



Rail

Guideline



Intrastate Rail Access Regime: Reporting and Compliance 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 under 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** reporting and compliance requirements that apply to **Operators**, pursuant to section 9 and Part 7 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**.
- 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 (and significantly changed) by further proclamation.

1.2.6 Further, the **Access Regime** does not (and cannot) apply to anyway 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 anyway, 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>Access Regime</i>	The framework for Access to the Railway Network under Parts 3 to 8 of the ROA Act
<i>ACN</i>	Australian Company Number
<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>Commission</i>	Essential Services Commission of South Australia established under the ESC Act
<i>Compliance report</i>	a report presented in the form described at annexure b and annexure c to section 3 of this guideline
<i>Corporations Act</i>	Corporations Act 2001
<i>ESC Act</i>	Essential Services Commission Act 2002 (SA)
<i>External Director</i>	As defined in the Corporations Act
<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>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>Officers</i>	As defined in the Corporations Act
<i>Operator</i>	Has the same meaning as that under 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>Proclamation</i>	The South Australian Governor's Railways (Operations and Access)(Application of Access Regime) Proclamation 2016 regarding 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>Related Body Corporate</i>	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 Corporations Act 2001
<i>ROA Act</i>	Railways (Operations and Access) Act 1997
<i>Substantial Shareholding</i>	A substantial holding as defined in the Corporations Act 2001

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:

Essential Services Commission of South Australia
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2 Reporting Requirements

2.1.1 The following reporting obligations arise pursuant to the **Commission's** monitoring powers (contained in Part 7 of the **ROA Act**) – and its section 9 function of monitoring and enforcing compliance with the **ROA Act**.

2.2 Organisational information

2.2.1 In accordance with section 62 of the **ROA Act**, an **Operator** must provide the **Commission** with an Annual Statement containing the following information:

- (a) the names and positions of **Officers**;
- (b) the locations and addresses of major sites of business;
- (c) the organisation's legal name and **ACN**, its **ABN** if such exists, its registered office address and the address of its principal place of business under the **Corporations Act**;
- (d) the names, addresses and **ACNs** and **ABNs** of any subsidiaries;
- (e) details of quality / safety accreditation and any changes since the last report;
- (f) a description of its business of providing **railway services** (to which the **Access Regime** applies);
- (g) a summary of each provision of **railway services** (to which the **Access Regime** applies) to third party users; and
- (h) name, title, address, email, phone and fax numbers for the contact person in respect to the matters covered in the report.

2.2.2 An **Operator** must advise the **Commission** in writing of any significant change to the information provided in its previous Annual Statement as soon as practicable after the change has occurred.

2.3 Accounts and Records

2.3.1 An **Operator** must provide the **Commission** with Accounting Statements and Associated Reports that:

- (a) give a true and fair view of its business of providing **railway services** to which the **Access Regime** applies; and
- (b) demonstrate that it has kept accounts and records in relation to its business of providing railway services to which the **Access Regime** applies, in accordance with section 22 of the **ROA Act**.

2.4 Reporting Periods

2.4.1 An **Operator** must provide the **Commission** with its Annual Statement, Accounting Statements and Associated Reports as soon as possible after production and no later than four months after the end of the financial year to which they relate.

2.5 Assurance

2.5.1 An **Operator** must provide an accompanying Statement of Compliance, containing assurance that its Accounting Statements and Associated Reports have been prepared in accordance with the requirements herein. The statement must be signed by at least two Directors of the **Operator**, 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 a 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.

2.5.2

2.6 Exemption

2.6.1 The **Commission** may exempt an **Operator** from all or part of Section 2 requirements should circumstances so require. Any application for an exemption must be made in writing to the Commission outlining the reasons why the exemption is sought and contain any relevant evidence supporting the request. An **Operator** will be informed of its exemption, and the duration of that exemption, by the **Commission**, in writing.

2.7 Obligation to provide access contracts

2.7.1 Section 61 of the **ROA Act** requires that operators must provide the **Commission** (on a confidential basis) with a copy of every access contract entered into. These access contracts must be provided within 30 days after the making of the contract.

3 Compliance Systems and Reporting

In accordance with section 9(2) and section 62 of the **ROA Act**, this section sets out the compliance systems and reporting obligations, which must be met by an **Operator**.

