

**SUBMISSION TO THE OFFICE OF THE RAIL ACCESS
REGULATOR**

Compliance Monitoring Regime

30 November 2002



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EXECUTIVE SUMMARY

NECG was retained to recommend a range of KPIs that would assist the Regulator in monitoring compliance with the access regime. WestNet believes that the NECG proposal, which recommends an exhaustive list of up to 77 KPIs, has not taken proper account of the legislative basis of the Western Australian regime.

Under the WA rail access regime, the Regulator is not required, or indeed empowered, to develop a KPI framework that goes beyond the requirement to monitor compliance with the regime. Accordingly, it is not the function of the Regulator to develop a KPI framework that seeks to enhance the effectiveness of the regime by making more information available to prospective access seekers and other stakeholders than is explicitly required by the Act and Code.

NECG has drawn upon the ARTC and Queensland Rail Access Regimes to identify KPIs that might be included in the Regulator's monitoring framework. It is significant that the KPIs under both regimes are not defined by the legislation of the type that establishes the Western Australian regulatory regime, but rather by way of voluntary undertakings. As such, the KPIs go to support a broader agenda, including giving *effect to* the regime, rather than merely *compliance with* the regime.

In reviewing the NECG proposals, WestNet's approach has been to put the NECG KPIs through two screens, covering their:

- a) legal enforceability; and
- b) relevance to monitoring compliance.

In WestNet's view, only 27 of the 77 potential KPIs developed by NECG relate to activities which are within the functions or power of the Regulator to monitor and where the Regulator has the power to demand the information be provided. Of those 27 KPIs, only 1 KPI was considered relevant to the monitoring of compliance with the access regime.

It is worth emphasising that the two key mechanisms for monitoring compliance with the access regime are independent audit and a dispute resolution process.

The Regulator's determinations to date have confirmed the role of independent audits as the central platform of the KPI regime, with the final audit report to be made public. The Regulator also retains the right to commission the annual audits as well as commissioning additional audits should he think they were warranted. Any additional information disclosure must have material incremental benefit to warrant the cost and administrative effort required. In WestNet's view, in most cases the incremental benefit is marginal.

Requiring WestNet to release actual cost data under the guise of 'monitoring compliance' is not acceptable. It is not the function of the Regulator to monitor actual costs and the arguments about additional transparency being required under this regime are spurious. As outlined in the Regulator's determination, compliance with the costing principles is established through an external audit

process with the final audit report being published. Monitoring of actual costs is not required.

The Access Agreement is the fundamental building block upon which the performance regime for the rail network (and the operator) will be defined. The performance regime will likely contain many of the KPIs recommended by NECG but ultimately this is a matter for negotiation between the access seeker and the network owner.

Notwithstanding that process, WestNet accepts the need for some transparency in its activities and has assessed potential KPIs against three criteria:

- i. Public interest considerations;
- ii. Support for the Regulator's determinations; and
- iii. General measures of performance.

Including the one KPI which made it through both of the screens, WestNet proposes to present periodic information covering a total of 8 KPIs on a best endeavours basis.

1 Introduction

This submission has been prepared by WestNet Rail Pty Ltd ("WestNet") in response to the Draft Report on Key Performance Indicators for the Rail Access Regime prepared by Network Economics Consulting Group (NECG) for the Office of the Rail Regulator in Western Australia ¹.

NECG was retained to recommend a range of KPIs that would assist the Regulator in monitoring compliance with the access regime¹. WestNet believes that the approach suggested by NECG is based more on regimes that have as their basis voluntary undertakings by the infrastructure owner and where, unlike in Western Australia, there is no legislative basis to the direct operation of the regime. As such we believe that the NECG proposals have not taken proper account of the basis of the WA regime.

Four further sections are provided, covering:

- ▶ Key performance indicators and monitoring;
- ▶ Legal basis for KPIs suggested by NECG;
- ▶ Relevance of KPIs to compliance monitoring;
- ▶ WestNet proposed KPIs.

Included in an appendix is a discussion on the legal basis of the regulatory framework.

¹ The 'regime' in this context covers the Act, Code and the Regulator's determinations.

2 Key Performance Indicators and Monitoring

2.1 Monitoring framework

As stated by NECG in the introduction to the report, they were asked to examine the appropriate key performance indicator (KPI) framework that would assist the Regulator in monitoring compliance with the regime. In this context, compliance with the regime is taken to be compliance with the Act, the Code and any determinations by the Regulator.

The Regulator is not required, or indeed empowered, to develop a KPI framework that goes beyond the requirement to monitor compliance with the regime. Accordingly, it is not the function of the Regulator to develop a KPI framework that seeks to enhance the effectiveness of the regime by making more information available to prospective access seekers and other stakeholders than is explicitly required by the Act and Code.

NECG has drawn upon the ARTC and Queensland Rail Access Regimes to identify KPIs that might be included in the Regulator's monitoring framework. It is significant that the KPI's under both regimes are not defined by the legislation of the type which establishes the Western Australian regulatory regime, but rather by way of undertakings given to secure the benefits of accession to a principle based, rather than function and power based, regulatory regime. As such, the KPIs go to support a broader agenda, including giving *effect to* the regime, rather than merely *compliance with* the regime.

Thus, while appeal may be made to the KPIs in each case as being indicative of the type of KPI's that other regulatory parties have considered relevant, in the context of their particular *negotiation* of the access regime, they are of no particular consequence here given the legislative basis of the Western Australian regime.

From a legal perspective the KPI's that can be imposed are only those that have basis in the regulatory powers and that perform a function specifically described in the WA regime.

2.2 Relevance of Principal/Agent theory

A premise for the KPI monitoring regimes outlined in Part 3.1 of the Report, is that the measuring of performance is a requirement of a relationship, and specifically the relationship of "principal" and "agent". In conventional enterprises, a "principal" is the beneficiary of the enterprise (in the sense of the equity owner or the person deriving the economic benefit from the conduct of the enterprise) and the "agent" is the collective management, or unit of management, by which the enterprise is conducted for the benefit of the principal.

In the regulatory context, this conventional differentiation, which reflects the well settled legal notion of "principal" and "agent" (and indeed its well settled English

dictionary definition) has been interpreted into a notion that a Regulator is a principal with respect to the regulated, who are “agents” of that Regulator.

A close analysis of the structure of regulation under the Western Australian legislation, and indeed the structure alluded to at page 16 of the NECG report, demonstrates the flaw in that proposition.

