



Rail

Guideline



Intrastate Rail Access Regime: Access Information and Pricing Principles Guideline

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1 Introduction

1.1 Role of Guideline

- 1.1.1 The Essential Services Commission of South Australia (**Commission**) is established under the *Essential Services Commission Act 2002* (SA) (**ESC Act**) as a regulator of certain essential services in South Australia, with the primary objective of protecting the long-term interests of South Australian consumers with respect to the price, quality and reliability of those essential services.
- 1.1.2 Under the **ESC Act**, the **Commission** is given specific functions, including:
- (a) to monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts (section 5(b)); and
 - (b) in appropriate cases, to prosecute offences against the **ESC Act** or a relevant industry regulation Act (section 5(i)).
- 1.1.3 The **Commission** has been appointed as the regulator of the *Railway (Operations and Access) Act 1997* (SA) (section 9(1)) (**ROA Act**). Further, the **Commission** has the function of monitoring and enforcing compliance with the **ROA Act** (other than Part 2 of the Act), including the Access Regime established in parts 3-8 of the **ROA Act** (section 9(2)).
- 1.1.4 This Guideline has been prepared to explain the **Commission's** requirements under section 28(1)(c) of the **ROA Act** for **Operators** in preparing information brochures and the pricing principles pursuant to section 27 of the **ROA Act**.
- 1.1.5 This Guideline also explains the nature and detail of information reasonably requested from an Operator under Section 29 of the ROA Act, for which the Commission considers would be consistent with Section 29 of the ROA Act.

1.2 Scope

- 1.2.1 The **Access Regime** applies to **railway services** and **Operators** that are declared by proclamation by the South Australian Governor. The current proclamation in effect is the *Railways (Operations and Access) (Application of Access Regime) Proclamation 2016* made by the South Australian Governor on 29 September 2016 (**Proclamation**).
- 1.2.2 The **Proclamation** provides that the **Access Regime** applies to **railway services** associated with the provision (or the provision and operation) of railway infrastructure by an operator. Therefore, the **Access Regime** applies to a very wide variety of railway services and infrastructure. However, the **Proclamation** excludes a number of different types of **railway services** and infrastructure from the application of the **Access Regime**. A copy of the **Proclamation** outlining the **excluded railway services** is included in Schedule 2 of this Guideline.
- 1.2.3 Under the **Proclamation** the following railway services are **excluded railway services** from the **Access Regime**:
- (a) services provided by the tram track between the Adelaide Entertainment Centre and Glenelg;

- (b) not for profit railway services that are provided for amusement or heritage value and/or to provide services to tourists
- (c) services on any tracks on the Eyre Peninsula that are owned by OneSteel Manufacturing Pty Limited or any company or person to whom ownership of any such track is transferred with the approval of the Minister
- (d) services associated with the Leigh Creek Line (but only for such time as the sublease in existence at the time this proclamation comes into operation, under which the Line is sublet by the Generation Lessor Corporation to the Flinders Power Partnership, remains in force)
- (e) services associated with the rail bridge that was constructed as part of the Port River Expressway Project
- (f) services provided by the **Interstate Mainline Track**, including its crossings and passing loops. However, the **Access Regime** does apply to Interstate Mainline Track infrastructure that are declared to be accessible under the **Proclamation**; and
- (g) **freight terminals** and **private sidings**.

1.2.4 As outlined above, while the **Interstate Mainline Track** is excluded from the operation of the **Access Regime**, the **Access Regime** does apply to any of its infrastructure that is declared to be accessible under the **Proclamation**. The following infrastructure associated with the **Interstate Mainline Track** is declared to be accessible infrastructure and therefore subject to the **Access Regime**:

- (a) the buildings, installation and equipment used for passenger embarkation and disembarkation, and also the loading and unloading of goods (except buildings, installation and equipment located at a **freight terminal**);
- (b) railway yards and sidings (including associated track structures, supports, lines, posts and signs); and
- (c) railway infrastructure in the care and control of the Rail Commissioner for providing services associated with the **interstate mainline track**.

1.2.5 The application of the **Access Regime** can be amended by further proclamation.

1.2.6 Further, the **Access Regime** does not (and cannot) apply to any railway to which the *AustralAsia Railway (Third Party Access) Act 1999 (SA)* (***AustralAsia Railway Act***) applies. There is a separate access system for this railway provided in the ***AustralAsia Railway Act***.

