



Rail



Guideline

Rail Industry (Tarcoola-Darwin) Guideline No 1 - Access Provider Reference Pricing and Service Policies

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xxxx 2019

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1 Nature of the guideline

1.1 Title, authority and commencement

This **Guideline** is the *Rail Industry (Tarcoola-Darwin) Guideline No 1 – Access Provider Reference Pricing and Service Policies*.

1.1.1 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.

1.1.2 The Guideline commenced on **xxxx 2019**.

1.2 Interpretations

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 instruments, 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 statutory instruments, regulations, proclamations, orders in council, ordinances, by-laws and determinations issued **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) a reference to any thing includes a part of that thing**
- (i) an event which is required under **the 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

- (j) 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 This **Guideline** requires the **Access Provider** to provide, on application of any person, information reasonably requested by the person in accordance with the information requirements contained in this **Guideline**.
- 1.3.1 This **Guideline** requires the **Access Provider** to provide develop and maintain time-path allocation and reallocation policies and service quality and train management standards in accordance with principles contained in this **Guideline**.
- 1.3.2 This **Guideline** applies to each **Access Provider** operating on the railway as has been constructed between Tarcoola and Darwin **to the extent prescribed from time to time**.

1.4 Other Acts, industry codes and guidelines

- 1.4.1 This **Guideline** is a minimum requirement and the obligation of an **Access Provider** to comply with this **Guideline** is additional to any obligations imposed under:
- (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.

1.5 Processes for revision

- 1.5.1 The **Commission** may, at its 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**.
- 1.5.2 The **Commission** will undertake consultation with relevant stakeholders as necessary in accordance with the **Commission's** Charter of Consultation and Regulatory Practice and clause 8 of the **Code** before making any **variation to** this **Guideline**.
- 1.5.3 For all revisions to this **Guideline**, a commencement date will be nominated on the Amendment Record on the inside front page. The **Commission** will generally give an **Access Provider** not less than 45 days notice.

1.6 Input from interested parties

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

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

2 Reference prices

2.1 Information requirements

- 2.1.1 The **Access Provider** must comply with the requirements of this section 2 if the **Access Seeker** (or potential **Access Seeker**) puts its request for **Reference Prices** in writing, accompanied by the general relevant information that is reasonably required for this purpose as published from time to time by the **Access Provider**.
- 2.1.2 The general information to be provided by an **Access Seeker** (or potential **Access Seeker**) accompanying a written request for **Reference Prices** must include:
- (a) evidence of the bona fides of the **Access Seeker** in terms of the **Access Seeker's** (or potential **Access Seeker's**) current or expected participation in **Above-Rail** operations
 - (b) characteristics of the required **Services** where these may differ from the standard characteristics published for this purpose by the **Access Provider**
 - (c) the **Line Section** or sections which the **Services** require in terms of the **Line Sections** published for this purpose by the **Access Provider**, and
 - (d) the type of load (freight or passenger) intended to be transported and the volume/weight of the load.
- 2.1.3 The **Access Provider's** information requirements for reference pricing purposes must include:
- (a) its standard service characteristics
 - (b) standard pricing components and its **Line Sections**, and
 - (c) list of assets included under the **Access** arrangements of **the Code**.
- 2.1.4 **Reference Prices** are to be provided accompanied by:
- (a) a statement by the **Access Provider** affirming that the **Reference Prices** provided are neither maximum nor minimum and that actual prices are to be subject to negotiation and not restricted by these **Reference Prices**, and
 - (b) an indication of the processes (and likely costs) involved in negotiating an **Access Contract**, which may include the proposed standard terms of an **Access Contract**.

2.2 Timeliness of information provision

- 2.2.1 The **Access Provider** is to acknowledge a written request for **Reference Prices** within two business days of the receipt of the request.
- 2.2.2 The **Access Provider** must provide a schedule of **Reference Prices** (and supporting statements) within 10 business days of receipt of the request.
- 2.2.3 The schedule of **Reference Prices** is to be provided to the **Access Seeker** (or potential **Access Seeker**) requesting such prices on a no-cost basis.

