



**Public Transport  
Authority**



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

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[Table 1. Legislative Requirements to Segregate Access-Related Functions](#) Error! Bookmark not defined.

# 1. Introduction

## 1.1. Purpose and Scope

These Segregation Arrangements set out the mechanisms by which the Public Transport Authority of Western Australia (PTA) will meet its obligations under Part 4, Division 3 of the [Railways \(Access\) Act 1998](#) (the Act) to segregate its Access-related Functions from its other functions. The objective of these Segregation Arrangements is to set out the administrative and accounting arrangements that enable compliance with the requirements of Part 4, Division 3 of the Act for segregation of Access-related Functions.

The Segregation Arrangements are intended to establish a rail access regime in respect of the urban rail Network controlled by the PTA that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations, as required by the Act.

Under section 29 of the Act, before a Railway Owner puts in place or varies any arrangement for segregation, it must obtain the Regulator's approval to the arrangement or variation. These Segregation Arrangements have been submitted to the Regulator and approved.

In addition to approving Segregation Arrangements proposed by the PTA, the Regulator may confer with the PTA on any matter that relates to the way in which the PTA's obligations under section 28 of the Act are to be carried out, with a view to the Regulator and the PTA reaching agreement on the matter. The Regulator may give directions in writing to the PTA with respect to segregation arrangements.

## 1.2. 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 Railways (Access) Code 2000 (the Code). Schedule 1 of the Code lists the sections of the PTA's 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 those services.

It is likely that only a small portion of the PTA's Network will be subject to access applications from third party freight rail operators, heritage/boutique train service providers, private passenger train operators and work train operators. These Segregation Arrangements are designed to address segregation issues relevant to the portion of the Network to which access is requested by Access Seekers.

The division responsible for Access-related functions is physically and functionally separated from TTO which carries out the train control function within the PTA. TTO must perform this function using the policies and procedures determined by the PTA, including these Segregation Arrangements.

## 1.3. Priority of Urban Rail Public Transport Services

The primary purpose of the PTA's urban rail Network is to provide a safe, reliable 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 currently operates a rail-based public transport service to a schedule based upon an on-time running target that reflects the needs and expectations of Government and users.<sup>1</sup>

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 PTA's approach to the provision of track access.

## 1.4. Legislative requirements

The relevant requirements set out in Part 4, Division 3 of the Act are provided in Table 1.

**Table 1. Legislative Requirements to Segregate Access-Related Functions**

Section	Requirement
<b>28. Duty to segregate</b>	<p>(1) <i>A railway owner must make arrangements to segregate its access-related functions from its other functions</i></p> <p>(2) <i>A railway owner must have appropriate controls and procedures to ensure that the measures in place under subsection (1) –</i></p> <p style="padding-left: 20px;">(a) <i>operate effectively; and</i></p> <p style="padding-left: 20px;">(b) <i>are complied with.</i></p>
<b>29. Powers of Regulator in relation to segregation</b>	<p>(1) <i>Before a railway owner puts in place or varies an arrangement for the purpose of carrying out its obligations under section 28 it must obtain the Regulator's approval to the arrangement or variation.</i></p> <p>(2) <i>In addition to subsection (1), the Regulator may confer with a railway owner on any matter which relates to the way in which the railway owner's obligations under section 28 are to be carried out, with a view to the Regulator and the railway owner reaching agreement on the matter.</i></p> <p>(3) <i>The Regulator may give directions in writing to a railway owner with respect to a matter to the extent that agreement is not reached under subsection (2), and the railway owner is to comply with any such direction.</i></p> <p>(4) <i>If a railway owner fails to comply with –</i></p> <p style="padding-left: 20px;">(a) <i>an arrangement, or varied agreement, approved under subsection (1);</i></p> <p style="padding-left: 20px;">(b) <i>an agreement reached under subsection (2); or</i></p> <p style="padding-left: 20px;">(c) <i>a direction given under subsection (3),</i></p> <p style="padding-left: 20px;"><i>the railway owner commits an offence.</i></p> <p><i>Penalty: \$100,000</i></p>
<b>30. Matters to be covered under section 28</b>	<i>Without limiting section 28, in carrying out its obligations under that section a railway owner must ensure that the provisions of sections 31, 32, 33 and 34 are satisfied.</i>
<b>31. Protection of confidential information</b>	<p>(1) <i>There must be an effective regime designed for the protection of confidential information relating to the affairs of persons seeking access or rail operators from –</i></p> <p style="padding-left: 20px;">(a) <i>improper use; and</i></p> <p style="padding-left: 20px;">(b) <i>disclosure by relevant officers, or other persons, to other officers or employees of the railway owner or other persons, except for proper purposes.</i></p> <p>(2) <i>In this section –</i></p>

