



# Genesee & Wyoming Australia

Review of Regulatory Guidelines

*Submission – 17 May 2019*



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# 1. Executive Summary

This submission has been prepared by Genesee & Wyoming Australia Pty Ltd (**GWA**) for consideration by the Essential Services Commission of South Australia (**ESCOSA**) in relation to the two Draft Decisions resulting from a review of the guidelines under railway access regimes under its jurisdiction. GWA would like to thank ESCOSA for the opportunity to present our input into the review.

ESCOSA has published Draft Decisions to deal with guidelines for the:

- Tarcoola to Darwin Railway (**TDR**); and
- South Australian regional rail network (**SA Regional Network**).

This GWA submission covers both Draft Decisions. Matters specific to one network or the other are covered under separate sections of this submission.

The TDR is regulated through the AustralAsia Railway (Third Party Access) Act 1999 (SA & NT) (**TDR Code**). The TDR Code provides for ESCOSA to publish guidelines relating to various matters. Four guidelines under the TDR Code have been published to date. The TDR Draft Decision covers Guideline Nos.1 – 3 with Guideline No.4 to be covered at a later date.

The SA Regional Network is regulated through the Railways (Operations and Access) Act 1997 (SA) (**SA Regional Regime**). ESCOSA has published a guideline in the form of an Information Kit that covers the SA Regional Regime.

Generally, GWA supports the TDR Draft Decision and the accompanying Draft Guidelines. In particular, GWA recognises that the reformatting and reorganisation of the Draft Guidelines is helpful.

The key area where GWA has a concern with regard to the TDR Draft Decision is in regard to ESCOSA's view that reference prices for the TDR should be published. There are a number of reasons why GWA sees this as counter-productive, including:

- The particular circumstances of the TDR are different to those which apply in the majority of instances where reference prices apply elsewhere, for example most reference prices target coal traffics where the ceiling price applies;
- Reference prices are most useful where train services are concentrated around a single train specification, as is the case for bulk coal hauls. The bulk hauls operating or potential future traffics on the TDR do not have this characteristic;
- The access undertakings where reference prices are published have specific mechanisms that interact with the reference prices, and these mechanisms are absent from the TDR Code;
- The seeming simplicity of the published reference prices is misleading as they are underpinned by complex mechanisms and detailed train specifications, e.g. the Aurizon Network 2017 Access Undertaking Schedule F has 54 pages that control the

calculation and modification of the reference for coal trains that are tightly specified even down to a particular technology that should be used;

- The circumstances of the TDR are such that access applications routinely require an assessment of additional infrastructure to provide the required capacity; this makes the publication of a reference price that excludes such consideration unhelpful and potentially misleading.
- The publication of reference prices may discourage Access Seekers from engaging directly with GWA. As spare capacity on the TDR can be very limited depending upon the paths required, it is important to both the proponent and GWA that a complete understanding of the circumstances surrounding the access proposal is reached. GWA's experience is that such interactions at the earliest stage materially improve the proponent's understanding of the rail haulage task on the TDR and this cannot be achieved through the mere publication of prices. In this context, the publication of prices can detract from the level of customer service rather than improve it.
- The existing requirement to supply reference prices within 10 days after provision of appropriate information is sufficient and leads to timely, useful reference pricing for users.

The TDR Draft Decision implies that the publication of reference prices is the common approach across Australia and that the TDR is somehow deficient in not doing so. It is GWA's view that this overstates the practice and nearly as many railways do not publish access prices as those that do. Even where reference prices are published, the publication is specific to certain traffics and does not necessarily cover all traffics on the railway. For example Aurizon and Queensland Rail both publish coal access prices but do not do so for passenger, grain, other bulk and intermodal traffics even though both railways have these traffics in material volumes. It is also the case that where prices are published, the regulatory instruments governing access are specifically designed to accommodate this,

Notwithstanding GWA's view, GWA is prepared to publish the broad principles that underpin pricing decisions. While this may fall short of stakeholder expectations, it is GWA's view that, for the reasons set out in this submission, expectation of publication of actual prices or a simple formulaic approach is misplaced.

Notwithstanding GWA's general support for the TDR Draft Guidelines, GWA has concerns with several changes that have not been referenced in the TDR Draft Decision. These concerns are detailed in sections 3.3, 3.4 and 3.5. A number of these issues appear to be unintended inclusions or exclusions and are notable in that they are not referred to in the TDR Draft Decision. A number of the variations are not highlighted or commented within the Draft Guidelines whilst some are. This has made review of the Draft Guidelines difficult and some reviewers may not have understood the extent of the proposed changes. GWA suggests that the Final Decision should fully cover any changes of substance in the proposed guidelines and provide commentary where appropriate.

The SA Regional Network Draft Decision leaves the substantive provisions of the Information Kit unchanged but proposes splitting the kit into two guidelines of similar format to that proposed for the TDR Guidelines. GWA supports the proposed SA Regional Network Guidelines and the publication of information content in fact sheets (not seen at this time). Section 4 of this submission sets out several suggestions for minor modifications to the guidelines for consistency.

## 2. Introduction

The Tarcoola to Darwin Railway (**TDR**) is regulated through the AustralAsia Railway (Third Party Access) Act 1999 (SA & NT) (**TDR Code**). The TDR Code provides for the regulator, the Essential Services Commission of South Australia (**ESCOSA**) to publish guidelines relating to various matters. Four guidelines under the TDR Code have been published to date and ESCOSA is conducting a review of the operation of these guidelines. In April 2019, ESCOSA published a Draft Decision resulting from this review. The ESCOSA Draft Decision covers Guidelines Nos.1 – 3. Guideline No. 4 is to be reviewed as part of the Commission's broader review of compliance and monitoring later in 2019.

The South Australian regional rail network (**SA Regional Network**) is regulated through the Railways (Operations and Access) Act 1997 (SA) (**SA Regional Regime**). ESCOSA has published a guideline in the form of an Information Kit that covers the SA Regional Regime. As for the TDR, ESCOSA is conducting a review of the operation of the Information Kit. In April 2019, ESCOSA published a Draft Decision resulting from this review.