3 Train-path Policy

3.1 Information requirements

- 3.1.1 The **Access Provider** must develop and maintain a **Train Path** allocation and reallocation policies for the **Railway** in accordance with principles contained in section 3 of this **Guideline**.
- 3.1.2 The **Access Provider's Train-Path Policy** ('the Policy') is to be a statement of policy relating to the allocation of **Train Paths** and the provision of **Access to Train Paths** that have ceased to be used.
- 3.1.3 The Policy is to be designed **and maintained** to ensure that the allocation and re-allocation of **Train Paths** is undertaken in a non-discriminatory way between all **Above-Rail Operators** using the **Railway**, acknowledging existing contractual rights and any new contractual rights created under **Access Contracts** entered into under **the Code**.
- 3.1.4 The Policy is to be designed **and maintained** to encourage the maximum use of the **Railway**.
- 3.1.5 The Policy **must** be consistent in scope and effect with the equivalent policy undertakings by **ARTC** in respect of the **Interstate Network**, unless the **Access Provider** can demonstrate to **Commission's** satisfaction that to do so would be inconsistent with the requirements of **the Code**.

3.2 Master Train Plan

- 3.2.1 The Policy must include a **Master Train Plan** for all **Line Sections**, being a graphical representation of committed entitlements on an operator-by-operator basis, together with:
- (a) section running time information for indicative **Services**, and
 - (b) any applicable route standards.
- 3.2.2 The **Master Train Plan** must show:
- (a) all **Scheduled Train Paths**,
 - (b) all **Conditional Train Paths**, and
 - (c) all planned **Train** movements for which advice has been given to an **Above-Rail Operator** that the path for the **Train** movement is available and able to be practically operated but for which no contractual agreement has yet been entered into.
- 3.2.3 **The Access Provider must publish and maintain an up-to-date Master Train Plan on its website.**
- 3.2.4 The **Access Provider** must undertake a **Capacity** analysis review from time to time, to identify whether there is sufficient **Available Capacity** to meet Access Applicants' requirements.
- 3.2.5 Where there is a reasonable basis to suspect that there may be impediments to the provision of **Capacity** to meet the requirements of an applicant, the **Access Provider** must make available (in addition to the **Master Train Plan**):

- (a) daily train plans, and
- (b) train control diagrams.

3.3 Conditional and Reserved Train Paths

- 3.3.1 The Policy must identify the circumstances under which the **Access Provider** may create **Conditional Train Paths** at the request of an operator.
- 3.3.2 The Policy must identify the circumstances under which the **Access Provider** may create an entitlement to **Reserved Train Paths**, including those parts of the **Railway** over which **Reserved Train Paths** may apply and any conditions to apply to those entitlements.
- 3.3.3 The application of a **Reserved Train Path** entitlement cannot be used to alter or override a **Scheduled Train Path**.

3.4 Competition for the Same Train Path

- 3.4.1 The Policy is to state how access applications from different **Above-Rail Operators** covering the same available **Train Path**, where both requests cannot be satisfied by using alternative but similar **Train Paths**, are to be resolved.
- 3.4.2 The Policy must address both:
 - (a) if two or more applicants are seeking **Access** with respect to mutually exclusive **Access** rights, provide that each of the applicants are to be so advised prior to the **Access Provider** making any decision affecting either application, and
 - (b) if **Access** rights are to be allocated to the operator that, in the **Access Provider's** opinion, is most favourable to its below-rail operations, state the safeguards used by the **Access Provider** to assure third-party access applicants that the decision is unaffected by the impact upon the **Access Provider's** affiliated above-rail operations (which is to include a process for making transparent the **Access Provider's** assessment where its decision is in favour of its affiliated Above-Rail Operations).

