

TARCOOLA-DARWIN RAIL REGULATION ANNUAL REPORT 2012/13

September 2013



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The Essential Services Commission of South Australia is the independent economic regulator of the electricity, gas, ports, rail and water industries in South Australia. The Commission's primary objective is the *protection of the long-term interests of South Australian consumers with respect to the price, quality and reliability of essential services*. For more information, please visit www.escosa.sa.gov.au.

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1 THE COMMISSION'S FUNCTIONS AND POWERS

The Essential Services Commission of South Australia (**Commission**) is the designated regulator of third-party access to the Tarcoola-Darwin railway (**Railway**).

The rail access regime is set out in the AustralAsia Railway (Third Party Access) Code (**Code**), which is a schedule to the *AustralAsia Railway (Third Party Access) Act*.

This rail access regime has been certified by the National Competition Council as an 'effective' State regime under the national access regime (Part IIIA of the *Competition and Consumer Act 2010* (Cth)).

The Railway commenced operations on 15 January 2004 and the Code took effect as of that date. The Railway has been owned and operated by Genesee & Wyoming Australia (**GWA**) since 2010. GWA is required to comply with the Code.

Clause 5 of the Code appoints the Commission as the regulator under the Code. Under the Code, prices are set by negotiation between potential users and the track operator. In the event of a dispute, prices will be set by an arbitrator appointed by the Commission. If price arbitration is required, the arbitrator must comply with various guidelines developed by the Commission.

Under the Code, the Commission's role involves:

- ▲ prior to any access negotiations taking place – the development and maintenance of various guidelines, including:
 - arbitrator pricing requirements;
 - access provider reference prices and service policies; and
 - access provider information reporting requirements;
- ▲ once access negotiations commence – facilitating access negotiations where necessary and (with consent of the parties) settling access disputes; and
- ▲ more generally – monitoring and enforcing compliance with the Code as well as periodically reviewing aspects of the operation of the Code.

Further information about the Commission's role as the regulator under the Code, together with various regulatory guidelines, is available from the Commission's website at www.escosa.sa.gov.au.

Compliance monitoring and enforcement remains an important part of the regulatory arrangements administered by the Commission. The compliance regime established by the Commission in April 2005 (under Guideline No. 4) provides a framework for self-reporting, which provides compliance assurance to the Commission. However, under this relatively light-handed approach, the Commission can conduct independent compliance audits and investigations, as necessary.

2 COMMISSION ACTIVITIES

In 2012/13, the Commission's work focused on administration of the regime set out in the Code, including monitoring of compliance with its requirements.

On 4 September 2013, GWA submitted its compliance report for the year 1 July 2012 to 30 June 2013. No major breaches were identified. The Commission's monitoring of compliance has not identified any material breaches. The Commission appreciates the efforts made by GWA to ensure that its internal systems meet regulatory compliance requirements.

The Commission did not receive any access notifications from GWA during 2012/13, nor were any access disputes notified.

In 2013/14, the Commission will continue to administer the Code, including monitoring of compliance and attending to any reported access disputes or related inquiries that may arise.

The Commission will continue to work closely with GWA to ensure that reporting and compliance obligations are met during 2013/14. If necessary, the Commission will publish and update information on its website to enable interested parties to better understand the access regime.

To ensure that it is prepared for any disputes requiring arbitration, the Commission will maintain a list of potential arbitrators as required under clause 16(1) of the Code. In the case of a dispute, the Commission will consider the appointment of an arbitrator under the established arrangements for appointment. The Commission will respond to requests under clause 12B of the Code to facilitate negotiations.

In 2013/14, the Commission will also conduct a review of the third-party access revenues paid or payable by access holders to GWA for Tarcoola-Darwin railway infrastructure services. The Commission is required to conduct this review pursuant to section 50 of the Code.

3 FINANCIAL INFORMATION

Funding for the Commission's Tarcoola-Darwin rail regulatory activities is provided by both the South Australian and Northern Territory Governments. A summary of revenues and expenses for 2012/13 is provided in Table 1, together with comparative figures for the previous year.

Table 1: Tarcoola-Darwin Rail Regulatory Revenues and Expenses

	2012/13	2011/12
	\$000	\$000
REVENUE		
SA Government Contribution	50	100
NT Government Contribution	12	33
	<hr/>	<hr/>
	62	133
EXPENSES		
Salaries and on-costs	44	60
Consultants	0	1
Administration	15	17
Payments to SA Govt	350	0
	<hr/>	<hr/>
	409	78
	<hr/>	<hr/>
ANNUAL SURPLUS /(DEFICIT)	(347)	55

Over time, funding is shared equally between the SA and NT Governments. However, the funding contributions made by the SA and NT Governments may differ in any one year. A separate account is maintained for each Government which records its contributions and share of expenses. The annual contributions of the NT Government have been lower than those of the SA Government in recent years, as the NT Government's annual contributions have been more actively varied to avoid the build-up of accumulated surpluses.

In 2012/13, the Commission adopted a policy to ensure that surpluses do not accumulate to unnecessary levels. Consistent with this policy, the Commission requested reduced contributions from the SA and NT Governments (of \$50,000 and \$12,000, respectively) for 2012/13.

In addition, in 2012/13 the Commission returned surplus funds of \$350,000 to the SA Government, which had built up in the SA Government's account over a number of years. Government account policy requires that such returns of funds be reported as expenses.

The Commission has previously returned surplus funds to the NT Government and will continue to do so in future, as necessary.

The accumulated surplus as at 30 June 2013 for the Tarcoola-Darwin rail regulatory activities was \$26,000.



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