



Rail

Guideline



Rail Industry (Tarcoola-Darwin) Guideline No 3 – Regulatory information requirements

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1 Nature of the guideline

1.1 Title, authority and commencement

- 1.1.1 This **Guideline** is the *Rail Industry (Tarcoola-Darwin) Guideline No 3 – Regulatory Information Requirements*.
- 1.1.2 Clauses 5 of the AustralAsia Railway (Third Party Access) Code 1999 (SA) and also the AustralAsia Railway (Third Party Access) Code 1999 (NT) (the Code) appoint the Commission as the regulator of the Code both for South Australia and also for the Northern Territory. Section 8 of the Essential Services Commission Act 2002 (SA) provides that the Commission may publish guidelines relating to the performance of its functions as a regulator. Further, the Code requires that the Commission must develop and publish guidelines to support sustainable competitive prices, to address instances where there is not a sustainable competitive price and to ensure that the access price must not be less than the economic cost of providing the railway infrastructure service. Additionally, pursuant to clause 45A of the Code the Commission may vary any guidelines published by the Commission.
- 1.1.3 This Guideline commenced on 31 October 2019.

1.2 Interpretation

- 1.2.1 In this **Guideline**, unless the context otherwise requires:
- (a) headings are for convenience only and do not affect the interpretation of this Guideline
 - (b) words importing the singular include the plural and vice versa
 - (c) words importing a gender includes any individual, regardless of gender or sex,
 - (d) an expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency
 - (e) a reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns
 - (f) a reference to any statute, statutory instrument, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, statutory instrument, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute, statutory instruments, includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations or other subordinate legislation made under it
 - (g) a reference to a document or a provision of a document includes an amendment or supplement to, or replacement or novation of, that document or that provision of that document
 - (h) an event which is required under this **Code** to occur on or by a stipulated day which is not a **business day** may occur on or by the next **business day**, and

- (i) words and phrases presented in a bold font **such as this**, are defined in Schedule 1 for the purposes of interpreting this Guideline. This provides clarity and reduces the risk of ambiguity in the interpretation of the Guideline.
- 1.2.2 This Guideline seeks to provide definitions consistent with those given in **the Code**. Definitions are listed in Schedule 1 of this Guideline. Where words and phrases are not defined in this section, they shall have the meaning given to them by **the Code** or any other relevant legislative or regulatory document.

1.3 Scope

- 1.3.1 From the date of commencement of operations of the **Railway** (15 January 2004), an **Access Provider** is to prepare, keep and provide to the Essential Services Commission of South Australia (the **Commission**) information in accordance with this Guideline, being the information that the **Commission** requires for its functions under the AustralAsia Railway (Third Party Access) Code (**the Code**), in particular:
- ▶ clause 39(1) where an **Access Provider** responds to a written notice requiring the provision of specified information or specified documents issued by the **Commission**.
 - ▶ clause 46 where an **Access Provider** must keep separate accounts and records, including in compliance with any guidelines issued; and
 - ▶ clause 50(4) in relation to the **Commission** undertaking revenue reviews.

1.4 Reporting timing

- 1.4.1 An **Access Provider** must provide the information required under this Guideline to the **Commission** no later than four months after the end of the financial year to which the information relates – except where varied specifically in this Guideline or, if a written notice to produce specified information or documents is issued under Clause 39 of the Code to comply with the period stated in the notice.

1.5 Compliance

- 1.5.1 Clause 6(1)(a) of **the Code** requires the **Commission** to monitor and enforce compliance with **the Code**. This includes monitoring and enforcing compliance with this Guideline.

Compliance requirements for this Guideline are set out within this Guideline, complemented by any general compliance requirements that the **Commission** establishes for an **Access Provider** under **the Code**.

1.6 Confidentiality

- 1.6.1 Any requirement in this Guideline for an **Access Provider** to provide information to the Commission arises pursuant to clause 39 of **the Code**. Confidentiality of that information is protected, in accordance with clause 40 of **the Code**.

1.7 Other Acts, industry codes and guidelines

- 1.7.1 This Guideline is a minimum requirement and the obligation of an **Access Provider** to comply with this Guideline is additional to:
- (a) Acts of Parliament and regulations made under those Acts of Parliament and/or any other law,
 - (b) industry codes made by the **Commission** from time to time, and
 - (c) any rules or other guidelines made by the **Commission** from time to time.

1.8 Processes for revision

- 1.8.1 The **Commission** may, at its absolute discretion, amend or vary this Guideline from time to time when it considers such action necessary in order to meet the needs of **Access Providers**, **Access Seekers** or the **Commission** and taking into account any interface issues that may arise under a corresponding access regime (provided that this is consistent with the operation of **the Code**).
- 1.8.2 The **Commission** will undertake consultation with relevant stakeholders in accordance with the **Commission's** Charter of Consultation and Regulatory Practice and clause 8 of **the Code** before making any significant revisions to this **Guideline**. If the amendments are of a routine nature, or required by law, the **Commission** may elect to modify the Guideline without consultation.
- 1.8.3 For all revisions to this **Guideline**, a commencement date will be nominated on the Amendment Record on the inside front page.