Genesee & Wyoming Australia Pty Ltd (**GWA**) is the leaseholder for a number of regional lines in SA covered by the SA Regional Regime and through the related entity GWA (North) Pty Limited is also the current leaseholder for the TDR. For convenience, this submission refers to all entities related to GWA as GWA.

As the main access provider covered by both regulatory instruments, GWA has a significant interest in the form and substance of the guidelines. This submission provides comments on the two Draft Decisions.

## 3. TDR Guideline Draft Decision

ESCOSA's Draft Decision with regard to Guideline Nos. 1 – 3 finds that the Guidelines are not in need of major change and continue to provide appropriate guidance to both Access Seekers and Access Providers. TDR Draft Decision has proposed several minor amendments to the wording of the guidelines and has proposed a change of format for consistency with other regulated industries. In addition, the TDR Draft Decision suggests that Access Providers publish either reference prices, the formula for calculating reference prices or the principles of the calculation.

The sub-sections below set out GWA's views in respect of these proposals.

### 3.1. Publication Of Reference Prices, Formulae Or Principles

The TDR Code section 9(1)(e) and Guideline No.1 require GWA to provide an access seeker with a reference price on written application within 10 days once the necessary information has been received. This is a different approach to some other access regimes that provide for reference prices to be published along with the specification of the corresponding reference train. GWA's February 2017 submission to ESCOSA at section 4.1 argued that the publication of reference

prices was inappropriate for a number of reasons, some of which ESCOSA has, in the past, also recognised:

- The peculiarities of the competitive imputation approach to pricing where sustainable competition exists (effectively intermodal traffic) make the provision of up to date and relevant reference prices difficult;
- Prices for other traffics are subject to the particular specification of those traffics and the publication of a 'reference price' in such a circumstance is more likely to be misleading than helpful to an Access Seeker.

For further development of these points, GWA would refer readers to the previous submission.<sup>1</sup>

In addition to those previously published reasons for not publishing reference prices, GWA presents the following more detailed discussion:

### **3.1.1. Reference Prices For Other Networks**

The Draft Decision suggests that the publication of reference prices would bring the TDR more into line with other rail networks across Australia.<sup>2</sup> GWA recognises that reference prices are published for some hauls on Australian freight rail networks. At a high level it could be argued that publishing reference prices represents a higher standard of transparency providing an Access Seeker with an opportunity to quickly obtain an indicative price for a proposed train operation within the specified parameters.

However, closer examination of those instances where prices are published shows that the picture is more complex and that the publication of reference pricing is typically restricted to very specific and predictable situations. In circumstances where new traffics are unlikely to conform to those specifications, it is much less clear that the publication of reference prices will lead to useful pricing information.

Key issues that confront GWA in relation to the publication of reference prices that distinguish the TDR from other rail networks are:

- the use of competitive imputation pricing for intermodal traffics;
- the diversity in non-intermodal traffic types and train specifications (both existing and prospective) on the TDR without a dominant traffic;
- while the line is not currently at capacity, the unusually long distances between passing loops at critical points make the availability of capacity highly dependent on the specific requirements of any proposed traffic; and
- the existing and prospective bulk hauls on the TDR differ widely across most elements that would impact pricing. The nature of the bulk products being, or likely to

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<sup>1</sup> The GWA submission is available at [https://www.escosa.sa.gov.au/ArticleDocuments/1065/20170307-ReviewOfRailGuidelinesAccessRegime\\_2017Submission-GenesseW/yoming.pdf.aspx?Embed=Y](https://www.escosa.sa.gov.au/ArticleDocuments/1065/20170307-ReviewOfRailGuidelinesAccessRegime_2017Submission-GenesseW/yoming.pdf.aspx?Embed=Y)

<sup>2</sup> ESCOSA TDR Draft Decision 2019 p.9

be, hauled varies as do the technical specifications of the hauls and the nature of the access sought (e.g. number and quality of paths, length of haul, length of access contract).

This can be contrasted with those jurisdictions that currently publish reference prices for bulk hauls in Australia. The majority of these are for the haulage of coal in circumstances where the key haul parameters are the same across most of the hauls to which the prices apply. Even in these circumstances, the publication and maintenance of reference prices is complex. For example the Queensland Rail 2016 Access Undertaking Schedule D provides reference prices for coal trains operating on the West Moreton and Darling Downs coalfields to the Port of Brisbane.<sup>3</sup> This schedule covers 20 pages and embraces many complexities, at the same time adopting very specific specifications such as that the train will have a particular number of locomotives and wagons.<sup>4</sup> Similarly, the Aurizon Network 2017 Access Undertaking (UT5) Schedule F<sup>5</sup> comprises some 54 pages of complex provisions, again solely for coal hauls in Central Queensland that are largely similar in their specifications within each region. As with the Queensland Rail requirements, the Aurizon prices are very specific, e.g. requiring the use of a particular technology for a door opening mechanism for product discharge.<sup>6</sup> These specific requirements make sense in the environment in which the reference prices apply but demonstrate their restrictive application. Neither Queensland Rail nor Aurizon publish prices for any other hauls on those networks even though other traffics such as grain, passenger and intermodal freight traverse the same tracks.

Even where prices are published in a relatively uncomplicated form, e.g. ARTC's Hunter Valley coal network,<sup>7</sup> these prices are subject to significant variation after the close of the relevant period and adjusted so that the price paid will almost certainly vary (either up or down) from the published price. Actual pricing in this situation is complicated even more to the extent that actual railings vary from contracted railings due to a portion of the price being fixed. Again this is in an environment where a large proportion of the haul specifications are consistent across the network and the reference price does not need to accommodate difference across a number of dimensions as would apply where key parameters in the train specification are different. In this instance the prices are more in the nature of a mechanism for managing cash flow across a period before finalisation through a regulatory process that can take years to finalise. While there is potentially some informational value in the published prices to an Access Seeker, it would be unwise to wholly rely on those prices to evaluate a potential project given (a) the potential restatement at a later date and (b) the unpredictability of variation across pricing periods due to the price-setting process and the eventual reconciliation to the ceiling.