Neither the State, nor the Regulator, is in any conventional sense a beneficiary of the activities of the putative “agent”. Rather, the State constrains the independence of action of the regulated railway owner for the benefit of:

- a) directly - a class of persons defined by specific characteristics (“access seekers”); and
- b) indirectly (and for the purpose of ensuring that the regulated do not derive profits which are “monopoly” profits at their expense) - the economic beneficiaries of broader economic activity in the State;

The State appoints the Regulator to act on its behalf in that regard, at some distance from, but not dissociated with, the State. The Regulator is, in turn, a constrained “agent” of the State. However, none of the economic benefits of regulation flow to the Regulator.

What is important then, is to realise the difference that plainly exists between the reporting required between “principal” and “agent” in a conventional economic relationship, and the reporting required by the suggested regulatory principal agent relationship referred to by NECG.

In the conventional economic relationship, the owner has the power, through ownership (unless the owner has voluntarily constrained itself by contract or is otherwise constrained by externalities) to impose reporting requirements in such manner as it thinks fit. Conventionally, one would expect it to impose economically efficient reporting requirements, to reflect the particular economic objectives that it sought to achieve, aligned with the behaviours which it sought to reward or punish.

A regulatory framework, however, is not so discretionary. First, the economic imperatives of the State may, or may not, be as defined, or indeed as variable, as those of the economic principal. The State as the source of the regulatory mechanism, acts “on behalf” of 2 groups of “principals” whose interests are not necessarily wholly consistent (indeed, rational principals in the first group – access seekers, will seek to secure economic advantages from both the regulated – the railway owner, and from the second group of “principals”, the broader class of economic participants, by maximising revenues derived from the latter, and minimising costs paid away to the former). The nature of a statutory regulatory mechanism is inherently less flexible (because of the requirements of certainty, and parliamentary approbation).

So it is in the case of the Western Australian Access Regime. The Act has defined the functions and powers of the Regulator, and established the Access Regime, by the Act and delegated legislation.

The tools available to the Regulator are, defined by the functions imposed, and powers conferred, under that legislation. The Regulator as regulatory “principal” does not have the freedom of action of the economic principal to impose or modify reporting requirements, or the economic incentives and disincentives which may be attached to them.

NECG's attempt to promote Principal-Agent theory as the foundation for an extensive and exhaustive list of KPI's is therefore inappropriate given the legislative context of the monitoring framework.

2.3 Discrimination and Reporting

Within the KPI's themselves, NECG draw an irrelevant distinction between reporting dealings with associated and non-associated entities.

Such reporting is incompatible with the very purpose of Division 3 of Part 4 of the *Railways (Access) Act*.

That Division contemplates that (and in the context of WANR the Regulator has accepted) that arrangements will be put in place to segregate access related functions from other functions of the railway owner. In a sense, section 28 of the Act is unnecessary in the light of section 11 of the *Rail Freight System Act 2000* which requires that a railway owner, with respect to the rail freight system, can only be an entity:

- a) having as its main business the provision and maintenance of facilities for the operation of railways;
- b) which is not involved in the provisions of train services; and
- c) which has in place constitutional restrictions to prevent the disclosure of confidential information obtained in the course of its business to a person which does provide train services or to any person controlling or controlled by a person providing train services.

Putting one side however, the provisions of the *Rail Freight System Act*, approved segregation arrangements have the consequence, *ex hypothesis*, that there can be no discrimination between access seekers, whether associated in some way with the railway owner, or not (a notion reinforced by sections 31, 32 and 33 of the Act).

This discriminatory approach proceeds from an inherent bias against an associated operation, as indeed is reflected in identification in clause 3.4 of the “stakeholders” in the KPI regime in a manner which appears at least to connote that AWR, the operator owned by ARG, is not a stakeholder with respect to the KPIs required by the draft report.

That cannot be the case.

Division 3 of Part 4 is predicated upon the premise that the segregation arrangements under section 28, approved under section 29, and reinforced by sections 31 to 33, will place AWR in precisely the same position as any third party operator.

NECG would seem to imply that differences in some access “outcomes” between associated and non-associated entities might indicate a failure of the segregation arrangements but it is not clear whether the recommended KPIs could reliably indicate any such failure (and may unfairly imply a failure where it does not exist) and ignores the existence of an independent audit process to ensure compliance.

2.4 What is measured in the regulation of utilities

NECG has reviewed, and held as relevant, various approaches to KPI's adopted in the rail sector. As discussed in section 2.1 above, the ARTC and QR 'regulator endorsed' performance monitoring regimes have been established through a different process (i.e. negotiation of a voluntary undertaking) and for a different purpose (i.e. giving *effect to* rather than merely *compliance with* the regime). Consequently, they are of limited usefulness in specifying the KPI's to underpin the Regulator's compliance monitoring framework.

NECG refer to the performance regime of the Victorian passenger franchise in which case the Government (as owner) monitors various service quality aspects of the rail operation they have purchased through their franchise agreements. In effect, the franchise agreements are analogous to access agreements where the customer may seek disclosure of various service quality measures. The example is of no relevance to the role of the Regulator in monitoring compliance with the regime.

Similarly, the ATC standards reflect target performance standards for rail infrastructure that Governments believe are necessary to achieve certain national transport outcomes and are of absolutely no relevance here.

2.5 WestNet approach

The objective is to identify the KPIs that the Regulator will require in order to monitor compliance with the Access Regime. It is important to note that in various areas, compliance with the regime is monitored by way of independent audit. As such, the need for KPIs and detailed information disclosure is greatly reduced.