3.5 Possession of the Railway

- 3.5.1 The Policy is to establish the consultative procedures to be followed by the **Access Provider** before taking possession of the **Railway** (except in the case of an emergency) with a view to efficient possession planning and to minimising disruption to **Services**.
- 3.5.2 The Policy must include, with respect to effecting repairs, maintenance or upgrading:
 - (a) the reasonable steps to be taken to minimise any disruption to the **Scheduled Train Paths**,
 - (b) the minimum period of notice to be provided to **Access** holders, and
 - (c) the nature of the **Access Provider's** best endeavours to provide an alternative **Train Path**.

3.6 Variations to Scheduled Train Paths

- 3.6.1 The Policy must lay down procedures to be followed by the parties if it is intended that a **Scheduled Train Path** variation is a permanent or a long term variation, including the minimum period of notice for a variation request and the maximum period of response.
- 3.6.2 Any notice must state:
- (a) the length of time such variation will be in force, and
 - (b) the reason or reasons for the proposal by the requesting party.
- 3.6.3 Consent may only be withheld upon reasonable grounds, with full reasons being provided in writing to the requesting party.
- 3.6.4 The Policy must lay down procedures to be followed by the parties if it is intended that a **Scheduled Train Path** is to be temporarily varied by the giving of instructions for the purpose of preventing any actual or potential:
- (a) breach of safety requirements on the **Railway**,
 - (b) material damage to the **Railway, Rolling Stock** or any associated **Railway Infrastructure Assets**,
 - (c) injury to any person or damage to any property, or
 - (d) delay to the progress of **Services** on the **Railway** for **Trains** that have priority over an operator's **Trains**.

3.7 Train-Path Deletion and Transfer

- 3.7.1 The Policy must state the requirements to be met before the **Access Provider** can delete any **Scheduled Train Path** from the **Master Train Plan**.
- 3.7.2 The Policy must identify the dispute resolution provisions to apply in such circumstances.
- 3.7.3 The Policy must also provide for:
- (a) **Train Paths** to be assigned by an **Above-Rail Operator** to a third party with the **Access Provider's** approval in accordance with stated assignment provisions, and
 - (b) the review of **Scheduled Train Paths** by the parties by comparing the stated departure and arrival times for the **Scheduled Train Path** with the performance during a nominated preceding continuous period of the actual **Trains** using or purporting to use that reviewable entitlement (which is to include a process to ensure the **Access Provider's** affiliated **Above-Rail Operations** are subject to the same transfer triggers and reviews as Third-Party **Above-Rail Operators**).
- 3.7.4 The Policy may provide for the cancellation of **Services** using **Scheduled Train Paths** in circumstances within the reasonable control of an **Above-Rail Operator**, but must make allowances for alternative methods of cancellation such as **Conditional Train Paths** for seasonal traffic.

