



# **Public Transport Authority Third Party Rail Access**

## **Train Path Allocation Policy**

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# 1. Introduction

The following Train Path Allocation Policy (TPAP) will be applied by the Public Transport Authority of Western Australia (PTA) in its performance of functions related to requirements imposed on PTA under the [Railways \(Access\) Act 1998](#) (the Act) and the [Railways \(Access\) Code 2000](#) (the Code). The Act requires nominated parts of the rail Network managed by PTA to be made available for access by third party rail operators.

## 1.1. Roles and Responsibilities

The PTA is responsible for the development, management, maintenance and control of the urban rail Network that has been made available for access by third party rail operators under the Act and in accordance with the Code (as relevant). Schedule 1 of the Code lists the sections of the PTA Network covered by the Code.

The PTA is also responsible for the provision of public transport services, including urban passenger rail services. The PTA has established a separate division – Transperth Train Operations (TTO) – that has responsibility for the provision of urban passenger rail services, including all operational activities associated with the provision of that service. TTO is a physically and functionally separate division within the PTA.

For reasons of efficiency and safety, TTO carries out the Train Control function within the PTA, which is also subject to the PTA's Segregation Arrangements. In making decisions regarding the allocation and management of Train Paths under this TPAP, TTO may be asked for advice on the potential impact on passenger services timetables when an application for access to a specific Train Path is received. However, TTO does not make access-related decisions.

## 1.2. Purpose and Scope

Part 5 of the Code requires relevant Railway Owners to prepare and maintain specified instruments that give effect to the provisions of the Code, which must be approved by the Regulator. Section 44(2) of the Code requires each Railway Owner to prepare and submit a statement of policy that it will apply in the allocation of Train Paths, as well as the provision of access to Train Paths that have ceased to be used. This TPAP is submitted in accordance with that requirement.

The purpose of the TPAP is to ensure that the allocation of Train Paths is undertaken in a manner that ensures fairness of treatment in relation to all Access Holders and Access Seekers, taking into account existing contractual rights and any new contractual rights created in accordance with the Code.

With the aim of maximising the efficient use of the Network, the TPAP establishes a set of principles under which an Access Seeker has an entitlement to access Train Paths on the PTA Network and the circumstances under which variations to those Train Paths may occur.

This TPAP applies to Train Paths allocated with respect to Access Agreements made under the Code. This TPAP will be employed when PTA is negotiating all Access Agreements under the Code.

## 2. Associated Reference Documentation

This TPAP must be read in conjunction with the following associated reference documents, all of which are publicly available and may be obtained from the PTA:

- PTA Network Rules (Safeworking Rules and Procedures);
- PTA Rail Infrastructure Codes of Practice and Procedures;
- PTA Train Management Guidelines (9502-000-007);
- PTA Working Timetables;
- Rail Safety National Law Application Act 2024 and Rail Safety National Law (WA);
- Railways (Access) Act 1998 (WA);
- Railways (Access) Code 2000;
- The Australian Code for Transport of Dangerous Goods by Rail and Road;
- Dangerous Goods Safety Act 2004 WA; and
- Dangerous Goods Safety (General) Regulations 2007 (WA).

The PTA is aware of and undertakes to comply with the requirements of all the above referenced and associated documents. All Access Seekers seeking to run trains on the PTA Network must also be aware of and undertake to comply with the requirements of the above referenced and associated documents.

### 3. Priority of Urban Rail Public Transport Services

The primary purpose of the PTA urban rail Network is to provide a safe, customer-focused, integrated and efficient rail-based public transport service within metropolitan Perth.

Certain performance standards for the provision of that public transport service are required by Government, which funds the urban rail Network and the public transport service. The PTA operates a rail-based public transport service to a schedule based on an on-time running target that reflects the needs and expectations of Government and users.<sup>1</sup> It also uses safe systems such as Automatic Train Protection.

The operational demands of urban passenger services, and consequent capacity constraints on the Network, are at their highest in Peak Periods. For this reason, Train Paths are not available for allocation to Access Seekers for freight services that would allow or require Services to operate on the Network in Peak Periods.