NECG has developed an extensive list of KPIs, many of which are not legally enforceable and go beyond satisfying the stated purpose of monitoring compliance with the regime. WestNet's approach has been to put the NECG KPIs through two screens, covering their:

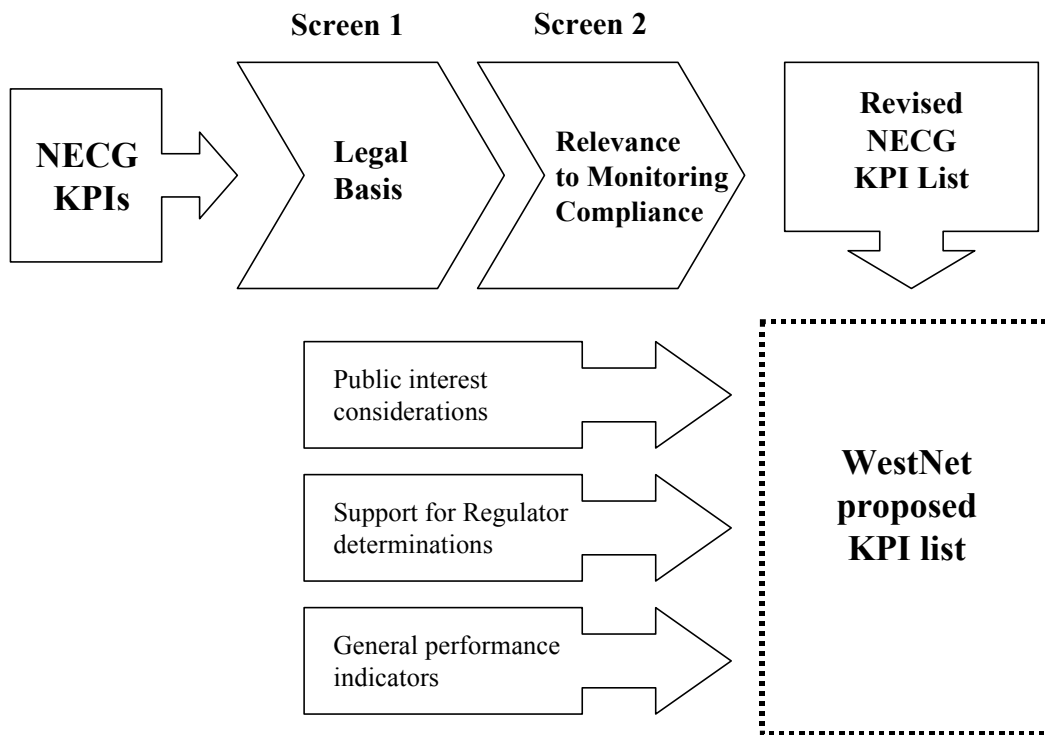
- c) legal enforceability; and
- d) relevance to monitoring compliance.

Notwithstanding that process, WestNet accepts the need for some transparency in its activities and has assessed potential KPIs against three criteria:

- iv. Public interest considerations;
- v. Support for the Regulator's determinations; and
- vi. General measures of performance.

This approach is summarised in Figure 1. Sections 3 and 4 present the results of the two screens and Section 5 presents WestNet's proposed KPIs.

Figure 1. WestNet Approach



3 Screen 1: Legal Basis

Taken together, the KPIs suggested by NECG go well beyond the powers conferred on the Regulator by the relevant access legislation. This section presents a legal screen of the NECG KPIs, specifically, an assessment of:

- a) whether it is within the prescribed power of the Regulator to regulate or monitor the activity; and
- b) whether it is within the power of the Regulator to demand the information specified.

The order of KPI's is consistent with the NECG report.

3.1 Network Overview

The Act and Code are not concerned with the railway infrastructure per se but access to them (and information about them). That is, the Act and Code do not regulate infrastructure but merely access and terms of access.

Section 6(1)(b) of the Code provides that the railway owner must prepare, and make available for purchase, a publication containing information described in Schedule 2. Schedule 2 provides inter alia:

- "1. *A map of the routes listed in Schedule 1 showing the configuration of the tracks on each route.*
2. *For each route section, details of –*
 - (a) *the length;*
 - (b) *the ruling grades;*
 - (c) *the operating gauge;*
 - (d) *the track design characteristics;*
 - (e) *the indicative running times for various types of standard trains;*
 - (f) *the maximum axle loads and speed restrictions that apply; and*
 - (g) *the indicative maximum train lengths.*
3. *The permissible gauge outlines that enable the required dimensions of rolling stock to be determined."*

The Regulator's only function is to ensure that the relevant information prescribed by the Act is made available. That is, the Regulator can regulate whether the railway owner has complied with this provision.

Table 3.1 indicates the network overview KPIs proposed by NECG and whether or not the Regulator can regulate or demand such data according to the provisions of the Act and the Code.

Table 3.1 - Network overview KPIs

KPI #	Draft report – proposed KPI	Can Regulate/monitor		Can Demand		Legislative provisions allowing access for /comments
		Yes	No	Yes	No	
1	Length of track	X		X		ss.21-22A of Act; s.6 & item 2(a) of Schedule 2 of Code
2	Gross tonnes		X		X	Not in connection with functions (see Appendix 1)
3	Gross tonnes kilometres		X		X	Not in connection with functions (see Appendix 1)
4	Train kilometres		X		X	Not in connections with functions (see Appendix 1)
5	Maximum axle load	X		X		ss.21-22A of Act; s.6 & item 2(a) of Schedule 2 of Code
6	Maximum speed	X		X		ss.21-22A of Act; s.6 & item 2(a) of Schedule 2 of Code
7	Average speed		X		X	Not in connection with functions (see Appendix 1)
8	Maximum train length	X		X		ss.21-22A of Act; s.6 & item 2(a) of Schedule 2 of Code

3.2 Negotiation framework

The Code sets out the processes dealing with proposals, negotiations and arbitrations. The relevant function of the Regulator is then to monitor and enforce compliance with these processes by railway owners (s 20(1)(a) of the Act).

We also note that section 12 of the Code prescribes the information relating to the proposals to be kept:

- "(1) *The railway owner must keep a register relating to all proposals made to it under section 8 [proposals for access].*
- (2) *The register must show –*
 - (a) *a general description of the proposal;*
 - (b) *the name and address of the proponent;*
 - (c) *the day on which it was received by the railway owner;*
 - (d) *the day on which each step required by this Code was taken; and*
 - (e) *the final outcome of the proposal.*
- (3) *The register may be kept in electronic form, but must be capable of being reproduced in written form."*

Table 3.2 indicates the negotiation framework KPIs proposed by NECG and whether or not the Regulator can regulate or demand such data according to the provisions of the Act and the Code.