4 Train control

4.1 Information requirements

- 4.1.1 The **Access Provider** must develop and maintain **Train Control Procedures** for the **Railway** in accordance with principles contained in section 4 of this **Guideline**.
- 4.1.2 The **Access Provider's Train Control Procedures** are to be a statement of principles, rules and practices to be applied in the real-time management of **Services**. The **Train Control Procedures** are to include the principles, rules and practices applicable in circumstances where **Services** are interrupted due to matters outside the **Access Provider's** control and there is a need to resolve competing interests of users of the **Railway**.
- 4.1.3 The **Train Control Procedures** (and any amendment to them) must ensure that, within safety constraints, **Trains**:
- (a) which enter the **Railway** on time and do not suffer any significant en-route delays brought about by **Above-Rail** causes, exit the **Railway** on time thereby maintaining the order of priority of the Scheduled Train Paths run according to Scheduled Train Paths,
 - (b) which are running or presented late and do not suffer any significant en-route delays brought about by **Above-Rail** causes, do not lose any further time, and
 - (c) which are presented early and do not suffer any significant en-route delays brought about by **Above-Rail** causes, depart the **Railway** no later than the scheduled time.
- 4.1.4 The **Train Control Procedures** must be applied in a non-discriminatory way between all **Above-Rail Operators** using the **Railway**.
- 4.1.5 The **Procedures** must prescribe:
- (a) the protocols to apply in the issuing of instructions or directions by the train controller to **Above-Rail Operators**,
 - (b) the processes to apply in deciding among the alternatives available in clearing an operator's failed **Train** from the **Railway**,
 - (c) in the event of the **Access Provider** becoming aware of a railway failure or potential deviation from the **Scheduled Train Path**, the consultation protocols to apply in notifying all affected parties **within a reasonable time**,
 - (d) in the event of a conflict with **Scheduled Train Paths** arising from an untimely **Train** (one which enters the network late or loses time en-route), the general rules to be applied by the train controller, in the form of train control matrix, in resolving the prioritisation of **Scheduled Train Paths** or of **Trains** are,
 - (e) conflict resolution procedures and protocols,
 - (f) the management of emergencies, and
 - (g) the management of daily issues related to train operations (such as the imposition of temporary speed restrictions).

- 4.1.6 The **Train Control Procedures** must be consistent in scope and effect with the equivalent policy undertakings by **ARTC** in respect of the **Interstate Network**, unless the **Access Provider** can demonstrate to the **Commission's** satisfaction that to do so would be inconsistent with the requirements of **the Code**.

5 Service quality

5.1 Information requirements

- 5.1.1 The **Access Provider** must develop and maintain **Service Quality Standards** for the **Railway** in accordance with principles contained in section 5 of this **Guideline**.
- 5.1.2 The **Access Provider's Service Quality Standards** must be based on an undertaking to maintain the **Railway** in a condition which is fit for an **Above-Rail Operator's** purpose to use the **Railway** to provide **Services** having regard to the terms of that operator's **Access Contract**.
- 5.1.3 The **Service Quality Standards** must be applied in a non-discriminatory way between all **Above-Rail Operators** using the **Railway**.
- 5.1.4 The **Service Quality Standards** must:
- (a) establish an on-going internal system for monitoring compliance with the **Access Provider's** Train-Path Policies and **Train Control Procedures**,
 - (b) identify, and specify the means of measuring, its performance for the information of **Access Seekers** and **Above-Rail Operators**, where the agreed means **must** be referred to as 'Key Performance Indicators', and
 - (c) incorporate an annual internal audit process for reviewing Key Performance Indicator reporting.
- 5.1.5 With regard to Key Performance Indicators, the **Service Quality Standards** must state:
- (a) the manner in which, and the frequency with which, the Key Performance Indicators are to be monitored, recorded and reported,
 - (b) the consequences in relation to rights and obligations under the **Access Contract** or otherwise of not meeting or of exceeding Key Performance Indicators,
 - (c) the process (and frequency) by which the parties are to discuss and determine actual performance against the Key Performance Indicators,
 - (d) the choice of measures aimed at ensuring the performance of the **Affiliated Operator** and **Third-Party Operators**, and
 - (e) any other relevant arrangements relating to the use of Key Performance Indicators in connection with the **Access Contract**.
- 5.1.6 The Standards must be consistent in scope and effect with the equivalent policy undertakings by **ARTC** in respect of the **Interstate Network**, unless the **Access Provider** can demonstrate to the **Commission's** satisfaction that to do so would be inconsistent with the requirements of **the Code**.

