SOUTH AUSTRALIAN RAIL ACCESS REGIME: REVIEW OF REGULATOR COMPONENTS

ISSUES PAPER

May 2005

The Essential Services Commission of South Australia
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REQUEST FOR SUBMISSIONS

The Essential Services Commission of SA (the Commission) invites written submissions from interested parties in relation to the issues raised in this paper. Written comments should be provided by **Thursday, 9 June 2005**. It is highly desirable for an electronic copy of the submission to accompany any written submission.

It is Commission policy to make all submissions publicly available via its website (www.escosa.sa.gov.au), except where a submission either wholly or partly contains confidential or commercially sensitive information provided on a confidential basis and appropriate prior notice has been given.

The Commission may also exercise its discretion not to exhibit any submission based on their length or content (for example containing material that is defamatory, offensive or in breach of any law).

Responses to this paper should be directed to:

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ESSENTIAL SERVICES COMMISSION
OF SOUTH AUSTRALIA

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GLOSSARY OF TERMS

THE ACCESS REGIME	The South Australian Rail Access Regime, as established under the ROA Act
THE COMMISSION	The Essential Services Commission of South Australia, established under the ESC Act
ESC ACT	*Essential Services Commission Act 2002*
INFORMATION BROCHURE	A document containing information relevant to access that an operator is obliged to prepare and provide in accordance with s. 28 of the ROA Act
INFORMATION KIT	The Commission's primary publication concerning the Access Regime
OPERATOR	Defined in s. 4 of the ROA Act to mean a person who provides, or is in a position to provide, railway services in relation to the railway network
RAILWAY NETWORK	Defined in s. 4 of the ROA Act to mean the railways to which the ROA Act applies
RAILWAY SERVICE	For the purposes of the Access Regime a railway service is a service brought into the ambit of the Access Regime by proclamation, pursuant to s. 7 of the ROA Act
ROA ACT	*Railways (Operations and Access) Act 1997*

1 INTRODUCTION

The South Australian Rail Access Regime (the Access Regime) is set out in Parts 3 to 8 of the *Railways (Operations and Access) Act 1997* (the ROA Act). It establishes a framework for the negotiation of access to certain railway services, generally intrastate services, and for the resolution of access disputes that may arise between operators (access providers) and proponents (access seekers).

The Essential Services Commission of South Australia (the Commission) became the regulator for the Access Regime on 18 March 2004. Prior to that date the regulator had been the Executive Director, Transport SA.

The Commission has a number of functions under the Access Regime, including (but not limited to) developing and setting out:

- ▲ pricing principles for floor and ceiling prices (section 27);
- ▲ Information Brochure requirements, currently including reference tariffs (section 28); and
- ▲ regulatory reporting obligations (section 60 and 62).

The current arrangements covering the three areas above are set out in the Commission publication *South Australian Rail Access Regime: Information Kit* (the *Information Kit*), which is available on the Commission's website: www.escosa.sa.gov.au.

Readers are advised to consult the ROA Act and the *Information Kit* to better understand the Access Regime – including what it covers (whether track, yards, terminals, etc).[1] The *Information Kit* was developed by the previous regulator and released in January 2000. The Commission re-published the *Information Kit*, with some minor revisions, under its own banner on 9 June 2004.

The Commission considers it timely to review the regulator components of the *Information Kit* now that it is over 5 years old. This will enable the Commission to update those components of the Access Regime, if necessary, to better reflect recent developments in the administration and design of rail access regimes and current conditions in the Australian rail sector.

Note that this is not a review of the whole ROA Act, nor the whole Access Regime. It is only a review of certain, specific components for which the Commission is responsible.

[1] The Access Regime does not apply to the ARTC controlled interstate railways, nor does it cover the Tarcoola – Darwin railway, access to which is covered by the AustralAsia Railway (Third Party Access) Code, for which the Commission is also the regulator. A proclamation under the ROA Act also excludes, amongst other things, services associated with the Glenelg tramline, the Leigh Creek Line and any OneSteel owned track on the Eyre Peninsula.

