



Rail

# SOUTH AUSTRALIAN RAIL ACCESS REGULATION ANNUAL REPORT

2014-15

September 2015

**Enquiries concerning the currency of this report should be addressed to:**

Essential Services Commission of South Australia  
GPO Box 2605  
Adelaide SA 5001

Telephone: (08) 8463 4444  
Freecall: 1800 633 592 (SA and mobiles only)  
E-mail: [escosa@escosa.sa.gov.au](mailto:escosa@escosa.sa.gov.au)  
Web: [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au)

ISSN: 2205-6823

# Table of contents

- 1 The Commission’s functions and powers .....1
- 2 Railways and facilities covered by the Access Regime .....2
- 3 Commission activities .....4
  - 3.1 South Australian Rail Access Regime Review.....4
  - 3.2 Other activities.....5
- 4 Financial information .....6

# Glossary of Terms

<b>Access Regime</b>	The third-party access regime established under the Railway (Operations and Access) Act 1997 for below-rail railway infrastructure services
<b>Commission</b>	The Essential Services Commission of South Australia
<b>GSR</b>	Great Southern Railway Ltd
<b>GWA</b>	Genesee & Wyoming Inc.
<b>Information Kit</b>	South Australian Rail Access Regime Information Kit
<b>Minister</b>	Minister for Transport and Infrastructure
<b>ROA Act</b>	Railway (Operations and Access) Act 1997

# 1 The Commission's functions and powers

The Essential Services Commission of South Australia (**Commission**) is the regulator under section 9 of the Railway (Operations and Access) Act 1997 (**ROA Act**). The ROA Act establishes a negotiate/arbitrate access regime (**Access Regime**) that covers certain railways and associated facilities within South Australia.

The Access Regime aims to encourage negotiation for access on fair commercial terms and provides for the Commission to monitor and oversee access matters, establish pricing principles and information requirements, and refer access disputes to arbitration. If price arbitration is required, the arbitrator must comply with relevant guidelines developed by the Commission.

The ROA Act assigns the following specific functions to the Commission:

- ▲ monitoring and enforcing compliance with Part 3 (general rules for conduct of business) of the ROA Act
- ▲ monitoring the costs of rail services under the ROA Act
- ▲ making an application to the Supreme Court for appointment of an administrator where a rail operator becomes insolvent, ceases to provide railway services or fails to make effective use of the infrastructure of the State
- ▲ establishing pricing principles for fixing a floor and ceiling price for railway services
- ▲ establishing requirements for information about access to rail services and determining the price to be charged for such information
- ▲ conciliation of access disputes and referral of disputes to arbitration
- ▲ fulfilling any other functions and powers conferred by regulation under the ROA Act.

Following recommendation from the National Competition Council, the Access Regime was certified by the Parliamentary Secretary to the Federal Treasurer in July 2011 as an 'effective' State regime under the National Access Regime (Part IIIA of the Competition and Consumer Act 2010 (Cth)) for a period of 10 years until 26 July 2021.

Section 7(A) of the ROA Act requires the Commission to conduct a review of the operators and railway services subject to the Access Regime every five years to determine whether the Access Regime should continue to apply. The decision to continue or to terminate the Access Regime rests with the Minister for Transport and Infrastructure (**Minister**), upon receiving a recommendation from the Commission.

The ROA Act requires the Commission to report annually to the Minister on work it has carried out relating to its role under the ROA Act.

Further information about the Commission's role as the regulator under the ROA Act, together with the regulatory guidelines, is available from the Commission's website at [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).

## 2 Railways and facilities covered by the Access Regime

The Access Regime applies to railway infrastructure services as defined under the ROA Act and includes:

- ▲ rail track and yards, but excluding freight terminals and private sidings
- ▲ passenger railway stations
- ▲ the services needed for the operation of these, such as train control.

General categories of railway services such as the provision of locomotives, wagons, workshops and maintenance are excluded from the Access Regime.

The specific railways and associated facilities within South Australia covered by the Access Regime include:

- ▲ the broad gauge rail lines within metropolitan Adelaide used mainly for urban public transport services, controlled by the Rail Commissioner<sup>1</sup>
- ▲ the intra-state lines controlled by Genesee & Wyoming Australia Pty Ltd (**GWA**) used primarily for freight services, including:
  - the narrow gauge lines on the Eyre Peninsula
  - the broad gauge lines in the Mid North
  - the standard gauge lines in the Murray-Mallee region.
- ▲ the Great Southern Railway Ltd (**GSR**) owned and operated passenger terminal at Keswick.

The Access Regime does not apply to the Australian Rail Track Corporation Ltd owned interstate mainlines, the Glenelg tramline, the lines owned by Arrium (formerly OneSteel), the Leigh Creek line or any tourist or heritage railway lines.

