

The Pilbara Infrastructure Pty Ltd (TPI)

Final Determination on TPI's Revised
Proposed Segregation Arrangements
(including TPI's proposed Segregation
Manual)

31 August 2009

Economic Regulation Authority



WESTERN AUSTRALIA

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FINAL DETERMINATION

1. The Pilbara Infrastructure Pty Ltd (**TPI**), a wholly owned subsidiary of Fortescue Metals Group Ltd (**FMG**), is the owner of a recently constructed railway (**TPI Railway**) connecting FMG's Cloud Break iron ore mine in the Pilbara to TPI's port facilities at Port Hedland.
2. On 1 July 2008, the TPI Railway was included in the State's rail access regime (consisting of the *Railways (Access) Act 1998* (**Act**) and the *Railways (Access) Code 2000* (**Code**)) through the proclamation of Part 3 of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* (**Agreement Act**).
3. On 3 July 2008, TPI submitted its proposed Segregation Arrangements for the TPI Railway to the Economic Regulation Authority (**Authority**) for approval, in accordance with its obligations under Part 4, Division 3 of the Act. The Agreement Act required TPI to submit its proposed Segregation Arrangements to the Authority no later than seven days after the TPI Railway became subject to the State's rail access regime.
4. The Authority's approval is required, pursuant to section 29(1) of the Act, before TPI can put in place its proposed Segregation Arrangements.
5. The Authority issued its draft determination on TPI's proposed Segregation Arrangements on 3 December 2008. The draft determination listed twenty two amendments which were required to be made to TPI's proposal before the Authority could approve this proposal.
6. On 22 May 2009, TPI submitted its proposed Segregation Manual to the Authority in accordance with the requirements outlined in the draft determination. TPI's Segregation Arrangements include, under the Act, the procedures and processes as outlined in its Segregation Manual.
7. On 17 July 2009, TPI submitted a revised version of its proposed Segregation Arrangements to the Authority. TPI's revised proposed Segregation Arrangements addressed a significant number of the amendments required under the draft determination.
8. The Authority has considered TPI's revised proposed Segregation Arrangements of 17 July 2009 in conjunction with comments made in submissions to the Authority on TPI's proposal of 3 July 2008, the draft determination and TPI's proposed Segregation Manual.
9. The final determination of the Authority is to approve TPI's revised proposed Segregation Arrangements of 17 July 2009, which includes its proposed Segregation Manual of 22 May 2009 subject to ten amendments as listed on the following page.

LIST OF AMENDMENTS

Required Amendment 1

TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the word "Regime" under section 4.4.2 on page 24 and replacing this word with "Code".

Required Amendment 2

TPI's proposed Segregation Arrangements should be amended such that its Stage Two arrangements are implemented at the commencement of its Segregation Arrangements.

Required Amendment 3

Section 1.3.2 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the second sentence in the fourth paragraph on page 8 and inserting the additional information on the Stage 2 arrangements which this sentence indicates will be provided at a later date.

Required Amendment 4

Section 4.2 on page 15 of TPI's revised proposed Segregation Arrangements of 17 July 2009 (headed 'Confidential Information Flows') should be amended by inserting the following paragraph, at the end of the information on page 17:

"Where access-related confidential information is required to be disclosed during the course of management meetings involving representatives of the arm of TPI or related entities of TPI involved in operating train services, the same control measures as those outlined above for senior TPI or FMG management meetings will also apply to parties receiving confidential information. Disclosure of such confidential information will only occur in these meetings where necessary, such as for the purpose of improving productivity and safety performance of the rail network."

Required Amendment 5

Section 4.3.1 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the third and fourth sentences in the second paragraph on page 22 and replacing these sentences with a statement consistent with the following requirement:

"TPI will preclude the ability of senior staff (staff at management level and above including the Commercial/Compliance Officer) to transfer between positions involved in performing access-related functions and positions involved in performing other functions where the occupant of the access-related position concerned is required to sign TPI's Segregation Awareness Statement, except where the person transferring from that access-related position first spends at least one year undertaking other access-related functions within the Rail Infrastructure Division which do not require the signing of TPI's Segregation Awareness Statement."

Required Amendment 6

Section 3 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the words "be subject to" in the last line of the second paragraph on page 13 and replacing these words with "sign".

Required Amendment 7

Section 7 of TPI's revised proposed Segregation Arrangement of 17 July 2009 should be amended as follows:

- Second last paragraph on page 27: (1) Change "the" to "its" in the first line. (2) Delete "the Act or Code" in the first and second lines and replace with "the Segregation Arrangements".
- Last paragraph on page 27: (1) Delete "its Act and Code" in the second line and replace with "the Segregation Arrangements". (2) Add the following sentence to the end of this paragraph: "It is expected that the first audit will commence at the end of the 2011-12 financial year."
- Delete the third paragraph and associated dot points on page 32.
- Review the remainder of section 7.2, much of which duplicates the information on pages 27 and 28 of section 7, and consolidate the appropriate parts of section 7.2 with the information on pages 27 and 28 of section 7.

Required Amendment 8

Section 8 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by adding a sentence at the end of the definition of Segregation Manual on page 34 as follows:

"This manual forms part of TPI's Segregation Arrangements."

Required Amendment 9

TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended as follows:

- The term "weekly" when used in reference to train plans should be changed to "fortnightly" and the wording used in relation to the issue of train plans should not be inconsistent with TPI's approved Train Management Guidelines.
- In a number of cases the term "proponent" has been used when the issue could relate to both proponents and operators. The use of this term should be checked and should be replaced in such circumstances with the term "proponents and operators".
- A number of references to TPI's proposed Segregation Manual are made in terms such as "will be included in TPI's Segregation Manual" or "TPI will develop control measures". The wording of this document should be reviewed and updated to reflect the manual and its associated Controlled Documents as been set out as part of the document (Amendment 10 of this final determination requires the manual to be an Appendix to this document). Particular reference should be made to updating section 7.1 (Development of Segregation Manual).
- The information set out in this document should include appropriate references to the relevant sections of TPI's proposed Segregation Manual where related information is outlined.

Required Amendment 10

TPI's proposed Segregation Manual (including the Controlled Documents) should be amended as follows:

- The references to a staged approach should be revised to be consistent with the requirements of Amendment 2 of this final determination.

- The definitions used should be consistent with the definitions in TPI's revised proposed Segregation Arrangements of 17 July 2009 and should incorporate the requirements of Amendment 8 of this final determination.
- The term "weekly" when used in reference to train plans should be changed to "fortnightly" and the wording used in relation to the issue of train plans should not be inconsistent with TPI's approved Train Management Guidelines.
- The information in the Manual Overview and Controlled Documents should include appropriate references to the relevant sections of TPI's revised proposed Segregation Arrangements of 17 July 2009 where related information is outlined.
- The Controlled Documents should be renumbered to ensure that they are numbered consecutively. The seventh document (presumably (R-PR-RA-0007) is currently missing.
- The Manual Overview and Controlled Documents should be included as an appendix to TPI's revised proposed Segregation Arrangements when TPI's current revised proposed Segregation Arrangements of 17 July 2009 is further revised to incorporate the required amendments set out in this final determination.
- Sections 1.6 and 3 of the Manual Overview should include reference to the Authority's required two-yearly independent audit, as set out under section 7 of TPI's revised proposed Segregation Arrangements of 17 July 2009.
- The title "Head of Rail" should be deleted from section 2.1 of the Manual Overview.
- The table contained in section 2.3 of the Manual Overview and section 5.4 of Controlled Document R-PR-RA-0002 should be revised by: (1) Replacing the heading in the first column "Document Type" with the heading "Document and Information Type". (2) Replacing the document headings "Applications for Access Agreements" and "Correspondence with Access Seekers" with the headings "Proposals for Access" and "Correspondences with Proponents and Operators" respectively. (3) Following the document heading "Master Control Diagram" add the heading "Completed Train Control Diagrams". (4) Following the document heading "Train Graphs" add the heading "Voice Logging Tapes from Train Control". (5) Add a new box with the document heading "Any Data Related to the Recording of Usage of the Access Agreement Including the Data Held in the Rail Access Management System".
- The wording of the second paragraph of section 2.6 of the Manual Overview should be revised to make it consistent with the relevant wording under section 5 of TPI's revised proposed Segregation Arrangements of 17 July 2009.
- Section 3.3 of the Manual Overview should be deleted.
- Two additional columns should be added to the table under section 4.2 titled "Contractor/Consultant" and the "Segregation Awareness Statement Signed (Yes/No)".
- Section 5.1 of Controlled Document R-PR-RA-0002 should include the definition of confidential information as contained under section 31(2) of the *Railways (Access) Act 1998*.
- The heading at the top of the pages comprising Controlled Document R-PR-RA-0002 should be changed from "R-PR-RA-0008" to "R-PR-RA-0002".
- Controlled Document R-PR-RA-0002 should be revised to incorporate the requirements of Amendments 4 and 4 of this final determination.
- The definition of "Emergency" under Section 4 of Controlled Document R-PR-RA-0003 should be revised by deleting the sentence under the first dot point and replacing it

with the definition of “Emergency” as contained under section 10 of WNR’s 2009 Train Path Policy.

- The definition of “Junior Staff” under section 4 of Controlled Document R-PR-RA-0003 should be revised to provide a detailed description of the positions which are considered to fall into this category. These positions should clearly be “below manager level” positions.
- In section 5.1.3 of Controlled Document R-PR-RA-0005 the words “is regards” should be changed to “in regards”.