3.1 Introduction

- 3.1.1 This section outlines the **Commission's** approach to compliance systems and reporting in a Railway Service Business in South Australia.
- 3.1.2 The section applies to an **Operator** subject to the **Access Regime** under the **ROA Act**.
- 3.1.3 This section sets out a process for the reporting of compliance by an **Operator** in a way that meets the **Commission's** requirements and demonstrates that appropriate compliance systems are in place.
- 3.1.4 This section does not diminish an **Operator's** obligation to report, or otherwise respond to, any breach of an obligation under the **ROA Act** within the stipulated time and in the manner required where the **ROA Act** so requires.

3.2 The Purpose of this section

- 3.2.1 Section 5(1) of the **ESC Act** sets out the functions of the **Commission**, to:
 - (a) regulate prices and perform licensing functions under relevant industry regulation Acts;
 - (b) monitor and enforce compliance with and promote improvement in standards and conditions of service and supply under relevant industry regulation Acts;
 - (c) make, monitor the operation of, and review from time to time, codes and rules relating to the conduct or operations of a regulated industry or regulated entities;
 - (d) provide and require consumer consultation processes in regulated industries and to assist consumers and others with information and other services;
 - (e) advise the Minister on matters relating to the economic regulation of regulated industries, including reliability issues and service standards;
 - (f) advise the Minister on any matter referred by the Minister;
 - (g) administer the **ESC Act**;
 - (h) perform functions assigned under the **ESC Act** or any other Act; and
 - (i) in appropriate cases, prosecute offences against the **ESC Act** or a relevant industry regulation Act.
- 3.2.2 Many of the functions of the **Commission** in relation to a **Railway Service** Business arise through Section 5(1)(h) of the **ESC Act** – that is, they are functions assigned to the Commission by the **ROA Act**.
- 3.2.3 Section 9(2) of the **ROA Act** assigns to the **Commission** the function of monitoring and enforcing compliance with the **ROA Act** (other than Part 2).

- 3.2.4 Section 62 of the **ROA Act** provides the **Commission** with the power to require an **Operator** to give it information or copies of specified documents related to the provision of **railway services** by the **Operator**.
- 3.2.5 The **ESC Act** requires that in performing its functions, the **Commission** must have as its primary objective the protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and at the same time have regard to the need to:
- (a) promote competitive and fair market conduct;
 - (b) prevent misuse of monopoly or market power;
 - (c) facilitate entry into relevant markets;
 - (d) promote economic efficiency;
 - (e) ensure consumers benefit from competition and efficiency;
 - (f) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and
 - (g) promote consistency in regulation with other jurisdictions.
- 3.2.6 The **Commission** will necessarily require information and reports from **Operators** to fulfil these objectives and functions.

3.3 Definitions and Interpretation

- 3.3.1 In this section, the words "*shall*" and "*must*" indicate mandatory requirements, unless the overall meaning of the phrase in which one of these words appears is otherwise.
- 3.3.2 This section seeks to provide definitions consistent with those given in the **ROA Act** and the **ESC Act**. Where words and phrases are not defined in section 1.4, they shall have the meaning given to them by these Acts or any other relevant Regulatory Instrument.
- 3.3.3 Explanations in this section as to why certain information is required are for guidance only. They do not limit in any way the **Commission's** objectives, functions or powers.

3.4 Confidentiality

- 3.4.1 **Compliance Reports**, and the information therein, will be collected by the **Commission** pursuant to section 62 of the **ROA Act**.
- 3.4.2 Therefore, the confidentiality requirements that apply are those arising in section 63 of the **ROA Act**.

3.5 Exemption

- 3.5.1 Should circumstances so require, the **Commission** may exempt an **Operator** from all or part of this section on such terms and conditions determined by the **Commission**. Any application for an exemption must be made in writing to the Commission outlining the reasons why the exemption is sought and contain any relevant evidence supporting the

request. An **Operator** shall be informed of the terms, conditions and duration of that exemption, by the **Commission**, in writing.

- 3.5.2 Explanation – exemptions are not intended for general application, rather they are intended for use in situations where the **Commission** decides that the application of part or all of this section would be of no net benefit.

3.6 Processes for Revision

- 3.6.1 The **Commission** may amend and expand this section from time to time where this is necessary to meet the needs of an **Operator**, stakeholders or the **Commission**.
- 3.6.2 The **Commission** will undertake consultation with relevant **Operators** and other stakeholders as appropriate before making any significant amendment to this section.

