

Background Paper

Review of the Regulatory Compliance Arrangements for the Public Transport Authority

3 January 2008

Economic Regulation Authority



WESTERN AUSTRALIA

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For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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1 Overview

The Economic Regulation Authority (Authority) administers the Western Australian Railways Access Regime (Regime). The Regime is comprised of the Railways (Access) Act 1998 (Act) and the Railways (Access) Code 2000 (Code). The Code is a requirement of the Act and both became effective in September 2001.

The Authority's role is to oversee, monitor and enforce compliance with the Act and the Code. The rail network and types of infrastructure subject to the Regime are defined in Schedule 1 of the Code.

The Authority is currently reviewing the regulatory compliance arrangements for the Public Transport Authority (PTA) under the Regime.

The objective of this review is to reduce the regulatory compliance requirements for the PTA in order to minimise the compliance and administration costs of the Regime while maintaining a rail access regulatory framework that ensures effective, fair and transparent competition on Western Australia's regulated access railway network.

As part of this review, the Authority has proposed a reduction in the PTA's regulatory compliance arrangements as outlined under Section 6 below. The proposed reduced compliance arrangements would not involve any change to the existing rail access legislation. Both the PTA and the Minister for Planning and Infrastructure have been consulted in relation to the proposed changes and have indicated their agreement to these changes.

The purpose of this paper is to provide background information on this matter to assist interested parties in making submissions to the Authority. Following the receipt of these submissions, the Authority will make a final decision on the PTA's regulatory compliance arrangements.

2 The WA Rail Access Regime

2.1 Railway owners and coverage of the Regime

Section 3 of the Act defines a 'railway owner' to mean the person having the management and control of the use of the railway infrastructure. In this context, the Public Transport Authority (PTA) is considered to be the owner of the urban passenger network and WestNet Rail (WNR) is considered to be the owner of the regional freight railway network.

The railway network covered by the Regime is set out in Schedule 1 of the Code and comprises about 5,000 route kilometres of rail track in the south-west of Western Australia and includes the regional freight network and the urban passenger network.

PTA

The PTA is a government owned enterprise with vertical integration of the above and below rail parts of the business. The PTA brings together the management and delivery of public passenger transport services in Western Australia, providing metropolitan and

regional passenger rail services. The rail service divisions of the PTA include Transperth, which is the metropolitan passenger train operating division and uses the PTA urban network, and Transwa, which operates three regional passenger train services (the Australind, the Prospector and AvonLink) which use both the PTA and WNR networks.

There is very limited third party usage of the PTA railway network, consisting of Specialised Container Transport (SCT) using the section of rail line from North Fremantle to Robbs Jetty and Great Southern Railways (GSR) using the section of rail line from Midland to East Perth for its Indian Pacific passenger rail service.

The railway business of PTA is largely operated as a public service where the losses are funded by government.

WNR

WNR, which is part of the WestNet Group, owns and operates the regional railway network west of Kalgoorlie. This network includes standard and narrow gauge rail track and associated infrastructure and is used predominantly for freight transport. WNR owns and operates the 'below rail' infrastructure only and provides access to 'above rail' rolling stock operators.

3 Legislative obligations on railway owners

3.1 Part 5 Instruments

There are four regulatory requirements on railway owners, as set out in Part 5 of the Code, referred to collectively as the Part 5 Instruments. The four regulatory instruments are the train management guidelines, the statements of policy (i.e. train path policy), the costing principles, and the over-payment rules. The railway owners must prepare documents demonstrating their compliance with these four requirements and submit these to the Authority for approval.

In addition, under Schedule 4 of the Code, the railway owner must prepare documents outlining the proposed ceiling (maximum) and floor (minimum) costs applicable to those sections of rail track on which access is likely to be sought by third parties.

Purpose of 'Part 5 Instruments'

The overall purpose of the Part 5 Instruments and the floor and ceiling costs is to facilitate the provision of access to monopoly infrastructure with reasonable quality of service at fair prices (i.e. preventing below rail infrastructure owners from extracting monopoly rents from above rail operators whilst balancing the need for infrastructure owners to achieve fair and reasonable returns on their rail investments).

The train path policy and train management guidelines set out the principles for the quality of service and the costing principles and over-payment rules relate to the cost of the service. The costing principles provide the framework for the setting of the ceiling and floor prices that the railway owner can charge for access to the railway network.

The over-payment rules are derived from the costing principles and associated ceiling and floor costs. These rules outline the procedures when payments made by an operator, or

operators, on a particular section of rail track exceed the railway owner's determined ceiling costs.