Table 3.2

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
9	Number and percentage of breaches of the negotiation timeframes outlined in the Code	X		X		May not be " <i>information</i> " (ie. requires interpretation) but raw data may be accessed via s.21 Act (See Appendix)
10	Where breaches of the negotiation timeframes have occurred, the average delay in days taken to complete the requirement that was breached (with the Regulator retaining the discretion to require a further breakdown into specific breaches)	X		X		May not be " <i>information</i> " (ie. requires interpretation) but raw data may be accessed via s.21 Act (See Appendix)
11	Number of negotiations commenced within the year	X		X		May be accessed via s.21
12	Number of negotiations completed resulting in an access agreement being negotiated	X		X		May be accessed via s.21
13	Number of access negotiations withdrawn from by the access seeker	X		X		May be accessed via s.21
14	Number of negotiations in dispute (refer section 25(2) of the Code)	X		X		May be accessed via s.21
15	Number of agreements reached	X		X		May be accessed via s.21
16	Number of agreements reached "outside" the regime	X		X		Totally outside regime set up by Act and Code
17	Number of arbitrations commenced	X		X		May be accessed via s.21
18	Number of arbitrations completed	X		X		May be accessed via s.21

3.3 Segregation arrangements

The relevant sections in the Act relating to segregation (see ss 28 – 32) deal with "*arrangements*", "*appropriate controls and procedures*", and "*effective regimes designed*".

Table 3.3 indicates the segregation arrangement KPIs proposed by NECG and whether or not the Regulator can regulate or demand such data according to the provisions of the Act and the Code.

Table 3.3 - Segregation arrangements KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
19	Efficacy of controls over physical and electronic separation of data	X			X	Not " <i>information</i> " as such (See Appendix)
20	Effectiveness of RAS and RAMS protection	X			X	Not " <i>information</i> " as such (See Appendix)
21	Acknowledgment from employees who will perform prescribed duties about the need for maintaining confidentiality	X		X		May be accessed via s.21
22	Signing of deeds for rotating employees	X		X		May be accessed via s.21
23	Effectiveness of staff training on the compliance manual	X			X	Not " <i>information</i> " as such unless recorded pursuant to a segregation procedure (See App)
24	Compliance with information disclosure protocols for the chief executive and board members of ARG	X			X	Not " <i>information</i> " as such unless recorded pursuant to a segregation procedure (See App)
	Audit – conflict of interest					
25	Ensuring that rotations that occur in emergencies are notified to Regulator	X			X	Not " <i>information</i> " as such unless recorded pursuant to a segregation procedure (See Appendix)
	Remaining KPI's					
26	Number of breaches of segregation arrangements notified to the Regulator by WNR within 5 business days of becoming aware of the Breach and a description on the remedial action taken and the consequences of the breach		X		X	Not all " <i>information</i> " as such (See Appendix)
27	Number of allegations of breaches of segregation arrangements	X		X		May be accessible via s.21
28	Number of breaches of the segregation arrangements substantiated by the Regulator and a description on the remedial action taken and the consequences of the breach		X		X	Not all " <i>information</i> " as such (See Appendix)
29	Number of complaints satisfactorily resolved by the parties		X		X	Not all " <i>information</i> " as such (See Appendix)

3.4 Train paths policy

The Regulator's function is to approve, determine, enforce and monitor compliance. This does not empower the Regulator to demand information relating to the proposed KPIs, as indicated in Table 3.4.

Table 3.4 - Train paths policy KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
30	Number of disputes in relation to scheduling processes (including for temporary variations, permanent variations and reallocation of train paths)		X		X	May be accessed via s.21
31	Number of complaints that are substantiated (which may be through a dispute resolution process)	X			X	Query whether "information" as such unless recorded pursuant to train path policy (See Appendix)
32	Number of complaints that are neither substantiated to WNR's satisfaction or resolved to the operator's satisfaction	X			X	Query whether "information" as such unless recorded pursuant to train path policy (See Appendix)
33	Number of complaints that are resolved to the parties' satisfaction without further intervention		X		X	Query whether "information" as such unless recorded pursuant to train path policy (See Appendix)

3.5 Train management guidelines

Section 40 provides that nothing in Part 5 (which deals with approval functions of the Regulator and includes the train management guidelines) limits the function of Regulator to monitor compliance by the railway owner with the provisions of the Code.

The Regulator's function is to approve or determine the guidelines (section 43 of Code) and to enforce and monitor compliance. This does not empower it to demand information relating to the proposed KPIs, as indicated in Table 3.5.

Table 3.5 - Train management guidelines KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
34	Number of disputes in relation to train control decisions		X		X	Not connected with functions (See Appendix)
35	Number of complaints that are substantiated (which may be through a dispute resolution process)	X			X	Not "information" as such (See Appendix)
36	Number of complaints that are neither substantiated to WNR's satisfaction nor resolved to the operator's satisfaction		X		X	Not connected with functions. Not "information" as such (See Appendix)
37	Number of complaints that are resolved to the parties' satisfaction without further intervention		X		X	Not connected with functions. Not "information" as such (See Appendix)

3.6 Costing principles

Section 40 provides that nothing in Part 5 (which deals with approval functions of the Regulator and includes the costing principles) limits the function of the Regulator to monitor compliance by the railway owner with the provisions of the Code.

The Regulator approves or determines these principles (section 46 of Code).

Schedule 4 of the Code details the process for determining costs and therefore floor and ceiling prices and when information is to be provided.

For example:

Clause 9 Division 2 of Schedule 4 provides that the Regulator may notify the railway owner that he proposes to determine costs (where there is a proposal likely to be made) and that the railway owner is required to provide an initial determination of costs to the Regulator;

Clause 10 Division 2 of Schedule 4 provides that where a proposal has been made and clause 9 does not apply, the railway owner is to notify the Regulator of costs determined by it and the Regulator is to approve the determination of costs (or if he is not willing to do so, determine the relevant costs).

Therefore, the procedure for the provision of information relating to costs is prescribed by the Code.

Further, NECG’s proposal for continuous disclosure “to inform the accuracy and appropriateness of [the] determinations” by the Regulator does not appear to be in connection with a function of the Regulator. That is, whilst it is a function of the Regulator to make determinations or approve the railway owner’s determinations as to costs, it is not a function of the Regulator to monitor the accuracy and appropriateness of these determinations.

The information requested also appears to assume that the Regulator can demand gross tonne kilometres data which, as indicated in Section 4.1 of this report, he does not appear to be entitled to do.

Table 3.6 indicates the costing principles KPIs proposed by NECG and whether or not the Regulator can regulate or demand such data according to the provisions of the Act and the Code.

