information and Security Arrangements

2.5 Staff Transfers

2.6 Conflicts of Interest

2.7 Duty of Fairness

2.8 Separation of Accounts and Financial Records

**3 COMPLIANCE PLAN**

3.1 Breaches and Complaints Management

3.2 Annual Audit and Report

3.3 Key Performance Indicators

**4 SUPPORTING DOCUMENTATION AND FORMS**

4.1 Segregation Awareness Statement

4.2 Confidential Information Register

4.3 Associated Controlled Documents

*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 Stage 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

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLAF		

	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

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 5 business days. TPI notes that the Regulator has the ability to commission special audits on any issue or area where additional assurance is sought.

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

Deleted: WA Rail Access Regime

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 Proponents to the Regulator for assessment; and
- percentage of potential breaches referred by Proponents to the Regulator that are substantiated.

Deleted: Access Seekers

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### 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 Proponents and Operators can approach the Regulator at any time they consider a segregation breach may have occurred. The Act provides wide powers for the ERA to investigate any alleged breaches of the segregation arrangements.


Deleted: Access Seekers

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<b><u>REV NO.</u></b>	<b><u>ISSUE DATE</u></b>	<b><u>PREPARE BY:</u></b>		
2	17/JULY/2009	G.DELLA		



	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

*Stage 1*

If a Proponent considers that TPI has breached its legislative segregation obligations, they may lodge a written complaint with TPI.

**Deleted:** third party Access Seeker

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 advise the Regulator within 10 business days of any complaint it receives and the action it is taking to investigate the complaint. TPI will use reasonable endeavours to complete its internal investigation and advise the complainant and the Regulator of the result within 30 days of receiving its complaint.

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*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 Operator confidential information as well as Proponent confidential information.

**Deleted:** Access Holder

**Deleted:** Access Seeker

**Deleted:** Agreement

**Deleted:** an agreement between TPI and an entity for access to

**Deleted:** rail

**Deleted:** by that entity

**Deleted:** Application

**Deleted:** Means an application made in accordance with the Act and Code for access to the rail infrastructure

**Deleted:** Holder

**Deleted:** A person who holds access rights in relation to the rail infrastructure

**Deleted:** Access Seeker

**Deleted:** A person who has submitted an Access Application

**Deleted:** Regulator

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## 8 Definitions

Access Means the use of railway infrastructure.

Access Agreement Means an agreement in writing under the Code between TPI and an entity for access by that entity.


Access Proposal Means a proposal made in writing under the Code for access.

Act Means the Railways (Access) Act 1998.

Code Means the Railways (Access) Code 2000 established under the Act.

Confidential Information Has the meaning given under Section 31(2) of the Act.

REV NO.	2	ISSUE DATE	17/JULY/2009	PREPARE BY:	G.DELLAFA
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	<b><u>TPI RAIL ACCESS MANAGEMENT SYSTEM</u></b>	<b><u>DOCUMENT NUMBER</u></b> <b><u>R-PL-RA-0001</u></b>
	<b><u>SECTION</u></b> <b><u>PLANS</u></b>	<b><u>TITLE</u></b> <b><u>RAIL ACCESS SEGREGATION ARRANGEMENTS</u></b>

<u>Contractor</u>	<u>Means a person or entity engaged by TPI to provide advice on or assist in carrying out its access-related functions.</u>
<u>FMG</u>	<u>Means Fortescue Metals Group Ltd.</u>
<u>Master Train Control Diagrams</u>	<u>Means a diagrammatic or electronic record covering specific parts of the Network which shows all of the Train Paths on that Network.</u>
<u>Operator</u>	<u>Means an entity who holds access rights under an access agreement.</u>
<u>Proponent</u>	<u>Means an entity who has submitted a proposal for access under the Code.</u>
<u>Regulator</u>	<u>Means the Economic Regulation Authority.</u>
<u>Rules</u>	<u>Means TPI's rules governing safe operation of trains on the railway in accordance with the 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 TPI for the purpose of ensuring the safe use of the railway.</u>
<u>Segregation Awareness Statement</u>	<u>Means a statement signed by a TPI or FMG employee, director, contractor or consultant indicating their understanding of the obligations imposed under the Act or Code and specifically as these obligations relate to the protection of confidential information.</u>
<u>Segregation Manual</u>	<u>Means the internal manual used by TPI to give effect to these arrangements.</u>
<u>TPI</u>	<u>Means The Pilbara Infrastructure Pty Ltd</u>

<u>REV NO.</u>	<u>ISSUE DATE</u>	<u>PREPARE BY:</u>		
2	17/JULY/2009	G.DELLAFA		