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

Section	Requirement
	<p><b>confidential information</b> means information that has not been made public and that –</p> <p>(a) is by its nature confidential;</p> <p>(b) was specified to be confidential by the person who supplied it; or</p> <p>(c) is known by a person using or disclosing it to be confidential.</p>
<b>32. Avoidance of conflict of interest</b>	<p>The arrangements under section 28 must be such as to ensure that a relevant officer does not have a conflict between his or her duties –</p> <p>(a) as a person concerned in the performance of access-related functions, on the one hand; and</p> <p>(b) as a person involved in other business of the railway owner, on the other.</p>
<b>33. Duty of fairness</b>	<p>In performing their functions relevant officers must not have regard to the interests of the railway owner in a way that is unfair to persons seeking access or to other rail operators.</p>
<b>34. Maintenance of separate accounts and records</b>	<p>A railway owner must ensure that its accounts and records are in such form as to enable –</p> <p>(a) all income, expenditure, assets and liabilities relating to the carrying out of its access-related functions to be properly recorded and distinguished from the railway owner's other income, expenditure, assets and liabilities; and</p> <p>(b) where necessary, any item of income, expenditure, assets or liabilities which relates only in part to the carrying out of its access-related functions to be apportioned in a fair and reasonable manner.</p>

As a State Government statutory authority, PTA is also bound by the provisions of the Public Transport Authority Act 2003, Public Sector Management Act 1994, Financial Management Act 2006, Freedom of Information Act 1992 and Statutory Corporations (Liability of Directors) Act 1996, among other statutes. Administrative and accounting arrangements designed to meet the requirements of the Act must also comply with this legislation governing the operation and management of the PTA as a statutory authority.

## 2. Access-related Functions

Access-related Functions include but are not limited to:

- negotiation of Access Agreements and approving access rights;
- the various steps prior to negotiation as specified in the Code;
- management of Access Agreements including performance monitoring and reporting, and day to day operational issues;
- development and authorisation of the PTA's Network Rules including the working timetables and the issue of special notices, instructions and warnings related to the rules;
- emergency management on the Network including co-ordination of emergency service responses;
- train control which includes provision of appropriate authorities for trains to use scheduled train paths;
- train scheduling including train path allocation and variation, publication of working timetables, control planning and the approving of ad-hoc train path allocations;
- development, maintenance and monitoring compliance with appropriate safety standards for the PTA staff, its Contractors and Access Holders on the Network;
- the maintenance of the track and infrastructure including signalling and communications;
- the collection, use, and dissemination of train running data including manifest details and access usage;
- the development of train operating standards (to the extent they relate to the infrastructure) such as maximum braking distances, maximum train lengths etc., and also the maintenance standards for the infrastructure itself;
- calculation of total and incremental costs for line sections, including calculation of the relevant inputs;
- compliance with access legislation and the Regulator's requirements; and
- ensuring suitable controls, measures and procedures are maintained to provide an effective system of segregation.

The PTA may perform the Access-related Functions in-house or contract them to external suppliers. In either case, the PTA has responsibility for the management of all Access-related Functions and must ensure compliance with the Segregation Arrangements.

Any agreements or arrangements arising from negotiations for access between the PTA and a third party that fall outside the Code will not be considered to be "Access-related Functions".

## 3. Segregation Requirements

### 3.1. Confidential Information

#### (a) Protection of Confidential Information

PTA and its employees and Contractors will:

- keep confidential and secure any Confidential Information relating to the affairs of Access Seekers or Access Holders;
- not disclose any Confidential Information relating to the affairs of Access Seekers or Access Holders except in accordance with these Segregation Arrangements;
- subject to paragraph 3.2(b) below, only use Confidential Information relating to the affairs of Access Seekers or Access Holders for the purpose for which it was provided;
- prohibit any non-authorised employees from accessing Confidential Information relating to the affairs of Access Seekers or Access Holders.

PTA's employees and Contractors who access or use Confidential Information relating to the affairs of Access Seekers or Access Holders will be required to sign a confidentiality undertaking.

Confidential Information used for Access-related Functions will only be accessed, assessed and used by PTA employees and Contractors with a business need and who have authority to access that Confidential Information.

