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# **SEGREGATION ARRANGEMENTS GENERAL**

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## WESTNET RAIL

### SEGREGATION ARRANGEMENTS

#### 1. OBJECTIVES OF THE ARRANGEMENTS

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

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

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

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

#### 2. SEGREGATION OF ACCESS RELATED FUNCTIONS

WestNet defines Access Related Functions as:

- (i) Compliance with the provisions of the Act and Code and with requirements of the Regulator under that legislative framework including but not limited to:

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

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

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### **3. RAIL ACCESS SEGREGATION ARRANGEMENTS MANAGEMENT AND COMPLIANCE PROCESSES**

WestNet Rail has detailed more specific management and compliance processes in Appendix A to this document.

This Appendix describes the principal and more detailed methods by which WestNet Rail manages the Segregation arrangements and also describes the processes to ensure an effective compliance regime is maintained.

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

Therefore Appendix A - the Segregation Arrangements Management and Compliance Processes will:

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

Appendix A will include:

- (i) Specific details of the security arrangements in place to protect confidential information including details of the arrangements for securing paper and electronic records and for access to information systems.
- (ii) Details of the physical location of staff work places and the security systems in place in those workplaces and especially for the train control centres operated by WestNet and employees dedicated to providing network management and access related matters.
- (iii) A list of the types of behaviour which may breach segregation arrangements and the appropriate corrective arrangement for each breach.
- (iv) A compliance plan that will include external audit requirements. The compliance plan will be a key monitoring tool for the Regulator in assessing effectiveness of the segregation arrangements.

Appendix A will be approved by the Regulator and changes to Appendix A will also have to be approved by the Regulator.

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#### 4. CONFIDENTIAL INFORMATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **5. CONFLICTS OF INTEREST**

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

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

Operators may prepare amendments to daily or weekly plans for services which experience variable demand or variable destinations providing they do not interfere with any other operators' rights and subject to WestNet having ultimate approval of such changes.

## **6. DUTY OF FAIRNESS**

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

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

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

- (i) Access seekers can determine the fairness of prices negotiated under provisions of Section 21(1) of the Code.
- (ii) Provisions of WestNet's standard Access Agreement provide for specific consultation mechanisms, the provision of information, and dispute resolution mechanisms which would allow access seekers to test the duty of fairness related to other than price issues in the provision of access.

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

- (i) The Segregation Arrangements.

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

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

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

## **7. PREPARATION OF ACCOUNTS AND RECORDS**

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

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

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

## **8. COMPLIANCE WITH THESE ARRANGEMENTS**

Compliance with these arrangements will be achieved by;

- (i) Submission of an independent external auditor's report to the Regulator on compliance on a negative assurance basis. The scope of that audit must be approved by the Regulator who may also choose to select and manage the audit at WestNet's cost. That report will be made public.
- (ii) WestNet will report any breach of the segregation arrangements of which it becomes aware to the Regulator in writing within five business days.

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

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



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## 9. DEFINITIONS:

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

WestNet	Means WestNet Rail Pty Ltd.
WestNet Rules	Means WestNet's Rules (including the Appendix to the Rules and Working Timetables) issued in accordance with WestNet's "Rail Safety Management Plan" approved under Section 10 of the Rail Safety Act together with any amendments, deletions or additions made in accordance with the Rail Safety Management Plan and all policies and notices issued by WestNet for the purpose of ensuring the safe use of the Network.
Working Timetable	Means the train timetables and operating data for all or part of the network issued as part of the WestNet rules and as amended from time to time.

**10. APPENDIX A - MANAGEMENT AND COMPLIANCE PROCESSES**

(See separate document).

**APPENDIX A**  
(to the SEGREGATION ARRANGEMENTS)



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**SEGREGATION ARRANGEMENTS,  
MANAGEMENT AND  
COMPLIANCE PROCESSES**

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## 1 PURPOSE AND OVERVIEW

Consistent with the obligations and intent of the Western Australian Railways (Access) Act 1998, (the Act) and the corresponding Railways (Access) Code 2000, (the Code) this Appendix document addresses WestNet Rail's processes and compliance obligations to give effect to the Segregation Arrangements Determination first issued on the 6<sup>th</sup> June 2002 by the Independent Rail Access Regulator under Section 28 of the Act and any subsequent revisions.