1.9 Input from interested parties

- 1.9.1 The **Commission** welcomes comments, discussion, or suggestions for amendments to this Guideline from any interested party. Any contributions should be addressed to:

Essential Services Commission
GPO Box 2605
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E-mail: escosa@escosa.sa.gov.au

2 Regulatory Accounts

2.1 Requirements

- 2.1.1 An **Access Provider** must prepare and keep, on a financial year basis, Regulatory Accounts that provide:
- (a) a comprehensive view of that **Access Provider's** legal and equitable rights and liabilities in relation to each **Prescribed Business**; and
 - (b) a true and fair view of :
 - (i) income and expenditure derived from, or relating to, each **Prescribed Business**; and
 - (ii) assets and liabilities of each **Prescribed Business**.
- 2.1.2 Regulatory Accounts differ from Financial Accounts in that they must relate specifically to the **Prescribed Businesses**. Financial Accounts, which are likely to relate to the overall business, may include non-prescribed components.

2.2 Compliance

- 2.2.1 An **Access Provider** must provide annually to the **Commission** the Regulatory Accounts prepared in respect of its **Below-Rail Business**.
- 2.2.2 Regulatory Accounts prepared in respect of the **Below-Rail Business** for a financial year must be provided to the Commission by 30 November following the close of that financial year to which the information relates – except where varied specifically in this Guideline or, if a written notice to produce specified information or documents is issued under Clause 39 of the Code to comply with the period stated in the notice.
- 2.2.3 An **Access Provider** must also provide an accompanying statement of compliance, containing an assurance that the Regulatory Accounts for each **Prescribed Business** have been prepared in accordance with the above requirements. The statement shall be signed by at least two Directors of the **Access Provider**, one of whom must be an **External Director**. In the event that the **Access Provider** does not have an **External Director**, the statement of compliance may be signed by an **External Director** of a **Related Body Corporate** of the **Access Provider**. In the event that a company does not have any **Related Body Corporate** it may be signed by the director and a company secretary. If a company does not have a second director, or a company secretary who is a different person from the director it may be signed by the sole director.
- 2.2.4

3 Cost information

3.1 Requirements

- 3.1.1 An **Access Provider** must prepare, keep and provide to the **Commission**, on a financial year basis, records of all of its costs associated with providing **Railway Infrastructure Services**, at a level of detail necessary to ensure that there will be an

appropriate information base for the **Commission's** revenue reviews under **the Code**.

- 3.1.2 The costs associated with providing **Railway Infrastructure Services** are to include both:
- (a) operating costs, including maintenance costs (including major periodic maintenance), labour and materials associated with the operation of the required railway infrastructure and administrative costs; and
 - (b) capital-related costs, including both depreciation and a return on assets. At a minimum, the Cost Information must distinguish between costs attributable to:
 - (i) passenger services and freight services; and
 - (ii) freight services that may involve sustainable competitive prices and those which do not.

3.2 Compliance

Cost Information for the following financial years must be reported (segregated by financial year) by 30 November 2023:

- ▶ 1 July 2018 – 30 June 2019
- ▶ 1 July 2019 – 30 June 2020
- ▶ 1 July 2020 – 30 June 2021
- ▶ 1 July 2021 – 30 June 2022, and
- ▶ 1 July 2022 – 30 June 2023.

4 Usage information

4.1 Requirements

- 4.1.1 An **Access Provider** must prepare, keep and provide to the **Commission**, on a financial year basis, records of all usage of **Railway Infrastructure Services**, distinguishing between, in respect of each **Line Section** for each financial year:
- (a) Gross Tonne Kilometres (**GTK**) for freight services for which sustainable competitive prices exist performed by the **Above-Rail Business**;
 - (b) **GTK** for freight services for which no sustainable competitive prices exists performed by the **Above-Rail Business**;
 - (c) Total Freight **GTK** performed by the **Above-Rail Business**;
 - (d) **GTK** for freight services for which sustainable competitive prices exist performed by other **Above-Rail Operators** in accordance with an existing access agreement or similar arrangement;
 - (e) **GTK** for freight services for which no sustainable competitive prices exists performed by other **Above-Rail Operators** in accordance with an existing access agreement or similar arrangement;
 - (f) Total Freight **GTK** performed by other **Above-Rail Operators** in accordance with an existing access agreement or similar arrangement;
 - (g) Total **GTK** for freight services for which sustainable competitive prices exist;
 - (h) Total **GTK** for freight services for which no sustainable competitive prices exists;
 - (i) Total Freight **GTK**;
 - (j) Passenger Train Kilometres performed by the **Above-Rail Business**;
 - (k) Passenger Train Kilometres performed by other **Above-Rail Operators** in accordance with an existing access agreement or similar arrangement; and
 - (l) Total Passenger Train Kilometres.