Table 3.6 - Costing principles KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
	Costs					
38	Actual infrastructure operating costs per train kilometre (TKM) and per gross tonne kilometre (GTK), for each route section identified by the Regulator and for each region	X		X		May access through s.21
39	Actual maintenance unit costs for infrastructure maintenance (\$/GTK) for each route section identified by the Regulator and for each region	X		X		May access through s.21
40	Actual maintenance expenditure for each route section identified by the Regulator, and for each region	X		X		May access through s.21
41	Actual routine and cyclical maintenance per kilometre for each route section identified by the Regulator and for each region	X		X		May access through s.21
42	Actual expenditure of savings attributable to assumed condition relative to actual expenditure for each route section identified by the Regulator and for each region	X		X		May access through s.21
	Efficiency					
43	Percentage of maintenance work that is competitively outsourced		X		X	

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
	Track quality					
44	Track quality indices (quart)		X		X	
45	The impact of speed restrictions:- Percentage of each region of the network subject to temporary speed restrictions		X		X	
46	The impact of speed restrictions:- Percentage of each region of the network subject to permanent speed restrictions		X		X	
47	The impact of speed restrictions:- The average impact on transit time of speed restrictions over the period as a percentage of expected transit time with no speed restrictions		X		X	
48	The impact of speed restrictions:- Total and average number of train services in a region affected by speed restrictions		X		X	
49	Track availability measures: Periods on the Master Train Plan (MTP) where the track will not be available to train services due to maintenance work		X		X	
50	Track availability measures: Periods on the MTP where the track will not be available due to seasonal formation instability or other infrastructure related limitation		X		X	
51	Track availability measures: Periods where the track is not available for train services where the MTP indicates it should be available		X		X	
52	Track availability measures: Number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributable directly to the railway owner		X		X	

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
53	Track availability measures: Number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributable directly to an operator		X		X	
54	Track availability measures: Number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an operator or to the railway owner		X		X	
55	Track availability measures: Overall percentage of time of actual unavailability to actual availability		X		X	

3.7 Overpayment rules

Section 40 provides that nothing in Part 5 (which deals with approval functions of the Regulator and includes the over-payment rules) limits the function of the Regulator to monitor compliance by the railway owner with the provisions of the Code.

Section 47 of the Code (which deals with over payment rules) provides that:

- (1) *the railway owner is to submit to the Regulator the over-payment rules;*
- (2) *the rules are to give effect to the following requirements:*
 - (a) *the excess (as referred to in clause 8(4) of Schedule 4) in respect of an operator or group of operators must at all times be within a limit, being a percentage of the relevant costs, from time to time notified by the Regulator;*
 - (b) *at the expiry of each successive period of 3 years from the commencement of access by an operator or group of operators there must be no such excess in respect of that operator or group of operators;*

(3) the Regulator may approve the rules or determine the rules (or attachments thereto).

Table 3.7 indicates the overpayment rules KPIs proposed by NECG and whether or not the Regulator can regulate or demand such data according to the provisions of the Act and the Code.

Table 3.7 - Over Payment rules KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
56	WNR be required to produce a confidential spreadsheet listing revenue under each contract and apportioning it to each route section in accordance with the Final Determination and identify any percentage of over-recovery. The spreadsheet should separately record private contributions and government subsidies from access charges		X		X	Not "information" as such (See Appendix 1)
57	The number of contracts negotiated outside the regime and a comparison of non-regime revenue against the total regime revenue		X		X	
58	The quantum or size of carryover of overpayments each period, ie effectively a measure of annual overpayment balance		X		X	
59	Balance of the Trust Account and a statement of compliance with the rules, ie. balance, reconciliation and appropriate application of interest		X		X	Not "information" as such (in relation to statement of compliance) (See Appendix 1)
60	Number of route sections that breached the ceiling		X		X	
61	Number of route sections that breached the ceiling by more than 10%		X		X	
62	The number and quantum of overpayments proposed to be returned by WNR by September 30 in the year		X		X	Not "information" as such (See Appendix 1)

Table 3.7 (cont'd)

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
63	The number and quantum of overpayments proposed to be returned by WNR in the previous 3 years		X		X	Not "information" as such (See Appendix 1)
64	The number and quantum of overpayments actually returned by WNR in the previous period		X		X	
65	The number of breaches of ceiling prices tests by route and reason, that is, avoidable and unavoidable as defined by the Final Determination		X		X	Not "information" as such (See Appendix 1)

3.8 Service quality

The Code provides for matters to be dealt with in access agreements (which include performance standards) – see schedule 3 of the Code. However, it is not a stated function of the Regulator to monitor the manner in which Access Agreements are carried out.

Table 3.8 summaries the service quality KPIs recommended by NECG, none of which have any legal basis.

Table 3.8 – Service quality KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
	Reliability					
66	Number and percentages of healthy services that exit the Network within tolerance		X		X	
67	Number and percentage of unhealthy services that do not deteriorate further, within tolerance		X		X	

Table 3.8 (cont'd)

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
68	Number and percentages of unhealthy services that exit the Network within tolerance		X		X	
69	Number and percentages of services which are operated in a healthy manner		X		X	
70	Number and percentage of services which exit the Network no later than schedule, within tolerance		X		X	
71	Number and percentage of services which enter the Network no later than schedule, within tolerance		X		X	
72	Number and percentage of services which exit the Network no later than one hour after schedule		X		X	
	Transit times – histograms indicating delay as follows					
73	For those trains that do not reach their destination within the agreed tolerance on account of a below rail delay the delay, in minutes per 100 kilometres, for each such delay		X		X	
74	For those train services that do not reach their destination within agreed tolerance, on account of an above rail delay, the delay, in minutes per 100 train kilometres for each such delay		X		X	
75	For those train services that do not reach their destination within agreed tolerance, on account of neither an above rail or below rail reason, the delay, in minutes per 100 train kilometres for each such delay		X		X	
	Billing accuracy					
76	Number of instances where an operator has made a complaint to WNR about an incorrectly calculated bill, and where WNR's investigation into the complaint identifies that the bill was incorrectly calculated		X		X	

3.9 Safety

It is not a function of the Regulator to monitor safety.

Table 3.9 – Safety KPIs

KPI #	Draft Report – Proposed KPI	Can Regulate/monitor		Can demand		Legislative provisions allowing for access/comments
		Yes	No	Yes	No	
77	The number of category A incidents attributable to infrastructure related causes		X		X	

4 Screen 2 : Relevance to Monitoring Compliance

In total, only 27 of the 77 KPIs cover activities that are within the functions and powers of the Regulator to regulate or monitor. The relevance of these KPIs to compliance monitoring is considered further in Table 4.1 below. Note that the KPI numbers in Table 4.1 correspond to those allocated in Section 3.