Schedule 1 – Definitions

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

Above-Rail Operator	means an operator of Trains in accordance with an Access Contract
Access	means access to use the Railway , or any part thereof, for the purpose of running a Service
Access Contract	means a contractual agreement between an Above-Rail Operator and the Access Provider regarding Access to the Railway
Access Provider	means an owner or operator of Railway Infrastructure Assets subject to regulation under the Code , also referred to as the Below-Rail Service Provider
Access Seeker	means an Above-Rail Operator seeking Access to the services provided by Railway Infrastructure Assets
Affiliated Operator	means an Above-Rail Operator that is a related body corporate or an associate within the meaning of the <i>Corporations Act 2001</i> (Cth), of the Access Provider
ARTC	means the Australian Rail Track Corporation Ltd, the Commonwealth body responsible for below-rail operations on the Interstate Network
Available Capacity	means the portion of Capacity that is not required to meet the Capacity granted to an Above-Rail Operator under an Access Contract in the form of Train Paths
Below-Rail Service Provider	means an Access Provider (or any related body corporate or associate of the Access Provider) that provides Access to Railway Infrastructure Assets
Capacity	means the capability of the Railway for Services , including the capability of the Railway to accommodate additional Train Paths , after taking the account: (a) possessions of the Railway reasonably required by the Access Provider for maintenance, repair or enhancements, and (b) the operation of work Trains
Commission	means the Essential Services Commission established under the <i>Essential Services Commission Act 2002</i> (SA), formerly named the SA Independent Industry Regulator (SAIIR)
Conditional Train Path	means the entitlement of an Above-Rail Operator to use the Railway between agreed locations at times which are not in conflict with the operator of Scheduled Train Paths that exist for that part of the Railway and which are seasonal or vary over time because of the nature of the operations
Guideline	Guidance paper developed and published by the Commission pursuant to the Code

Interstate Network	means the interstate standard gauge rail network operated by ARTC
Key Performance Indicator	means measures of performance in the delivery of the Service Quality Standards that may be agreed by Above-Rail Operators and Access Seekers.
Line Section	means a segment or sector of the Railway distinguished for the purposes of applying access prices and charges
Master Train Plan	means a complete listing of all the scheduled Train Paths and related information
Possession of the Railway	means closure of the relevant part of the Railway to all traffic for the purpose of effecting repairs, maintenance or upgrading.
Railway	means the railway line between Tarcoola and Darwin, comprising the existing railway line between Tarcoola and Alice Springs and the newly-constructed railway line between Alice Springs and Darwin
Railway Infrastructure Assets	mean such facilities necessary for the operation or use of the Railway, including signalling, control systems and communications systems as well as railway track, but not Rolling Stock
Reference Price	means proposed (or offered) access prices that are provided by the Access Provider to Access Seekers 'for reference purposes' in accordance with clause 9(1)(e) of the Code
Reserved Train Paths	mean Train Paths recorded on the Master Train Plan which provide for the commencement of a Scheduled Train Path within six months of it being placed on the Master Train Plan, or provide for the use of a Scheduled Train Path on a seasonal or agreed intermittent basis
Rolling Stock	means a locomotive, carriage, wagon or other vehicle for use on the Railway
Scheduled Train Paths	mean the entitlements of an Above-Rail Operator to use a Train Path on the Railway between the times and between the locations set out in an Access Contract (and as amended or varied permanently in accordance with the Access Contract)
Services	mean Trains run by an Above-Rail Operator using the Railway which provides freight or passenger services including work Trains
Service Quality Standards	The Access Provider's Service Quality Standards to which the Key Performance Indicators are applied.
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 Northern Territory. The Commission is the Regulator for both the South Australian and the Northern Territory legislation.

Third-Party Operators	mean Above-Rail Operators who are not related to or affiliated with the Access Provider
Train	means a single unit of Rolling Stock or two or more units coupled together, at least one of which is a locomotive or other self-propelling unit
Train Control Procedures	means the Access Provider's statement of the rules and practices to be applied in the real-time management of Services
Train Path	means the entitlement of an Above-Rail Operator to use the Railway between the times and between the locations as specified in an Access Contract (whether being scheduled or on an ad hoc basis), referred to in the Code as a 'time path'

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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