Confidential Information relating to the affairs of Access Seekers or Access Holders may include, but is not limited to, the following:

- submissions from Access Holders and Access Seekers;
- correspondence related to the negotiation of Access Agreements;
- Access Agreements and documents related to the management of Access Agreements;
- document registers pertaining to Segregation Arrangements;
- management reports on Access-related Functions, including revenues from access charges and costs of providing access (shown in aggregated form); and
- periodic summaries of Access-related Functions and activities conducted.

All Access Agreements, associated correspondence and supporting documentation supplied by an Access Seeker or an Access Holder and all other Confidential Information relating to the affairs of an Access Seeker or an Access Holder are stored on specially designated files. A separate file is maintained for each Access Seeker and Access Holder. These files are secured within the PTA's information management system and access to these files is restricted to authorised PTA personnel.

The PTA has procedures in place to protect Confidential Information relating to the affairs of Access Seekers or Access Holders. Corporate protocols are applied to ensure access to Confidential Information is based on role classification and this is monitored. Personnel in the business unit performing Access-related Functions with access to Confidential Information, may not share that information to the TTO division, unless it is for the purpose of a permitted disclosure in accordance with paragraph 3.2(b) below.

The risk of unauthorised sharing of Confidential Information relating to the affairs of Access



Seekers or Access Holders is reduced by physical separation of the relevant business units. This is implemented by maintaining separate offices in different buildings for the business unit with primary responsibility for Access-related Functions and the TTO division.

In all instances employees transferring between the business unit with primary responsibility for Access-related Functions and TTO must sign a formal confidentiality undertaking.

All Access Agreements will contain specific provisions imposing contractual obligations in relation to Confidential Information.

#### **(b) Permitted disclosures**

The PTA may disclose Confidential Information under limited circumstances as listed below:

- for management purposes;
- to any Minister, the Government or in accordance with a Government direction;
- to satisfy the requirements of parliamentary accountability or any other reporting or recognised public obligations of the State;
- to the Western Australian Auditor General (or his or her delegate) for the purposes of satisfying its statutory duties;
- in accordance with policies of the Western Australian Government;
- in accordance with an Access Agreement;
- in accordance with any law, regulation or court order;
- to the extent disclosure is necessary for:
  - (A) the provision of advice from legal advisers, financiers, accountants or other consultants or professional advisers; or
  - (B) notifications to brokers, insurers or claims assessors,provided that the person to whom the disclosure is made is under a legal obligation to keep the information confidential;
- with the written consent of the owner of the Confidential Information; and
- for performance of the PTA's responsibility for maintaining safety outcomes and smooth operation of the Network.

The PTA's procedures for managing the forwarding of Confidential Information associated with Access-related Functions to the Minister and Government are managed through the PTA's Corporate Issues and Compliance business unit.

For the avoidance of doubt, nothing in this paragraph prevents PTA from disclosing, in the ordinary course of business, financial reporting information which has been aggregated with other information of a similar nature such that it cannot reasonably be, and is not reasonably capable of being, identified with, attributed to or used to identify any Access Seeker or Access Holder.

#### **(c) Negotiations with Access Seekers**

The PTA will:

- inform Access Seekers of their respective rights to confidentiality when negotiating inside and outside the Code; and
- establish a protocol for dealing with Access Seekers who move from negotiating outside the Code to within the Code.

## **3.2. Conflict of interest**

The PTA will manage its Access-related Functions so that, for PTA's relevant officers, no conflicts of interest exist between his or her duties:

- (i) as a person concerned in the performance of Access-related Functions, on the one hand; and
- (ii) as a person involved in other business of PTA, on the other.

The PTA will require that all relevant officers disclose any potential conflicts of interest that may affect their performance of Access-related Functions or any other PTA business. Any conflicts will be managed appropriately, for example by organisational separation of duties and control of information flow or restricting that person working on Access-related Functions, depending on the nature of the conflict.

The organisational structure of the PTA provides for separation of the business unit with primary responsibility for Access-related Functions from TTO. Applications for access are managed, and negotiations undertaken, by authorised personnel within the business unit with primary responsibility for Access-related Functions. Confidential Information relating to the affairs of Access Seekers or Access Holders provided by any other party will be disclosed only to the relevant PTA officers dealing with an access application where that is necessary to the access application.

### **3.3. Duty of fairness**

PTA acknowledges that, in performing Access-related Functions, PTA and its employees must not have regard to the interests of PTA in a way that is unfair to Access Seekers or other rail operators.

The PTA will treat all Access Seekers and Access Holders (including associates and third parties) fairly in relation to access prices, service quality, train paths and priorities in accordance with the requirements of the Act and the Code.