1.2.7 It is important to note that if a **railway service** is excluded by the **Proclamation** this exclusion applies only for the **Access Regime** in parts 3-8 (inclusive) of the **ROA Act** and does not exclude the operation of the other parts of the legislation, such as laws relating to the ability to provide liquor and gambling facilities on rail services.

1.3 Interpretation

1.3.1 For the purposes of interpreting this Guideline:

- (a) words and phrases presented in a bold font such as **this** are defined in the definition section;

- (b) a word or phrase not defined in the definition section will have the meaning given by the *Railways (Operations and Access) Act*, the *ESC Act*, the *Proclamation* or any other relevant regulatory instrument;
- (c) a reference to any legislation or regulatory instrument includes:
 - (i) all regulations, orders or instruments issued under the legislation or regulatory instrument; and
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or regulatory instrument;
- (d) a reference to this Guideline includes its appendices, annexures and schedules;
- (e) words importing the singular include the plural and vice versa
- (f) any heading, index or table of contents is for convenience only and does not affect the construction or interpretation of this Guideline; and
- (g) where an act is required to be done pursuant to this Guideline on, or by, a stipulated day which is not a **business day**, the act may be done on the following **business day**.

1.3.2 Explanations in this Guideline as to why certain information is required are for guidance only. They do not, in any way, limit the **Commission's** objectives, functions or powers.

1.4 Definitions

1.4.1 In this Guideline, unless the contrary intention appears—

<i>ABN</i>	Australian Business Number
<i>ACN</i>	Australian Company Number
<i>Above-Rail</i>	Rolling stock such as locomotives, carriages and wagons.
<i>Access</i>	Has the same meaning as that under the <i>ROA Act</i>
<i>Access Applicant</i>	A third party with proper interest on making an access proposal to the Operator
<i>Access Holder</i>	A third party that has received access for a Network Segment from the Operator
<i>Access proposal</i>	Has the same meaning as that under the <i>ROA Act</i>
<i>Access Regime</i>	The framework for Access to the Railway Network under Parts 3 to 8 of the <i>ROA Act</i> .
<i>Access Seeker</i>	A third party that has requested an Information Brochure (or is likely to) from the Operator
<i>AustralAsia Railway Act</i>	AustralAsia Railway (Third Party Access) Act 1999 (SA)
<i>Below-Rail Service</i>	Refers to operations involving track management, including the track and associated infrastructure required to operate it

<i>Business day</i>	Means a day that is not a Saturday, a Sunday or a public holiday in the State of South Australia
<i>CAPEX</i>	Capital Expenditure
<i>CAPM</i>	Capital Asset Pricing Model
<i>Commission</i>	Essential Services Commission of South Australia
<i>Corporations Act</i>	Corporations Act 2001 (Cth)
<i>ESC Act</i>	Essential Services Commission Act 2002 (SA)
<i>Freight Terminal</i>	Areas set aside for transferring goods from a train to another train or alternative transport service (for example a truck or ship)
<i>Full Economic Cost</i>	As defined by clause 3.3.3
<i>gtkm</i>	gross tonne kilometres
<i>Incremental Costs</i>	As defined by clause 3.2.2
<i>Information Brochure</i>	Has the same meaning as that under the ROA Act
<i>Interstate Mainline Track</i>	Means the Interstate Mainline Track as defined by the Railways Agreement set out in the Schedule to the <i>Non-Metropolitan Railways (Transfer) Act 1997</i> (as that Agreement is amended from time to time).
<i>Non-segment</i>	Means assets that the Operator cannot directly identify with a Segment
<i>Operator</i>	Has the same meaning as that under the ROA Act
<i>Officers</i>	As defined in the Corporations Act
<i>Pricing Principles</i>	Has the same meaning as that under the ROA Act
<i>Proclamation</i>	The South Australian Governor's Railways (Operations and Access)(Application of Access Regime) Proclamation 2016 regarding the ROA Act
<i>Private Siding</i>	Means a private siding within the meaning of the <i>Rail Safety National Law (South Australia) Act 2012</i> , that is used or maintained to provide access to an area that is used (or predominantly used) by the person who owns, controls or manages the siding (or any other person) for a purpose other than transport purposes
<i>RAB</i>	Regulatory Asset Base
<i>Rail corridor</i>	Has the same meaning as that under the ROA Act
<i>Railway Infrastructure</i>	Has the same meaning as that under the ROA Act
<i>Railway Network</i>	The Railways subject to the ROA Act .
<i>Railway Services</i>	Has the same meaning as that under the ROA Act
<i>Rate of Return</i>	As defined by clause 3.3.11