In WestNet's view, only one or two KPIs have any real relevance and meaning in the context of the KPIs required to assist the Regulator in monitoring compliance with the regime. Many of the rejected KPIs relate to the level of 'activity' carried within the regime, which has no real correlation to the level of compliance with the regime. Other KPIs are of limited incremental value when compliance is being monitored through an independent audit process.

NECG argues that the assumption of the "new" network in the regime suggests additional transparency is required relative to other reporting regimes and thereby justifies recommending a mix of both actual and assumed costs. On the contrary, the "new" network and the annuity calculation makes the ceiling price calculations much easier and more transparent. For instance, the current condition of the assets is not a relevant factor in this regime. Also, maintenance costs for a new network are more easily assessed than an older network of varying condition.

Requiring WestNet to release actual cost data under the guise of 'monitoring compliance' is not acceptable. It is not the function of the Regulator to monitor actual costs and the arguments about additional transparency being required under this regime are spurious. As outlined in the Regulator's determination, compliance with the costing principles is established through an external audit process with the final audit report being published. Monitoring of actual costs is not required.

Key to Table 4.1

KPI of little or no relevance	KPI of moderate relevance	KPI is relevant
0	2	4

Table 4.1

KPI number	KPI	Relevance	Comment
	Network Overview		
1	Length of track	0	This KPI is not relevant to monitoring compliance with the regulatory regime. Length of track is to be provided to access seekers at the time a genuine access enquiry is made.
5	Maximum axle load	0	As above.
6	Maximum speed	0	As above.
8	Maximum train length	0	As above.
	Negotiation framework		
9	Number and percentage of breaches of the negotiation timeframes outlined in the Code	4	This is a reasonable indicator.
10	Where breaches of the negotiation timeframes have occurred, the average delay in days taken to complete the requirement that was breached (with the Regulator retaining the discretion to require a further breakdown into specific breaches)	2	Perhaps keeping statistics on the causes of delay would be more relevant and helpful.
11	Number of negotiations commenced within the year	0	Measuring and reporting the level of 'access activity' not otherwise required by the Act and Code appears unnecessary and it is not clear what it has to do with compliance with the regime.
12	Number of negotiations completed resulting in an access agreement being negotiated	0	As above.
13	Number of access negotiations withdrawn from by the access seeker	0	As above.
14	Number of negotiations in dispute (refer section 25(2) of the Code)	0	As above.
15	Number of agreements reached "inside" the Code	0	As above.

KPI number	KPI	Relevance	Comment
17	Number of arbitrations commenced	0	As above.
18	Number of arbitrations completed	0	As above.
	Segregation		
19	Efficacy of controls over physical and electronic separation of data	0	The regulator has an audit process, the results of which will be made public. There is therefore no need for a KPI to monitor compliance.
20	Effectiveness of RAS and RAMS protection	0	As above.
21	Acknowledgment from employees who will perform prescribed duties about the need for maintaining confidentiality	0	As above.
22	Signing of deeds for rotating employees	0	As above.
23	Effectiveness of staff training on the compliance manual	0	As above.
24	Compliance with information disclosure protocols for the chief executive and board members of ARG	0	As above.
25	Ensuring that rotations that occur in emergencies are notified to Regulator	0	As above.
27	Number of allegations of breaches of segregation arrangements	0	As above. It is unclear what constitutes an 'allegation'
	Train paths policy		
31	Number of complaints that are substantiated (which may be through a dispute resolution process)	2	It is not clear how a “dispute” would be defined. What if a scheduling variation is sought that WestNet for operational reasons cannot provide? It is not clear what “substantiation” means or how a complaint would be defined.
32	Number of complaints that are neither substantiated to WNR's satisfaction or resolved to the operator's satisfaction	2	As above.

KPI number	KPI	Relevance	Comment
	Train management guidelines		
35	Number of complaints that are substantiated (which may be through a dispute resolution process)	2	As above.
	Costing principles		
38	Actual infrastructure operating costs per train kilometre (TKM) and per gross tonne kilometre (GTK), for each route section identified by the Regulator and for each region	0	In terms of compliance with the Regime, the relevant issue is whether actual access prices are within the boundaries laid down by the price ceiling. This is a matter for the audit of the overpayment rules. The cost-based price ceilings are verified by the Regulator through a separate process.
39	Actual maintenance unit costs for infrastructure maintenance (\$/GTK) for each route section identified by the Regulator and for each region	0	As above.
40	Actual maintenance expenditure for each route section identified by the Regulator, and for each region	0	As above.
41	Actual routine and cyclical maintenance per kilometre for each route section identified by the Regulator and for each region	0	As above.
42	Actual expenditure of savings attributable to assumed condition relative to actual expenditure for each route section identified by the Regulator and for each region	0	This is not clear.

5 WestNet Proposed KPIs

Notwithstanding the arguments against most of the KPIs recommended by NECG, WestNet is cognisant of the need to ensure some transparency of information to access seekers and the public at large. WestNet's approach is to assess potential KPIs against three criteria:

- 1) Public interest considerations;
- 2) Support for the Regulator's determinations; and
- 3) General measures of performance.

WestNet would provide the information on a best endeavours basis.

5.1 Public interest considerations

WestNet acknowledges that it may be in the public interest for information to be disclosed on the level of activity being undertaken under the Regime and would therefore propose to publish information regarding:

- a) The number of access negotiations undertaken; and
- b) The number of access agreements completed.

This information would be published annually.

5.2 Support for the Regulator's determinations

WestNet acknowledges that it may be in the public interest to have some information disclosure in relation to the Regulator's various determinations, notwithstanding that independent audits and a dispute resolution process are the major mechanisms for ensuring compliance with the regime. WestNet therefore proposes to publish information regarding:

- c) Segregation arrangements - Number of major breaches of the segregation arrangements substantiated and a description on the remedial action taken and the consequences of the breach (A major breach is to have a defined meaning).
- d) Train path policy - The number of disputes in relation to scheduling processes (including for temporary variations, permanent variations and reallocation of train paths) (The meaning of dispute to be defined).
- e) Train management - Number of disputes in relation to train control decisions (the meaning of dispute is to be defined).

A KPI covering the negotiation framework might also be justified:

- f) Negotiation framework – number of breaches of the negotiation timeframes outlined in the Code (and potentially some categorisation of reason).

As suggested in Section 4, we submit that KPIs with respect to the costing principles and overpayment rules are unnecessary due to the existing audit provisions.

5.3 General Measures of Performance

WestNet recognises that, while they do not necessarily assist the Regulator in ensuring regime compliance, the provision of some basic performance measures may be in the public interest.