3.7 Regulatory Objective

- 3.7.1 Each **Operator** is required to comply with various obligations imposed by the **Access Regime**.
- 3.7.2 The **Commission** is required to ensure compliance with various of these obligations, either as specified throughout the **Access Regime** or more generally as set out in section 9(2) of the **ROA Act**.
- 3.7.3 The **Commission** has sought to implement a compliance monitoring and reporting system which minimises costs and disruption to **Operators**, but ensures compliance systems exist and operate efficiently and effectively.
- 3.7.4 The **Compliance Report** requires that an **Operator**:
- (a) testify that it has a sound and effective compliance program;
 - (b) report non-compliances of the type required to be reported during the relevant reporting period; and
 - (c) briefly address the impact of such non-compliance on customers and other entities as well as the implications for the effectiveness of the **Operator's** compliance system (see Schedule B of Annexure C).
- 3.7.5 As a matter of policy, the **Commission** will be inclined to exercise the **Commission's** powers in respect of a non-compliance more favourably towards an **Operator** where that **Operator** has actively co-operated in relation to a regulatory non-compliance.
- 3.7.6 Prompt disclosure of all non-compliances will be viewed favourably by the **Commission** and will be a relevant consideration in determining what if any action to be taken to address the non-compliance.

3.8 Reporting Approach

- 3.8.1 The **Commission** has decided to adopt a simple reporting approach to compliance auditing and reporting. This requires **Operators** to report on their compliance with the obligations which are applicable to them under the **Access Regime** or related or subordinate instruments.

- 3.8.2 If new or varied obligations are imposed on an **Operator** under the applicable legislation or related regulatory instruments, then the **Operator** should report compliance against those new or varied obligations, even if the **Commission** has not amended this section to reflect the new conditions.
- 3.8.3 The **Commission** requires:
- (a) immediate reporting of “material” breaches of obligations; and
 - (b) annual reporting of compliance in relation to all obligations.
- 3.8.4 The Annual Report must include any breaches that have been reported immediately.

3.9 Reporting Obligations

- 3.9.1 Annexure A shows the key obligations under the **ROA Act**.
- 3.9.2 The **Commission** may categorise obligations for which breaches are to be considered material under clause 3.10 differently as between **Operators** if the circumstances so require.
- 3.9.3 This section does not cover reporting of obligations arising under access disputes once they become subject to an arbitration process under the **Access Regime**. Compliance obligations arising in such processes will be managed within that process.

3.10 “Material” Breaches

- 3.10.1 An **Operator** should apply the following separate tests to determine whether a breach is “material” or not.
- 3.10.2 The **Operator** will treat a breach as “material”:
- (a) where the **Commission** has identified the obligation in Annexure A as “material” in respect of a breach;
 - (b) where the **Commission** has, from time to time, written to the **Operator** and informed it of an obligation that the **Commission** considers to be “material”; or
 - (c) where the **Operator** itself considers that the breach is “material”, having regard to all relevant matters, including having regard specifically to the following:
 - (i) the impact of the breach on customers;
 - (ii) whether the breach has a financial impact on customers;
 - (iii) the number of customers affected; and
 - (iv) the potential (and actual) impact on safety and risk to the public.

3.11 Compliance Reporting

3.11.1 The Compliance Report scheme:

- 3.11.2 The **Commission** considers it appropriate to require **Operators** to adopt the **Compliance Report** scheme, as described below.
- 3.11.3 For any **Operator**, the **Commission** reserves the right to require, at any time, an external, independent audit of some or all of an **Operator's** obligations if the **Commission** considers that such a course is necessary and consistent with the applicable legislation. Such *ad hoc* audits may be ordered by the **Commission** on the basis of any or all of:
- (a) the **Commission's** assessment of the adequacy of the **Operator's** compliance system;
 - (b) the level and nature of non-compliances by the **Operator**; or
 - (c) any relevant matter disclosed in the **Compliance Reports** provided by the **Operator**.
- 3.11.4 The **Compliance Report** scheme requires that **Operators** have, and rigorously adhere to, a sound compliance system. The **Compliance Report** testifies on a periodic basis to that effect, and reports non-compliances in accordance with the periodic scheme.
- 3.11.5 Such a scheme should reduce the need for costly and resource intensive external audits and reviews of **Operator** compliance.
- 3.11.6 A sound compliance system may be based on the Australian Standard on Compliance Programs, AS ISO 19600:2015 (as amended), or on any other credible compliance standard.
- 3.11.7 The **Compliance Report** provides assurance to the **Commission** that the **Operator** has a credible compliance system in operation and records the results of that compliance system by way of "exception reporting" – that is, compliance with all obligations is assumed unless breaches are reported to the **Commission**.
- 3.11.8 **Operators** must report all non-compliances in the relevant **Compliance Report**, even if they have already been reported to the **Commission** in the course of the compliance period by other means.
- 3.11.9 Annual **Compliance Reports** should contain a summary of all non-compliances reported to the **Commission** during the relevant reporting year.
- 3.11.10 Reporting of all non-compliances, and subsequently an assessment of their nature and extent, will provide the **Commission** with a sound basis upon which to require changes to the **Operator's** compliance system, or to review a reporting-based approach to compliance with respect to that obligation or generally.
- ### 3.11.11 Reporting Periods:
- 3.11.12 The **compliance reporting** procedure is based on a requirement to provide immediate and annual **Compliance Reports** to the **Commission**.