<i>ROA Act</i>	Railways (Operations and Access) Act 1997
<i>segment</i>	Means a component of the Railway Network as defined in the Proclamation
<i>train kilometre</i>	Unit of measure representing the movement of a <i>train</i> over one <i>kilometre</i>
<i>WACC</i>	Weighted average cost of capital

1.5 Input from interested parties

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

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2 Information Brochure

- 2.1.1 In accordance with section 28(1)(c) of the **ROA Act**, the Commission requires that an **Operator** must include in its **Information Brochure** all of the information outlined in this section (section 2).

2.2 Description of railway services

- 2.2.1 The **Information Brochure** must include a full current description of the **below-rail services** that the **Operator** provides, or can reasonably provide, and which are covered by the **Access Regime**. The **Information Brochure** must clarify the availability and capacity of the services where appropriate and be time and location specific.

2.2.2 Railway track

- 2.2.3 This includes all rail lines, yards, sidings, crossing loops, passing loops and associated infrastructure such as bridges, tunnels, formations, supporting services permitting use of the track.

- 2.2.4 The description must include, but need not be limited to:

- (a) the lengths and locations of track, which must be provided in plans and maps, together with any height, width, or axle load restrictions;
- (b) the maximum speeds which apply on each section of track for typical trains;
- (c) major track and other relevant infrastructure improvement or upgrade plans, together with any track closures or limitations to availability expected;
- (d) the train scheduling, signalling and communication systems used for train control, safe working and emergencies, including hours of operation and availability;
- (e) the safety record on the line, including the number of derailments and collisions over the last two years;
- (f) average transit times;
- (g) minimum radius curves and ruling grades;
- (h) estimated available capacity; and
- (i) available train paths.

- 2.2.5 All such information must be reported by **segment** or other division as reasonable and appropriate.

2.2.6 Terminals and Stations

- 2.2.7 Terminals and stations include all facilities and associated services for embarking or disembarking passengers, and the incidental loading and unloading of freight.

- 2.2.8 The description must include, but need not be limited to:

- (a) a functional description of each facility, as it exists and with anticipated changes in the next twelve months, plus a plan or diagram showing its physical configuration and layout;
- (b) any other relevant track information as set out in the section on Railway track above;
- (c) hard standing areas and available storage space;
- (d) an operational description of the facility, including fixed equipment, communications and train control systems, the hours of operation and any physical limitations to access; and
- (e) the existing use of the facility describing who uses it, at what frequency, based on the last year of operation, and any expected changes to this use in the next twelve months.

2.3 Proposed terms and conditions of access

2.3.1 Section 28(1)(b) of the **ROA Act** requires that the **Information Brochure** must include the terms and conditions on which the **Operator** is prepared to make its **railway infrastructure** available for use by others. For the avoidance of doubt, this includes, but is not limited to:

- (a) general rights of access, including:
 - (i) path length availability;
 - (ii) available capacity;
 - (iii) axle load limitations;
 - (iv) maximum allowable speeds;
 - (v) infrastructure characteristics;
 - (vi) applicable safeworking requirements; and
 - (vii) segment run times;
- (b) network control;
- (c) track occupations;
- (d) rolling-stock standards;
- (e) incident management;
- (f) environmental constraints (for example, noise);
- (g) accreditation requirements;
- (h) inspection requirements;
- (i) indemnity and insurance;
- (j) performance undertakings to be made by both parties;
- (k) breaches and termination; and

- (l) dispute resolution processes.