1.1 Objectives

In conducting this review and reaching any decisions, the Commission will have regard to both the objects of the ROA Act and the Commission's objectives as set out in the *Essential Services Commission Act 2002* (the ESC Act).

Section 3 of the ROA Act provides that the objects of the Act are to:

(a) promote a system of rail transport in South Australia that is efficient and responsive to the needs of industry and the public;

(b) provide for the operation of railways;

(c) facilitate competitive markets in the provision of railway services;

(d) promote the efficient allocation of resources in the rail transport segment of the transport industry; and

(e) provide access to railway services on fair commercial terms and on a non-discriminatory basis.

Section 6 of the ESC Act provides that in performing its functions, the Commission must:

(a) have as its primary objective protection of the long term interests of South Australian consumers with respect to the price, quality and reliability of essential services; and

(b) at the same time, have regard to the need to:

  i) promote competitive and fair market conduct;

  ii) prevent misuse of monopoly or market power;

  iii) facilitate entry into relevant markets;

  iv) promote economic efficiency;

  v) ensure consumers benefit from competition and efficiency;

  vi) facilitate maintenance of the financial viability of regulated industries and the incentive for long term investment; and

  vii) promote consistency in regulation with other jurisdictions.

Section 3 of the ESC Act provides that rail services are essential services.

The ROA Act does not declare the provision of railway services to be a regulated industry for the purposes of the ESC Act. This means that the first part of Commission objective (b)(vi), with its reference to regulated industries, does not apply here. The practical effect of this is limited as the interests of access providers are relevant considerations through the various other objectives.

1.2 Possible compliance role

The Railways (Operations and Access) (Regulator) Amendment Bill 2004 is currently before the South Australian Parliament. If enacted, the legislation would, amongst other things, confer upon the Commission the function of monitoring and enforcing compliance with the ROA Act (other than Part 2). This could have implications for the content of the *Information Kit*, as the Commission may need to add compliance matters to it, including inserting the equivalent of a compliance guideline.

The Commission has recently published a compliance guideline in respect of the AustralAsia Railway (Third Party Access) Code, which covers the Tarcoola-Darwin railway. Interested parties may wish to examine that guideline as it may serve as a model should the Commission take on compliance responsibilities under this Access Regime.

1.3 Structure of this paper

This Issues Paper sets out the key areas for review. The Commission invites submissions from all stakeholders on areas of interest to them and encourages suggestions of changes that would enhance the Access Regime. This could include suggestions or comments in relation to Access Regime matters not specifically raised in this paper, but which stakeholders believe the Commission should consider.

Section 2 discusses the Pricing Principles that the Commission may establish under the Access Regime.

Section 3 discusses the Information Brochure content requirements that the Commission may establish.

Section 4 deals with Regulatory Information Requirements – that is, the reporting of information to the Commission that it requires of operators.

Section 5 raises broader issues with the *Information Kit*.

Section 6 sets out the Next Steps for this review.

2 PRICING PRINCIPLES

Section 27(1) of the ROA Act provides that the Commission:

> *… may establish principles (the **pricing principles**) for fixing a floor and ceiling price for the provision of railway services generally or railway services of a particular class.*

Section 27(2) of the ROA Act provides that the:

> *… floor price should reflect the lowest price at which the operator could provide the relevant services without incurring a loss …*
>
> and
>
> *… ceiling price should reflect the highest price that could fairly be asked by an operator for provision of the relevant services.*

If the Commission does establish pricing principles then they are used to calculate the floor and ceiling price in an arbitration. An arbitrator cannot set a price that is above the ceiling price or below the floor price calculated. However, the floor and ceiling only applies to an arbitration, they do not stop an operator and access seeker themselves agreeing to terms outside the pricing principles.

Notably, section 27 only envisages the Commission establishing pricing principles, not floor and ceiling prices themselves. Specific floor and ceiling prices need only be calculated, by an arbitrator, during the arbitration of an access dispute.[2]

2.1 Current pricing principles

Section 3 of the *Information Kit* sets out the current pricing principles. Section 4 provides examples of their application.