- 3.11.13 The form of the reports is set out in Annexures B and C to this section. The **Commission** may accept variations to the form of each report, subject to **Commission** approval of any variations.
- 3.11.14 Immediate Reports are to be made as soon as the **Operator** becomes aware of the event.
- 3.11.15 Annual Reports are in respect of the twelve month period ending on 31 December each year.
- 3.11.16 All Annual Compliance Reports are to be provided to the **Commission** within four calendar months of the last day of the relevant reporting period.

3.11.17 Immediate Reports:

- 3.11.18 Each immediate **Compliance Report** must be approved and signed by:
- (a) the Chief Executive Officer of the **Operator**; or
 - (b) a person holding an equivalent position to the Chief Executive Officer of the **Operator**; or
 - (c) a person delegated to exercise the powers and functions of the **Operator** at a level equivalent to that held by a Chief Executive Officer; or
 - (d) the person acting as the Chief Executive Officer or equivalent position during an absence of the substantive office-holder.

3.11.19 Annual Reports:

- 3.11.20 There are a range of options for signing an annual Compliance Report as set out below. The critical element is that the **Commission** is given an independent and expert assurance that the matters referred to in the **Compliance Report** are accurate.
- 3.11.21 Annual Compliance Reports must be signed by:
- (a) the Chief Executive Officer and one other Director of the Operator, who must be an "External Director" (see clauses 3.11.28 to 3.11.30, and 3.11.35 and 3.11.36 below); or
 - (b) an external and independent auditor approved by the **Commission**; or
 - (c) an internal auditor, subject to clauses 3.11.23 to 3.11.26 below.

3.11.22 Use of Internal Auditor to sign Compliance Reports:

- 3.11.23 If the **Operator's** internal audit function is undertaken by an independent and expert auditor, the **Operator** may request the **Commission** to accept such an auditor for the purposes of signing annual **Compliance Reports**.
- 3.11.24 If the **Commission** accepts the **Operator's** request to use the internal auditor for this purpose, the annual internal audit reports should be specifically addressed to the **Commission** as well as to the **Operator**.

- 3.11.25 If this option is utilised, there is no need to rely precisely on the form of the **Compliance Report** described at Annexure C, so long as the internal audit report, at least:
- (a) certifies that the **Operator** has an active and effective compliance scheme in operation;
 - (b) lists all applicable obligations with which the **Operator** is required to comply by section or clause, and by summary description; and
 - (c) lists all non-compliances that have occurred within the reporting period.
- 3.11.26 **Operators** intending to use this option are required to obtain the **Commission's** approval annually, prior to the beginning of the reporting year for which this option is intended to be used.

3.11.27 Use of an external director(s) of a substantial shareholder to sign Compliance Reports:

- 3.11.28 Where the **Operator** does not have any "External Directors" on its Board, the **Operator** may request of the **Commission** that it use "External Director(s)" of an Australian incorporated company that has a **Substantial Shareholding** in the **Operator** as a surrogate for the "External Director" of the **Operator**.
- 3.11.29 If the **Commission** in its absolute discretion agrees in writing, such Director(s) will be accepted by the **Commission** as "External Director(s)" of the **Operator** solely for the purpose of signing annual **Compliance Reports**.
- 3.11.30 The **Commission** will only give approval for such an arrangement if satisfied that the proposed Director(s) have relevant expertise, and independence from the **Operator**.

3.11.31 Other Options for Compliance Reporting:

- 3.11.32 The **Commission** will consider other reasonable options for compliance reporting submitted by an **Operator**.
- 3.11.33 However, any such option should be based on the **Operator** having a sound and effective compliance system and on providing the **Commission** with expert and independent assurance to that end, and on a systematic reporting of the nature and level of non-compliances to the **Commission**.