2.4 Access prices and their relationship to the pricing principles

- 2.4.1 An **Operator** must provide indicative floor and ceiling prices for all significant **below-rail services** – being services it provides that are, or are highly likely to be, subject to access interest – that it offers and which are subject to the **Access Regime**.
- 2.4.2 The indicative floor and ceiling prices provided must be accompanied by statements explaining how the floor and ceiling prices relate to each aspect of the **pricing principles**, including by disclosing:
 - (a) the value of the real **rate of return** used; and
 - (b) the latest **RAB** used, by **segment**.
- 2.4.3 Any prices or price information provided by the **Operator** are to be expressed in terms reasonably used in the Australian rail industry for the **railway service** in question.
- 2.4.4 Any indicative floor and ceiling prices or price information provided by the **Operator** must clearly and separately state the prices applying to third-party use of the railway track and related infrastructure.
- 2.4.5 The **Information Brochure** also must detail, as appropriate:
 - (a) the prices for any other items for which a charge would be made, for example, for particular services or items of plant;
 - (b) any price penalties that may apply, for example delays or disruption caused to other services;
 - (c) the basis for charging any direct costs arising from the access applicant's operations, for example, due to damage caused; and
 - (d) any other prices that would be charged, if not covered by the above.

2.5 Corporate information requirements

- 2.5.1 The **Information Brochure** must provide a description of the organisation in sufficient detail to inform a potential **access seeker** of all the relevant aspects of the organisation it is dealing with and its capabilities.
- 2.5.2 The description must include, but need not be limited to:
 - (a) the corporate and legal nature of the organisation, its registered and head office addresses, the address of its principal place of business under the **Corporations Act** and the names of **Officers**, its **ABN** and **ACN** and its major shareholders or equivalent;
 - (b) details of insurance policies held;
 - (c) details of rail safety and quality accreditation held; and
 - (d) the name(s), titles, contact addresses, phone numbers and email of persons:

- (i) to whom access enquiries and applications should be addressed; and
- (ii) who would be responsible for ongoing management of an access contract.

2.6 The form of the Information Brochure

- 2.6.1 An **Operator** may elect to meet some of the content requirements by cross-referencing in its **Information Brochure** to suitably accessible, and maintained, ancillary information on its website in accordance with the requirements below.
- 2.6.2 An **Operator** may meet its requirements under section 28 of the **ROA Act** by making its **Information Brochure** suitably accessible on the **Operator's** website. However, if a particular **Access Seeker** requests the **Information Brochure** in another reasonable format (other than by accessing the website) the **Operator** must provide the **Information Brochure** in that format.

3 Pricing Principles

- 3.1.1 Under section 27 of the **ROA Act** the **Commission** may establish **pricing principles** for a floor and ceiling price for accessing **below-rail services**.

3.2 Floor price

- 3.2.1 Section 27 (2) of the **ROA Act** states that:

The floor price should reflect the lowest price at which the Operator could provide the relevant services without incurring a loss.

- 3.2.2 The floor price is defined as the **incremental cost** of providing the relevant service prudently. **Incremental cost** means the costs that vary directly with the usage of the below-rail services by the third-party user and are directly attributable to (though not necessarily incurred in) the period for which access is sought.

- 3.2.3 Cost calculations for the floor price purposes must include any additional:

- (a) directly incurred operating costs as a result of providing the relevant **below-rail service** (including major periodic maintenance) prudently and efficiently; and
- (b) administrative costs that are a direct result of providing the relevant **below-rail service** prudently and efficiently; and
- (c) capital costs that are a direct result of providing the relevant **below-rail service** prudently and efficiently, and where included capital costs are limited to costs:
 - (i) arising because the prudent replacement of the required railway infrastructure is brought forward by the operation of the relevant below-rail service (such as wear and tear of the track); and/or
 - (ii) incurred by providing specific infrastructure enhancements for the traffic in question.

- 3.2.4 Prudent and efficient costs are costs incurred by an **operator** acting in accordance with good industry practice to achieve the lowest sustainable cost of delivering the service in question, taking into account the circumstances and obligations of the **operator**.

- 3.2.5 Any asset values required for the purposes of determining a floor price must be based upon the prudent cost of the purchase, acquisition or construction of the new or replacement assets.

- 3.2.6 Any return on assets required for the purposes of determining a floor price must be calculated in the same way as set out in section 3.3.

- 3.2.7 Floor prices must be expressed in terms reasonably used in the Australian rail industry for the **below-rail service**.

3.3 Ceiling price

- 3.3.1 Section 27(2) of the **ROA Act** states that:

...the ceiling price should reflect the highest price that could fairly be asked by an Operator for provision of the relevant services.