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<sup>3</sup> Available at <https://www.queenslandrail.com.au/business/access/Access%20Undertaking%20and%20related%20documents/Queensland%20Rail%20Access%20Undertaking%201%202016.pdf>

<sup>4</sup> Queensland Rail Access Undertaking Schedule D 2.1(c)(ii)

<sup>5</sup> Available at <https://www.aurizon.com.au/~media/aurizon/files/what%20we%20do/network/undertaking%20downloads/aurizon%20network%202017%20access%20undertaking%20ut5.pdf>

<sup>6</sup> Aurizon Network UT5 Schedule F 1.3(b)(vi) requires use of the KWIK DROP mechanism which in turn requires that product discharge is through a wagon's bottom doors (noting that the alternative 'rotary dumping' is used on a number of bulk hauls in Australia and elsewhere).

<sup>7</sup> ARTC 2019 access prices available at <https://www.artc.com.au/uploads/ARTC-2019-Hunter-Valley-Access-Charges.pdf>

ARTC publishes reference prices for its interstate network. The majority of these relate to intermodal hauls. The ARTC Interstate Access Undertaking provides a pricing approach that has built in an “indicative access charge”, a reference price by another name and restricts modification to an annual escalation. The indicative access charge is expressly approved by the ACCC at the time the undertaking is approved and the undertaking contains the process and formula for the annual escalation of prices. This can be contrasted with the TDR Code that does not support a built-in indicative or reference price nor any specified indicative service; to the contrary, the pricing principles in the TDR Code avoid specifying any prices between the floor and ceiling and have no provision for any reference service, nor is the periodic variation of prices covered. It is difficult to see how an ARTC Interstate Undertaking approach could be incorporated into the TDR Code without substantial modification given that intermodal pricing is dependent on external factors that are both outside GWA’s control and likely to vary up or down from one year to the next. The relative stability of pricing across periods allows the ARTC pricing, at least to the extent that this applies, to convey a greater level of pertinent information than would be the case for the TDR.

In all the above examples, there is a close interrelationship between the publication of reference prices and the related access undertaking such that the reference prices operate within the context of the undertaking, often in complex ways. Thus the appearance of simplicity in the publication of a price (even where this appears simple, which is not always the case) is misleading and an Access Seeker would need to fully understand the interaction between the reference price, the related undertaking and the proponent’s proposed operation. An example of this is the quarterly publication of reference prices by Aurizon Network. This is a one page document that provides reference prices for the relevant period.<sup>8</sup> However, to properly understand the prices and the way in which they are applied the reader will need to master the 54 page Schedule F to the Aurizon Network 2017 Access Undertaking (UT5) referred to earlier. It would also be prudent for the reader to be conversant with the 300+ page body of the undertaking itself to understand the complex status of the reference prices and the potential for their variation.

A further difficulty is the nature of the TDR with very long single line sections up to 350 km, with a number well over 100km, and few crossing loops.<sup>9</sup> Notwithstanding the current relatively low percentage dwell times shown in the TDR Draft Decision, it is very possible that any new traffic would require at least some level of network augmentation, dependent on which parts of the network an Access Seeker wished to use. It is important that readers understand the limitation of the comparison being offered in the TDR Draft Decision. It would be incorrect to assume that the current relatively low dwell time proportion indicates that the TDR can accommodate substantial additional traffic in its current configuration. The wide spacing of crossing loops, particularly north of Alice Springs can be contrasted with the ARTC line from Adelaide to Kalgoorlie which has crossing loops at 50km distances or less.<sup>10</sup> This much shorter distance combined with a much greater consistency of loop spacings mean that an applicant seeking access to the ARTC trans-Australia line would be justified in having greater confidence that the specifics of its proposed traffic could be accommodated and that therefore the reference price would apply. Such an assumption does not apply to the TDR. It would be misleading for a

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<sup>8</sup> Available at <https://www.aurizon.com.au/~media/aurizon/files/what%20we%20do/network/network%20downloads/tariffs/reference%20tariffs%20%201%20march%202019%20to%2030%20june%202019.pdf>

<sup>9</sup> <https://gwnr.com/download.axd/48b6ac22c817450db6cd3ec48501f8bf.pdf?d=Master%20Train%20Plan>

<sup>10</sup> [https://www.artc.com.au/uploads/ARTCS3090005\\_EW\\_SA.pdf](https://www.artc.com.au/uploads/ARTCS3090005_EW_SA.pdf)

prospective Access Seeker to assume that it could rely on a published price as being representative of the price that might actually apply given the likelihood that network augmentations would need to be taken into account. Note that, to the extent that networks which do publish reference prices have restricted capacity, the potential for misunderstanding as to both the availability of capacity and the likely price are existing concerns and it is the case that an informed Access Seeker will want to engage with the Access Provider regardless of whether reference prices are provided or not.

There are a number of Australian rail networks that cater for passenger, intermodal and bulk traffics that do not publish reference prices and of those that do, most publish prices for a restricted set of traffics. It is GWA's view that the publication of reference prices for specific traffics elsewhere in Australia requires circumstances that do not apply to the TDR, namely:

- a high degree of traffic and technical homogeneity that allows for the tight specification of the reference train parameters that are essential to allow for a meaningful reference price to be published;
- either an acceptance that the pricing is contingent on unpredictable movement but nevertheless serves a purpose for existing users or the underlying commercial criteria and associated access undertakings limit the opportunities for periodic variation.

It remains GWA's view that it is highly preferable that Access Seekers engage with GWA directly so that prices can be prepared on the basis of a firm set of parameters at the same time that capacity requirements can be considered. This provides an Access Seeker with a significantly greater level of confidence as to both price and the availability of capacity and assists GWA to provide a superior customer service and maintain an understanding of potential future traffic demand, to the benefit of all existing and potential network users.