Accordingly this document describes how WestNet Rail manages its segregation obligations and processes and specifically outlines the responsibilities and authorities with respect to segregation, day-to-day management processes and compliance requirements, including the auditing process.

This document, (Appendix A), will be issued as a controlled document to all appropriate WestNet Rail managers and employees who have involvement in rail-access related functions. It is the document that provides the basis for the training/awareness process which is delivered to all employees, contractors and other appropriate persons to ensure compliance to the relevant aspects of the Railway (Access) Act 1998.

This document shall be the vehicle by which the segregation arrangements and compliance obligations are communicated to the appropriate managers and staff.

WestNet Rail Pty Ltd, the Owner as defined in the Railway (Access) Act 1998, provides and controls access for all Operators to the WestNet Rail routes as defined in Schedule 1 of the Railways (Access) Code 2000, in accordance with contractual obligations and the Rail Access Act 1998.

(WestNet Rail shall be referred to in this document as WestNet).

The essential business of WestNet is the sale of access at a price that will provide acceptable returns on the investment and encourage utilisation and competition on the network. In addition, a core function of WestNet is to maintain the railway infrastructure to acceptable operating and safety standards.

WestNet will grant access to the WestNet network and will ensure all Operators are treated in a fair and equitable manner.

The pricing policies adopted will be developed within the framework established under the Act and the Code which will also provide the framework within which access agreements will be negotiated.

The WestNet network includes all designated main-line tracks and associated infrastructure (freight network) which was previously owned and operated by the former Westrail Freight (Government) Network. That part of the network open to access is described in Schedule 1 of the Rail (Access) Code 2000.

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## 2 RESPONSIBILITIES AND AUTHORITIES

The responsibilities and authorities for WestNet's employees carrying out Access Related Functions including managing, performing activities and the maintenance of records and other documentation is appropriately defined and detailed in various documents described below:

### Documented Procedures

WestNet's documented procedures describe the allocation of responsibilities to particular designated positions. The documented actions also indicate the allocation of responsibilities and authorities for particular railway Access related tasks.

### Position Descriptions

Position Descriptions are prepared for each designated position within WestNet. These Position Descriptions describe the functional areas of responsibility including Access Related Functions.

## 3 DETAILS OF THE MANAGEMENT OF SEGREGATION ARRANGEMENTS

### 3.1 Access Related Premises and Locations

*(Ref. Section 28 – Act)*

Within the WestNet Company there are several functional groups housed at various geographical locations throughout the Network. The Infrastructure (both civil and signalling and communications) management groups are located at head office and regional centres. The Access Group (management) is located at head office, i.e. Welshpool. There are currently two Train Control Centres being Midland Control and Avon Yard Control.

- **Access Management Head Office – Welshpool**

The Access management area is located together with other WestNet head office management groups in a separate and secure office premises. These premises located in Welshpool are accessed only by WestNet employees through the use of access security cards. Visitors to the WestNet's head office must enter into a reception area which is separated from the main office facility. Bonifidi visitors are then escorted to the area of business.

Apart from authorised WestNet staff the only other permitted entry after hours is by the specified cleaning contractor. This contractor is briefed on the confidentiality requirements/obligations of the facility and any documents therein. The contractor management is also asked to sign a specific confidentiality agreement obliging him or any of his staff to observe and protect the confidentiality requirements.

## 3.2 Confidential Information

(Ref. Section 31 – Act)

### Types of Confidential Information

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

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

### General Management of Confidential Information

WestNet shall maintain the confidentiality of Access related matters through a series of initiatives/processes including controls and training. The following describes the particular processes which promote and manage the regime of confidentiality of Access related matters within WestNet.

- Once WestNet has identified that an employee, position, contractor or organisation has prescribed duties or potential contact with Access related functions; WestNet shall at the time of appointment/engagement, whether permanent or temporary require the individual concerned or the manager/supervisor of a maintenance or cleaning contractor to sign a Confidentiality and Compliance Agreement which stipulates that they are aware of their responsibilities and obligations with respect to “confidential information”. Confirmation of appropriate personnel having signed a Confidentiality and Compliance Agreement shall be carried out on an annual basis and will be confirmed through the Independent External compliance audit. WestNet will maintain a current list of personnel required to sign a Confidentiality and Compliance Agreement.
- The Safety and Compliance Section will maintain a current file of completed and signed-off Confidentiality and Compliance Agreements.