- 3.3.2 For the purposes of determining a ceiling price, the full economic cost of providing the relevant service prudently to the **access seeker** or **access applicant** must be determined.
- 3.3.3 Full economic cost means the costs associated with the required railway infrastructure needed by the **access seeker** or **access applicant** for the provision of the relevant **below-rail service** on relevant segments of the railway, less the aggregate of:
- (a) the **incremental costs** attributable to the usage of that required railway infrastructure by all other **access holders** (including the **Operator's** own use); and
 - (b) a reasonable contribution to the fixed costs of that required railway infrastructure ("R") from all other **access holders** using that required railway infrastructure (including the **Operator's** own use),

where—

- (i) R is to be an amount which is not greater than the amount, if any, by which revenues of the **Operator** attributable to access holders' usage of the required railway infrastructure required by those access holders exceeds the **incremental costs** attributable to those **access holders'** usage of that required railway infrastructure; and
 - (ii) the costs are to be on-going costs that are causally related to the relevant required below-rail, including:
 - (A) directly incurred operating costs associated with the operation and maintenance of the required **below-rail service** (including major periodic maintenance); and
 - (B) an appropriate allocation of administrative costs; and
 - (C) an appropriate allocation of capital costs, including both depreciation and a return on assets.
- 3.3.4 For the purposes of clause 3.3.3, **Full economic cost** of a **segment** means:
- (a) **segment** specific labour and material and administrative costs; and
 - (b) depreciation of **segment** specific assets; and
 - (c) a return on **segment** specific assets, being determined by applying a real rate of return to the **RAB** of **segment** specific assets; and
 - (d) an allocation of non-**segment** specific costs; and
 - (e) an allocation of depreciation of **non-segment** specific assets; and
 - (f) an allocation of return of **non-segment** specific assets, being determined by applying a real rate of return to the value of **non-segment** specific assets.
- 3.3.5 For the purposes of clause 3.3.4, **non-segment** specific costs and depreciation of, and return on, **non-segment** specific assets must be allocated to **segments** in accordance with the following principles:

- (a) where possible, costs are to be directly attributed to a particular **segment**;
- (b) where possible, **non-segment** specific costs and **non-segment** specific assets are to be identified with a **corridor, corridors** or identified as system-wide; and
- (c) **non-segment** specific costs and depreciation of, and return on, **non-segment** specific assets identified with a **corridor** or **corridors**, or identified as system-wide, are to be allocated to those parts of segments in that corridor or corridors, or, where identified as system wide, to segments owned, leased or licensed by the Operator, in proportion to:
 - (i) **gtkm** with respect to **non-segment** specific costs and depreciation of, and return on, **non-segment** specific assets associated with track maintenance; and
 - (ii) **train kilometres** with respect to **non-segment** specific costs and depreciation of, and return on, **non-segment** specific assets not associated with track maintenance.

3.3.6 For the purposes of clause 3.3.5(c), where the **gtkm** allocation system can be shown to be inappropriate, the **Operator** may use alternative allocation systems where they can be justified.

3.3.7 Prudent and efficient costs are costs incurred by an **operator** acting in accordance with **good industry practice** to achieve the lowest sustainable cost of delivering the service in question, taking into account the circumstances and obligations of the **operator**.

3.3.8 For the purpose of these ceiling price principles, all costs must comprise reasonably anticipated costs over a reasonable future timeframe.

3.3.9 Regulatory asset values required for the purposes of determining a ceiling price must be;

- (a) valued initially using the depreciated optimised replacement cost method of valuing assets, though notwithstanding that land and formation works shall be valued at no more than historical cost; and
- (b) adjusted annually by roll forward according to the following methodology:

$$\text{RAB}_t \text{ start} = \text{RAB}_{t-1} \text{ end} = (\text{I} + \text{CPI}_{t-1}) * \text{RAB}_{t-1} \text{ start} + \text{Net Capex}_{t-1} - \text{Depreciation}_{t-1}$$