Under the current TDR Guideline No.1 GWA is required to provide reference prices within 10 days of receipt of a written application, subject to that application containing sufficient data to allow prices to be prepared. It is GWA's view that there are no projects where this timeframe has impacted the viability of the project. In fact, GWA's experience is that multiple reference prices for the same project are provided as a project matures over years, therefore making a published reference price at a point in time misleading.

### **3.1.2. Reference Pricing & The TDR Code**

The TDR Code requires GWA to set prices between the floor and the ceiling.<sup>11</sup> For traffics other than those based on competitive imputation, there is little guidance provided as to what those prices should be except that prices for similar services should be the same, noting that "same" in this context refers to parameters including:

- Location (i.e. origin, destination and rail segments traversed);

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<sup>11</sup> TDR Code Access Pricing Schedule s.1(3)(a) and (b) for traffics subject to competitive imputation prices, s.4(1)(a) and (b) for passenger traffics, s.2(1)(a) and (b) for other traffics

- Duration and quality of train path;
- Train configuration (including train length, tare and gross mass, number of locomotives and wagons, axle loads, train forces, acceleration and speed profiles, braking characteristics);
- Characteristics of the service (this might include a number of possible points of distinction, e.g. the method of loading and discharge, any stabling or shunting requirements, any additional dwell time);
- Longevity of the access required (i.e. period contracted, any seasonality);
- Arrival and departure times of both day and week (which would include the frequency and regularity or eccentricity of train cycles); and
- The above rail operator operating in the same end market.<sup>12</sup>

The ceiling price on the TDR is very high due largely to the high capital value of the infrastructure however it is unlikely that GWA will be able to price access at or even near the ceiling for any traffic as it would be counterproductive to set prices at the ceiling and have no traffic on the network. Therefore, GWA's task is to set prices which encourages traffics onto the network and contributes to its avoidable costs. In this way, GWA will generate revenue without introducing any economic inefficiency and should achieve recovery of as close to the economic cost of the railway as possible. The regulatory model is based on Ramsey pricing whereby prices are set as closely to economic cost as the price elasticity of traffics allows. This is intended to mimic what would occur in a normal market situation, recognising that the natural monopoly characteristics of a railway network require the adoption of a regulatory framework to achieve a pseudo-market outcome. Users of the network are protected from excessive prices by the imposition of the ceiling.

The Ramsey pricing principle is expressly inbuilt into the competitive imputation price that applies to intermodal traffics. The competitive transport mode price sets the total revenue available for the above and below rail operators and the Competitive Imputation Price formula applies the residual to below rail after allowing the above rail operator to recover its avoidable costs.

Pricing for all other traffics follows a similar logic except that in place of a single competitive alternative price setting the maximum, different traffics are likely to have different price elasticities dependent on the specifics of the traffic and the end markets in which they operate. The product transported by each traffic will have different revenues and costs and consequently a different ability to contribute to the recovery of below rail costs above avoidable costs (i.e. the floor).

This environment does not lend itself to the publication of simple reference prices. The majority of situations where reference prices are published in Australia are for the haulage of coal. As discussed in section 3.1.1 above, these are traffics operating largely to the same specification, in the same end market that meet most of the criteria for differentiation noted above. Pricing for those traffics is set at the ceiling and there is no need or opportunity to differentiate access prices.

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<sup>12</sup> TDR Guideline No.2 5.2.2

The situation on the TDR is substantially different in that the existing and potential traffics exhibit a high degree of variation in many of the differentiation criteria. Prices for these traffics are necessarily differentiated to both legitimately generate GWA's access revenue under a Ramsey pricing approach, albeit well below the economic cost of the infrastructure, and to ensure that traffics capable of contributing above avoidable cost are not excluded. In such an environment, the publication of reference prices on a broad basis, say reflecting existing traffics, may significantly over- or under-estimate the price that would legitimately be applied to other traffics. The informational value from this is questionable, potentially misleading and potentially sets up customer expectations that are unfounded. At best, the published price could only apply with any certainty to a traffic that was similar to the existing traffic in all respects. Not only is this relatively unlikely, for the published price to be meaningful, it would need to disclose a great deal of operational and technical detail of the existing operation to allow a viewer to be sure that the price was relevant to the proposed operation. This would involve the disclosure of details that are likely to be commercially sensitive to GWA's customers and subject to GWA's confidentiality obligations.

In these circumstances, there appears to be nothing gained by the publication of access prices. Except in rare instances, the prices published will not reflect the actual prices that are offered as the published prices cannot reflect the specifics of any particular access proposal and may thus be misleading. GWA has no incentive to publish prices that might fall into a range that is "likely" to apply, even if that was knowable in advance, given that GWA will have no knowledge of the proposed operation nor the volumes and capacity requirements involved.

The issue of customer expectations is not a trivial one. There are few actions that a business can take that will disappoint a potential customer more than to publish a price which the customer subsequently learns is not available. This has the potential to erode trust between the customer and service provider and damages the potential for cooperation in achieving the best outcome for the customer and the network as a whole. Trust and close cooperation are essential for the good operation of the network and GWA works hard to avoid generating unnecessary conflicts with its customers.

Given the above, an alternative that would avoid these difficulties would be the publication of reference prices based on achieving close to the ceiling revenue. This would largely avoid the problems of a requirement to deal with traffic specific variations (though unknown volumes would remain a problem). However, the ceiling price would be essentially meaningless as no traffic could be expected to pay even close to the ceiling even if the network was utilised at its maximum current capacity. There seems to be little information value in the publication of a price that would never apply and there is the possibility that a prospective Access Seeker might be discouraged from seeking access on the basis of such prices.

### **3.1.3. Impact Of Reference Prices**

GWA's experience is that the majority of requests for reference prices are in relation to prospective bulk hauls. Often the requests will be in relation to an early stage evaluation of a project where the parameters for the haul will be poorly defined. Indeed, the requirement for a written access proposal is often the spur for a more considered transport specification by the project proponent.