WestNet therefore would be prepared to publish information regarding:

- g) Number and percentages of ‘healthy’ scheduled passenger and scheduled freight services that exit the Network within tolerance
- h) Number and percentage of ‘unhealthy’ scheduled passenger and scheduled freight services that do not deteriorate further, within tolerance.
- i) Number and percentages of ‘unhealthy’ scheduled passenger and scheduled freight services that exit the Network within tolerance.

Healthy services will have a defined meaning.

APPENDIX 1 – Regulatory Framework

This appendix presents discussion on the legal framework relevant to the construct of the compliance monitoring regime.

A1. Regulatory Framework

A1.1 Relevant provisions in the Act

There are a number of key provisions of the Act and Code which require consideration in the evaluation of the KPI proposal.

The preamble to the Railways (Access) Act describes the purpose of the Act as follows:

*"An Act to promote competition in the operation of rail services by –
providing for the establishment of a Code governing the use of certain facilities for rail operations by persons other than their owners;
establishing an office with monitoring, enforcement and administrative functions for the implementation of the Code; and
specifying the kinds of arrangements that railway owners are to have in place for the purposes of that implementation.
To amend –
The Government Railways Act 1904 to make consequential amendments; and
The National Rail Corporation Agreement Act 1992,
And for related purposes."*

Section 2A provides that:

"The main object of this Act is to establish a rail access regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for rail operations."

Section 4(2)(d) – Provision is to be made in the Code *"for the Regulator to have supervisory and other functions for the purposes of the Code, including a function of determining certain requirements in relation to access that are to be binding on the railway owner, a person making a proposal for access under the Code, and an arbitrator"*.

Section 6(1)(ca) and (d) provides that the Code may also make provision for or in relation to the functions of the Regulator and the regulation of matters that are otherwise necessary or convenient for the purposes of this Act.

Section 20 provides relevantly that:

"(1) The Regulator –

- (a) *is responsible for monitoring and enforcing compliance by railway owners with this Act and the Code; and*
- (b) *also has the functions given by particular provisions of this Act and Code.*
- (2) ***The Regulator may exercise the powers given by this Part for the purpose of performing his or her functions under this Act and the Code, and may do all things that are necessary or convenient to be done for or in connection with the performance of those functions.***
- (3) *Without limiting subsection (2), the powers given by this Division extend to financial information relating to a railway owner's own use of railway infrastructure to which the Code applies.*
- (4) *In performing functions under this Act or the Code, the Regulator is to take into account –*
 - (a) *the railway owner's legitimate business interests and investment in railway infrastructure;*
 - (b) *the railway owner's costs of providing access, including any costs of extending or expanding the railway infrastructure, but not including costs associated with losses arising from increased competition in upstream or downstream markets;*
 - (c) *the economic value to the railway owner of any additional investment that a person seeking access or the railway owner has agreed to undertake;*
 - (d) *the interests of all persons holding contracts for the use of the railway infrastructure;*
 - (e) *firm and binding contractual obligations of the railway owner and any other person already using the railway infrastructure;*
 - (f) *the operational and technical requirements necessary for the safe and reliable use of the railway infrastructure;*
 - (g) *the economically efficient use of the railway infrastructure; and*
 - (h) *the benefit to the public from having competitive markets.*

...."

Section 21 deals with powers to obtain information and provides:

- "(1) *The Regulator may by notice in writing require a railway owner –*
 - (a) *to send to the Regulator before a day specified in the notice a statement setting out such information as is specified in the notice;*
 - (b) *to give information to the Regulator by way of periodical returns at times specified in the notice;*
 - (c) *to send to the Regulator, before a day specified in the notice, any book, document, or record that is in the possession or under the control of the railway owner.*
- (2) *A railway owner must comply with a notice under subsection (1)."*

Sections 22-22D deal with power of entry, privilege etc.

Part 5 of the Code deals specifically with enforcement (ie. by arbitration pursuant to section 36 or through an injunction via the Supreme Court).

A1.2 Necessary or convenient

An exercise of power under a "*necessary or convenient*" clause is ultra vires if the delegated legislation or administrative action does not fall within the scope or operation of the Act: *Shanahan v Scott* (1957) 96 CLR 245

A "*necessary or convenient*" clause included in a statute lays down only the main outline of provisions, leaving a wide ambit for completion by the administrator of details which are ancillary to the purposes of the Act. However, the ambit of a "*necessary or convenient*" clause is more confined when it is accompanied by express heads of subject matter of the administrative or delegated law making power: *Halbury's Laws of Australia* at [10-2141]

The section is likely to be interpreted so as not to "*result in an operation ... which in [the court's] opinion is capricious and irrational*": *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 321.

Any action will be beyond power if it "*could not be justified on any reasonable ground*": *Parramatta City Council v Pestell* (1972) 128 CLR 305 at 323.

"...this court has held that, in characterising a law as one with respect to a permitted head of power, a reasonable proportionality must exist between the designated object or purpose and the means selected by the law for achieving that object or purpose. The concept of reasonable proportionality is now an accepted test of validity on the issue of ultra vires ... It is a test which governs the validity of statutes as well as regulations. So in Castlemaine Tooheys Ltd v South Australia, ... in deciding whether a law was appropriate and adapted to the protection of the environment, in which event the law would have been valid, it was necessary to consider whether the adverse or extraordinary consequences of the law were disproportionate to the achievement of the relevant protection.": *Nationwide News Pty Ltd v Wills* (1992) 108 ALR 681 at 689.

However, a "*court is not at liberty to declare a regulation or by-law invalid on the ground of unreasonableness merely because the court think it could be more fairly framed, so as to bear with less hardship on those affected. Such considerations are here entrusted to high public functionaries, and although the ultimate power of supervision remains in the court, it is only for the purpose of confining the rule making power within the limits of its jurisdiction, and not for correcting any possible unwisdom in its determinations.*": *Ferrier v Wilson* (1906) 4 CLR 785 at 801.

Generally, it is only where the decision is such that no reasonable person could ever have devised it will it be struck down: *Minister for Primary Industries and Energy v Austral Fisheries Pty Ltd* (1992) 30 ALD 783.

The Regulator may only do things that are necessary or convenient to be done for or in connection with the performance of his function: s. 20(2) of the Act. That is, the power to do all things must be used for the purpose for which they were granted and not otherwise. Accordingly, the schedules which follow seek to set out the relevant functions of the Regulator.