4.2 Compliance

- 4.2.1 Usage Information for the financial year must be reported by 30 November following the close/end of that year. An **Access Provider** must also provide an accompanying responsibility statement declaring that the Usage Information is true and correct. The responsibility statement shall be signed by the Chief Financial Officer of the **Access Provider**.

5 General requirements

- 5.1.1 An **Access Provider** must maintain accounting and reporting arrangements which:
- (a) enable the information required under this Guideline to be prepared for the relevant **Prescribed Business**; and
 - (b) on request by the **Commission**, provide such information in a form that can be verified.
- 5.1.2 All information required under this Guideline must be prepared:
- (a) in accordance with the relevant methodology and format agreed with the **Commission**.
 - (b) in so far as is consistent with this Guideline and any others published by the **Commission**, in accordance with the accounting principles and policies applicable to the audited general purpose (or special purpose) financial statements; and
 - (c) in a consistent manner allowing the **Commission** to make comparisons between them over time.
- 5.1.3 If some or all of the activities of an Access Provider are carried out by an entity that does not have audited general purpose financial statements, all financial representations of the activities by such an entity must be capable of being audited by an external independent auditor.
- 5.1.4 All information prepared by an Access Provider in compliance with its obligations under this Guideline must contain the entirety of the activities of the applicable **Prescribed Business** by:
- (a) eliminating costs not related to the **Prescribed Business**; and
 - (b) consolidating or disaggregating amounts from audited general purpose financial statements within an entity in order to prepare financial statements.
- 5.1.5 Wherever required under this Guideline, capital costs must be calculated in accordance with the Pricing Schedule of **the Code**. In particular, an approach for valuing capital assets that reflects the Depreciated Optimised Replacement Cost of those assets and is consistent with relevant guidelines developed and published by the **Commission** must be used.
- 5.1.6 For the purpose of the Regulatory Accounts and the Cost Information required to be prepared and kept under this Guideline, the allocation of accounts (as applicable) between each **Prescribed Business** or each **Line Section** or each type of service is to be based on the principle that:
- (a) items which are directly attributable to a **Prescribed Business** or a **Line Section** or a type of service (as applicable) are assigned accordingly; and
 - (b) items not directly attributable are to be allocated on a causation basis except where the item is not **Material** and a causal relationship cannot be established without undue cost and effort, in which case the Access Provider may effect an allocation of these items on a non-causal basis, provided that it is accompanied by supporting documentation.

- 5.1.7 An **Access Provider** must keep documentation for each item that has not been directly attributed (as applicable) to a **Prescribed Business** or a **Line Section** or a type of service that includes:
- (a) the amounts that have been allocated to the **Prescribed Business** or **Line Section** or type of service and amounts that have not been so allocated; and
- 5.1.8 (b) the numeric quantity of each allocator.

Schedule 1 – Definitions

In this Guideline words appearing in bold like this have the following meanings:

Above-Rail Business	means the business of any related body corporate or associate of an Access Provider to whom a Railway Infrastructure Service is provided by that Access Provider
Above-Rail Operator	means the operator of locomotives, carriages, wagons and the like in accordance with an Access Contract
Access Provider	means the provider or operator of the Railway Infrastructure Service subject to regulation under the Code ; also referred to as the Below-Rail Service Provider
Below-Rail Business	means the business of an Access Provider (or any related body corporate or associate of the Access Provider) that provides Railway Infrastructure Services
Commission	means Essential Services Commission of South Australia, established under the <i>Essential Services Commission Act 2002 (SA)</i> , formerly the SA Independent Industry Regulator (SAIIR)
Cost information	means records of all the Access Provider's costs, on a financial year basis, associated with providing Railway Infrastructure Services , including operating costs and capital expenditure split between areas of the business that face sustainable competition and those that do not
External Director	as defined in the <i>Corporations Act 2001</i>
GTK	is an acronym standing for Gross Tonne Kilometres
Line Section	means a segment or sector of the Railway distinguished for the purposes of applying access prices and charges
Material and materiality	in respect to an item, means that the item's omission, misstatement or nondisclosure has the potential to prejudice the understanding of the financial or operational position and nature of the associated Prescribed Business, Line Section or type of service gained by reading the information kept
Prescribed Business	means the Above-Rail Business and/or the Below-Rail Business , as applicable
Railway	means the railway line between Tarcoola and Darwin, comprising the Existing Railway and the New Railway
Railway Infrastructure Services	mean the provision of such facilities necessary for the operation or use of the Railway, including signalling and control systems as well as railway track, but not Rolling Stock
Related Body Corporate	In relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50 of the <i>Corporations Act 2001</i>

The Code

means the AustralAsia Railway (Third Party Access) Code (contained in the Schedule to the AustralAsia Railway (Third Party Access) Act 1999 (SA) and the AustralAsia Railway (Third Party Access) Act 1999 (NT), which apply as laws of South Australia and the Northern Territory. The Commission is the Regulator for both the South Australian and the Northern Territory legislation.

All other words and phrases in this **Guideline** have the corresponding meaning to the same words and phrases where defined in **the Code**.



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