As noted above, capacity on the TDR is limited and GWA has found that the ability to interact with project proponents significantly improves both an understanding of the transport requirements and flags any potential network augmentation that is required. The installation of additional track work, communications and safety systems tend to be significant cost items and can have a material impact on the viability of a project. As such, it is important that an Access Seeker engages directly with GWA to understand several key issues:

- whether the proposed task/train specification conforms to network requirements;
- whether there is sufficient spare capacity to provide the required service;
- the indicative price of access; and
- the cost of any required additional rail infrastructure.

Engagement with GWA under the current guideline provisions allows for these issues to be addressed at the same time and in conjunction with the provision of prices and for the Access Seeker to come away from the process well informed. The provision of a simple published reference price does not provide the opportunity for this interaction to take place and an Access Seeker who does not engage with GWA would be subject to a significant risk of misunderstanding the complexities and cost of the rail task and whether the proposed task is in fact feasible at all.

It is GWA's view that the advantages gained by an Access Seeker under the current requirement for the provision of reference prices on the basis of a written application significantly outweigh the questionable advantage of simply looking up a reference price on-line and avoid the potential costly misunderstanding that might arise.

In support of this view, it is the case that rail operations are complex and the time required to properly conceive of the rail task, the constraints around the operation and design of the preferred train parameters, is considerable. It is unlikely that any meaningful consideration of use of the network will be delayed by application of the current timeframes in order for tailored pricing to be provided. It is typical that Access Seekers will be concerned with a much broader palette of issues such as mining, port and other logistical requirements (or terminals for passenger and intermodal traffics) and the below rail pricing and potential network infrastructure requirements will form only part of those considerations. It is unlikely that the current written reference pricing procedure will significantly delay the consideration of these other matters. The difference in timing will be, at worst, a small inconvenience offset against the significant benefit of a good understanding of the below rail dimensions of a project.

It is noted that the Draft Decision suggests that the publication of access prices could result in fewer written applications for reference prices.<sup>13</sup> While this is possibly the case, for the reasons outlined above, far from being a benefit, as discussed above, this would be most undesirable for both the Access Seeker and GWA. It is GWA's view that an Access Seeker has little to gain and much to lose by failing to engage with GWA directly through the written application process. It will be noted that GWA often provides assistance to Access Seekers on receipt of a written application, above and beyond the strict requirement of the Guideline, that materially improves

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<sup>13</sup> ESCOSA TDR Draft Decision 2019 p.9

both the standard of the application and the Access Seeker's understanding of the relevant issues relating to the proposed train service (both above and below rail). Such assistance cannot be given through the publication of reference prices.

#### **3.1.4. Publication Of Pricing Principles**

As discussed, traffic on the TDR is subject to differing regulatory requirements and there is a large diversity in the requirements and specifications of potential bulk hauls. This means that it is difficult to adopt a simple formulaic approach to the calculation of prices for both existing and potential traffics. At the very least it would require multiple formulae and these would need to be tightly specified such as in the Queensland Rail and Aurizon reference pricing schedules. Examination of these schedules demonstrates that a high level of expertise and knowledge of the relevant access undertaking is required in order to make sense of them.

Even in the case of existing traffics where there might be a formula in the access contract that specifies say the annual escalation of prices, difficulties in publication arise due to (a) commercial confidentiality and (b) the contracts do not specify how the initial price has been calculated.

For these reasons, GWA would prefer to publish the principles that underlie the pricing process rather than attempt a formulaic approach. A description of the principles will demonstrate how GWA ensures it is compliant with the TDR Code and Guidelines and to that extent, will give confidence to stakeholders. However, as described in section 3.1.2 above, pricing requires a degree of judgement and the principles cannot go beyond a description of the pricing process and the matters that GWA considers in arriving at a reference price.

### **3.2. Guideline Format**

GWA supports the modified format for the proposed guidelines. It is noted that a number of terms have been added that might be considered of a "boilerplate" or "preamble" nature in section 1 of each Draft Guideline and GWA supports the inclusion of these provisions as they provide useful context.

It is noted that the TDR Draft Guidelines contain several minor typographical, formatting and numbering issues. It is assumed that these will be rectified in the final versions and they have not been identified in this submission.

There are some specific changes that require further consideration or comment and these are discussed in the following sections. While some of the changes have been highlighted in the TDR Draft Guidelines, GWA is disappointed that some of the changes that could be considered material have not been identified in this way. Therefore, while GWA has attempted to comment on material changes, it is possible that some changes that were not highlighted may not have been identified.

### **3.3. Draft Guideline No.1**

#### **3.3.1. Guideline No.1 Section 2.1.5(d)**

TDR Draft Decision section 3.1.2 proposes to change the term “end market” in Guideline No.1 Section 2.1.2(d) to “Nature of goods”. However, it is noted that the actual draft Guideline No.1 has rather more substantially modified the previous wording than the Draft Decision would suggest.

The current Guideline No.1 reads *“the end market for the required (freight or passenger) Services in terms of the range of end markets published for this purpose by the Access Provider”*.

The TDR Draft Guideline reads *“the type(s) of goods that are intended to be transported, the volume/weight of the goods and where the goods will be transported to and from”*

Notwithstanding this additional change, GWA supports the proposed modification. It would be appropriate for the Final Decision to reflect the actual proposed wording.

#### **3.3.2. Guideline No.1 Sections 2.1.3 & 2.1.4**

Guideline No.1 section 2.1.3 appears to significantly modify the previous corresponding provision:

*“The Access Provider’s information requirements for reference pricing purposes, as well as its standard service characteristics, standard pricing components and its Line Sections, are to be at least made available on a clearly identified and publicly accessible page of the Access Provider’s (below-rail) website.”*

This is proposed to be replaced by:

*“The Access Provider’s information requirements for reference pricing purposes, as well as its standard service characteristics, must include:*

- (a) indicative access charges for indicative Services*
- (b) standard pricing components and its Line Sections, and*
- (c) list of assets included under the Access arrangements of the Code and”*

The inclusion of (a) significantly expands the previous obligation. This change is not discussed in the Draft Decision nor is it highlighted.