The PTA will put in place the following mechanisms to reinforce the duty of fairness:

- relevant provisions in PTA's standard Access Agreements including consultation mechanisms, obligations to provide information and dispute resolution mechanisms;
- the key terms and conditions of access arrangements for all existing services will be broadly comparable to those provided or offered to Access Seekers; and
- Access Seekers negotiating within the Code will be referred to their rights under section 21(1) of the Code to apply to the Regulator for an opinion on the fairness and consistency of prices.

Officers responsible for Access-related Functions will be obliged to be familiar with the requirements of the Public Sector Code of Ethics, PTA's Code of Conduct and their obligations under the Act and the Code.

The PTA will investigate allegations that any employee engaged in Access-related Functions has unfairly advanced the interests of the PTA at the expense of the interests of Access Seekers or of other rail operators.

### **3.4. Maintenance of separate accounts and records**

PTA will maintain accounts and financial records for the purposes of complying with the Act and the Code. Separate accounting, information systems processing, recording and reporting of data are maintained for Access-related Functions.

All income, expenditure, assets and liabilities relating to the carrying out of the PTA's Access-

related Functions will be properly recorded and can be distinguished from the PTA's other income, expenditure, assets and liabilities.

Where an item of income, expenditure, assets or liabilities relates only in part to the carrying out of PTA's Access-related Functions, an internal assessment will be made as to what proportion of that item can be fairly and reasonably attributed to those functions.

### **3.5. Enterprise Asset Management System**

The PTA's finance business unit operates an integrated corporate management system for its asset-intensive operations, which provides reliable, sound and timely reports on revenue, assets, expenditure and liabilities and other performance measures. This information is captured and reported at a divisional level and internal control procedures ensure appropriate cost allocations and approvals are followed.

Access to this system is protected through a user identification and logon process, which is password protected and system secured. Divisional staff are restricted from access to information outside their division.

## 4. Compliance and Review

The PTA will comply with the provisions of these Segregation Arrangements including:

- the operation of business relating to third party access;
- undertaking compliance auditing; and
- implementation of a complaints handling process.

Under sections 20(1) and (2) of the Act, the Regulator is responsible for monitoring and enforcing compliance with the Act and the Code utilising the powers granted to the Regulator under the Act. The responsibilities of the Regulator under sections 20(1) and (2) of the Act extend to the monitoring and enforcement of these Segregation Arrangements.

Under section 29(1) of the Act, PTA may vary these Segregation Arrangements, subject to the approval of the Regulator.

Section 29(3) of the Act allows the Regulator to give directions in writing to PTA with respect to a matter which relates to the way in which PTA's segregation obligations under section 28 of the Act are to be carried out to the extent that agreement is not reached under section 29(2) of the Act. PTA must comply with any such direction.

Any breach of these Segregation Arrangements will be reported to the Regulator in writing within five business days of the breach being discovered by PTA, including details of any rectification process. The PTA acknowledges that the Regulator may conduct its own investigation on the breach if it is deemed necessary.

The PTA will provide training for staff involved in Access-related Functions regarding the implementation of these Segregation Arrangements and their confidentiality obligations.

## 5. Definitions

Term	Meaning
Access Agreement	Has the meaning assigned 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-related Functions	Has the meaning described in section 24 of the Act, which is as follows: <i>functions involved in arranging the provision of access to railway infrastructure under the Code.</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>
Confidential Information	Has the meaning described in section 31(2) of the Act, which is as follows: <i>information that has not been made public and that —</i> (a) <i>is by its nature confidential;</i> (b) <i>was specified to be confidential by the person who supplied it; or</i> (c) <i>is known by a person using or disclosing it to be confidential.</i>
Contractor	Means any person who is contracted by PTA to undertake services which are, in any way, concerned in the performance of Access-related Functions.
Railway Network, Network	Has the meaning described in section 3 of the Code, which is as follows: (a) <i>all the railways that were Government railways when the Act received the Royal Assent; and</i> (b) <i>all the railways that are on land that is corridor land as defined in the Rail Freight System Act 2000; and</i> (c) <i>the railway constructed pursuant to the TPI Railway and Port Agreement; and</i> (d) <i>any railway declared under section 3(2) of the Act to be part of the railways network.</i>  In respect of these Segregation Arrangements, means the Railway Network managed by the PTA.
Railway Owner	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>  In respect of these Segregation Arrangements, Railway Owner means the PTA.
Regulator	Economic Regulation Authority
TTO	Transperth Train Operations