All Operator Track Access Agreements contain specific contractual obligations requiring WestNet to protect confidential information.



### Management of Electronic Data

- WestNet operates with a security system including time-limited passwords on electronic records that allows only appropriate WestNet staff to access the records/information/data of Access Related Functions. Other security measures include:-
  - The authority to access electronic information that is confidential can only be given by the Commercial Manager and will only be given to persons who have signed a Confidentiality and Compliance Agreement.
  - When a user logs-on to the computer network his/her access to any shared files, information systems, e-mail and the ability to generate reports etc is automatically restricted to their Business section.
  - WestNet has a physically separate computer file server from any other business unit or company.
  - User Ids and passwords are set up and managed by the Information Technology Section of the organisation. All personnel within the Information Technology Section are required to sign a Confidentiality and Compliance Agreement. Authority to allocate passwords for Access related matters resides with the General Manager WestNet Rail.
  - Additionally a further restriction is applied to users who have the ability to access any stand-alone computer system. This restriction only allows specific information to be viewed/reported in accordance with their allocated user ID scope and approved by the General Manager WestNet Rail.
  - The Access management area utilises computing equipment with access rights confined to that management area to carry out train path planning and allocation. This process is an independent function to the RAMS system which is separately secured on a WestNet server with authorised controlled passwords.
  - The Rail Access Management System RAMS is a purpose built computer data management system which:- facilitates the management of train operation through authorising only appropriate train consists (with certified rollingstock); monitors and records train movements over the Network and details relevant information on train and the perway condition. WestNet has implemented a regime of security on accessing any specific data considered confidential information to appropriate personnel authorised by the General Manager WestNet Rail and who have signed a Confidentiality and Compliance Agreement. The process of authorising access and the general usage of RAMS confidential information shall be audited.
  - All computer systems management and back-up processes are managed by the Information Technology (IT) section.

With respect to the treatment of Confidential Information, all IT staff members who have access to WNR systems are required to sign a Confidentiality and Compliance Agreement. There are daily incremental back-ups and weekly full-backups.

The Regional areas have dedicated WestNet computer directory structures which are not accessible by non WestNet staff. Backup tapes are handled by WestNet staff and forwarded to the IT staff for safe-storing.

- WestNet management is required to provide management/financial reports to the WestNet Board of Directors who in turn have specific obligations to maintain confidential information.

#### Management of Other Specific Confidential Information

- Train Control Master Diagrams are prepared and kept within the secured Access Management Area. Completed train Control diagrams from both train control centres are addressed and dispatched to the Access Manager under separate bag and following examination are secured and stored within the Access Management Area.
- Voice Logged Tapes

All conversations on both radio and telephone between the Train Controllers and train crews, on-track equipment/vehicles or track-side maintenance staff are voice recorded utilising a continuous running magnetic digital tape system.

The tapes are stored in a secure/locked facility, to maintain a history of communication, only authorised WestNet personnel having the key for the purposes of tape replacement and rotation. Any movement or interchange of tapes is recorded in a log book which is endorsed with time, date and signed.

The retrieval of any tape information for monitoring, audit or incident investigation purposes can only be carried out with the express authority of the Access Manager and tape movements can only be between the locked tape housing and the Access Manager's office area in a sealed envelope.

### **3.3 Conflicts of Interest**

#### (Ref. Section 32 – Act)

WestNet will manage its access related functions in a manner which provides for, and ensures that, all relevant WestNet staff do not have a "conflict of interest" in performing Access Related Functions.

All Access management and Access operational staff including those involved in Access applications and negotiations, train scheduling, train control as well as Access pricing and invoice information preparation shall sign a Confidentiality and Compliance Agreement.

The use of contractors, consultants, legal expertise and any other services provided by external personnel or companies will be managed to ensure that there are no conflicts of interest issues. Should the use of any

external service involve actual or potential access to rail access related information particularly that involving above-rail operator information, then those personnel shall be required to sign a Confidentiality and Compliance Agreement.