GWA assumes that the terms “indicative access charges” and “indicative Services” are synonymous with “reference prices” and “reference Services”. If something else is intended, then the drafting would need to make the actual intention clear. As discussed in 3.1 above, the inclusion of reference prices is far from simple and presents considerable difficulties in relation to the TDR against questionable benefits. It is GWA’s position that the guideline should retain the existing provision with regard to the requirement for a written application with 10 days to respond after receipt of sufficient information to allow for prices to be prepared.

As it stands, the final clause at the end of 2.1.3 appears to be incomplete but it appears that there was an intention to include 2.1.4.

GWA does not support the proposed expansion of section 2.1.3 to include an obligation to publish access prices.

Section 2.1.4 appears to be a new provision and does not appear to mirror the previous guideline. It requires GWA to provide *“Details of the procedure for applying for access to assets outside the Code are to be at least made available on a clearly identified and publicly accessible page of the Access Provider’s (below-rail) website.”*

It appears that 2.1.3(c) and 2.1.4 are actually intended to be the same section with the requirement to publish information on the website applicable to both 2.1.3 and 2.1.4. However, this is unclear and, at the least, requires redrafting.

As drafted, the guideline seems to impose an obligation on GWA with respect to assets that are “outside the Code”, and therefore by definition beyond the scope of the TDR Code and the guideline. This proposed change is not discussed in the TDR Draft Decision and the changed wording has not been highlighted in the Draft Guideline.

GWA notes that it has previously discussed with ESCOSA that it would be appropriate for GWA’s website to identify the components of the network that are included and, to the extent that there are assets outside the scope of the TDR Code, to provide an alternative contact for any inquiries. To that end, the GWA website currently includes the following wording:

*“Access to railway lines does not include access to yard loading facilities and hardstand. For access to these areas, please contact GWA Director of Intermodal Marketing & Business Development on (08) 8343 5415.”*

It is assumed that the proposed wording for Guideline No.1 section 2.1.4 was intended to reflect this. However, as drafted, the section appears to go substantially beyond this, presupposing that access to those assets is necessarily available and that GWA has procedures in place to provide that access. While GWA may be willing to provide access to these facilities under the right commercial circumstances, this would be outside of any current third party access regulatory arrangement and therefore the guideline should not seek to prescribe any measure in relation to these assets, nor presuppose that such access will be made available.

GWA does not support 2.1.4 as it exceeds the limits of the TDR Code.

### **3.3.3. Guideline No.1 Section 2.1.5(c)**

Guideline No.1 Section 2.1.5 is intended to mirror a previous section in the guideline, and subparagraphs (a) and (b) achieve this. However, a new requirement has been added as subparagraph (c), *“a statement by the Access Provider that, where an Affiliated Operator is competing for the same contract as an unaffiliated Access Seeker, the reference price for access, and commercial terms, are provided on a competitively neutral basis.”*

The term *Affiliated Operator* has also been added to the definitions.

It is noted the changed wording has not been highlighted in the Draft Guideline and the change has not been discussed in the TDR Draft Decision.

Sub-paragraph (c) reflects the requirement that pricing should not discriminate solely on the basis of the ownership of the Access Seeker. GWA does not object to the proposed inclusion of section 2.1.5(c).

#### **3.3.4. Guideline No.1 Section 3.1.2**

Guideline No.1 Section 3.1.2 defines a Train Path. This mirrors the corresponding section in the previous guideline. However, as “Train Path” is already defined in the definitions section and that definition is more detailed, it might be more appropriate to remove section 3.1.2 to avoid the potential for confusion.

#### **3.3.5. Guideline No.1 Sections 3.2.2 & 3.2.3**

Section 3.2.2(a) purports to define “Scheduled Train Paths”. However, “Scheduled Train Path” is already defined in the definitions section. To avoid confusion, this should be modified as follows:

~~“all Train movements scheduled and included in the working timetable as permanent Train movements (Scheduled Train Paths)”~~

Similarly, section 3.2.2(b) also purports to define “Conditional Train Paths”. To avoid confusion, this should be modified as follows:

~~“all Train movements which have been proposed and agreed and for which there is a contractual agreement which reserves that path for an Above-Rail Operator (Conditional Train Paths), and”~~

Guideline No.1 Section 3.2.3 also purports to define a Scheduled Train Path. As “Scheduled Train Path” is already defined in the definitions section, it might be more appropriate to remove section 3.2.3 to avoid the potential for confusion.

#### **3.3.6. Guideline No.1 Section 3.2.4**

Guideline No.1 Section 3.2.4 is new and has no corresponding obligation under the current Guideline No.1. It is confusing that the phrase *“and maintains”* is highlighted when the entire section is new.

GWA currently publishes its Master Train Plan on its website. However, the use of the term *“including a clear representation of the accessible assets under the Code”* is ambiguous and appears to represent an additional obligation that is not discussed in the TDR Draft Decision. It is possible that the intention is to refer to the defined term *“Railway Infrastructure Assets”* but this is unclear.

A Master Train Plan normally is in the form of a diagram with locations and distances on the Y-axis and time (usually a day or a week) along the X-Axis. It would be unusual to list any specific assets as part of a Master Train Plan.

GWA does not support the inclusion of the proposed section in its current form.

#### **3.3.7. Guideline No.1 Section 3.3.1**

Guideline No.1 Section 3.3.1 defines a Conditional Train Path. This mirrors the corresponding section in the previous guideline. However, as “Conditional Train Path” is already defined in the definitions section, it might be more appropriate to remove section 3.3.1 to avoid the potential for confusion.

#### **3.3.8. Guideline No.1 Section 3.3.4**

Guideline No.1 Section 3.3.4 defines a Reserved Train Path. This mirrors the corresponding section in the previous guideline. However, as “Reserved Train Path” is already defined in the definitions section, it might be more appropriate to remove section 3.3.4 to avoid the potential for confusion.