where

- (i) RAB_t start is the RAB at the start of the relevant year (t) (which for the initial year would be the Initial RAB);
 - (ii) RAB_{t-1} end is the RAB at the end of the preceding year (t-1) as applicable;
 - (iii) RAB_{t-1} start is the RAB at the start of the preceding year (t-1) as applicable;
 - (iv) CPI_{t-1} is the inflation rate for the preceding year (t-1), determined by reference to the All Groups Consumer Price Index Statistics published for the March quarter of that year;
 - (v) Net Capext-1 is the net additions to the RAB in year t-1 (that is out-turn capital expenditure less any disposals during period t-1) on a prudent basis; and
 - (vi) $Depreciation_{t-1}$ is the Depreciation applicable to the RAB in year t-1.
- 3.3.10 For the purposes of clause 3.3.9, the optimised replacement cost means the cost of replacement by commercially efficient application of best known currently available technology based on existing capacity and performance characteristics of the asset.
- 3.3.11 The “Rate of Return” is the (post-tax) real weighted average cost of capital (“WACC”) after consideration of all regulatory and commercial risks involved, the elements of which must comprise:
- (a) a capital asset pricing model (“CAPM”) method of determining the cost of equity; and
 - (b) a debt to equity ratio which would be considered prudent for the Operator’s business in relation to the railway by reputable lenders; and
 - (c) an appropriate adjustment (beta) factor to the equity risk margin appropriate for investment in railway infrastructure.
- 3.4 Ceiling prices must be expressed in terms reasonably used in the rail industry for the below-rail service.

4 Further Access Information

- 4.1.1 In accordance with section 29 of the **ROA Act**, an **Operator** must, on the application of a person with a proper interest in making an access application to the **Operator**, provide the **access applicant** with certain types of information. This information goes beyond the information required in the **Operator's Information Brochure**.
- 4.1.2 Regarding the provision of information reasonably requested under section 29 of the **ROA Act**, the **Commission** provides the following information (clauses 4.2 and 4.3) which may assist the parties in any access negotiations.

4.2 –“Likely price” compliance considerations

- 4.2.1 Under section 29(1)(c)(i) of the **ROA Act**:
- An operator must, on the application of a person with a proper interest in making an access proposal to the operator, provide the applicant with ... an indication of the likely price on which the operator would be prepared to provide the service.*
- 4.2.2 As outlined above, the **Operator** must provide an **access applicant** with information reasonably requested by the person about, in relation to the railway infrastructure that is subject to the application, relevant prices and costs associated with **railway services** provided by the **Operator**.
- 4.2.3 The **Commission** considers that the reasonably requested information should address matters below in addition to any other matters required in the specific instance. Among the relevant considerations in determining what is reasonably requested information, is that prices and costs relate to **below-rail services** separately from any other **railway services**.
- 4.2.4 The **Commission's** view is that the likely price should provide meaningful pricing information to the applicant, and so should go beyond the indicative floor and ceiling prices (and the accompanying statement listing the main factors to be used by the **Operator** to determine where the access price might most appropriately fall between the floor and ceiling price) provided as part of the **Information Brochure**.
- 4.2.5 The **Commission** considers that the likely price should be based on indicative information provided by the **access applicant** to the **Operator** about its possible usage of the railway infrastructure. In the absence of such information, the likely price provided by the **Operator** would be accompanied by the set of assumptions on which the likely price is based.
- 4.2.6 The assumptions underlying the **Operator's** indication of the likely price should, in the **Commission's** view, be specified and include:
- (a) the level of service quality that is to be provided at the likely price;
 - (b) in the event the proposed access to the railway infrastructure requires the **access applicant** to have recourse to additional capacity, an outline of the works and an indicative estimate of the cost of such works required to provide the additional capacity or an outline of the requirements for an investigation into the provision of additional capacity for the proposed access; and

- (c) a demonstration of how any proposed capital expenditure during the access period is linked to service requirements and how it is to be incorporated into the access charges (either through capital contributions or tariffs).
- 4.2.7 Where the likely price is to be based on prices already charged for the same or similar services, the **Operator** may differentiate price on the basis of:
- (a) the particular characteristics of the relevant service, including: axle load, speed, wheel diameter, train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week;
 - (b) the commercial impact on the **Operator's** business, including the term of the access period, the consumption of the **Operator's** resources and the credit risk associated with the business;
 - (c) logistical impacts on the **Operator's** below-rail business, including the impact on other services and risk of failure of other **access holders** to perform and reduced capacity and system flexibility;
 - (d) capital or other contributions by other **access holders** to the **Operator's** costs; and
 - (e) the cost of any additional capacity.
- 4.2.8 The **Commission** considers that where the likely price is to be based on prices already charged for the same or similar services, the **Operator** should not differentiate price between circumstances where:
- (a) the characteristics of the **railway services** are alike, in terms of location, duration and quality of the train path, train configuration, characteristics of the service, longevity of access, arrival and departure times of the day and week; and
 - (b) an **access holder** is operating within the same above-rail market.
- 4.2.9 Any indication of likely prices or price information provided by the **Operator** should, in the **Commission's** view, clearly and separately state the prices applying to third-party use of the railway track and related infrastructure.