3.11.34 External Director:

- 3.11.35 A Director is an "External Director" if the Director is not, and has not been in the previous 2 years, an employee of the **Operator** or a **Related Body Corporate**; and
- (a) is not, and has not been in the previous 2 years, an executive officer of a **Related Body Corporate**; and
 - (b) is not, and has not been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **Operator** or a **Related Body Corporate**; and

- (c) is not a member of a partnership that is, or has been in the previous 2 years, substantially involved in business dealings, or in a professional capacity, with the **Operator** or a related body corporate; and
- (d) does not have a material interest in the **Operator** or a **Related Body Corporate**; and
- (e) is not a relative or de facto spouse of a person who has a material interest in the **Operator** or a **Related Body Corporate**.

3.11.36 The above definition of an External Director is consistent with that in section 601JB of the Corporations Act 2001 (Cth) in relation to Compliance Committees.

ANNEXURE A – Indicative Obligations

Relevant Obligations: Railways (Operations and Access) Act 1997

Note: The list of obligations below refers to the ROA Act and related or subordinate instruments. It is a non-exhaustive list of general obligations under that Act. Operators are encouraged to examine the ROA Act and related or subordinate instruments to identify other applicable obligations that may apply to them. The description of obligations is intended as a guide only.

Items marked with an X under the “Material” column heading are the obligations so identified by the Commission for the purposes of subclause 2.11.2(a) of section 2. Other provisions may also be material, pursuant to subclauses 2.11.2(b) or (c).

OBLIGATIONS

ROA ACT	SUMMARY DESCRIPTION	MATERIAL
22	Segregation of accounts and records	X
23	Unfair discrimination	X
24	Preventing or hindering access to railway services	X
28	Information brochure	X
29	Operator’s obligation to provide information about access	X
30	Information to be provided on non-discriminatory basis	X
31	Access proposal	
32	Duty to negotiate in good faith	X
33	Limitation on operator’s right to contract to provide access	
60	Regulator’s power to monitor costs	X
61	Copies of access contracts to be supplied to regulator	X
62	Operator’s duty to supply information and documents	X

Schedule A – Relevant Obligations

ANNEXURE C – Annual Compliance Report

* Delete if inapplicable.

To: Essential Services Commission of South Australia
Level 1,151 Pirie Street
ADELAIDE SA 5000

[Name of licensee] reports as follows:

1. This Report is an Annual Compliance Report for the period [insert] and has been prepared in a manner that meets the requirements of the Compliance Systems and Reporting Section (“the Section”) of the Report and Compliance guideline.
2. [Name of licensee], having made due enquiry, is not aware of any breach of any of the obligations listed in Schedule A to this Report (“Applicable Obligations”), other than as detailed in Schedule B.
3. [Name of licensee] has maintained a compliance program during the relevant period that ensures that:
 - (a) it has identified all Applicable Obligations;
 - (b) it has identified a “Responsible Officer” who has operational control over the activity or work area where the relevant Applicable Obligations arises;
 - (c) it has ensured that the “Responsible Officer” has programmed the Applicable Obligations into the operational procedures for the relevant activity or work area, and is accountable to the Board of Directors* / Compliance Committee of the Board of Directors* through the Chief Executive for ensuring compliance with the Applicable Obligations;
 - (d) the Chief Executive Officer (or equivalent in accordance with clause 3.11.17 of the section) of [name of licensee] will be made aware of any breaches of Applicable Obligations without delay;
 - (e) remedial action is taken as soon as possible to rectify breaches of Applicable Obligations, and that the breach of the Applicable Obligation, and the completion of the remedial action, is reported to the Board* / Compliance Committee of the Board of Directors*;
 - (f) the compliance system is reviewed every two years, and also where:
 - ▶ continued breaches indicate systemic failure, to ensure that the compliance system is effective and relevant;
 - ▶ and there is a significant change to the regulatory regime, in order to update the system to accommodate the change.
4. [Name of licensee] has established a process for signing this Compliance Report that is in accordance with clause 3.11 of the Section.

Schedule B – Relevant Obligations

Schedule C

NON-COMPLIANCES	BRIEF COMMENTS
Section/Clause of [Act//section] – brief description	<p>Briefly address the impact of non-compliance on:</p> <p>Customers and other entities; and</p> <p>Implications for the effectiveness of the Operator's compliance system.</p>
Section/Clause of [Act//section] – brief description	<p>For example:</p> <p>Only one customer affected – no delay resulted, explanation given to customer.</p> <p>Operational procedures not followed by new employee – remedial action undertaken.</p>