REASONS FOR THE FINAL DETERMINATION

BACKGROUND

10. The TPI Railway was commissioned in May 2008. This railway is about 260 kilometres in length and runs from FMG's Cloud Break iron ore mine in the Chichester Ranges (East Pilbara) to TPI's port facilities at Anderson Point in Port Hedland.
11. The Agreement Act requires that the TPI Railway have a capacity of not less than 70mtpa and be subject to the Act and the Code.
12. On 1 July 2008, the TPI Railway became subject to the Act and the Code through the proclamation of Part 3 of the Agreement Act.
13. The TPI Railway is owned and will be operated by TPI. TPI will perform both access-related rail functions and functions associated with the operation of train services (rail operations).
14. As of 1 July 2008, TPI was required to comply with the legislative obligations set out for railway owners under the Act and the Code.
15. Part 4, Division 3 of the Act, sets out the segregation obligations applicable to TPI in relation to the TPI Railway. The Agreement Act required TPI to submit its proposed Segregation Arrangements to the Authority no later than seven days after the TPI Railway became subject to the State's rail access regime.
16. Under Part 4, Division 3 of the Act, TPI is required to obtain the Authority's approval prior to putting its Segregation Arrangements into place
17. On 3 July 2008, TPI submitted its proposed Segregation Arrangements to the Authority for approval.
18. On 22 May 2009, TPI submitted its proposed Segregation Manual to the Authority in accordance with the requirements outlined in the draft determination. TPI's Segregation Arrangements include, under the Act, the procedures and processes as outlined in its Segregation Manual.
19. On 17 July 2009, TPI submitted a revised version of its proposed Segregation Arrangements to the Authority. TPI's revised proposed Segregation Arrangements addressed a significant number of the amendments required under the draft determination.
20. TPI's proposed Segregation Arrangements proposed Segregation Manual and revised proposed Segregation Arrangements of 17 July 2009 are available on the Authority's web site (www.era.wa.gov.au).
21. To assist the Authority in the preparation of its final determination, the Authority engaged a consultant, PricewaterhouseCoopers (**PwC**) to review TPI's proposed Segregation Arrangements and subsequent revisions, including its proposed Segregation Manual, and the submissions received and provide advice to the Authority. The PwC final report is available on the Authority's website (www.era.wa.gov.au).

22. The PwC final report considered TPI's revised proposed Segregation Arrangements of 7 May 2009. This is an earlier revised version of TPI's proposed Segregation Arrangements than the 17 July version referred to in this final determination. The only material difference between these versions was a revision to the definitions, under section 8, which were revised to be Code compliant in the 17 July version. The proposed Segregation Manual considered by PwC is the same 22 May 2009 version referred to in this final determination.

DRAFT DETERMINATION

23. The Authority issued its draft determination on 3 December 2008. Twenty two amendments were required to be made to TPI's proposed Segregation Arrangements, as submitted on 3 July 2008, under the draft determination.
24. The Authority provided an eight week public consultation period on its draft determination, from 3 December 2008 to 30 January 2009. This period was extended beyond the usual six weeks due to the Christmas period. Four public submissions were received on the draft determination, from the North West Iron Ore Alliance (**NWIOA**), Hancock Prospecting (**Hancock**), Oakajee Port and Rail (**OPR**) and TPI. In addition, TPI provided a further submission on 27 July 2009.
25. The above submissions are available on the Authority's web site (www.era.wa.gov.au).

SEGREGATION MANUAL

26. Amendment 19 of the draft determination required TPI to submit its Segregation Manual to the Authority in order for the Authority to assess TPI's compliance with the requirements under Part 4, Division 3 of the Act.
27. Amendment 19 also required acknowledgement that the Authority would undertake public consultation on the proposed Segregation Manual prior to making a final determination pursuant to section 29(1) of the Act.
28. On 22 May 2009, TPI submitted its proposed Segregation Manual to the Authority in accordance with the requirements of Amendment 19 of the draft determination.
29. The Authority provided a four week public consultation period on TPI's proposed Segregation Manual, from 3 June to 3 July 2009. Two submissions were received on this manual, from the North West Iron Ore Alliance (**NWIOA**) and the Australian Rail Track Corporation (**ARTC**). These submissions are available on the Authority's web site (www.era.wa.gov.au).

CODE AMENDMENTS

30. Subsequent to the Authority's release of the draft determination on 27 March 2009, amendments to the Code were published in the Government Gazette on 23 June 2009.
31. The Code amendments resulted from a report by the Authority, on its review of the Code, provided to the Government in late 2005, pursuant to the Authority's

responsibilities under section 12 of the Act, and subsequent public consultation and deliberations by the Government.

32. References to the Code in this final determination refer to the current version of the Code apart from instances where comments incorporate statements from the draft determination.

FINAL DETERMINATION

33. The twenty two amendments to TPI's proposed Segregation Arrangements of 3 July 2008, as set out in the draft determination, have been listed below. Each of these amendments is followed by:
 - An outline of the comments on the amendment in the public submissions.
 - PwC's advice on the public submission comments.
 - The Authority's assessment of the public submission comments.
 - The Authority's final determination with respect to the revised version of TPI's proposed Segregation Arrangements as submitted on 17 July 2009.
34. Following this information, an additional amendment is set out in this final determination which covers a number of revisions of a general nature required by the Authority to TPI's Segregation Arrangements of 17 July 2009.
35. Subsequent to the discussion of the above, TPI's proposed Segregation Manual, of 22 May 2009, is discussed in similar terms to the headings set out above.
36. It should be noted that two versions of TPI's revised proposed Segregation Arrangements of 17 July 2009 are available on the Authority's web site. One is a "track-change" version showing the changes made to TPI's proposed segregation Arrangements of 3 July 2008. The other is a "clean" version of the 17 July 2009 document. Where page numbers are referred to in this final determination, in relation to TPI's revised proposed Segregation Arrangements of 17 July 2009, these numbers refer to the "clean" version of the document.

Draft Determination – Amendment 1

37. *TPI's proposed Segregation Arrangements should be amended by deleting all references to the term "WA Rail Access Regime" and replacing with the term "the Act and the Code", with the exception of the following:*
 - *Part 1.1 on page 1 – no replacement required.*
 - *Part 4.4.2 on page 19 – replace with "the Code".*
 - *Part 7.3 on page 23 – replace with "the Act".*

Public Submissions

38. No comments were made in the public submissions relating to Amendment 1.

Authority's Assessment

39. The Authority confirms its position as set out in the draft determination.

Final Determination

40. The Authority notes that, apart from the second dot point, TPI has incorporated the requirements of draft determination Amendment 1 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).
41. In relation to the second dot point of draft determination Amendment 1, the Authority requires the following amendment in this final determination:

Required Amendment 1

TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the word "Regime" under section 4.4.2 on page 24 and replacing this word with "Code".

Draft Determination – Amendment 2

42. *Part 1.1 of TPI's proposed Segregation Arrangements (headed 'Background') should be amended by inserting the term "(the Act)" immediately after the term "Railways (Access) Act 1998" and inserting the term "(the Code)" immediately after the term "Railways (Access) Code 2000".*

Public Submissions

43. No comments were made in the public submissions relating to Amendment 2.

Authority's Assessment

44. The Authority confirms its position as set out in the draft determination.

Final Determination

45. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 2 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 3

46. *Part 1.2 of TPI's proposed Segregation Arrangements (headed 'WA Rail Legislative Requirements') should be amended by including in the last paragraph in this section on page 4 the following statement: "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".*

Public Submissions

47. No comments were made in the public submissions relating to Amendment 3.

Authority's Assessment

48. The Authority confirms its position as set out in the draft determination.

Final Determination

49. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 3 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 4

50. *Part 1.3.1 of TPI's proposed Segregation Arrangements (headed 'Corporate Structure of TPI and FMG') should be amended as follows:*
- *The following statement should be included in the third paragraph in this section on page 4: "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".*
 - *The organisational structure outlined on page 5 of this section should be amended to provide the following additional information:*
 - *A detailed description of each position in the structure.*
 - *The classification of each position in terms of whether it performs access-related functions or other functions.*
 - *The direct reporting paths in relation to access-related functions, for those positions which perform these functions, to the TPI and FMG boards.*
 - *The physical location of each position.*

Public Submissions

51. No comments were made in the public submissions relating to Amendment 4.

Authority's Assessment

52. The Authority confirms its position as set out in the draft determination.

Final Determination

53. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 4 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 5

54. *TPI's proposed Segregation Arrangements should be amended to remove all references to a staged approach to the implementation of its Segregation Arrangements.*

Public Submissions

55. Hancock commented that it was pleased to see that the draft determination did not accept the staged approach proposed by TPI as it had concerns in relation to such an approach.
56. The NWIOA noted that it supported the amendments required under the draft determination. No further comment was provided in relation to Amendment 5.
57. TPI commented that that it did not believe that its proposed staged approach was inconsistent with, or not contemplated by the Act. TPI noted that its staged arrangements addressed the provisions of sections 31 to 34 of the Act and that the staged approach recognised the need for maximum interaction and sharing of information between rail infrastructure staff and haulage staff to achieve a safe and productive overall rail system.

PricewaterhouseCoopers' (PwC) Advice

58. PwC examined the information on the proposed staged approach provided by TPI in its revised proposed Segregation Arrangements and proposed Segregation Manual, in its final report (Part 2 of Appendix 1 on page 73). PwC concluded that TPI's proposed segregation arrangement measures outlined under each of the two stages were consistent with sections 28 and 31 to 34 of the Act.