4.3 Scope of (non-price) terms and conditions

- 4.3.1 Under section 29 (1)(c)(i) of the **ROA Act**:
- 4.3.2 *An operator must, on the application of a person with a proper interest in making an access proposal to the operator, provide the applicant with information ...about ...the general terms and conditions ... on which the operator would be prepared to provide the service.*
- 4.3.3 As outlined above, the **Operator** must in accordance with Section 29 of the ROA Act provide an **access applicant** with information reasonably requested by the person about, in relation to the railway infrastructure that is subject to the application, relevant terms and conditions associated with **railway services** provided by the **Operator**.
- 4.3.4 The **Commission** considers that the reasonably requested information should address matters below in addition to any other matters required in the specific instance. Among the relevant considerations in determining what is reasonably

requested information, is that non-price terms and conditions relate to **below-rail services** separately from any other **railway services**.

- 4.3.5 The **Commission** considers that in responding to a reasonable request the **Operator** should provide (among other specific information that is reasonably required) the access applicant with information about the railway infrastructure that is subject to the application:
- (a) the extent to which that particular railway infrastructure is currently being used;
 - (b) technical details and requirements of the **Operator** with regards to use of that railway infrastructure, such as axle load data, clearance and running speeds;
 - (c) the **Operator's** time-path allocation and reallocation policies for the railway; and,
 - (d) the **Operator's** service quality and train management standards.
- 4.3.6 More generally, the general terms and conditions could properly include (but not limited to):
- (a) the minimum performance standards to be met by the **Operator**;
 - (b) any minimum or indicative annual purchase quantity obligations;
 - (c) the length/term of the proposed period of access, and the terms laid down for renegotiation of terms and conditions at the end of the access contract;
 - (d) details of any actions or activities by one or other party that would be prohibited under the terms of the proposed access contract;
 - (e) details of any actions or activities that would be required to be undertaken by one or other party under the proposed access contract;
 - (f) the risks to be assigned to each party under the proposed access contract;
 - (g) advice in respect of the existence of other **access applicants** who have submitted an **access proposal** (where negotiations are continuing) in respect of access which, if it were to be provided, may limit the ability of the **Operator** to provide access in accordance with the general terms and conditions provided;
 - (h) details of the additional information required from the applicant for the **Operator** to progress the proposal and further develop the access pricing charges and terms and conditions for acceptance;
 - (i) the indicative train path availability;
 - (j) all other material non-price terms and conditions; and
 - (k) any other information relating to capacity or train operations reasonably required by the applicant, provided the **Operator** is given an opportunity to provide to the applicant an estimate of the reasonable cost of preparing the aspects of such other information which are not ordinarily and freely available to the **Operator**, and the applicant agrees to pay such costs.
- 4.3.7 The **ROA Act** imposes confidentiality obligations on the **Operator** to not disclose information which would breach any confidentiality obligation.

- 4.3.8 The **Operator's** obligation to provide information to the **access applicant** in accordance with the **ROA Act** is subject to the **access applicant** agreeing to pay the reasonable costs incurred by the **Operator** in obtaining information that is not ordinarily and freely available to the **Operator**.

4.4 Section 29 charges

- 4.4.1 Under section 29 (2) of the **ROA Act**:
- 4.4.2 *The operator may make a reasonable charge (to be determined on a basis decided or approved by the regulator) for providing information under this section.*
- 4.4.3 The reasonableness of a charge for information provided is to be assessed against the following principles:
- (a) The charge should not exceed the efficient cost of gathering and providing the necessary information.
 - (b) The charge should be consistent with a competitive market for the provision of railway services.
 - (c) The charge should not serve as a hindrance to access.
 - (d) The charge should reflect the section 30 of the **ROA Act** non-discriminatory provision of information.

