

## The North West Iron Ore Alliance

PO Box 223, WEST PERTH  
WESTERN AUSTRALIA 6872  
Telephone: +61 (0) 8 9476 7977  
Facsimile: +61 (0) 8 9476 7988  
Email: [info@nwioa.com.au](mailto:info@nwioa.com.au)  
Website: [www.nwioa.com.au](http://www.nwioa.com.au)

30 January 2009

Mr Jeremy Threlfall  
Assistant Director Rail  
Economic Regulation Authority  
PO Box 8469  
PERTH BC WA 6849

Dear Jeremy,

### **The Pilbara Infrastructure Pty Ltd Draft Determination on Proposed Segregation Arrangements**

The North West Iron Ore Alliance (NWIOA) is pleased to respond to the Economic Regulation Authority's (Authority) Draft Determination on Proposed Segregation Arrangements.

As an overarching comment the NWIOA is in broad agreement with the Authority and supports the Required Amendments as enhancing proposed segregation arrangements and likely to contribute toward the desired outcome for the State. However, in doing so, there are several matters the NWIOA requests the Authority consider before issuing a Final Determination. These matters pertain to:

- **Required Amendment 9:** The NWIOA supports the Required Amendment and believes that for consistency and uniformity between the regime confidential documents, the first dot point should also be considered by the Authority when making the Determinations for Train Path Policy and Train Management Guidelines.
- **Required Amendments 10 and 12:** These Amendments are supported by the NWIOA through an understanding they are consistent with the NWIOA's original submission (5 September 2008). The latter advocates that an annual audit of compliance with arrangements for treatment of confidential information be undertaken. The NWIOA interprets the Required Amendments in the Draft Determination as inferring that an audit will indeed review the confidentiality system.
- **Required Amendment 17:** The NWIOA advocates that the access seeker and TPI sign their own confidentiality deed as a part of the negotiation process. This suggestion relates to the first two dot points of Required Amendment 17 and will obviate the need for the second dot point so that negotiations both inside and outside the Code have confidentiality coverage. This is consistent with an 'overall encompassing' approach and worthy of inclusion in the Final Determination.



- **Section 33:** The NWIOA's original submission (5 September 2008) supported payment of liquidated damages where a breach of the Arrangements has occurred. We remain supportive of this concept because: (1) The Railways (Access) Act 1998, Part 5 – Enforcement provisions relate to penalties for conduct aimed at preventing or hindering access and do not directly relate to breaches of the Segregation Arrangements; and (2) It is unclear whether the Authority can enforce the Part 5 provisions. For both these reasons, there is merit in the Authority reconsidering this aspect before issuing a Final Determination.

In closing, the NWIOA extends its thanks to the Authority for preparing and issuing their draft recommendations on segregation arrangements (and more recently on the weighted average cost of capital). We appreciate the opportunity to provide comment and look forward to the Authority's recommendations for the remaining Part 5 instruments.

Yours faithfully,



Dr Justin Walawski FCPA  
**Deputy Chairman & Chief Executive**