3.2 Segregation Arrangements

The Segregation Arrangements are a requirement of section 28 of the Act and are an essential component of any third party access regime where access to monopoly infrastructure is separated from the contestable components of a business.

Purpose of segregation arrangements

The purpose of the Segregation Arrangements (often referred to as 'ring fencing' in other third party access regimes) is to ensure that where the incumbent company owns both the contestable and natural monopoly components of a railway business (i.e. both the above and below rail operations) that third parties seeking access to the rail network are not unfairly disadvantaged compared with the incumbent firm's own above rail operation.

The Segregation Arrangements under the Act provide for the key elements of protection of confidential information, avoidance of conflict of interest, duty of fairness, and maintenance of separate accounts and records. These arrangements should result in a more economically efficient outcome than would otherwise be the case.

4 Current regulatory compliance arrangements

As indicated above, the preparation of the Part 5 Instruments, the floor and ceiling costs and the Segregation Arrangements are required under the existing rail legislation (the Code and the Act). However, the frequency of the Authority's review of these regulatory parameters and the submission of Key Performance Indicators (KPIs) and compliance audits relating to these regulatory obligations are not set out in the legislation. Rather, these compliance matters have been dealt with through determinations by the Authority and its predecessor, the Independent Rail Access Regulator. Therefore, changes can be made to these compliance arrangements without the need to amend the rail legislation.

Under current compliance arrangements, the railway owners are required to:

- 1) Prepare and submit detailed KPI information to the Authority on a quarterly and annual basis.
- 2) Commission independent annual audits of compliance with the Part 5 Instruments, Segregation Arrangements and selected KPI information.
- 3) Undertake reviews of the Part 5 Instruments and the floor and ceiling costs at set intervals.

5 Rationale for changes to the railway access compliance requirements

The objective of the rail access regime is to establish and implement a framework in order to promote efficient, effective, fair and transparent competition on Western Australia's railway network to achieve a net public benefit to the State.

To maximise the net benefit of the rail access regime the costs of the regime need to be minimised. Where these costs could be avoided without an associated loss of benefit, the net public benefit would be increased.

Broadly the costs can be categorised as the compliance costs, which are borne by the railway owner and the administration costs which are borne by the Authority as the rail access regulator. In particular, the review and approval of the Part 5 Instruments, the preparation and analysis of KPI information and the commissioning and review of annual compliance audits impose compliance costs on the PTA, as a railway owner, and administration costs on the Authority, as the rail access regulator.

The current situation is that the PTA and WNR are subject to similar regulatory requirements, although the circumstances and operations of the railway owners are significantly different. As outlined above these differences include the type of ownership, the structure of the business and the nature of business activities, all of which may have implications for the suitability of the arrangements for monitoring railway owners' compliance with the access regime.

To minimise the compliance and administration costs of the regulatory regime, the regulatory instruments should be tailored to the differences between the railway owners rather than the existing 'one size fits all' approach.

6 Proposed changes to the railway access compliance requirements

The Authority proposes changes to the compliance arrangements for the PTA to better reflect the nature of the urban rail network managed by the PTA and the extent to which third party access to PTA's rail network is likely to be an issue in the future.

Given the above, and the situation where the PTA is a Government owned and operated entity managing a subsidised urban passenger rail network which is unlikely over the foreseeable future to attract access seekers other than at the margin (such as the current SCT and GSR operations), it seems reasonable for the extent of PTA's regulatory compliance requirements to be aligned with the nature of its operations and rail network from a third party access perspective. With this in mind, the Authority considers that the regulatory compliance arrangements currently in place for the PTA can be significantly reduced.

The Authority proposes the following changes to the PTA's current regulatory compliance requirements:

1. No longer requiring annual compliance audits for the Part 5 Instruments, Segregation Arrangements and selected KPIs except where a third party approaches the Authority seeking access under the Regime and the Authority decides that a compliance audit is required.
2. No longer requiring KPI information to be provided to the Authority except where a third party approaches the Authority seeking access under the Regime and the Authority decides that KPI information is necessary to monitor the service quality of the PTA.
3. No regular future reviews of the PTA's Part 5 Instruments and floor and ceiling costs (after completion of the current reviews) except where access seekers

approach the Authority seeking access under the regime and the Authority decides that a review is required.

The Authority's proposed changes to the regulatory compliance requirements would substantially reduce the compliance burden imposed by the Regime on the PTA. Should future access seekers not be able to negotiate commercial access agreements with the PTA and make a request to the Authority for access to the PTA's network then the Authority has the ability to reinstate appropriate compliance arrangements. As noted previously, these proposed changes to the PTA's regulatory compliance arrangements would not involve any amendments to the existing rail legislation.