The State rail access regime requires that Access Seekers be permitted to negotiate agreements to use the PTA Network and the PTA is committed to facilitating such use.

The safe and reliable operation of the rail-based urban public transport service is paramount and must not be compromised as a result of the presence of other Access Holders on the Network. This principle underlies the PTA's approach to the allocation and management of Train Paths.

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<sup>1</sup> Refer: <https://www.transperth.wa.gov.au/About/Surveys-Statistics>

## 4. Management of Train Paths

### 4.1. Master Control Diagrams

The PTA will maintain Master Control Diagrams for all routes under its control that are subject to the Code.

### 4.2. Train Path Allocation

#### 4.2.1. General Guidelines

The PTA's approach to allocating Train Paths reflect the requirements of the Code and the priority to be given to allocating and managing Train Paths required for urban public rail transport services. This extends to the exclusion of Train Paths to Access Seekers for freight services that would allow or require Services to operate on the Network in Peak Periods.

The PTA has duties under the Code in allocating Train Paths to impose any necessary requirements in relation to operating standards and to not unfairly discriminate between:

- the proposed rail operations of an Access Seeker and the railway operations of another Access Seeker (section (16(1)(b)));
- the proposed rail operations of an Access Seeker and the PTA's railway operations (section 16(2)).

Priority will be given to Train Paths already allocated to or required by TTO. These paths form an integrated system of public rail transport services within the Perth metropolitan area. These Train Paths are set out in published timetables and are integrated with other public transport services, such as bus services.

If capacity is available for an additional Train Path, the PTA will endeavour to allocate a Train Path preferred by an Access Seeker.

In assessing whether a request for a Train Path is warranted, the PTA will have regard to:

- whether the Access Seeker can demonstrate a contractual commitment to operate Trains or carry passengers on the Network;
- if relevant, historical usage of Train Paths;
- whether the Access Seeker can demonstrate increased demand or anticipated increased demand resulting from an expansion of Services or market growth generally;
- whether the Access Seeker can demonstrate a new project with committed funding; and
- whether the Access Seeker can demonstrate a fluctuating need for Train Paths, based on seasonal demand, surge requirements or similar factors.

The PTA will apply the following processes:

- the PTA will request adequate documentary evidence to support the Access Seeker's request;
- if the PTA is not satisfied with information provided, the PTA will seek further supporting information until satisfied; and
- if the PTA considers the request does not comply with the relevant criteria or is otherwise not warranted, the PTA will promptly inform the Access Seeker and if any dispute results, this will be resolved in accordance with the relevant Access



Agreement or, if no agreement has been entered into, in accordance with the Code.

The PTA grants Scheduled Train Paths under an Access Agreement. The PTA may also grant access to ad hoc Train Paths upon request, which will be assessed on a case by case basis in accordance with this TPAP and the Access Agreement.

#### **4.2.2. Competing Requests for Access**

Where an Access Seeker desires a Train Path that is already being used by, or that is subject to an application from, another entity, including the PTA's own operating arms, the following principles will apply:

- The safe, reliable and integrated operation of the urban public transport system is to be given priority.
- No Access Holder with a current Access Agreement, who is not in breach of any of the terms and conditions of that agreement, will be obliged to relinquish an established Scheduled Train Path other than voluntarily.
- The PTA will use reasonable endeavours to enable the Access Seeker to acquire its desired Train Path.
- Where there is competition between Access Seekers for a particular Train Path, the available Train Path will be provided to the Access Seeker who first requested the Train Path and can establish that it has a requirement to use the Train Path, having regard to the factors set out in section 4.2.1.

The PTA will act consistently based on its duty of fairness under the Act and will endeavour to ensure that in the allocation of Train Paths, the PTA acts in a non-discriminatory manner.

#### **4.2.3. Other**

In other circumstances, the PTA will allocate available Train Paths on a "first come first served" basis, subject to the Access Seeker being able to demonstrate that its rollingstock and operating procedure are appropriate for the Train Path.

Special requirements may be imposed for certain Train Paths. For example, for Train Paths with short headways the PTA may require that Automatic Train Protection devices be fitted to the Access Seeker's rollingstock, especially during Peak Periods.