Schedule 1 – Interpretation

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 include any gender;
- (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, regulation, proclamation, order in council, ordinance or bylaw includes all statutes, regulations, proclamations, orders in council, ordinances or by-laws varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, orders in council, ordinances, by-laws and determinations issued under that statute;
- (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**.

Schedule 2 – Proclamation

South Australia

Railways (Operations and Access) (Application of Access Regime) Proclamation 2016

under section 7 of the *Railways (Operations and Access) Act 1997*

1—Short title

This proclamation may be cited as the *Railways (Operations and Access) (Application of Access Regime) Proclamation 2016*.

2—Commencement

This proclamation comes into operation on the day on which it is made.

3—Interpretation

In this proclamation—

Act means the *Railways (Operations and Access) Act 1997*;

Flinders Power Partnership means the partnership between Flinders Power Holdings GMBH, Flinders Labuan (No. 1) Ltd and Flinders Labuan (No. 2) Ltd;

freight terminal means an area set aside for transferring goods to a train from another transport service (including another service provided by train), or from a train to another transport service (including another service provided by train), whether or not the goods are held, kept or stored at the terminal for a period of time pending transfer to the train or to the other transport service;

Generation Lessor Corporation means the Generation Lessor Corporation established under the *Public Corporations (Generation Lessor Corporation) Regulations 2010*;

Interstate Mainline Track means the Interstate Mainline Track as defined by the Railways Agreement set out in the Schedule to the *Non-Metropolitan Railways (Transfer) Act 1997* (as that Agreement is amended from time to time);

Leigh Creek Line means the rail corridors specified in Schedule 5 of the Railways Agreement set out in the Schedule to the *Non-Metropolitan Railways (Transfer) Act 1997* (or in any other relevant instrument modifying or varying any such corridor);

private siding means a private siding within the meaning of the *Rail Safety National Law (South Australia) Act 2012*, that is used or maintained to provide access to an area that is used (or predominantly used) by the person who owns, controls or manages the siding (or any other person) for a purpose other than transport purposes;

Rail Commissioner means the Rail Commissioner established under the *Rail Commissioner Act 2009*.

4—Application of access regime

- (1) Subject to subclause (2), the access regime under the Act is declared to apply to railway services associated with the provision (or the provision and operation) of railway infrastructure by an operator.
- (2) Subclause (1) does not apply to or in relation to—
 - (a) services associated with the Interstate Mainline Track, including associated crossing and passing loops, but not including infrastructure that is declared to be accessible under subclause (3); or
 - (b) services associated with the rail bridge constructed under Stage 3 of the Port River Expressway Project (the principal features of which are contained in Part 2 Division 1 of Schedule 1 of the *Highways (Port River Expressway Project) Regulations 2004*); or
 - (c) services associated with the tram track from the Adelaide Entertainment Centre to Glenelg; or
 - (d) services associated with any track on Eyre Peninsula owned by OneSteel Manufacturing Pty Limited or any company or person to whom ownership of any such track is transferred with the approval of the Minister; or
 - (e) services associated with the Leigh Creek Line (but only for such time as the sublease in existence at the time this proclamation comes into operation, under which the Line is sublet by the Generation Lessor Corporation to the Flinders Power Partnership, remains in force); or
 - (f) freight terminals; or
 - (g) private sidings; or
 - (h) services established on a non-profit basis—
 - (i) for heritage value or amusement; or
 - (ii) to provide services to tourists.
- (3) For the purposes of subclause (2)(a), the following infrastructure is declared to be accessible:
 - (a) buildings, installations and equipment for—
 - (i) the embarkation and disembarkation of passengers; or
 - (ii) the loading and unloading of goods, other than buildings, installations and equipment situated at a freight terminal; and
 - (b) railway yards and sidings (including associated track structures, supports, lines, posts and signs); and
 - (c) railway infrastructure under the care and control of the Rail Commissioner for the purposes of providing services associated with the Interstate Mainline Track.

5—Revocation

To the extent that it is required, the proclamation declaring the application of the access scheme under section 7 of the Act made on 7 May 1998 (see *Gazette 7.5.1998 p2116*, as varied, is revoked.

Made by the Governor

with the advice and consent of the Executive Council
on 29 September 2016

MTR/16/056



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