Authority's Assessment

59. In assessing TPI's submission on the draft determination supporting its proposed two stage approach, the Authority is mindful of the views expressed in the submissions on TPI's proposed Segregation Arrangements as outlined in the draft determination. The NWIOA, UMC, Hancock and the ARTC all expressed concerns about the adequacy of the arrangements proposed under TPI's staged approach. The issue of protection of confidential information was a matter of particular concern. The Authority also notes that it required WNR to separate its access-related functions from its other functions in its segregation arrangements which came into effect in 2003.
60. The views expressed in the public submissions were considered by the Authority, in conjunction with TPI's proposed Segregation Arrangements, in its assessment process which resulted in the requirements set out under Amendment 5 of the draft determination.
61. In the draft determination, the Authority noted that it did not consider that TPI's proposed Segregation Arrangements were consistent with the Act on the basis that the Act did not contemplate a two stage process for a railway owner to meet its obligations as set out under sections 31 to 34 of the Act. The Authority has subsequently reconsidered this matter and is of the view that a staged approach to the implementation of a railway owner's segregation obligations under the Act could be accommodated within the provisions of this legislation.
62. Given the above, the Authority requested PwC to assess whether Stage One and Stage Two of TPI's proposed Segregation Arrangements each met the requirements of sections 31 to 34 of the Act, pursuant to the provisions of section 30 of the Act.

63. As noted above, PwC's advice in relation to this matter was that it considered TPI's proposed segregation arrangement measures outlined under Stages One and Two met the requirements of sections 31 to 34 of the Act.
64. The Authority notes PwC's advice and the control measures set out by TPI, including under its proposed Segregation Manual and associated Controlled Documents submitted to the Authority on 22 May 2009.
65. The issue for the Authority is whether, under TPI's proposed Stage One, where there will be minimal organisational separation of access-related and other functions, the requirements of section 28 of the Act will be met to the satisfaction of the Authority as is necessary for its approval of TPI's proposed Segregation arrangements pursuant to section 29(1) of the Act.
66. The Authority notes, that pursuant to section 30 of the Act, a railway owner's obligations under section 28 of the Act are not limited to the railway owner meeting the requirements of sections 31 to 34 of the Act.
67. The Authority considers that while appropriate control measures are a necessary requirement under section 31 to 34 of the Act, section 28 requires these measures to be incorporated within an overall organisational structure which sufficiently segregates the access-related functions from other functions to ensure that, together with these measures, the railway owner is able to carry out its access-related obligations under the Act in an effective manner. In its revised proposed Segregation Arrangements of 17 July 2009, TPI recognises the importance of organisational separation noting on page 11, that; "TPI recognises that organisational separation is a key means of preventing conflicts of interest arising in relation to the provision of access-related functions".
68. The Authority's notes that under Stage One, TPI has proposed a minimal separation between those parts of TPI dealing with access-related (below-rail) functions and those dealing with TPI's other functions including its above-rail train operations. It is clear from TPI's proposed Segregation Arrangements, that there will be considerable interaction between the Compliance Officer, the principal person dealing with access seekers' confidential information, and others in the TPI organisation. For example, TPI states on page 7 of its revised proposed segregation Arrangements of 17 July 2009 that under Stage One; "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".
69. Stage One is proposed to operate up until some point after the first access agreement is signed but no later than six months prior to that operator commencing its train operations on TPI's network. This means that access seekers (proponents) could be making proposals for access under Part 2 of the Code, negotiating access agreements under Part 3 of the Code and (for the first operator) administering an access agreement for some period under the Stage One arrangements. All these access-related functions are likely to involve the disclosure of confidential information from access seekers to TPI. Without an appropriate level of organisation separation of access-related and other functions, and notwithstanding its proposed control measures, TPI would be placing access seekers at some degree of risk of disclosure of their confidential information which could result in adverse commercial outcomes for access seekers. The obligations set out under section 28 of the Act are intended to

ensure that the railway owner has effective organisational separation and control measures in place such that access seekers' are adequately protected.

70. The Authority is not satisfied, due to the minimal nature of TPI's organisational separation of access-related and other functions, that its proposed arrangements under Stage One would be sufficient to meet the requirements of section 28 of the Act. A clear separation between access and non-access related functions within TPI, as proposed under Stage Two, together with the control measures proposed by TPI under this stage are considered by the Authority to be necessary at the commencement of TPI's Segregation Arrangements in order for the obligations of section 28 of the Act to be met.
71. Based on the above, the Authority confirms its position as set out in the draft determination. However, the wording of Amendment 5 has been clarified in this final determination to make it clear that the Stage Two arrangements proposed by TPI are required to be put in place at the commencement of its Segregation Arrangements.

Final Determination

Required Amendment 2

TPI's proposed Segregation Arrangements should be amended such that its Stage Two arrangements are implemented at the commencement of its Segregation Arrangements.

Draft Determination – Amendment 6

72. *The terms used in TPI's proposed Segregation Arrangements should be amended to ensure that these terms are consistent with the terms used in the Act and the Code.*

Public Submissions

73. No comments were made in the public submissions relating to Amendment 6.

Authority's Assessment

74. The Authority confirms its position as set out in the draft determination.

Final Determination

75. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 6 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 7

76. *Part 1.3.2 of TPI's proposed Segregation Arrangements (headed 'Timing of Implementation') should be amended to ensure that this section is consistent with the requirements set out under sections 31, 32, 33 and 34 of the Act.*

Public Submissions

77. Comments made in the public submissions relating to the staged approach issue have been dealt with in the above discussion on draft determination Amendment 5.

Authority's Assessment

78. The Authority confirms its position as set out in the draft determination. The Authority considers that Amendment 2 in this final determination deals with the requirements previously set out in draft determination Amendments 5 and 7.
79. The Authority also notes that the statement in the fourth paragraph on page 8 of section 1.3.2 of TPI's revised proposed Segregation Arrangements of 17 July 2009 ("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") is not appropriate. The Act does not provide for part of a railway owner's segregation arrangements to be approved initially and the remaining elements subsequently. TPI is required to provide the full extent of its detail on its Stage 2 arrangements in its Segregation Arrangements proposal so that the Authority can assess and approve such arrangements in their entirety.

Final Determination

Required Amendment 3

Section 1.3.2 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the second sentence in the fourth paragraph on page 8 and inserting the additional information on the Stage 2 arrangements which this sentence indicates will be provided at a later date.

Draft Determination – Amendment 8

80. *Part 2 of TPI's proposed Segregation Arrangements (headed 'Specification of Access-Related Functions') should be amended by including the words " as required under the Act and the Code" immediately following the word "matters" in the last dot point sentence on page 8.*

Public Submissions

81. No comments were made in the public submissions relating to Amendment 8.

Authority's Assessment

82. The Authority confirms its position as set out in the draft determination.

Final Determination

83. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 8 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 9

84. *Part 4.1 of TPI's proposed Segregation Arrangements (headed 'Definition of Confidential Information') should be amended as follows:*

- *Include as an addition to the dot point sentence on page 13, which states "train scheduling/planning data, to the extent it identifies specific haulage operations" the words "including Master Train Control Diagrams and Completed Train Control Diagrams and voice logging tapes from train control".*
- *Ensure that the examples of confidential information identified by TPI, under the seven dot point headings in this section (inclusive of the above inclusions), are all included under TPI's Segregation Arrangements from the time these arrangements commence.*
- *Include a sentence to the effect that 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.*

Public Submissions

85. The NWIOA noted that it supported this amendment and suggested that the first dot point in the amendment should also be considered by the Authority in its Train Path Policy and Train Management Guidelines determinations.

Authority's Assessment

86. The Authority notes the comments by the NWIOA.

87. The Authority confirms its position as set out in the draft determination.

Final Determination

88. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 9 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 10

89. *Part 4.2 of TPI's proposed Segregation Arrangements (headed 'Confidential Information Flows') should be amended as follows:*

- *Additional information should be provided comprising examples of the circumstances under which the Commercial/Compliance Officer would disclose confidential information and the specific information which would be disclosed in these circumstances.*
- *Clarification should be provided on the extent to which the Commercial/Compliance Officer is the sole custodian for each type of confidential information.*

- *Clarification should be provided on the extent to which any persons other than the Commercial/Compliance Officer will have access to confidential information.*
- *The persons recorded on the register should be expanded to include members of the TPI and FMG boards.*
- *The register should record both names and position titles for each person on the register.*
- *Persons recorded on the register should be required to sign confidentiality agreements with TPI, forming part of TPI's Segregation Awareness Statement.*
- *Control measures should be outlined in relation to managing confidential information flows within the executive and board structures of TPI and FMG. This outline should, at a minimum, be equivalent to the measures outlined under section 4 (from paragraph 11 on page 5 to the end of section 4 on page 6) of WNR's 2003 Segregation Arrangements and should include the following:*
 - *Description of procedures to protect confidential information that will allow the boards of TPI and FMG to carry out their statutory duties.*
 - *Specifying that management meetings in relation to access-related issues will not include representatives of the arm of TPI or related entities of TPI involved in operating train services.*
 - *Specifying the nature of the contents of management reports on access-related issues to be given to TPI and FMG management, directors and board members, in that management reports at group level should only provide aggregate financial and operating data and should not identify individual access seekers or operators.*
 - *Clearly defining confidential information when such information is provided to management, directors or board members.*
- *A statement should be added, following inclusion of the above information, to the effect that the detail of the control measures in relation to managing confidential information flows within the executive and board structures of TPI and FMG will be included in TPI's Segregation Manual.*

Public Submissions

90. The NWIOA noted that it supported this amendment and commented that it interpreted the draft determination as inferring that an audit will be undertaken of TPI's compliance with the confidentiality requirements in the segregation arrangements.
91. TPI, in its submission of 27 July 2009, commented that it had concerns in relation to one of the sub-components of draft determination Amendment 10, under the seventh dot point, related to the issue of TPI representatives being allowed to be present in management meetings where access-related issues are discussed. TPI considered that this part of Amendment 10 was unreasonable given that the majority of access-related matters dealt with at such management meetings would be for the purpose of improving the productivity and safety performance of the rail network and would require the involvement of TPI staff involved in operating train services.