With respect to the WestNet Board of Directors, there are processes detailed in this document and obligations already in place under the “Corporations Act-2001”; [exercise a duty of care (Section 180), act in good faith (Section 181) and disclose or avoid conflicts of interest (Section 191)] which preclude Boards and Directors from exercising a conflict of interest with respect to the Railways (Access) Act 1998 and Railways (Access) Code 2000.

### **3.4 Duty Of Fairness**

*(Ref. - Section 33 of the Act).*

WestNet commits to treat all clients whether actual or potential, including access seekers, actual train operators as well as commodity based clients acting in conjunction with a train operator in a fair manner with respect to the following:-

- response to applications;
- negotiation methodology;
- prices;
- quality of rail access related services, including liaison, correspondence, scheduling pathways, train control priority and emergency responses.

The principles of fairness do not directly equate to the term equality because of issues such as type of product, priority requirements of clients, length of haul and environmental concerns. However, it does oblige WestNet not to unfairly discriminate between the proposed rail operations of a proponent and the actual rail operations of an associate operator or another third party Operator.

The mechanism for ensuring WestNet’s duty of fairness includes:-

- (i) Informing access seekers of the provisions for assessing the consistency and fairness of prices being negotiated under provisions of Section 21 (1) of the Code.
- (ii) WestNet’s Standard Access Agreement provides for specific consultation mechanisms; the provision of information as well as dispute resolution mechanisms which allow the access seeker to determine the fairness of the provision of access related issues other than price.

WestNet will conduct awareness briefing sessions to staff involved in the provision of access on all compliance issues, including confidentiality and duty of fairness. The signing of a Confidentiality & Compliance agreement not only provides obligations for maintaining confidential information, but provides an obligation on the signatory to understand and comply with specific obligations under the Act, which include “duty of fairness”.

In accordance with Part 5 of the Code, the Regulator will issue determinations to ensure the appropriate application, management and enforcement of certain rail access related protocols. These determinations are also aimed at facilitating a duty of fairness to those protocols being:-

- The train management guidelines (Section 43 - Code)
- The Train Path Allocation Policy (Section 44 - Code)

WestNet commits not to discriminate against any third party Operator through inappropriate train scheduling.

WestNet commits to a duty of fairness to the application of the above determinations and its duty of fairness will be confirmed as part of the external independent audit process.

To further ensure that a duty of fairness is comprehended in dealings with all access seekers WestNet shall, at the onset of negotiations inform the access seeker of their rights to; and WestNet's commitment to; maintaining confidentiality, whether negotiations have commenced "inside" or "outside" of the provisions of the Code, notwithstanding the provision of Section 6.

Additionally, if negotiations have commenced outside the provisions of the Code and subsequently the access seeker makes application for access under the Code, WestNet and the access seeker shall agree that any information already supplied or disclosed by the access seeker shall be subject to the same confidential provisions as are required for negotiations carried under the Code.

### **3.5 Separation of Accounts and Records**

*(Ref. Section 34 - Act)*

WestNet maintains separate accounts information and financial calculations records which comply to Section 34 of the Act and relevant provisions of the Code.

Details of information associated with accounts are handled directly and only by designated WestNet staff in liaison with the Operator.

## **4 ACCESS SEGREGATION ARRANGEMENTS COMPLIANCE PLAN**

### **4.1 General**

WestNet shall as part of establishing and maintaining a compliance regime have a series of measures which will in effect monitor the following:-

- verification of obligations to the Act and Code;
- identifying/acknowledging breaches to the requirements of this document;
- development of appropriate KPIs;
- reporting of identified breaches to the regulator.

**(Note:** these measures are in addition to the independent external compliance audit.

Complaints regarding segregation obligations may be submitted directly to the Regulator in which case the Regulator should determine whether the complaint has sufficient substance to consider it to be a breach or potential breach of the segregation obligations rather than an unsubstantiated comment or a misunderstanding of WestNet's actual obligations. If the Regulator considers that the complaint warrants recording and/or investigation as a breach or potential breach it should forward the complaint to WestNet for follow up action.

