



Rail

Tarcoola-Darwin Rail Access Regulation Annual Report 2015-16

AustralAsia Railway (Third Party Access) Act 1999

September 2016

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Glossary of terms

| Term | Description |
|-----------------|--|
| Access Regime | The third-party access regime established under the AustralAsia Railway (Third Party Access) Act 1997 (the Code) for below-rail railway infrastructure |
| Code | AustralAsia Railway (Third Party Access) Code contained in the Schedule to the AustralAsia Railway (Third Party Access) Act 1999 |
| Commission | Essential Services Commission established under the Essential Services Commission Act 2002 |
| Guideline No. 4 | Rail Industry (Tarcoola-Darwin) Guideline No 4 - Compliance Systems and Reporting |
| GWAN | GWA (North) Pty. Limited, a wholly owned subsidiary of Genesee & Wyoming Inc |
| Railway | The railway line that runs from Tarcoola, South Australia to Darwin, Northern Territory, including all associated earthworks and infrastructure |

1 Introduction

The Essential Services Commission (**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 1999. The Code establishes a negotiate/arbitrate access regime (**Access Regime**) for the infrastructures services of the Tarcoola-Darwin railway (**Railway**). Genesee & Wyoming Australia North Pty Ltd (**GWAN**) is the owner and operator of the railway.

The Access Regime aims to encourage negotiation for access to those infrastructure services on fair commercial terms and provides that the Commission is 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 roles include:

- ▶ 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, and
- ▶ 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 2030.¹

Section 50 of the Code requires the Commission to review, after 10 years of operation (and every five years thereafter) GWAN's revenues received from access holders for railway infrastructure services where no sustainable competitive price exists. This is done to ensure that those revenues were not excessive.

The Code requires the Commission to report annually to the South Australian Minister for Transport and Infrastructure and the Northern Territory Minister for Transport on work it has carried out 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.

¹ For further information on the Access Regime certification by the National Competition Council refer to <http://ncc.gov.au/making-an-application/certification>.

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:

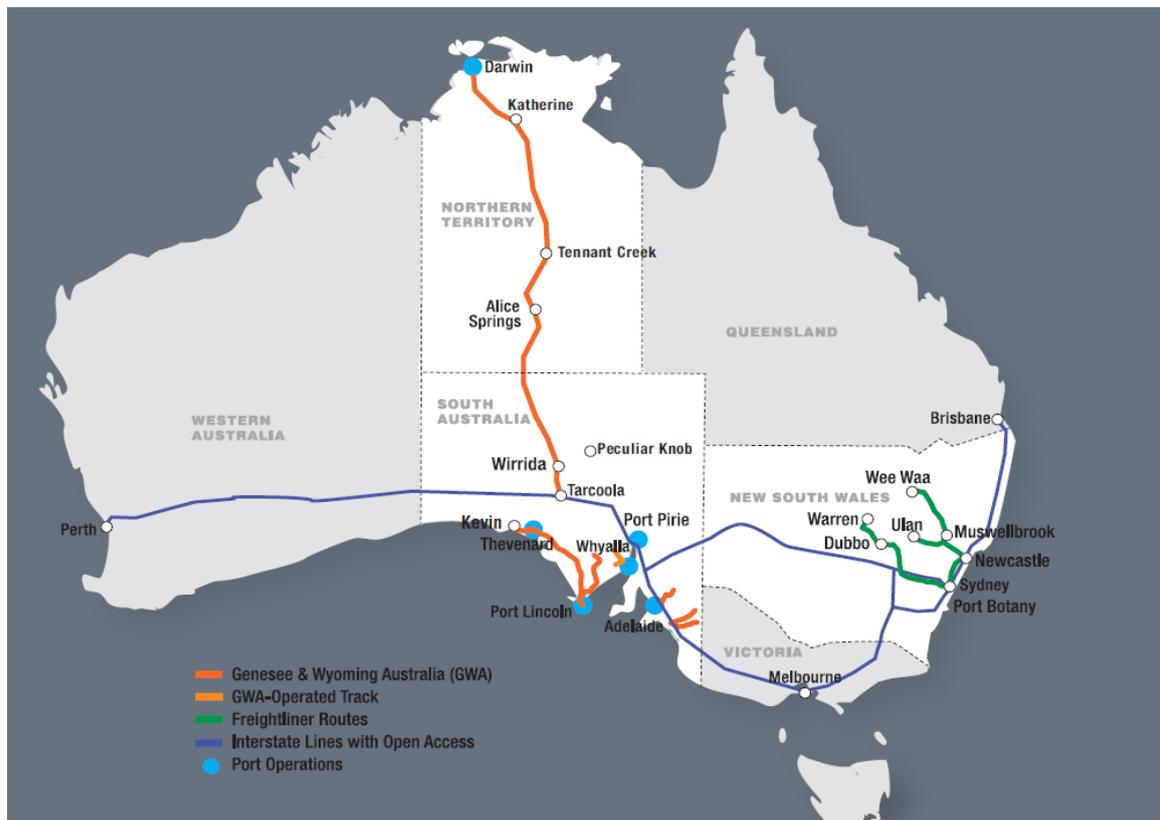
- ▶ rail track, and
- ▶ signalling systems, train control systems and communications systems.