Authority's Assessment

92. The Authority notes the comments by the NWIOA. In relation to the audit issue raised by the NWIOA, the Authority notes that TPI's revised proposed Segregation Arrangements of 17 July 2009 have incorporated the Authority's requirement for an independent audit to be undertaken of TPI's Segregation Arrangement obligations every two years.
93. In relation to the comments by TPI, the Authority considers that TPI has raised legitimate concerns. Consequently, the Authority considers that the relevant part of Amendment 10 (seventh dot point, second sub-component) should be revised to set out specific control measures to apply where access-related confidential information is required to be disclosed during the course of management meetings with representatives of the arm of TPI or related entities of TPI involved in operating train services. These control measures should require that:
- Confidential information is only disclosed where necessary, such as for the purpose of the improving productivity and safety performance of the rail network.
 - Such confidential information is clearly defined.
 - The recipients of such confidential information sign a Segregation Awareness Statement.
 - A register of the parties to whom such confidential information has been disclosed is maintained and can be viewed by the access seekers in relation to the disclosure of their confidential information.
94. The Authority confirms its position as set out under the remainder of draft determination Amendment 10.

Final Determination

95. Excluding that part of draft determination Amendment 10 discussed above (seventh dot point, second sub-component) the Authority notes that TPI has incorporated the remaining requirements of Amendment 10 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).
96. In relation to the excluded part of draft determination Amendment 10, the Authority requires the following amendment in this final determination.

Required Amendment 4

Section 4.2 on page 15 of TPI's revised proposed Segregation Arrangements of 17 July 2009 (headed 'Confidential Information Flows') should be amended by inserting the following paragraph, at the end of the information on page 17:

"Where access-related confidential information is required to be disclosed during the course of management meetings involving representatives of the arm of TPI or related entities of TPI involved in operating train services, the same control measures as those outlined above for senior TPI or FMG management meetings will also apply to parties receiving confidential information. Disclosure of such confidential information will only occur in these meetings where necessary, such as for the purpose of improving productivity and safety performance of the rail network."

Draft Determination – Amendment 11

97. *Part 4.2.1 of TPI's proposed segregation Arrangements (headed 'Hard Copy Access') should be amended to include the following additional measures to control access to TPI's hard copy confidential information:*

- *This information should be stored in a secured compactus or similar facility within the access management area of TPI's premises.*
- *The access management area should be locked when not attended by TPI staff.*
- *TPI staff involved in access-related functions within the access management area of TPI's premises should be located in a separate secured area.*
- *Train control centres should be secured with entry controlled by TPI.*
- *Entry to the access management area should only be available to TPI staff who have signed TPI's Segregation Awareness Statement.*
- *Entry to the access management area should only be available to TPI staff approved by TPI's General Manager, or equivalent.*

Public Submissions

98. OPR commented that it had concerns in relation to the first four dot points of this amendment in that these restrictions on access to confidential information may be unnecessarily restrictive. OPR considered that, in relation to the first three dot points, non access-related staff (such as TPI port-related staff) would need access to such confidential information in order to "ensure that the port and rail systems are operated as an efficient iron ore logistics chain". In relation to the fourth dot point, OPR considered that this amendment may not be appropriate if TPI was to engage a contractor to manage its train operations.

PricewaterhouseCoopers' (PwC) Advice

99. PwC noted that it did not consider it appropriate, as suggested by OPR, that access seekers' confidential information should be made available "to all TPI staff on the basis they sign Segregation Awareness Statements".

100. In PwC's view, access to such confidential information should only be on the basis that the staff member performs a function for which access to this information is relevant and meets the conditions set out in TPI's Segregation Arrangements and that access by the staff member must conform with all the relevant requirements of the segregation arrangements, including the requirement to sign a Segregation Awareness Statement.

Authority's Assessment

101. The Authority has considered OPR's comments and does not agree that the provisions under the first four dot points of draft determination Amendment 11 are too restrictive.
102. The Authority agrees with the view expressed by PwC and notes that the Act requires a railway owner to make arrangements to separate its access-related functions from its other functions (section 28). Access-related functions means the functions involved in arranging the provision of access to railway infrastructure under the Code. Other functions include, in the case of TPI, its above-rail operations and its port operations. One of the mandatory requirements set out in the Code, in relation to meeting the obligations of section 28, is the effective protection of access-seekers confidential information (section 31).
103. The Authority therefore considers that it would be inappropriate for access-seekers confidential information to be unsecured and readily accessible to TPI staff involved in TPI's other functions, including its port operations.
104. The Authority confirms its position as set out in the draft determination.

Final Determination

105. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 11 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 12

106. *Part 4.2.2 of TPI's proposed Segregation Arrangements (headed 'Electronic Access') should be amended to include the following additional measures to control access to TPI's electronic confidential information:*
- *The access of users, logging onto TPI/FMG's computer network, to shared files, information systems, e-mail and the ability to generate reports should be automatically restricted to information relating to that user's company, functional area and section.*
 - *The arrangements for the generation and management of user ID's and passwords within TPI need to be detailed. The authority to allocate passwords within TPI should reside with the TPI General Manager, or equivalent.*
 - *TPI should store its electronic confidential information on a dedicated and stand-alone computer file server, separate from both FMG and TPI's non-access related functions.*

- *Access to TPI's electronic confidential information system should be controlled by ensuring that access to this information can only be given by the TPI General Manager, or equivalent, and will only be given to persons who have signed TPI's Segregation Awareness Statement.*
- *Further restrictions, beyond those listed above for the TPI/FMG computer network, should apply to users of this computer network who require access to the TPI's electronic confidential information system. These restrictions should ensure that users accessing this electronic confidential information system are automatically restricted in the functions available to them and the information they can access and report on according to their user ID and the approval of the TPI General Manager, or equivalent, to the level of access sought.*
- *In regard to TPI's electronic data on rail operations (such as train movements and tonnages) as proposed to be contained in its Operations Management System, this system should have appropriate controls on the data to ensure the protection of confidential data.*
- *Access to TPI's electronic confidential data held in its Operations Management System should be controlled by ensuring that access to this confidential data can only be given by the TPI General Manager, or equivalent, and will only be given to persons who have signed TPI's Segregation Awareness Statement.*
- *Further restrictions, beyond those listed above for the TPI/FMG computer network, should apply to users of this computer network who require access to the TPI's electronic confidential data held in its Operations Management System. These restrictions should ensure that users accessing the confidential data in TPI's Operations Management System are automatically restricted in the functions available to them and the information they can access and report on according to their user ID and the approval of the TPI General Manager, or equivalent, to the level of access sought.*
- *The process of granting access and usage to TPI's electronic confidential information system and confidential data in its Operations Management System should be capable of being audited.*

Public Submissions

107. The NWIOA expressed the same general comments as for Amendment 10, to the effect that this amendment was supported and that it was assumed that an audit would be undertaken of TPI's compliance with the confidentiality requirements in the segregation arrangements.
108. OPR noted that it had concerns with the third dot point of this amendment, dealing with the issue of a dedicated server. In OPR's view the requirement on TPI was more restrictive than WNR, in that WNR was not required to have a separate server for its confidential access-related information. WNR was only required to have a separate server to the Australian Railroad Group. OPR considered that having separate servers for access-related information and non access-related information within TPI represented an unnecessary cost burden on TPI.
109. TPI commented that it did not agree that a dedicated server for managing access-related information within TPI was necessary. TPI noted that the implementation of FMG's security model was software based and did not

specifically require hardware standards. TPI outlined FMG's security model within its information technology system (which uses Microsoft Active Directory) and noted that this model is commonly found in the information technology systems of many Australian and global companies.

PricewaterhouseCoopers' (PwC) Advice

110. PwC examined the information provided by TPI, in response to the requirements set out under draft determination Amendment 12, as contained in TPI's revised proposed Segregation Arrangements and proposed Segregation Manual. In its final report (Part 3 of Appendix 1 on page 77), PwC concluded that the TPI had effectively addressed the regulatory objectives and legislative requirements underlying Amendment 12.
111. PwC further noted in its final report, that: a) TPI's information technology system arrangements to control access to electronic confidential information are considered to be appropriate although they may differ from elements of the ERA's Amendment 12 and b) that TPI's system arrangements based on software-created firewalls on common file servers would appear to incorporate appropriate controls to protect confidential information and such an information technology model is considered to be consistent with the efficiency objective expressed in section 2A of the Act.

