



Rail

# TARCOOLA-DARWIN RAIL ACCESS REGULATION ANNUAL REPORT

2014-15

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## Glossary of Terms

<b>Access Regime</b>	The third-party access regime established under the AustralAsia Railway (Third Party Access) Act 1997 (the Code) for below-rail railway infrastructure
<b>Code</b>	AustralAsia Railway (Third Party Access) Code contained in the Schedule to the AustralAsia Railway (Third Party Access) Act 1999
<b>Commission</b>	The Essential Services Commission of South Australia
<b>GWAN</b>	GWA (North) Pty. Limited, a wholly owned subsidiary of Genesee & Wyoming Inc.
<b>Railway</b>	The railway line that runs from Tarcoola, South Australia to Darwin, Northern Territory, including all associated earthworks and infrastructure

# 1 The Commission's functions and powers

The Essential Services Commission of South Australia (**Commission**) is the regulator under section 5 of the AustralAsia Railway (Third Party Access) Code (**Code**), which is a schedule to the AustralAsia Railway (Third Party Access) Act. The Code establishes a negotiate/arbitrate access regime (**Access Regime**) for the Tarcoola-Darwin railway (**Railway**).

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.

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
  - access provider information reporting requirements
- ▲ once access negotiations commence – facilitating access negotiations where necessary and (with consent of the parties) settling access disputes
- ▲ more generally – monitoring and enforcing compliance with the Code as well as periodically reviewing aspects of the operation of the Code.

Following recommendation from the National Competition Council, the Access Regime was certified by the Federal Treasurer in March 2000 as an 'effective' State regime under the National Access Regime (Part IIIA of the Competition and Consumer Act 2010 (Cth)) for a period of 30 years until 31 December 2030.

Section 50 of the Code Act requires the Commission to review, after 10 years of operation (and every five years thereafter) the revenues paid by access holders to the access provider for railway infrastructure services where no sustainable competitive price exists. The Code includes a mechanism to assess whether the Access Regime has been broadly successful and, if it has not, to put in place more targeted regulatory measures which will promote the achievement of that aim in the future.

The Code requires the Commission to report annually to the South Australian Minister for Transport and Infrastructure and the Northern Territories Minister for Transport on work it has carried out relating to its role under the Code.

Further information about the Commission's role as the regulator under the Code, 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 Railway and facilities covered by the Access Regime

The Access Regime applies to railway infrastructure services on the Tarcoola to Darwin railway and includes:

- ▲ rail track
- ▲ signalling systems, train control systems and communications systems.

General categories of railway services such as the provision of rolling stock are excluded from the Access Regime. New railway infrastructure services can be included and existing services can be removed from the Access Regime by proclamation.

The Railway comprises both an older section of standard gauge line between Tarcoola and Alice Springs<sup>1</sup>, measuring 824 km, and the more recently constructed section of standard gauge line between Alice Springs and Darwin, measuring 1,420 km. Construction of the new section of line from Alice Springs to Darwin commenced in 2001 at a cost of approximately \$1.6 billion (in real December 2014 prices). Figure 1 shows a map of the Railway.

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 North (**GWAN**) since 2010.

Figure 1: Tarcoola to Darwin Railway (shown in red)



Source: GWAN

<sup>1</sup> The line between Tarcoola and Alice Springs was built during the 1980s and replaced several older sections of line (along different routes) completed during the 1920s and which had their origins in the 1870s.

## 3 Commission activities

### 3.1 Tarcoola-Darwin Railway: 10-year review of revenues

In August 2014, the Commission commenced a review to:

- ▲ examine whether or not excessive revenues had been earned for any infrastructure services where a sustainable competitive access price did not exist during the first 10 years of operation
- ▲ if excessive revenues had been earned for those non-competitive services, to put in place more targeted regulatory measures which will ensure that excessive revenues are not earned in future.

The review involved assessment of relevant revenues and costs of providing the relevant railway services (bulk freight infrastructure services).

In November 2014, the Commission released an Issues Paper:

- ▲ inviting comments on the types of Railway services that have been subject to sustainable competition during the first ten years of operation
- ▲ outlining the scope and principles that the Commission intends to apply in this review
- ▲ requesting any information or evidence that the Commission should take into account in the review.

The Commission also engaged KPMG to investigate and report on the way revenues and costs are attributed for regulatory purposes to the Tarcoola-Darwin railway by GWAN. The report establishes principles to assess the reasonableness of the attribution of costs and revenues between rolling-stock services and railway infrastructure services and between competitive and non-competitive railway infrastructure services. The report found that the allocation bases adopted for those services were consistent with those principles.

Following public consultation on the Issues Paper, the Commission released a Draft Report in May 2015. The Commission's draft finding was that excessive access revenues had not been earned in respect of non-competitive infrastructure services provided on the Tarcoola-Darwin Railway for the period from 15 January 2004 to 30 June 2013.

In reaching its draft recommendation, the Commission had regard to the terms and legislative objectives of the Code 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 at the least regulatory cost.

Following consultation on the Draft Report, the Commission will release a Final Report in August 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 focused on administration of the Access Regime set out in the Code, including monitoring of 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 rail industry Tarcoola-Darwin Rail Guideline No 4 - Compliance Systems and Reporting (**Guideline No. 4**). 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 Guideline No. 4.

Monitoring of the compliance throughout the year has not identified any breaches with regard to GWAN. The Commission will continue to monitor compliance in the rail industry and ensure that the compliance systems of regulated entities meet regulatory requirements.

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

In 2015-16, the Commission will continue to administer the Code (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.

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.



## 4 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 2014-15 is provided in Table 1, together with comparative figures for the previous year.

Table 1: Tarcoola-Darwin Rail Regulatory Revenues and Expenses

	2014-15	2013-14
REVENUE	\$'000	\$'000
SA Government Contribution	120	50
NT Government Contribution	92	49
Total Revenue	212	99
EXPENSES		
Salaries and on-costs	125	55
Consultants	18	0
Administration	52	22
Total Expenses	195	77
ANNUAL SURPLUS / (DEFICIT)	17	22

The figures above show a decline in the surplus for the financial year 2014-15. Both revenues and expenses increased due to the Tarcoola-Darwin Railway - Ten Year Review of Revenues. Those amounts will vary according to the timing of future regulatory reviews, and will therefore reduce in 2015-16 following completion of the review.

Over time, funding is shared equally between the South Australian and Northern Territories Governments. However, the funding contributions made by the South Australian and Northern Territories may differ in any one year. A separate account is maintained for each Government which records its contributions and share of expenses.

The accumulated surplus for the Tarcoola-Darwin rail regulatory activities as at 30 June 2015 was \$65,300. 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.