The Scheduled Train Paths initially allocated to an Access Holder will be described in the Access Agreement entered into between the Access Holder and the PTA, in accordance with the Code. The Scheduled Train Paths initially allocated may be varied and additional Train Paths allocated by agreement in accordance with this TPAP and the Access Agreement.

Temporary Train Path variations are addressed in the Train Management Guidelines and Access Agreement. This includes variations that may be required for Special Events.

### **4.3. Permanent Variations to Scheduled Train Paths**

The procedure to be followed by the parties if it is intended that a Scheduled Train Path is to be permanently varied is set out in this section and Access Agreements will include provisions reflecting this procedure.

- One party to the agreement (Requesting Party) may send a written notice (Variation Request) to the other party (Notified Party) stating:
  - that the requesting party wishes to vary the use by the Access Holder of a Scheduled Train Path,
  - the date the variation is proposed to commence (Variation Date),



- the reason or reasons for the proposal by the Requesting Party.
- Promptly following receipt by the Notified Party of the Variation Request, the parties (each acting reasonably) will attempt to agree the following:
  - (1) any changes that must be made to the Train Paths to accommodate the variation;
  - (2) any new or varied charges to apply to the varied Train Path;
  - (3) the Variation Date, with such date to be not less than 30 days after the date of the Variation Request; and
  - (4) any other amendments to the Access Agreement required as a consequence of varying the Train Path.
- The Access Holder may only withhold its consent on reasonable grounds, as defined in the Access Arrangement. The Access Holder may not withhold its consent where the Variation Request is required by reason of PTA's obligations relating to an issue affecting the safety of the Network or for the purpose of maximising the reliability of the Network.
- PTA may withhold its consent in its absolute discretion.
- If the parties agree to the matters set out above in relation to the variation:
  - 1) the Access Agreement will be amended to reflect the agreed matters;
  - 2) the amendment to the Access Agreement will become effective on the Variation Date; and
  - 3) from the Variation Date the Access Holder will be entitled to utilise each varied Train Path.
- If the parties are unable to agree any of the matters set out above in relation to a variation, the variation will not occur and the Access Agreement will remain unchanged.

If an Access Holder no longer requires a Train Path to operate a Service the Access Holder should advise the PTA and request that the Train Path be cancelled in accordance with this TPAP and Access Agreement.

### **Additional Train Paths**

An Access Seeker may provide PTA with a written notice requesting an additional Train Path with details of the additional Train Path. The parties will attempt to agree the additional Train Path, but the approval is in PTA's absolute discretion.

Any agreement for an additional Train Path will be reflected in an amendment to the Access Agreement.

### **Ad-hoc Services**

An Access Seeker may provide PTA with a written notice requesting the provision of an Ad-hoc Service with details of that Service. The parties will attempt to agree the Ad-hoc Service, but the approval is in PTA's discretion, acting reasonably.

## 4.4. Removal of Underutilised Train Paths

The PTA has the right, by providing a notice in writing to the Access Holder, to amend an Access Agreement to remove a Scheduled Train Path from that Access Agreement if:

- the Scheduled Train Path has not been operated at least once for more than three consecutive times; and
- after the PTA has given the Access Holder notice of that fact, the Access Holder fails to utilise the Scheduled Train Path at least 75% of the time in the period of three months from the date of the PTA's notice.

Other than if the parties agree to substitute an alternative Train Path, a Scheduled Train Path has not been utilised within the meaning of this clause if the Access Holder has failed:

- to present a Train at the scheduled entry point onto the Network; or
- to operate the relevant Train so that it completes its full journey; or
- to operate a Train that is at least 50% of the length or weight of a Train that would usually run on the Scheduled Train Path (as determined by the PTA).

The PTA will take the following into account in assessing whether an Access Holder is underutilising one or more Scheduled Train Paths for the purpose of these provisions:

- underutilisation attributable to Force Majeure;
- the failure of the PTA to make the relevant Train Path available, but only where the Access Holder is able to demonstrate that it was ready, willing and able to make use of the relevant Train Path; or
- temporary variations or changes to Train Paths, including for possessions, Special Events or the actions of other Access Holders.