Authority's Assessment

112. In relation to the NWIOA's comments, the Authority notes that it has addressed the audit issue in its comments under draft determination Amendment 10.
113. With regard to the dedicated server issue raised by OPR and TPI, the Authority requested PwC to assess the manner in which TPI proposed (under its revised proposed Segregation Arrangements including its proposed Segregation Manual) to meet the requirements of draft determination Amendment 12, noting that TPI had not proposed a dedicated server consistent with the third dot point of this amendment.
114. The Authority agrees with the conclusions expressed by PwC in Appendix 1 (Part 3) of its final report, as outlined above.
115. The Authority confirms its position as set out in the draft determination noting that in the case of the third dot point of draft determination Amendment 12, TPI has proposed software firewall arrangements for its existing TPI/FMG information technology system for the protection of access seekers' confidential information which in the Authority's view (and based on PwC's advice) 'otherwise addresses' the requirement that TPI provide a dedicated computer server to store such information.

Final Determination

116. The Authority notes that TPI has incorporated or otherwise addressed to the Authority's satisfaction, the requirements of draft determination Amendment 12 in its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 13

117. *Part 4.3.1 of TPI's proposed Segregation Arrangements (headed 'Transfers') should be amended to include the following:*

- *TPI should preclude the ability of staff to transfer between positions involved in performing access-related functions and positions involved in performing other functions where the occupant of the access-related position concerned is required to sign TPI's Segregation Awareness Statement, except where the person transferring from that access-related position first spends at least one year undertaking other access-related functions within the Rail Infrastructure Division which do not require the signing of TPI's Segregation Awareness Statement.*
- *Due to the importance of ensuring the safe and reliable operation and use of its rail network, TPI may wish to consider adopting the exception to the above prohibition on staff rotations between access-related functions and other functions in the case of emergencies, as set out in section 5 of WNR's 2003 Segregation Arrangements. Rotation of relevant staff under emergency conditions should only occur after TPI advises the Authority of 1) the circumstances of the emergency; 2) the expected duration of the emergency; and 3) the specific measures TPI would take to protect confidential information and to protect against conflicts of interest including those people who are proposed to be used signing TPI's Segregation Awareness Statement.*

Public Submissions

118. TPI commented in its submission of 27 July 2009, that in relation to the first dot point of this amendment, such a restriction on staff movements would deny potential promotional opportunities to staff and would be unproductive in terms of developing TPI's staff. TPI suggested that the restrictions only apply to management level staff and the Commercial/Compliance officer.

Authority's Assessment

119. The Authority considers that TPI has raised legitimate concerns. Consequently, the Authority considers that the paragraph under the first dot point of draft determination Amendment 13 should be revised so that the restriction on staff movements applies only to staff at management level and above, including the Commercial/Compliance Officer.

120. The Authority confirms its position as set out under the remainder of draft determination Amendment 13.

Final Determination

121. Excluding that part of draft determination Amendment 10 discussed above (first dot point paragraph) the Authority notes that TPI has incorporated the remaining elements of Amendment 10 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

122. In relation to the excluded part of draft determination Amendment 10, the Authority requires the following amendment in this final determination.

Required Amendment 5

Section 4.3.1 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the third and fourth sentences in the second paragraph on page 22 and replacing these sentences with a statement consistent with the following requirement:

"TPI will preclude the ability of senior staff (staff at management level and above including the Commercial/Compliance Officer) to transfer between positions involved in performing access-related functions and positions involved in performing other functions where the occupant of the access-related position concerned is required to sign TPI's Segregation Awareness Statement, except where the person transferring from that access-related position first spends at least one year undertaking other access-related functions within the Rail Infrastructure Division which do not require the signing of TPI's Segregation Awareness Statement."

Draft Determination – Amendment 14

123. *Part 4.3.2 of TPI's proposed Segregation Arrangements (headed 'Consultants') should be amended to include the sentence as follows: "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".*

Public Submissions

124. No comments were made in the public submissions relating to Amendment 14.

Authority's Assessment

125. The Authority confirms its position as set out in the draft determination.

Final Determination

126. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 14 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 15

127. *Part 4.4.1 of TPI's proposed Segregation Arrangements (headed 'Segregation Awareness Statement') should be amended to include the following measures:*
- *The Segregation Awareness Statement should 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, should be included in TPI's Segregation Manual.*

Public Submissions

128. No comments were made in the public submissions relating to Amendment 15.

Authority's Assessment

129. The Authority confirms its position as set out in the draft determination.

Final Determination

130. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 15 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 16

131. *Part 3 of TPI's proposed Segregation Arrangements (headed 'Avoidance of Conflict of Interest') should be amended to include the following additional measures:*

- *Insert the sentence "TPI will manage its access related functions so that, for relevant officers, no conflicts of interest exist."*
- *Train scheduling and train control functions are required to be undertaken by TPI staff who have signed TPI's Segregation Awareness Statement.*
- *Provide a statement to the effect that 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 of such changes and that this process will be covered by a procedure in the Segregation Manual.*
- *Common membership of the TPI and FMG boards should be minimised to the extent possible in order to avoid potential conflicts of interest.*
- *In addition to the requirements listed above, TPI should make appropriate changes to this section consistent with those other amendments in this draft determination relevant to this section.*

Public Submissions

132. TPI commented in its submission of 27 July 2009, in relation to the fourth dot point paragraph, that restrictions on board memberships may reduce the effectiveness of business decisions across FMG and its subsidiaries, including TPI, without having any positive impact on the effectiveness of the segregation arrangements and that all board members would be required to sign Segregation Awareness Statements.

Authority's Assessment

133. The Authority considers that TPI has raised legitimate concerns.

134. The Authority also notes that the restriction on board membership set out under draft determination Amendment 16 was not imposed in WNR's 2003 Segregation Arrangements.

135. On the basis of the above, the Authority considers that the paragraph under the fourth dot point of draft determination Amendment 13 should be deleted.
136. The Authority confirms its position as set out under the remainder of draft determination Amendment 16.

Final Determination

137. Excluding the second and fourth dot point of draft determination Amendment 16 the Authority notes that TPI has incorporated the remaining requirements of Amendment 16 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).
138. As discussed above, in relation to the fourth dot point of draft determination Amendment 16, the Authority no longer considers this requirement to be necessary.
139. In relation to the second dot point of draft determination Amendment 16, the Authority requires the following amendment:

Required Amendment 6

Section 3 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by deleting the words "be subject to" in the last line of the second paragraph on page 13 and replacing these words with "sign".

Draft Determination – Amendment 17

140. *Part 5 of TPI's proposed segregation Arrangements (headed 'Duty of Fairness') should be amended to include the following additional measures:*
 - *TPI should inform access seekers negotiating within the Code at the outset of negotiations of their rights to confidentiality under its Segregation Arrangements.*
 - *If negotiations have commenced outside the Code and an access seeker subsequently chooses to continue negotiations under the Code, through the process as set out under Parts 2 to 4 of the Code, TPI and the access seeker will agree on what information previously supplied by the access seeker is subject to the confidentiality provisions of these arrangements.*
 - *The mechanisms for ensuring TPI's Duty of Fairness should be stated, as follows:*
 - *Access seekers under the Code 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 access seekers under the Code should provide for specific consultation mechanisms, the provision of information and dispute resolution mechanisms. This should allow these access seekers to test the duty of fairness related to other than price issues in the provision of access.*

Public Submissions

141. The NWIOA suggested that the access seeker and TPI sign their own confidentiality deed as part of the negotiation process. This would obviate the need for the second dot point paragraph under this amendment as negotiations both in and outside of the Code would have confidentiality coverage.
142. The NWIOA also raised the issue of liquidated damages being included where a breach of the segregation arrangements occurs.

PricewaterhouseCoopers' (PwC) Advice

143. PwC noted that the NWIOA's suggestion in relation to a confidentiality deed appeared to be reasonable but considered that this was a matter to be negotiated between the parties rather than being mandated by the Regulator, particularly where negotiations concerned take place outside the Code.

Authority's Assessment

144. The Authority agrees with PwC's advice in relation to the comments by the NWIOA.
145. The Authority notes that the rail access legislation only places obligations on the railway owner with respect to access seekers who negotiate within the Code. As such, the Act and the Code impose a minimum level of obligations on the railway owner to ensure adequate protection of the rights of access seekers negotiating under the Code. The legislation does not prevent the railway owner and an access seeker negotiating under the Code from entering into commercial arrangements which place obligations additional to those under the Code on the railway owner, such as entering into a confidentiality agreement with the access seeker, provided such arrangements are not inconsistent with the railway owner's legislative obligations. Such additional obligations are a commercial issue which fall outside the jurisdiction of the Authority.
146. For negotiations within the Code, the Authority's view is that segregation arrangements approved by the Authority under section 28 of the Act provide appropriate protection for access seekers as this section requires a railway owner to provide an adequate level of protection for confidential information provided by such access seekers.
147. In relation to the issue raised by the NWIOA, of liquidated damages being included in TPI's Segregation Arrangements, the Authority notes that this is a commercial matter which can be negotiated between the access seeker and TPI as part of access agreement negotiations. With respect to breaches of a railway owner's approved segregation arrangements, the Act provides the Authority with the power to impose a penalty pursuant to the provisions set out under section 29(4).
148. The Authority confirms its position as set out in the draft determination.