#### **3.3.9. Guideline No.1 Section 3.5.2**

Guideline No.1 Section 3.5.2 defines “Possession of the Railway”. This mirrors the corresponding section in the previous guideline. In order to be consistent with the treatment of definitions elsewhere in the guideline, it might be more appropriate to remove section 3.5.2 and include the definition in the definitions section.

#### **3.3.10. Guideline No.1 Section 4.1.1**

Guideline No.1 Section 4.1.1 is new and does not reflect any previous provision, though it was implied in the previous guideline. The purpose is to place a clear obligation on GWA to develop and maintain Train Control Procedures. This change was not discussed in the TDR Draft Decision.

GWA does not object to the inclusion of this provision.

#### **3.3.11. Guideline No.1 Section 4.1.2**

Guideline No.1 Section 4.1.2 defines “Procedures”. As this is already defined in the definitions section, it is suggested that 4.1.2 be modified to start: *“The Access Provider’s ~~Train Control~~ Procedures (~~“the Procedures”~~) are to be ...”*

### **3.3.12. Guideline No.1 Section 4.1.5**

Guideline No.1 Section 4.1.5 includes a new requirement that notification of affected parties be “*within a reasonable time*”. This change was not discussed in the TDR Draft Determination. Notwithstanding this, GWA does not oppose this additional obligation as it is reflective of existing practice.

### **3.3.13. Guideline No.1 Section 5.1.1**

Guideline No.1 Section 5.1.1 is new and does not reflect any previous provision, though it was implied in the previous guideline. The purpose is to place a clear obligation on GWA to develop and maintain Service Quality Standards. This change was not discussed in the TDR Draft Decision.

GWA does not object to the inclusion of this provision.

### **3.3.14. Guideline No.1 Section 5.1.4**

Guideline No.1 Section 5.1.4 mirrors the previous provision. It uses the term “Train Control Procedures” even though these are defined in the definitions section as “Procedures”. This inconsistency should be avoided. For clarity in reading, it may be preferable to use the term “Train Control Procedures” throughout the guideline.

### **3.3.15. Guideline No.1 Section 5.1.5**

Guideline No.1 Section 5.1.5 mirrors the previous provision. It uses and defines the term “Key Performance Indicators”. For consistency, it would be preferable that this definition be moved to the definitions section.

### **3.3.16. Guideline No.1 Section 5.1.2**

Guideline No.1 Section 5.1.2 mirrors the previous provision. It defines the term “Standards” in terms of Service Quality Standards. “Standards” are defined in the definitions section. This duplication of definition should be avoided. For clarity in reading, it may be preferable to use the term “Service Quality Standards” throughout the guideline.

## **3.4. Draft Guideline No.2**

### **3.4.1. Guideline No.2 Section 2.1.1**

The current Guideline No.2 specifies the coverage of the return on assets:

*“The return on assets calculated for Ceiling Price purposes is to be inclusive of a return on government-contributed assets and other government financial assistance, with such assets and assistance being included in the DORC value of the Railway Infrastructure Assets.”* (Underlining added)

The proposed wording for the equivalent section in Guideline No.2, in section 2.1.1:

*“The return on assets calculated for Ceiling Price purposes is to be inclusive of a return on the capital invested in the Railway (disregarding government-contributed assets and other government financial assistance), with such assets and assistance being included in the DORC value<sup>1</sup> of the Railway Infrastructure Assets.”* (Underlining added)

The proposed drafting expressly excludes a return on the government contributed assets. This is the opposite of the meaning of the current wording which expressly includes those assets for the calculation of the return component of the ceiling. Further, it would appear contradictory to include contributed assets in the DORC valuation while excluding those assets from the return calculation. The drafting also is inconsistent with the drafting in TDR Draft Guideline No.2 section 2.4.1 which applies the rate of return on the DORC value of the railway without qualification.

Clearly such a proposed change is significant. As this proposed change is not mentioned in the TDR Draft Decision, it is assumed that this drafting was not intended. GWA could not support the proposed drafting and is concerned that such a major change is not even mentioned in the TDR Draft Decision. If ESCOSA intended this change, GWA requests that the matter be subject to a separate consultation as it would have a substantial impact on the value of the ceiling.

If ESCOSA did not intend this change we propose the wording is adjusted to:

*“The return on assets calculated for Ceiling Price purposes is to be inclusive of a return on the capital invested in the Railway (including government-contributed assets and other government financial assistance), with such assets and assistance being included in the DORC value<sup>1</sup> of the Railway Infrastructure Assets.”* (Underlining added)

#### **3.4.2. Guideline No.2 Section 2.3.2(b)**

Draft Guideline No.2 section 2.3.2(b) includes new wording requiring that the depreciation calculation must be on a straight line basis. While GWA supports the use of the straight line depreciation methodology, it is noted that this change was not discussed in the Draft Decision.

#### **3.4.3. Guideline No.2 Section 2.3.2(d)**

Draft Guideline No.2 section 2.3.2(d) includes a new note that specifies the use of the average of eight capital cities series of ABS inflation statistics. While GWA supports this clarification, it is noted that this change was not discussed in the Draft Decision.

#### **3.4.4. Guideline No.2 Section 4.1.1**

It is noted that Draft Guideline No.2 section 4.1.1 has not carried over the paragraph relating to the cost of terminals. It is unclear whether this is intentional and the exclusion is not mentioned in the Draft Decision.

#### **3.4.5. Guideline No.2 Section 5.1.1**

GWA supports ESCOSA's intention to leave Guideline No.2 largely unchanged. However, in relation to section 5.1.1, it is noted that the exclusion of government contributed assets from the arbitrator's pricing decision is not clearly explained in the current wording and can therefore lead to reader confusion. The sentence from TDR Draft Decision 3.2.1 set out below explains the exclusion succinctly and GWA suggests that the inclusion of this sentence as a note to Guideline No.2 section 5.1.1(a) would greatly assist readers to understand the different context to which that section applies:

*"The [Guideline~~s~~ removes] government-contributed assets and financial assistance for the purposes of providing guidance to an arbitrated price, but ~~does~~ not remove it for ceiling price purposes, as this is a theoretical upper bound – not a guidance on an arbitrated price."*

#### **3.4.6. Guideline No.2 Section 5.1.4**

Draft Guideline No.2 section 5.1.4 includes new wording requiring that the depreciation calculation must be on a straight line basis. This is consistent with the proposed change in 2.3.2(b). While GWA supports the use of the straight line depreciation methodology, it is noted that this change was not discussed in the Draft Decision.