General categories of railway services such as the provision of rolling stock are excluded from the application of 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,² 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).

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 GWAN since 2010. GWAN is the regulated Railway operator under the Access Regime.

Figure 1: Tarcoola to Darwin railway



Source: Genesee & Wyoming Australia

² 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 under Section 50 of the Code which:

- ▶ examined 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, and
- ▶ if excessive revenues had been earned for those non-competitive services, would put in place more targeted regulatory measures to ensure that excessive revenues are not earned in future.

The review involved assessment of relevant revenues and costs of providing the relevant railway services (railway services where no sustainable competitive price existed, which were defined by the Commission as being bulk freight infrastructure services).

The Commission released an Issues Paper in November 2014:

- ▶ inviting comments on the types of Railway services that had been subject to sustainable competition during the first 10 years of operation
- ▶ outlining the scope and principles that the Commission intended to apply in the review, and
- ▶ 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. KPMG assessed the reasonableness of the attribution of costs and revenues between rolling-stock services and railway infrastructure services and between relevant railway services and other services. Having regard to KPMG's advice,³ the Commission found that there was no evidence to suggest that GWAN had inappropriately allocated costs and revenues between those services.

Following public consultation on the Issues Paper in December 2014 and Draft Report in May 2015, the Commission released a Final Report in August 2015. Application of the excessive revenue test to the revenues and costs of providing the relevant railway services for the period from 15 January 2004 to 30 June 2013 led the Commission to the conclusion that GWAN's relevant revenues over the review period were not excessive.

In reaching its findings, the Commission had regard to the terms and legislative objectives of the Code and the Essential Service Commission 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.

The Issues Paper, Draft Report, Final Report and all submissions received in response to the review are available on the Commission's website at www.escosa.sa.gov.au.

³ Refer http://www.escosa.sa.gov.au/ArticleDocuments/364/20150714-SARail_TarcoolaDarwinRailReview-GWAFinancialAllocations-KPMGReport.pdf.aspx?Embed=Y.

3.2 Other activities

The Commission's other activities in 2015-16 focused on administration of the Access Regime set out in the Code, including monitoring of compliance by GWAN with relevant 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, and
- ▶ 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 Rail Industry (Tarcoola-Darwin) 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 the Guideline No. 4.

Monitoring of the compliance throughout the year has not identified any regulatory breaches by GWAN. The Commission will continue to monitor compliance and ensure that the compliance systems of GWAN meet regulatory requirements.

The Commission did not receive any access notifications from GWAN during 2015-16, nor were any access disputes notified by other parties.

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.

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 2015-16 is provided in Table 1, together with comparative figures for the previous year.

Table 1: Tarcoola-Darwin rail regulatory revenues and expenses

| | 2015-16 | 2014-15 |
|---------------------------------|---------|---------|
| | \$'000 | \$'000 |
| Opening surplus | 65 | 48 |
| Revenue | | |
| SA Government Contribution | 55 | 120 |
| NT Government Contribution | 35 | 92 |
| Total Revenue | 90 | 212 |
| Expenses | | |
| Salaries and on-costs | 78 | 125 |
| Consultants | - | 18 |
| Administration | 26 | 52 |
| Total expenses | 104 | 195 |
| Annual surplus/(deficit) | -14 | 17 |
| Closing surplus | 52 | 65 |

Note: Figures may not sum due to rounding.

The figures above show a deficit for the financial year 2015-16. Both revenues and expenses decreased as the Tarcoola-Darwin Railway - Ten Year Review of Revenues was finalised early in 2015-16. Both revenue and expense amounts will vary in future largely according to the timing of regulatory reviews.

Over time, funding is shared equally between the South Australian and Northern Territory Governments. However, the funding contributions made by the South Australian and Northern Territory Governments may differ in any one year. A separate account is maintained for each Government which records its contributions. The Commission's expenses are apportioned equally to each of these accounts.

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.



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