A1.3 “May do all things”

Whilst the Regulator is empowered to do "*all things that are necessary or convenient to be done for or in connection with the performance of [his] functions*", does this also impose a positive obligation on the railway owner to take positive action to assist the Regulator?

In *O'Reilly v Commissioner of State Bank of Victoria & Ors (No.2)* (1983) 46 ALR 225, the High Court dealt with a similar issue in relation to a provision that read as follows:

"The Commissioner, or any officer authorized by him in that behalf, shall at all times have full and free access to all buildings, places, books, documents and other papers for any of the purposes of this Act, and for that purpose may make extracts from or copies of any such books, documents or papers."

The High Court held that there was nothing in the provision that imposed an obligation on anyone to take positive steps to enable the Commissioner more easily or effectively to enjoy his rights of access. Other reasons for holding that no positive obligation was imposed was because there were other provisions in the Act that provided for the Commissioner to issue notices requiring a person to furnish information and makes it an offence for the person not to comply. What the provision does do, is to override any person's rights to hinder or obstruct.

By analogy, we consider that, whilst the Regulator is empowered to do "*all things that are necessary or convenient to be done for or in connection with the performance of [his] functions*", it does not impose positive obligation on the railway owner to take positive action to assist the Regulator (for example, by furnishing information).

Therefore, we do not consider that (other than through the use of provisions such as s.21), the Regulator can compel the railway owner to furnish information or to compile records or registers other than as specifically provided for in the Act or Code.

However, we note that s.22B(1) provides that a person must not hinder or obstruct the Regulator exercising any power conferred by the Division.

A1.4 "Information"

The next issue is the scope of section 21 of the Act. The provision refers to the provision of "information" and "any book, document, or record". Does this oblige the railway owner to carry out any kind of analysis or interpretation of raw information?

The Macquarie Dictionary defines "information", relevantly as:

"1. knowledge communicated or received concerning some fact or circumstances; news. 2. knowledge on various subjects, however acquired..."

Therefore, it is arguable that "information" would not extend to opinions.

In *Riley McKay Pty Limited v Bannerman* (1977) 15 ALR 561, a case dealing with s. 155 of the *Trade Practices Act*, Bowen CJ stated that:

"While the notice under s 155 may seek information as to necessary facts relevant to the issues which the Commission has under consideration ... it does not appear to be appropriate for the Commission to seek information which, in effect, would require the recipient to give an interpretation of a document. This last statement is subject to the qualification that where a document contains symbols, code or other matter which the Commission or a court could not interpret itself, information may be sought as to those matters." : at 566.

"Where a question seeks information about a fact, for example, a date, no difficulty arises. Where, however the question seeks information as to whether the corporate body is aware of something or has a particular knowledge or belief, it appears to me that it is inappropriate simply to ask what is the awareness or knowledge or belief of the body corporate. In such a case, a question should, as may be appropriate, ask what was the awareness, knowledge or belief of, for example, the directors or certain employees of the body corporate": p567.

A1.5 Summary of law

Section 20(1) of the Act provides that the "Regulator ... is responsible for monitoring and enforcing compliance by railway owners with this Act and the Code".

Section 20(2) provides that the "Regulator may exercise the powers given by this Part for the purpose of performing his or her functions under this Act and the Code, and may do all things that are **necessary or convenient** to be done for or in connection with the performance of those functions".

Section 20(4) provides that in "performing functions under this Act or the Code, the Regulator is to take into account" certain listed factors.

We consider that, whilst the Regulator is empowered to do "*all things that are necessary or convenient to be done for or in connection with the performance of [his] functions*", it does not impose positive obligation on the railway owner to take positive action to assist the Regulator (for example, by furnishing information). However, no person may hinder or obstruct the Regulator exercising his powers.

"*Information*" does not extend to requiring the railway owner to undertake an interpretation or analysis of documents.

A2 Regulator's functions

A2.1 Under the Act

The Regulator must:

- (a) review the Code to assess the suitability of the provisions of the Code to give effect to the Competition Principles Agreement in respect of railways to which the Code applies: s.12 Act;
- (b) monitor and enforce compliance by railway owners with the Act and Code: s.20 Act;
- (c) ensure the railway owner makes arrangements to segregate access-related functions from other function and that the railway owner has appropriate controls and procedures to ensure measures operate safely and are complied with: s.28;
- (d) approve segregation arrangements: s.29; and
- (e) enforce the following:
 - (1) effective regime designed for protection of confidential information: s.31
 - (2) arrangements such that a relevant officer does not have a conflict of interest: s.32
 - (3) the obligations of relevant officers comply with duty of fairness: s.33
 - (4) the obligations of the railway owner to ensure maintenance of separate accounts and records:s.34.

A2.2 Under the Code

The Regulator must:

- (a) enforce s. 6 in respect of publication of information in relation to railway network by railway owner;
- (b) enforce compliance with requirement of provision of information by railway owner: s.7;
- (c) enforce compliance by the railway owner of their obligations on receipt of proposal ie:
 - (1) acknowledging receipt of proposal;
 - (2) providing floor & ceiling prices, costs, costing principles;
 - (3) notification of date on or before which the railway owner will provide draft access agreement;
- (d) determine the weighted costs of capital;
- (e) approve (or otherwise) the railway owner's determination of costs or determining costs;
- (f) approve (or otherwise) the proposal for access where capacity may be restricted where necessary: s.10;
- (g) enforce the railway owner's obligation to keep register of proposals: s.12.
- (h) enforce the railway owner's duties in relation to negotiations including to negotiate in good faith: ss.13 & 16;
- (i) give an opinion on price sought for access if required: s.21;
- (j) establish panels of arbitrators: s.24;
- (k) on receipt of notice of dispute, appoint suitable arbitrator(s): ss.26-27;
- (l) provide opinion, advice and comments to arbitrator in relation to questions referred to him in the course of a hearing of a dispute: s.30;
- (m) register for access agreements and determinations: s.39;
- (n) approve/determine train management guidelines (or amendments thereto): s.43;

- (o) approve/determine train path policies (or amendments thereto): s.44;
- (p) approve/determine costing principles (or amendments thereto): s.46;
- (q) approve/determine over-payment rules (or amendments thereto): s.47;
- (r) inquire into, report and make recommendations to the Minister on:
 - (1) matters relating to the operation of the Act or Code;
 - (2) the manner in which the Act or Code might be amended; and
- (s) disseminate information that relates to the carrying out of the Act, Code or matters provided for by them: s.50.