#### **3.4.7. Guideline No.2 Section 5.1.5**

It is noted that Draft Guideline No.2 section 5.1.5 does not include a note that specifies the use of the average of eight capital cities series of ABS inflation statistics. This is inconsistent with the proposed new note in section 2.3.2(d). As GWA supports the inclusion of the note in 2.3.2(d), it would also support the inclusion of the note for section 5.1.5 for the sake of consistency.

### **3.5. Draft Guideline No.3**

#### **3.5.1. Guideline No.3 Section 2.1.2**

Draft Guideline No.3 section 2.1.2 includes new wording specifying the difference between regulatory and financial accounts. This change is not discussed in the Draft Decision. As the change is of an explanatory nature, GWA supports the inclusion of this sub-section.

### **3.5.2. Guideline No.3 Section 2.2.2, 3.1.1, 4.1.1 & 4.2.1**

Draft Guideline No.3 sections 2.2.2, 3.1.1, 4.1.1 and 4.1.2 change the annual reporting of regulatory accounts to a calendar year basis. These changes were requested by GWA to reflect the internal reporting timing that applies to the TDR network. GWA supports these changes.

### **3.5.3. Guideline No.3 Section 2.2.3**

Draft Guideline No.3 section 2.2.3 changes the signatory requirements for the annual reporting of regulatory accounts. This change was requested by GWA to reflect its corporate structure and it is noted that the proposed change is broader than requested and the guideline now covers a number of different situations. GWA supports this change.

### **3.5.4. Guideline No.3 Section 3.2**

Draft Guideline No.3 section 3.2 changes the requirement to provide cost information to align with ESCOSA's 5-year revenue review cycle through to 2023. GWA supports this change. However, it is noted that timings are based on financial years rather than calendar years which introduces a level of inconsistency with the annual regulatory account, cost and usage reporting. It would assist GWA if ESCOSA were to realign its next review to cover up to 31 December 2017 as allowed under TDR Code s.50 with subsequent reviews occurring at 5 yearly periods thereafter on a calendar year basis.

### **3.5.5. Guideline No.3 Section 5.1.2 & Section 6**

Draft Guideline No.2 section 5.1.2 refers to section 6. The Draft Guideline has omitted section 6. As the Draft Decision does not mention this omission, it is unclear if it is intentional.

## **3.6. Other Matters Relating To The TDR Draft Decision**

### **3.6.1. Section 2.4.1 Context: Economic Conditions On The Railway**

The Draft Decision suggests that dwell time on the railway is a partial indicator of demand or utilisation. While this is true up to a point, it is more useful as an indicator over time for a particular railway rather than between railways and can be misleading when used to compare different railways as in the Draft Decision. This is because dwell time is a function of a variety of different operational factors; while the density of traffic is one of these, a number of other factors will impact the calculation. Examples include – the spacing of crossing loops, whether there are particular bottlenecks, the relative priorities given to different traffics, the availability and operational flexibility of loading and unloading facilities. The very long distances between crossing loops, particularly north of Alice Springs mean that small increases in traffic density can introduce disproportionately large increases in dwell times and rapidly overwhelm the ability of the railway to function efficiently. It is, therefore, important the readers understand the limitation of the comparison being offered in the TDR Draft Decision and they should be warned not to assume

that the current relatively low dwell time proportion suggests that the TDR can accommodate substantial additional traffic in its current configuration.

### 3.6.2. Section 2.4.2.3 Context: Floor Price

The Draft Decision contains the statement:

*“That calculation is based on the avoidable costs of Below-Rail Services attributable to the usage of that required infrastructure by all other access holders.”<sup>14</sup> (Underlining added)*

TDR Code Pricing Schedule, Division 1, clause 3 refers to the avoidable costs to provide the service to the Access Seeker, not “all other access holders”.

It is noted that this misinterpretation has not impacted the drafting of the TDR Draft Guidelines.

## 4. SA Regional Regime Information Kit

The SA Regional Network Draft Decision makes no material changes to the Information Kit but splits the current document into:

- A guideline relating to Access Information and Pricing Principles;
- A guideline relating to Reporting & Compliance; and
- Fact sheets.

The two draft guidelines have been provided as part of the SA Regional Network Draft Decision. The fact sheets have not been sighted but GWA understands that these will be in the nature of information only and will not impose any obligations on any party.

GWA supports the proposed guidelines subject to the following:

SA Regional Network Rail Access Regime: Access Information and Pricing Principles section 4.2.7(b) accurately reflects the term in the current Information Kit. However, it appears that the reference to “operating within the above-rail market” was originally intended to be “operating within the **same** above-rail market”. Without this change, the term adds nothing. Recognition of whether a “like” service is operating within the same above-rail market (i.e. the nature of the goods being transported) as a point of differentiation (or not) is reflected in other access jurisdictions including the TDR.

SA Regional Network Rail Access Regime: Reporting & Compliance Guideline 2.5.1 provides for the assurance as to accounts provided to ESCOSA. GWA requests that ESCOSA apply the same modification as applied in the TDR Draft Guideline No.3 section 2.2.3 to allow for alternative corporate structures.

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<sup>14</sup> ESCOSA TDR Draft Decision footnote 29 associated with this quote in addition to Pricing Schedule, Division 1 clause 3 appears to incorrectly reference Division 2, clause 2 – as there is no clause 2 to Division 2 it is unclear as to what was intended.

Similarly GWA requests that the reporting requirements in SA Regional Network Rail Access Regime: Reporting & Compliance Guideline 2.4.1 be modified to calendar year in place of financial year. It is noted that the Reporting & Compliance Guideline section 3.11.15 has already been altered to reflect calendar year reporting.