## 4.5. Review of Scheduled Train Paths

Scheduled Train Paths will be subject to a review in accordance with these provisions and the provisions contained in any relevant Access Agreement.

The PTA may at its discretion and following the provision of a written notice given to the Access Holder cause a Scheduled Train Path to be reviewed by the parties by comparing the stated departure and arrival times for the Train Path with the performance during the preceding continuous three month period of the actual Services using or purporting to use that Train Path (3-month history).

If on such a comparison of the Scheduled Train Path with the 3-month history, the departure or arrival times for a Train using or purporting to use the Scheduled Train Path differ in material respects, the parties must negotiate in good faith to vary the Scheduled Train Path so that it reflects, as closely as is reasonably practicable, the 3-month history.

PTA is not required to offer or agree any varied Train Paths under the review mechanism.

The Access Holder is not required to accept a varied Train Path offered by PTA under the review mechanism if there has been a material change in the operating pattern of the Service during that 3-month history which the Access Holder (acting reasonably) does not expect will continue.

Any amendments to one or more Train Paths agreed to following a review will be reflected in an amendment to the Access Agreement.

## **4.6. Cancellation of Services using Train Paths**

The PTA may, where required for operational reasons, vary, cancel or impose restrictions on Scheduled Train Paths by providing written notice to the Access Holder.

## **4.7. Provision of Access to Train Paths That Have Ceased to be Used**

Where, under any of the above provisions, a previously used Scheduled Train Path ceases to be used on a permanent basis, that path becomes available for allocation under the provisions of this TPAP. Notification of the cessation of a Service will be published in the weekly notices, which are provided to all Access Holders on the PTA Network.

## **4.8. Access Holder May Not Sell or Assign a Train Path without consent**

An Access Holder may not assign the rights granted under an Access Agreement without the prior written consent of the PTA and subject to compliance with the assignment provisions in the Access Agreement.

## 5. Disputes

The PTA will make decisions relating to Train Path allocation in accordance with this TPAP and relevant statutory obligations, including the Act and the Code.

If, prior to an Access Agreement being entered into, a dispute arises between the PTA and any Access Seeker under section 25 of the Code, Division 3 of the Code will apply to the dispute. The Access Seeker may provide notice to the Regulator in accordance with section 26 of the Code for the dispute to be referred to arbitration.

If an Access Agreement has been entered into, disputes will be resolved based on the terms of that Access Agreement. As a general rule, Access Agreements will provide for resolution of disputes by:

- first – negotiation by senior representatives of each party;
- second – negotiation by the chief executive officers of the parties;
- third – mediation by independent mediator; and
- fourth – by legal proceedings.

## 6. Review

This TPAP may be amended or replaced by the PTA with the approval of the Regulator (section 44(4) of the Code). The Regulator may direct the PTA to amend this TPAP or to replace it with another TPAP determined by the Regulator (section 44(5) of the Code).

## 7. Definitions

Term	Meaning
Access Agreement	Has the meaning assigned to “access agreement” in Section 3 of the Code, which, is as follows:  <i>“means an agreement in writing under this Code between the railway owner and an entity for access by that entity”.</i>
Access Holder	Has the meaning described in section 3 of the Code, which is as follows:  <i>“means an entity to which access is provided under an Access Agreement”.</i>
Access Seeker	Has the meaning described in section 3 of the Code, which is as follows:  <i>“means an entity that has made a proposal”.</i>
Ad-hoc Service	the operation of a Train on the Network utilising a Train Path other than: (a) a Train operating on a Scheduled Train Path; or (b) a light locomotive movement.
Automatic Train Protection	Means an on-board electronic system that monitors the train speed and the status of signals, applying warnings and automatic braking to prevent the train going past a signal at danger or exceeding the speed limit.
Force Majeure	Means an event or circumstance which: (a) is beyond the reasonable control of the party claiming force majeure ( <b>Affected Party</b> ); (b) prevents the Affected Party from performing its obligations under this Agreement; (c) was not reasonably foreseeable; (d) was not caused or contributed to by the Affected Party; and (e) cannot be prevented, overcome or remedied by the exercise by the Affected Party of a reasonable standard of care and diligence, and may include:— a) named cyclone, earthquake, fire, explosion, lightning, flood (other than any flood which should have been reasonably anticipated); or b) acts of war, terrorist act (as defined in section 5 of the Terrorism Insurance Act 2003 (Cth)), maritime or aviation disaster); or c) riot, sabotage, embargo, commotion or civil disturbance, blockade or picketing, except where the event arises in respect of any industrial action; or d) epidemics or pandemics other than COVID-19; or e) nuclear event, ionising radiations or contamination by radioactivity, but does not include: f) loss of customers or loss of market share; g) the failure of, or the breakdown of or other damage to plant, machinery or infrastructure other than as a direct result of a cause, event or circumstance set out in paragraph (a) or paragraph (c) of this definition;