Final Determination

149. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 17 into its revised proposed Segregation

Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 18

150. *Part 6 of TPI’s proposed Segregation Arrangements (headed ‘Preparation of Accounts and Records’) should be amended to include the following additional measures:*

- *TPI staff should control the information used to produce its regulatory accounts.*
- *TPI staff should control the data used to generate invoices for access customers.*
- *The collection of the payments to be performed by FMG’s Finance Group should be based on information supplied by TPI staff. Detailed information supporting invoicing should be provided direct to customers by TPI.*
- *There should be procedures to ensure that confidential information provided by TPI to support the billing process is protected. These procedures should be detailed in TPI’s Segregation Manual.*
- *Consistent with Required Amendment 9 of this draft determination:*
 - *Financial information provided by TPI to FMG’s Finance Group for normal internal reporting purposes should be aggregated to prevent disclosure of confidential information.*
 - *FMG Finance group staff and auditors given access to confidential information should be recorded on TPI’s register and should sign TPI’s Segregation Awareness Statement.*

Public Submissions

151. No comments were made in the public submissions relating to Amendment 18.

Authority’s Assessment

152. The Authority confirms its position as set out in the draft determination.

Final Determination

153. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 18 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 19

154. *Part 7.1 of TPI’s proposed Segregation Arrangements (headed ‘Preparation of Segregation Manual’) should be amended to include the following:*

- *An outline of the Segregation Manual document, in terms of major headings.*
- *A list of the documents and processes governed by the Segregation Manual, and the relationship of those to the Segregation Manual (ie*

whether they are part of the Segregation Manual or maintained under a separate, defined process).

- *A list of the information to be included in the Segregation Manual, which should be similar to the equivalent list in section 3 of WNR's 2003 Segregation Arrangements, including the following:*
 - *Copy of the register for recipients of confidential information.*
 - *Copy of the Segregation Awareness Statement including the Confidentiality Agreement.*
 - *A description of each position in TPI's organisational structure, the classification of these positions according to whether they perform access-related functions or other functions and the physical location of these positions.*
 - *The procedures to ensure that billing-related confidential information is protected.*
 - *The measures and commitments in relation to the protection of confidential information, the types of behaviour which breach the segregation arrangements, the appropriate corrective action for each breach and notification and reporting procedures for breaches.*
 - *The information required to be included in TPI's Segregation Manual as set out under Required Amendments 9, 10, 15, 16 and 18 of this draft determination.*
- *Acknowledgement that TPI's 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.*
- *Acknowledgement that in providing its Segregation Manual to the Regulator, TPI will need to also provide a public (non-confidential) version of this manual to allow the Regulator to undertake public consultation on the manual prior to making a determination pursuant to section 29(1) of the Act.*

Public Submissions

155. OPR commented that TPI's proposed Segregation Manual should not be subject to public consultation.
156. TPI provided the same comment as OPR, to the effect that it's proposed Segregation Manual should not be subject to public consultation.

Authority's Assessment

157. The Authority noted in the draft determination that a public consultation process was required to be undertaken on TPI's proposed Segregation Manual when provided by TPI. This provides the opportunity for interested parties to give their views on the arrangements proposed by TPI which can then be taken into account by the Authority as part of its assessment of these arrangements.
158. The Authority confirms its position as set out in the draft determination.

Final Determination

159. The Authority notes, as discussed previously, that TPI has provided its proposed Segregation Manual to the Authority as required under draft determination Amendment 19 and public consultation has been undertaken by the Authority on this manual. The Authority's assessment of TPI's proposed Segregation Manual is outlined in a subsequent section of this final determination.
160. In relation to the remaining requirements of draft determination Amendment 19, the Authority notes that TPI has incorporated these requirements into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 20

161. *Part 7.2 of TPI's proposed Segregation Arrangements (headed 'Audit and Compliance') should be amended as follows:*
 - *The words "10 business days" in the last paragraph on page 22, should be deleted and replaced with the words "5 business days".*
 - *A fourth dot point should be added on page 23. The statement inserted under this dot point should be; "other KPIs, as agreed between the Regulator and TPI, which measure the effectiveness of TPI's Segregation Arrangements".*

Public Submissions

162. No comments were made in the public submissions relating to Amendment 20.

Authority's Assessment

163. The Authority notes that subsequent to the draft determination, it completed a review of railway owners' compliance requirements under the Act and the Code. As a result of this review, the Authority's view is that while the Act and the Code allow the Authority to look at the operational performance of a railway network in the course of performing its functions, the Authority does not have a general function of monitoring the operational performance of a railway network and its monitoring functions do not extend beyond monitoring a railway owner's compliance with the Act and the Code.
164. Based on the above, the Authority will not require TPI to provide Key Performance Indicator (**KPI**) information to the Authority as part of its compliance arrangements.
165. The Authority's compliance review also indicated the need for the Authority to undertake independent compliance audits of a railway owner's compliance with its obligations under the Act and the Code. As a result of the review, these audits will in future be undertaken generally on a two year basis.
166. In light of the above, the Authority considers a two yearly independent audit of TPI's Segregation Arrangements to be appropriate. The first such audit is expected to commence at the end of the 2011-12 financial year.

167. In addition, the Authority will be writing to TPI in the near future outlining the requirement for this two yearly independent audit to cover those provisions of the Code relating to obligations on the railway owner in relation to dealing with access seekers under the Code. A similar arrangement is in place for WNR and is available on the Authority's web site (www.era.wa.gov.au).

Final Determination

168. The Authority notes that, subsequent to the draft determination, the Authority outlined, to TPI, the implications of its compliance review findings to TPI's proposed Segregation Arrangements. As a consequence, TPI has incorporated a significant proportion of the Authority's requirements into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).
169. In relation to the remaining matters, the Authority has set out the following amendment.

Required Amendment 7

Section 7 of TPI's revised proposed Segregation Arrangement of 17 July 2009 should be amended as follows:

- Second last paragraph on page 27: (1) Change "the" to "its" in the first line. (2) Delete "the Act or Code" in the first and second lines and replace with "the Segregation Arrangements".
- Last paragraph on page 27: (1) Delete "its Act and Code" in the second line and replace with "the Segregation Arrangements". (2) Add the following sentence to the end of this paragraph: "It is expected that the first audit will commence at the end of the 2011-12 financial year."
- Delete the third paragraph and associated dot points on page 32.
- Review the remainder of section 7.2, much of which duplicates the information on pages 27 and 28 of section 7, and consolidate the appropriate parts of section 7.2 with the information on pages 27 and 28 of section 7.

Draft Determination – Amendment 21

170. *Part 7.3 of TPI's proposed segregation Arrangements (headed 'Complaints Handling') should be amended as follows:*
- *Delete the dot point on page 23 which states; "advise the Regulator within 30 days of any complaint it receives" and insert a new sentence stating; "TPI will advise the Regulator within 10 business days of any complaint it receives and the action it is taking to investigate the complaint".*
 - *Add the words "and the Regulator" immediately after the word "complainant" under the second dot point on page 23.*

Public Submissions

171. No comments were made in the public submissions relating to Amendment 20.

Authority's Assessment

172. The Authority confirms its position as set out in the draft determination.

Final Determination

173. The Authority notes that TPI has incorporated the requirements of draft determination Amendment 21 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual).

Draft Determination – Amendment 22

174. *Part 8 of TPI's proposed segregation Arrangements (headed 'Definitions') should be amended as follows:*

- *Include a complete list of all the terms used in TPI's proposed Segregation Arrangements which might reasonably be expected to require a definition.*
- *All definitions should:*
 - *Be consistent with the definitions in the Act and the Code.*
 - *If not defined in the Act and the Code, be consistent with the definitions on pages 9 and 10 of WNR's 2003 Segregation Arrangements where possible.*

Public Submissions

175. No comments were made in the public submissions relating to Amendment 22.

Authority's Assessment

176. The Authority confirms its position as set out in the draft determination.

177. The Authority also notes that the definition of Segregation Manual should include a statement clearly indicating that this Manual forms part of TPI's Segregation Arrangements.

Final Determination

178. The Authority notes that while TPI has incorporated the requirements of draft determination Amendment 22 into its revised proposed Segregation Arrangements (as submitted on 17 July 2009 including also its proposed Segregation Manual) a further amendment is required as set out below.

Required Amendment 8

Section 8 of TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended by adding a sentence at the end of the definition of Segregation Manual on page 34 as follows:

"This manual forms part of TPI's Segregation Arrangements."

Additional Amendment

179. The Authority notes that there are a number of areas where amendments of a general nature are required to TPI's revised proposed Segregation Arrangements of 17 July 2009 to ensure consistency.

Required Amendment 9

TPI's revised proposed Segregation Arrangements of 17 July 2009 should be amended as follows:

- The term "weekly" when used in reference to train plans should be changed to "fortnightly" and the wording used in relation to the issue of train plans should not be inconsistent with TPI's approved Train Management Guidelines.
- In a number of cases the term "proponent" has been used when the issue could relate to both proponents and operators. The use of this term should be checked and should be replaced in such circumstances with the term "proponents and operators".
- A number of references to TPI's proposed Segregation Manual are made in terms such as "will be included in TPI's Segregation Manual" or "TPI will develop control measures". The wording of this document should be reviewed and updated to reflect the manual and its associated Controlled Documents as been set out as part of the document (Amendment 10 of this final determination requires the manual to be an Appendix to this document). Particular reference should be made to updating section 7.1 (Development of Segregation Manual).
- The information set out in this document should include appropriate references to the relevant sections of TPI's proposed Segregation Manual where related information is outlined.

TPI's Proposed Segregation Manual

180. As noted earlier, TPI provided its proposed Segregation Manual to the Authority on 22 May 2009 in accordance with the requirements of the draft determination. The Authority carried out public consultation on this manual over a four week period from 3 June to 3 July 2009.