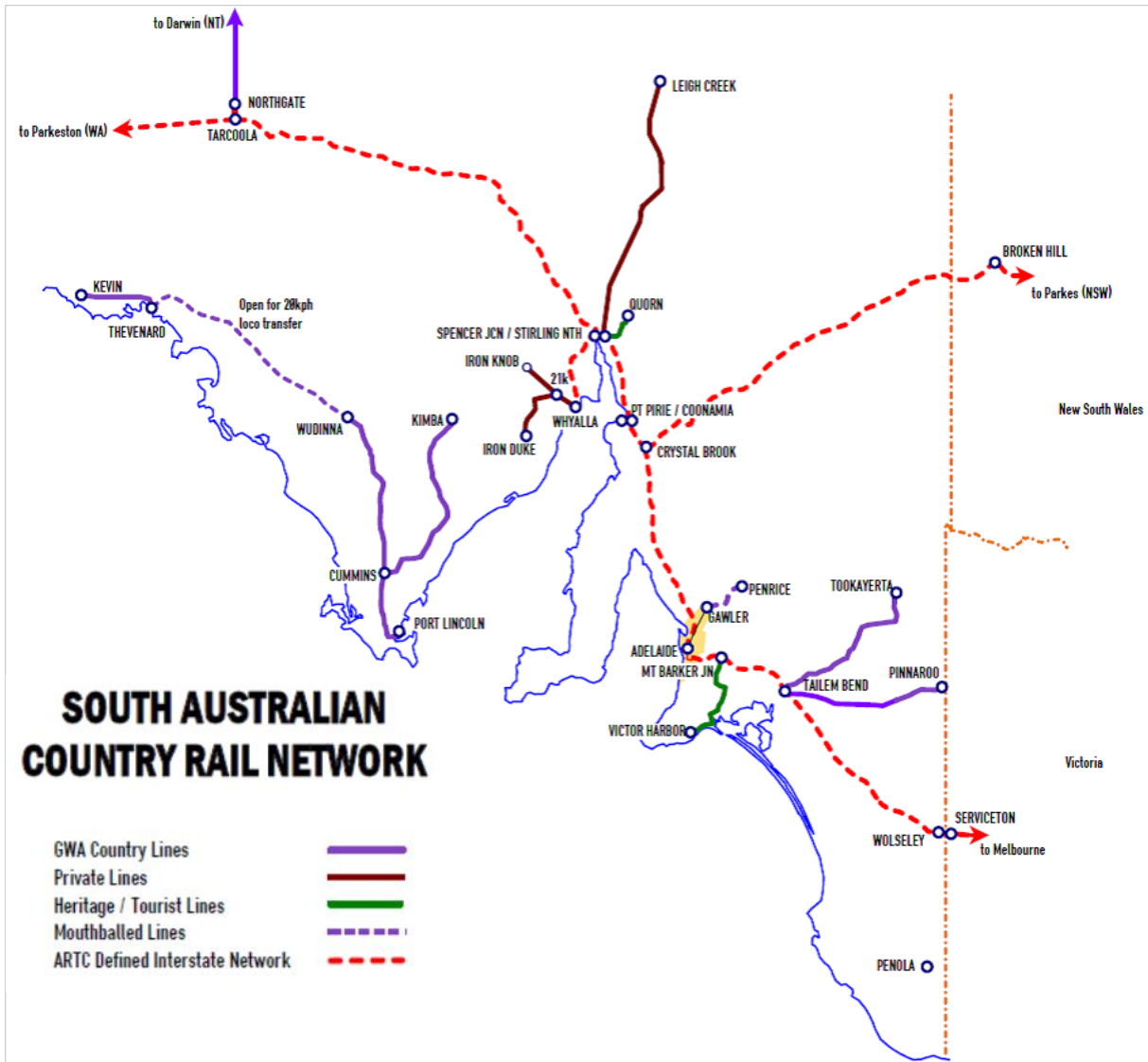
New railway infrastructure services can be included and existing services can be removed from the Access Regime by proclamation.

Figure 1 provides a map of the major railways in South Australia, with GWA-owned railways separately identified.

---

<sup>1</sup> The *Passenger Transport (Transfer of Assets and Vesting of Rights and Liabilities) Proclamation 2010* transferred all real and personal property of TransAdelaide to the Rail Commissioner with effect from 1 September 2010.

Figure 1: South Australian Rail Network



Source: SA Track and Signal

## 3 Commission activities

### 3.1 South Australian Rail Access Regime Review

In February 2015, the Commission commenced a review into the access regulation of intrastate railways in South Australia, pursuant to section 7(A) of the ROA Act. The purpose of such five-yearly reviews is to provide advice and recommendations to the Minister on whether or not ongoing access regulation is required.