Term	Meaning
	<ul style="list-style-type: none"> <li>h) wet, hot or otherwise inclement weather (other than as described in paragraph (a) of this definition);</li> <li>i) any acts or omissions by the Access Holder's personnel; or</li> <li>j) any event that results in the Affected Party having a lack of funds, including money, or inability to use, obtain or access funds, including money, for any reason.</li> </ul>
Master Control Diagrams	Means a diagrammatic or electronic record covering specific parts of the Network which shows all train paths including the Train Paths.
Network, Railway Network	<p>Has the meaning described in section 3 of the Code, which, as at the date of this Train Path Allocation Policy, is as follows:</p> <p><i>means —</i></p> <p>(a) <i>all the railways that were Government railways when the Act received the Royal Assent; and</i></p> <p>(b) <i>all the railways that are on land that is corridor land as defined in the Rail Freight System Act 2000; and</i></p> <p>(c) <i>the railway constructed pursuant to the TPI Railway and Port Agreement; and</i></p> <p>(d) <i>any railway declared under section 3(2) of the Act to be part of the railways network.</i></p> <p>In respect of this Train Path Allocation Policy, means the Railway Network managed by the PTA.</p>
Network Rules	Means the PTA's Safeworking Rules and Procedures together with the PTA's safety management system and all policies and notices issued by the PTA for the purpose of ensuring the safe use of the Network.
Peak Periods	Means weekday morning and evening time windows reflecting peak operational demands for passenger services, as reasonably determined by TTO.
Railway Owner	<p>Has the meaning described in section 3 of the Code, which is as follows: <i>"means the person having the management and control of the use of the railway infrastructure concerned"</i>.</p> <p>In respect of this TPAP, Railway Owner means the PTA.</p>
Regulator	Economic Regulation Authority
Scheduled Train Path	Means the entitlements of the Access Holder to use a Train Path on the Network between the times and locations set out in the Access Agreement and as amended, or varied permanently in accordance with that agreement.
Segregation Arrangements	Means the current PTA Third Party Rail Access Segregation Arrangements as approved by the Regulator, including any amendments to, or replacement of, these arrangements made pursuant to the Code.
Service	Means a Train run by an Access Holder, under an Access Agreement, using the Network by which the Access Holder provides railway freight or passenger services.



Term	Meaning
Special Events	Means those occasions when there is exceptional demand for public transport services to and from specific locations on the urban passenger Network. Special Events include, but are not limited to, the Skyshow, the Perth Royal Show, the Perth Christmas Pageant, New Year's Eve and certain major sporting events.
Train	Means a locomotive with or without wagons used to operate Services.
Train Control	Means the control of Trains by the PTA or its agents on the Network.
Train Management Guidelines	Means the current PTA Train Management Guidelines as approved by the Regulator, including any amendments to, or replacement of, those guidelines made pursuant to the Code.
Train Path	<p>Means the entitlements of the Access Holder to use the Network between the times and locations set out in the Access Agreement and as amended, or varied permanently in accordance with that agreement.</p> <p>This includes Scheduled Train Paths, Ad-hoc Services and all other ad hoc entitlements (including train paths arising by reason of compliance with Instruction (see Train Management Guidelines)) to access the Network which are provided by the PTA to the Access Holder on the terms set out in the Access Agreement and otherwise on such terms as the PTA may stipulate in accordance with the Access Agreement or as otherwise agreed between the parties, as amended or varied in accordance with the Access Agreement.</p>