#### **4.2 Confidential Information Compliance**

WestNet is committed to maintain confidentiality of information as detailed in Section 3.2 of this document. Reported breaches of this aspect should contain the details of the particular aspects of where confidential information has been disclosed either advertently or inadvertently. A breach may also be initiated internally should WestNet become aware that confidential information has been disclosed advertently or inadvertently.

Breaches of Confidentiality obligations will include inappropriate disclosure of information as described in Section 3.2 of this document.

Breaches to confidentiality obligations may occur verbally through personal conversation or telephone discussion; written through paper correspondence or Email; or any other process which communicates information.

#### **4.3 Conflicts of Interest Compliance**

A breach of the conflict of interest obligations shall have occurred when it is determined that the arrangements described in Section 3.3 of this document have failed. A breach would be primarily where a person carrying out rail Access Related Functions for WestNet has a working association with; or has carried out tasks for; or on behalf of; an Operator or an access seeker. A person who performs Rail Access Functions for WestNet shall not in the short term or long term perform above rail functions nor shall a person working for an Operator carry out WestNet Access Related Functions deemed confidential.

Also no Board member of WestNet is permitted to be a Board member or executive member of any above Rail Operator. Should at any time there be evidence to the contrary, this would be classified as a Breach.

#### **4.4 Duty of Fairness Compliance**

Issues raised through original public submissions confused being "fair" and fairly with "equally" and "equitable" as explained in Section 3.4 and the Regulator's determination following legal advice was to keep the terminology used in the Act and Code, that being "fair" and "fairly".

Accordingly breaches to Section 33 of the Act shall be deemed to occur when:-

- **Application for Access**

This refers to where an access seeker is not provided with a fair response to an expression of interest or access application. Fairness relates to preferential consideration/treatment provided to another proponent or operator in the form of access provision, access pricing or demands on required resources, processes or standards (operating and rollingstock).

- **Access Negotiation**

This refers to where an access seeker is not receiving a “fair” negotiation process in comparison with other proponents in terms of timing of responses, disadvantaged pricing structure, access provision or required resources, processes, staffing levels and standards.

- **Managing The Operation of Access Provision**

A breach is deemed to occur when an Operator is discriminated with respect to:- allocation of train paths and the management of train control including communication processes.

- **Related Services**

A breach is deemed to occur when an Operator is discriminated against with respect to the provision of related services including:- liaison, correspondence, confidential information, invoice information, treatment of priority requests and responses to emergency situations.

#### **4.5 Separation of Accounts and Records Compliance**

Breaches to the separation of accounts and records arrangements as described in Section 3.5 of this document shall occur when:-

- Individual train information, consists, kms, tonnes or rates are supplied to another above rail operator either advertently or inadvertently.
- Individual train information or invoicing/costing/pricing/processes which are worked on/prepared or reported on by unauthorised personnel or by persons outside WestNet and in particular by employees with another Operator.
- The electronic database RAMS is accessed by unauthorised personnel for preparing/working on or reporting on any financial aspects either by design or through inadvertent breakdown of the security password system.

#### **4.6 Physical Segregation of Premises/Personnel Compliance**

Breaches to the physical segregation arrangements as described in Section 3.1 of this document shall occur when:-

- It is reported to WestNet that unauthorised persons had unaccompanied or unsupervised access or entry into the WestNet Management office area.

- It is reported to WestNet that there was a failure of the physical security arrangements (key cards/locks) on the WestNet management area or any of the train control centres, with particular emphasis on after hours security failures.
- It is reported to WestNet that unauthorised persons were given or were in possession of key cards/keys allowing access to the WestNet head office management area or train control centres.
- It is reported to WestNet that the formal servicing or maintenance arrangements in place within the WestNet physically segregated area (including cleaning organisations) have been compromised which had; or potentially had; allowed disclosure of confidential information. There is a particular emphasis on after hours compromised circumstances.

#### 4.7 Corrective Action Resulting from Breaches

The Commercial Manager will maintain a Register of all complaints which claim there was a breach or a potential breach of Segregation arrangements submitted by external parties, the Regulator or identified internally within WestNet.