In February 2015, the Commission released an Issues Paper:

- ▲ inviting comments on the current Access Regime and alternative approaches to achieving the intentions of the Access Regime
- ▲ outlining the requirements of the Commission's review
- ▲ requesting any information or evidence that the Commission should take into account in the review.

The Commission also engaged KPMG to review the regulatory accounting practices of GWA to ensure that costs and revenues had been allocated appropriately between rolling-stock services and railway infrastructure services. The report found no inappropriate cost or revenue accounting practices regarding GWA's intrastate railway operations. It concluded that GWA is offering comparable access prices to access seekers as it charges itself.

Following public consultation on an Issues Paper, the Commission released a Draft Report in June 2015. The Commission's draft recommendation to the Minister, as the Minister responsible for the Access Regime, was that the Access Regime in its current form should continue for the next five years.

In reaching its draft recommendation, the Commission had regard to the terms and legislative objectives of the ROA Act and the ESC Act, the policy objectives of the Access Regime and principles of best practice access regulation. Taken together, those matters emphasise the need to prevent the misuse of market power in the provision of railway infrastructure services, in order to promote competition for above-rail services, at the least regulatory cost.

The Commission's draft recommendation to continue with the current form of Access Regime was based on the following findings:

- ▲ There is the potential for misuse of market power by rail infrastructure service providers, which justifies access regulation.
- ▲ However, there is no evidence of the misuse of market power, which suggests that only light-handed regulation is required.

The Commission's Draft Report also identified some areas where the Access Regime could be improved to make it more effective. Those relate to providing greater clarification over the scope of regulated infrastructure services and investigating opportunities for greater integration of transport access regimes.

Following consultation on the Draft Report, the Commission will release a Final Report in September 2015. The Issues Paper, Draft Report, submissions and the Final Report will be available on the Commission's website at [www.escosa.sa.gov.au](http://www.escosa.sa.gov.au).



## 3.2 Other activities

The Commission's other activities in 2014-15 focussed on administration of the Access Regime, including monitoring of operators' compliance with their regulatory requirements. In undertaking its compliance role, the Commission is guided by its legislative objectives in particular the need to protect the long term interests of South Australian consumers with respect to the price, reliability and quality of essential services.

To ensure compliance with the various obligations imposed by the Access Regime, a rail operator must:

- ▲ testify that it has a sound and effective compliance program
- ▲ report non-compliances of the type required to be reported during the relevant reporting period
- ▲ 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.

The Commission has developed guidelines on its compliance function in respect of the rail industry, through the South Australian Rail Access Regime Information Kit (**Information Kit**). Regulated entities are required to report annually (by 31 August) to the Commission with regard to compliance systems and processes in accordance with the requirements of their Information Kit.

For 2014-15, GSR recorded a non-compliance for submitting its 2013-14 annual compliance report after the due date of 31 August 2014. Monitoring of the compliance throughout the year has not identified any further breaches with regard to the Rail Commissioner, GWA or GSR. The Commission will continue to monitor compliance in the rail industry and will ensure that the compliance systems of regulated entities meet regulatory requirements.

The Commission did not receive any access notifications from GWA during 2014-15, nor were any access disputes notified by other parties.

In 2015-16, the Commission will continue to administer the regime (for example, monitoring of compliance and maintaining information on its website to enable interested parties to better understand the Access Regime) and attend to any reported access disputes or related inquiries that may arise.

## 4 Financial information

Funding for the Commission's rail regulatory activities is provided by the South Australian Government. A summary of revenues and expenses for these activities in 2014-15 is provided in Table 1, together with comparative figures for the previous year.

Table 1: Rail Regulatory Revenues and Expenses

	2014-15	2013-14
<b>REVENUE</b>	<b>\$'000</b>	<b>\$'000</b>
SA Government Contribution	150	93
Total Revenue	150	93
<b>EXPENSES</b>		
Salaries and on-costs	108	58
Consultants	12	0
Administration	40	22
Total Expenses	160	80
<b>ANNUAL SURPLUS / (DEFICIT)</b>	<b>-10</b>	<b>13</b>

The figures above show a deficit for the financial year 2014-15, due to undertaking the review into the access regulation of intrastate railways in South Australia pursuant to section 7(A) of the ROA Act. Both revenue and expense amounts will vary according to the timing of future regulatory reviews, and will therefore reduce in 2015-16 following completion of the review.

The accumulated surplus for the South Australian rail regulatory activities as at 30 June 2015 was \$43,118. The Commission will continue to ensure that its regulatory activities are being undertaken as efficiently and effectively as possible and that surpluses do not accumulate to unnecessary levels.