181. The Authority notes that TPI's proposed Segregation Manual consists of the manual overview (under R-PR-RA-0001) plus seven Controlled Documents which set out procedures in relation to the following:

- Protecting confidential information.
- Use of TPI staff in an emergency.
- Preparation by operators of amendments to daily or weekly plans for variable services.
- Provision of information to be given to the TPI or FMG Board/ CEO/ Senior Management.
- Protection of information provided to FMG Finance.
- Handling of complaints and breaches.
- TPI roles and responsibilities.

Public Submissions

182. Two public submissions were received, from the NWIOA and the ARTC.

183. The NWIOA raised the following matters in relation to TPI's Segregation Manual:

- The manual (under the Controlled Documents) refers to the staged approach contrary to the requirements of draft determination Amendment 5.
- Section 2.3 of the manual should include items (ii), (iii) and (iv) in section 3 (page 5) of WNR's 2003 Segregation Arrangements under the table matrix. In addition, the table matrix (first column) should be headed 'Document and Information Type'.
- The term 'Weekly Train Plan' should be changed to 'Fortnightly Train Plan' in the manual (section 2.3 and elsewhere) to be consistent with the Authority's draft determination on TPI's Train Management Guidelines.
- The manual (Procedure R-PR-RA-0005) does not appear to have fully complied with the requirements set out under the second last dot point (and associated sub-sections) of draft determination Amendment 10.
- The manual (Procedure R-PR-RA-0004) should apply to all operators using TPI's network.
- The manual (Procedure R-PR-RA-0005) should address the fourth dot point of draft determination Amendment 16.
- The manual (Procedure R-PR-RA-0006) has not properly addressed the requirements of draft determination 18.

184. The ARTC commented that it found TPI's Segregation Manual to be a comprehensive document but noted the following points:

- The manual should outline more clearly the objectives and strategies for implementation of the segregation requirements set out in the Act.
- The manual should outline the circumstances under which various parties will be treated in a fair manner. The manual should also refer to the Train Management Guidelines and Train Path Policy as these are part of the Duty of Fairness and ensure that TPI will treat all access seekers, whether negotiating in or outside the Code, with the same Duty of Fairness under its Segregation Arrangements.
- The compliance plan section of the manual (section 3) should provide more detail in relation to how a breach of its Segregation Arrangements will be dealt with by TPI.

PricewaterhouseCoopers' (PwC) Advice

185. PwC's assessment of TPI's proposed Segregation Manual (Final Report, Part 1 of Appendix 1) concluded that the manual was appropriate apart from four suggested amendments. These amendments were as follows:

- Document R-PR-RA-0002 – Definition of confidential information from section 31(2) of the Act should be incorporated into section 5.1 (section 5.1 is referenced by the definition in section 4).
- Document R-PR-RA-0003 – TPI should adopt definitions for "Emergency" and "Junior" that are less open to interpretation.
- Document R-PR-RA-0004 – The procedures to amend daily or weekly plans should be applied to all operators (whether access has been negotiated inside or outside the Code).
- Document R-PR-RA-0005 – TPI should include the requirements set out under the fourth dot point in draft determination Amendment 16.

Authority's Assessment

Manual Overview (R-MA-RA-0001)

186. In relation to section 1.2 (Terms and Definitions), the Authority notes that some of these definitions are not consistent with the Code. The Authority considers that the definitions in TPI's manual should be consistent with the definitions in its revised proposed Segregation Arrangements of 17 July 2009 and Amendment 8 of this final determination. This requirement applies to the Controlled Documents also, as these documents repeat the definitions in document R-MA-RA-0001.
187. The Authority notes the comment by the ARTC, in relation to section 1.5 (Segregation Objectives and Strategies) of the manual, concerning a lack of detail on the objectives and strategies. PwC advised that it considered the objectives and strategies set out in this section to be appropriate given that they include ensuring compliance with the relevant requirements of the Act and the Code and ensuring that the policies and procedures in TPI's Segregation Arrangements are effective. The Authority agrees with PwC's advice.

188. In relation to section 1.6 (Hierarchy of Information), the Authority notes that the “annual” independent audit report to the ERA should be changed to reflect the Authority’s requirement for a two-yearly independent audit consistent with section 7 of TPI’s revised proposed Segregation Arrangements of 17 July 2009.
189. Under section 2.1 (Overview of Access Related Roles and Locations), the title “Head of Rail” should be removed to make this title consistent with TPI’s revised proposed Segregation Arrangements of 17 July 2009 where this position is titled “General Manager Rail”.
190. The Authority notes the comments by the NWIOA in relation to the table under section 2.3 (Types of Confidential Information and Security Arrangements) to the effect that this section should include items (ii), (iii) and (iv) of section 3, page 5, of WNR’s 2003 Segregation Arrangements and that “weekly” train plan should be changed to “fortnightly” train plan.
191. In relation to the NWIOA comments on the inclusion of elements of section 3, page 5, of WNR’s 2003 Segregation Arrangements, the Authority notes that section 3 is not on page 5 and section 3 does not deal with the matters in TPI’s table. The Authority believes that the correct reference should be to section 4 on page 4 of WNR’s document which deals with types of confidential information. PwC’s advised that the information provided by TPI in the table under section 2.3 provides reasonable clarity in relation to the types of confidential information which TPI will be required to protect in relation to access seekers and of the general protective measures which TPI will implement for each of these information categories.
192. For the above reasons, PwC did not consider the inclusion of the additional information in section 4, page 4 of WNR’s 2003 segregation Arrangements, as suggested by the NWIOA, to be required. However, the Authority considers that some of this information should be included under section 2.3 (such as completed train diagrams and voice logging tapes from train control) in order to ensure that all potential documents or data which could contain confidential information are included in TPI’s table under section 2.3.
193. In addition, the Authority notes that some of the headings in the table under section 2.3, such as the document titled “Applications for Access Agreements” used in the second row of the table, are not consistent with the Code (this document title should be “Proposals for Access”, as described under Part 2 of the Code). The Authority also agrees with the NWIOA, that the first column in this table should be headed “Document and Information Type” rather than “Document Type” in recognition that the broader title better reflects the nature of all the material to be protected.
194. The second issue raised by the NWIOA in relation to section 2.3 of TPI’s manual was the suggestion that “weekly” train plan should be changed to “fortnightly” train plan. The Authority agrees with this suggestion on the basis that the draft determination on TPI’s Train Management Guidelines required (Amendment 5) the proposed “weekly” train plan to be changed to a “fortnightly” train plan. No submissions were received opposing this change. This change would ensure that TPI’s Segregation Arrangements were consistent with its Train Management Guidelines.
195. In relation to section 2.6 (Duty of Fairness), the Authority notes the ARTC comment that more detail should be included in the manual relating to TPI’s

duty of fairness. PwC has advised that it considered that TPI had provided adequate information, sufficient to meet the obligations of section 33 of the Act and the duty of fairness requirements set out by the Authority under draft determination Amendment 17. The Authority agrees with PwC's advice and notes that this final determination accepts that TPI has incorporated the requirements of draft determination Amendment 17 into its revised proposed Segregation Arrangements of 17 July 2009 including also its manual.

196. The ARTC also suggested, in relation to TPI's duty of fairness, that TPI's manual should note that TPI will treat all access seekers with the same duty of fairness under its Segregation Arrangements whether negotiating in or outside the Code. PwC advised that this issue had been adequately clarified under section 5 of TPI's revised proposed Segregation Arrangements. The Authority agrees with PwC's view.
197. The Authority considers that the wording in the second paragraph of section 2.6 of TPI's manual should be revised to make it more consistent with section 5 of TPI's revised proposed Segregation Arrangements of 17 July 2009.
198. In relation to section 3 (Compliance Plan), the ARTC commented that the manual should provide more detail on how TPI will deal with breaches of its Segregation Arrangements. This matter has been discussed later in this final determination under the discussion in relation to Controlled Document R-PR-RA-0008 (titled "Handling Complaints and Breaches").
199. The Authority considers that Section 3 should also include details, consistent with the information outlined under section 7 of TPI's revised proposed Segregation Arrangements of 17 July 2009 and Amendment 7 of this final determination, of the two-yearly independent audit of TPI's Segregation Arrangements to be undertaken by TPI as a requirement of the Authority.
200. The Authority considers that section 3.3 (Key Performance Indicators) should be deleted, consistent with the earlier discussion (under Amendment 20) of this final determination.
201. In relation to section 4.2 (Confidential Information Register), the Authority considers that two additional columns should be added to the table under this section. The first column should be titled "Contractor/Consultant" as the existing table only provides for an officer of TPI/FMG. The second column should be titled "Segregation Awareness Statement Signed (Yes/No)" so that it is clear that parties to whom confidential information is disclosed have signed TPI's Segregation Awareness Statement. In addition, a statement should be added to this section noting that the access seekers (proponents/operators) whose confidential information has been disclosed are able to view this register so far as it relates to the disclosure of their own confidential information.

Controlled Document: Protecting Confidential Information (R-PR-RA-0002)

202. The Authority notes that this document sets out the procedures proposed by TPI for how access-related confidential information is identified, stored, accessed and protected.
203. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments apart from a recommendation that

section 5.1 should include the definition of confidential information as contained under section 31(2) of the Act.