The process of follow up is to provide an acknowledgment of receipt to the complainant and then to determine if the complainant warrants it to be classified as a breach. A breach may be classified as a departure from the specified arrangements as described in Section 3 of this document, which may actually or potentially adversely impact a client with respect to confidential information; conflicts of interest; duty of fairness and separation of accounts and records.

**Note:-** Complaints which are passed on by the Regulator or initiated by the Regulator as being a breach or potential breach shall, in the first instance, be investigated by WestNet to determine if there has been a breach.

Should WestNet determine that the complaint is to be classified as a breach it shall be recorded as such and the following actions will be initiated:-

- 1) The General Manager WestNet Rail shall be advised of the breach as soon as practicable.
- 2) A formal Notice of Breach shall be submitted to the Regulator within 5 business days (following classification as a breach).
- 3) The breach shall be investigated to establish the actual actions, causes/reasons, whether there was a process or technology failure and if there was inadvertent departure from the segregation requirements or if there was a deliberate action by person/persons to depart from the segregation requirements.
- 4) An investigation report shall be submitted to the General Manager WestNet Rail and if the Breach is substantiated shall contain findings and recommendations to prevent any re-occurrence.
- 5) Following the endorsement of the General Manager WestNet Rail the recommendations shall be implemented which may include

counselling and or disciplinary action should an employee be found to have departed from the Segregation requirements.

- 6) Once the investigations are completed and the process of implementing the recommendations has been initiated a report will be submitted to the Regulator detailing the findings, recommendations and the follow up action to prevent a re-occurrence.
- 7) The Register maintained by the Commercial Manager which records if the complaint was classified as a breach will also record when the recommendations have been implemented.

#### **4.8 Segregation Training/Awareness**

To facilitate compliance with the Segregation requirements of the Act and Code, all employees and contractors who are required to perform WestNet Access related activities which are determined as confidential or which may be subject to the segregation arrangements shall complete an Access Segregation Awareness training session. The training session covers an overview of the Act and associated Code, Segregation obligations, Breaches to Segregation requirements and the need for signed Confidentiality and Compliance Agreements. The Safety and Compliance Section shall maintain a list of all personnel who have undertaken the training session.

#### **4.9 Confidentiality and Compliance Agreements Compliance**

All personnel involved in or conducting Access related activities are required to sign a Confidentiality and Compliance Agreement as described in Section 3.

The signing of a Confidentiality and Compliance Agreement commits the signatory to protect confidentiality as well as complying with the relevant obligations under the Act and Code. The signing of the Confidentiality and Compliance Agreement also confirms that the person understands the relevant obligation requirements; in addition to other measures this may be achieved by completing the Access Segregation Awareness training session.

Should it be determined that a person has breached the requirements of the Segregation arrangements as described in this document then the existing Confidentiality and Compliance Agreement shall be deemed as invalid and it shall be mandatory for that person to repeat the completion of the Access Segregation Awareness training and subsequently sign a new Confidentiality and Compliance Agreement. The above process is in addition to any counselling or disciplinary action which may result from the breach. The Manager Safety & Compliance shall maintain a register of all people who have been determined to have breached the Segregation arrangements and follow-up action taken, including training and resigning a Confidentiality and Compliance Agreement.



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## 5 INDEPENDENT EXTERNAL ACCESS SEGREGATION COMPLIANCE AUDIT

As part of maintaining and demonstrating compliance to the Access Segregation obligations, WestNet will arrange for an independent external auditor to conduct a compliance audit in relation to the segregation arrangements described in this manual or any other aspects deemed appropriate for inclusion in the audit scope. An Independent External Compliance Audit shall be carried out at least bi-annually. WestNet shall advise the Regulator of who it intends to engage to conduct the audit at an appropriate time in advance. The scope of the audit shall be approved by the Regulator. **Note:** The Regulator may select the auditor and manage the process of the Independent External compliance audit if it so chooses at WestNet's costs. The audit report will be submitted to the Regulator and may be made public. WestNet will formally submit the audit report to the regulator together with WestNet's response and proposed actions which may result from the audit findings.

WestNet acknowledges the rights of the Regulator to commission special audits in addition to the Independent External Compliance Audit, if the Regulator feels that the integrity of the Segregation Arrangements has been compromised as a result of a determined material breach.