204. The Authority agrees with PwC's recommended revision to section 5.1.
205. PwC's advice included its view that draft determination Amendment 5 (which deals with TPI's proposed staged approach) was not a necessary requirement based on its evaluation of TPI's staged approach as set out in Part 2 of Appendix 1 of its final report.
206. While the Authority generally agrees with the assessment by PwC, in the case of draft determination Amendment 5 (which deals with TPI's proposed staged approach) the Authority has a different view to PwC. This issue has been discussed in detail (under the Amendment 5 heading) previously in this final determination.
207. The Authority requirement, as set out in Amendment 2 of this final determination, is that TPI's proposed Stage Two arrangements should be implemented at the commencement of its Segregation Arrangements. As a consequence, TPI's manual, which includes the seven Controlled Documents, is required to be revised to be consistent with Amendment 2.
208. The NWIOA also raised this matter noting that TPI's manual was not consistent with the requirements of draft determination Amendment 5. As noted above, Amendment 2 of this final determination requires this matter to be addressed.
209. The Authority notes that the heading at the top of pages 2 to 15 of this document is described as R-PR-RA-0008. This should be changed to R-PR-RA-0002 consistent with the front of this document.
210. The Authority also notes that this document will need to be revised to reflect the requirements of Amendments 4 and 5 under this final determination, in addition to Amendment 2 as noted above.

Controlled Document: Use of TPI Staff in an Emergency (R-PR-RA-0003)

211. The Authority notes that this document outlines how and when TPI staff may undertake other duties in an emergency.
212. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments apart from a recommendation that TPI should adopt definitions for "emergency" and "junior" that are less open to interpretation.
213. The Authority agrees with PwC's advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.
214. In relation to PwC's recommended revision to this document, the Authority considers that TPI should delete the first dot point under its definition and insert the definition for "emergency" as contained in WNR's 2009 TPP. The second dot point under TPI's definition is appropriate.
215. In regard to the second part of PwC's recommended revision, relating to TPI's definition of "junior staff", the Authority considers that TPI's definition is too

vague and needs to be more precise in relation to describing the staff positions which would fall into the “junior” category of being “below manager level”.

Controlled Document: Preparation by Operators of Amendments to Daily or Weekly Plans for Variable Services (R-PR-RA-0004)

216. The Authority notes that this document describes how proposed amendments to daily or weekly plans for services which experience variable demand or variable destinations are handled.
217. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments apart from a recommendation that the procedures to amend daily or weekly train plans should be applied to all operators regardless of whether they had negotiated access in or outside of the Code .
218. PwC’s recommended revision to this document arose from a comment by the NWIOA to the effect that the procedures outlined in this document should apply to all operators using TPI’s network. PwC agreed with the NWIOA’s view.
219. The Authority does not consider that it would be appropriate for it to impose requirements, in TPI’s Segregation Arrangements, to apply to operators who have negotiated access agreements outside the Code. The obligations imposed on a railway owner under the provisions of the Act relating to segregation requirements do not apply to operators with access agreements outside of the Code. Under section 28(1) of the Act, a railway owner must make arrangements to segregate its access-related functions from its other functions. Section 24 of the Act defines access-related functions as the functions involved in arranging the provision of access to railway infrastructure under the Code.
220. The Authority otherwise agrees with PwC’s advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.

Controlled Document: Provision of Information to the TPI or FMG Board/CEO/Senior Management (R-PR-RA-0005)

221. The Authority notes that this document describes the procedures to manage the provision of confidential information to senior management in TPI or FMG to ensure compliance with TPI’s Segregation Arrangements.
222. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments apart from a recommendation that TPI should include in this document the requirements set out under the fourth dot point in draft determination Amendment 16.
223. PwC’s recommended revision to this document arose from a comment by the NWIOA to the effect that the procedures outlined in this document do not meet the requirements set out under the fourth dot point in draft determination Amendment 16. PwC agreed with the NWIOA’s view.
224. The Authority notes that this final determination does not require TPI’s revised proposed Segregation Arrangements of 17 July 2009 to include the provision outlined under the fourth dot point in draft determination Amendment 16. This

issue has been discussed (under Amendment 16) previously in this final determination.

225. The NWIOA also raised the issue that this document did not appear to fully comply with the requirements set out under the second last dot point of draft determination Amendment 10. PwC advised that it considered that the requirements of this amendment had been incorporated into TPI's revised proposed Segregation Arrangements and manual.
226. The Authority agrees with the NWIOA to the extent that it does not consider that the second sub-component under the seventh dot point of draft determination Amendment 10 has been fully met. The Authority has revised this element of Amendment 10 in the final determination and has set out its requirement under Amendment 4 of this final determination.
227. The Authority also notes that a minor revision is required under the second paragraph of section 5.1.3 where "is regards" should be "in regards".
228. The Authority otherwise agrees with PwC's advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.

Controlled Document: Provisions to Ensure Protection of Information to be Given to FMG Finance (R-PR-RA-0006)

229. The Authority notes that this document describes procedures to manage the provision of confidential information to FMG Finance.
230. The NWIOA commented that this document did not fully satisfy the requirements of draft determination Amendment 18. PwC commented that the issues of concern outlined by TPI had been addressed in TPI's revised proposed Segregation Arrangements, which together with the manual, formed TPI's proposed Segregation Arrangements. The Authority agrees with PwC's view on this matter.
231. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments.
232. The Authority agrees with PwC's advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.

Controlled Document: Handling Complaints and Breaches (R-PR-RA-0008)

233. The Authority notes that this document lists the type of behaviour that may lead to a breach of compliance with TPI's Segregation Arrangements and details how complaints will be handled.
234. As mentioned previously, the ARTC noted that the manual should provide more detail in relation to how a breach of TPI's Segregation Arrangements will be addressed. PwC's view was that the document reasonably described how breaches of TPI's segregation obligations and complaints from access seekers will be handled. PwC did not consider that additional detail on these matters was necessary. The Authority agrees with PwC's view.

- 235. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments.
- 236. The Authority agrees with PwC's advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.

Controlled Document: Role Descriptions (R-PR-RA-0009)

- 237. The Authority notes that this document sets out the TPI staff roles in terms of position titles, position responsibilities, location and reporting arrangements for both access-related and non access-related roles.
- 238. PwC advised that this document adequately incorporated the requirements of the relevant draft determination amendments.
- 239. The Authority agrees with PwC's advice on this document, excluding the matters raised previously in relation to the revisions required by the Authority to the manual in general.

Final Determination

Required Amendment 10

TPI's proposed Segregation Manual (including the Controlled Documents) should be amended as follows:

- The references to a staged approach should be revised to be consistent with the requirements of Amendment 2 of this final determination.
- The definitions used should be consistent with the definitions in TPI's revised proposed Segregation Arrangements of 17 July 2009 and should incorporate the requirements of Amendment 8 of this final determination.
- The term "weekly" when used in reference to train plans should be changed to "fortnightly" and the wording used in relation to the issue of train plans should not be inconsistent with TPI's approved Train Management Guidelines.
- The information in the Manual Overview and Controlled Documents should include appropriate references to the relevant sections of TPI's revised proposed Segregation Arrangements of 17 July 2009 where related information is outlined.
- The Controlled Documents should be renumbered to ensure that they are numbered consecutively. The seventh document (presumably R-PR-RA-0007) is currently missing.
- The Manual Overview and Controlled Documents should be included as an appendix to TPI's revised proposed Segregation Arrangements when TPI's current revised proposed Segregation Arrangements of 17 July 2009 is further revised to incorporate the required amendments set out in this final determination.
- Sections 1.6 and 3 of the Manual Overview should include reference to the Authority's required two-yearly independent audit, as set out under section 7 of TPI's revised proposed Segregation Arrangements of 17 July 2009.
- The title "Head of Rail" should be deleted from section 2.1 of the Manual Overview.
- The table contained in section 2.3 of the Manual Overview and section 5.4 of Controlled Document R-PR-RA-0002 should be revised by: (1) Replacing the heading in the first column "Document Type" with the heading "Document and Information Type". (2) Replacing the document headings "Applications for Access Agreements" and "Correspondence with Access Seekers" with the headings "Proposals for Access" and "Correspondences with Proponents and Operators" respectively. (3) Following the document heading "Master Control Diagram" add the heading "Completed Train Control Diagrams". (4) Following the document heading "Train

Graphs” add the heading “Voice Logging Tapes from Train Control”.
 (5) Add a new box with the document heading “Any Data Related to the Recording of Usage of the Access Agreement Including the Data Held in the Rail Access Management System”.

- The wording of the second paragraph of section 2.6 of the Manual Overview should be revised to make it consistent with the relevant wording under section 5 of TPI’s revised proposed Segregation Arrangements of 17 July 2009.
- Section 3.3 of the Manual Overview should be deleted.
- Two additional columns should be added to the table under section 4.2 titled “Contractor/Consultant” and the “Segregation Awareness Statement Signed (Yes/No)”.
- Section 5.1 of Controlled Document R-PR-RA-0002 should include the definition of confidential information as contained under section 31(2) of the *Railways (Access) Act 1998*.
- The heading at the top of the pages comprising Controlled Document R-PR-RA-0002 should be changed from “R-PR-RA-0008” to “R-PR-RA-0002”.
- Controlled Document R-PR-RA-0002 should be revised to incorporate the requirements of Amendments 4 and 4 of this final determination.
- The definition of “Emergency” under Section 4 of Controlled Document R-PR-RA-0003 should be revised by deleting the sentence under the first dot point and replacing it with the definition of “Emergency” as contained under section 10 of WNR’s 2009 Train Path Policy.
- The definition of “Junior Staff” under section 4 of Controlled Document R-PR-RA-0003 should be revised to provide a detailed description of the positions which are considered to fall into this category. These positions should clearly be “below manager level” positions.
- In section 5.1.3 of Controlled Document R-PR-RA-0005 the words “is regards” should be changed to “in regards”.