The principles for fixing a floor price are based on the concept of incremental cost and are set out in section 3.6 of the *Information Kit* as follows:

1. *The floor price shall be the price that matches the incremental cost to the rail service provider of providing the minimum services and facilities required to meet the specific needs of the access applicant.*
2. *The floor price shall comprise:*
    - *the sum of the current costs obtained from the use of the percentage allocations by cost category presented in Column 3 of Table 1; plus*
    - *a proportionate share of the amortised value of the incremental capital cost (plus any associated operating and maintenance costs) of new, upgraded or extended infrastructure provided to meet the applicant's needs if, and only if, this infrastructure is to be operational in the time period covered by the access agreement.*

[2] The Commission can oblige an operator to include indicative floor and ceiling prices in a s. 28 Information Brochure, as is discussed in the next section of this paper.

3. *The floor price shall be presented as a price per unit of consumption.*

4. *A separate floor price shall be determined based on the costs for each distinct category of the service or facility.*

5. *Accounts shall be kept in a manner which allows the cost allocations included in Table 1 to be determined with reasonable accuracy for each distinct category of the service and as otherwise required under section 22.*

If a rail service provider receives Government funding for community service obligations, the application of that funding shall be made explicit in terms of the services being supported. Where explicit funding is provided, it will be treated as access revenue and will not be taken into account in determining the floor price.

The principles for fixing a ceiling price are based on the concept of full economic cost and are set out in section 3.7 of the *Information Kit* as follows:

1. *The ceiling price shall be the price that matches the full economic cost of the minimum services and facilities required to meet the needs of the access applicant, less the actual or notional access income expected from other users of these services and facilities.*

2. *The ceiling price shall comprise:*

    - *the sum of current costs obtained from use of the percentage allocations by cost category presented in Column 4 of Table 1; plus*
    - *appropriate capital charges; plus*
    - *the amortised value of the incremental capital, operating and maintenance costs of new, upgraded or extended infrastructure provided to meet the applicant's needs, if, and only if, the infrastructure is to be operational in the time period covered by the access agreement.*

3. *The ceiling price shall be presented as a total price per annum. It also should be presented as a price per unit of consumption if it is possible and appropriate to do so.*

4. *A separate ceiling price shall be determined based on the costs for each distinct category of the service or facility.*

5. *Accounts shall be kept in a manner which will allow the cost allocations included in Table 1 to be determined with reasonable accuracy for each distinct category of the service and as otherwise required under section 22.*

For a ceiling price to be "the highest price that can be fairly asked" it needs to take account of other use of the railway services. Thus the ceiling price may reflect the rail service provider's own use of the service or facility, to which a notional income should be attributed, and/or the actual income expected from any other rail operators. That is, when taken together, the sum of the prices paid by all users should not exceed the full economic cost of the minimum services and facilities required to meet their collective needs.

The *Information Kit* provides further definitions and also provides a table of cost categories showing what proportion of each cost category is to be included in any calculation of a floor or ceiling price.

2.2 The role of the pricing principles

The effect of the pricing principles is to establish bounds for an arbitrator. The actual price outcome of an arbitration may sit anywhere within those bounds, which might be quite broad. The price outcome is at the discretion of the arbitrator, subject to the arbitrator taking into account the various principles set out for them in s. 38 of the ROA Act.

Thus, the primary role for the pricing principles is to exclude the possibility of certain pricing outcomes – those outcomes outside the bounds. Section 27(2), presented above, describes the bounds as ensuring that an operator will not incur a loss, nor charge above a "fair maximum" price.[3] The most appropriate price in any given situation may be neither the floor nor the ceiling, but the pricing principles are not seeking to point to an appropriate price, they are only meant to avoid clearly inappropriate prices. That is, the appropriate price must lie somewhere between the bounds.

It is arguable that an arbitrator would reach an appropriate price in any case, taking into account only the s. 38 principles. Indeed, the Commission could decide to not establish any pricing principles, simply by abolishing the existing pricing principles. In this case an arbitrator would reach an outcome purely by taking into account the s. 38 principles (equivalent to how the South Australian Ports Access Regime is structured).

To reach a view on this matter the Commission will need to consider the net value offered by pricing principles in this case (e.g. what is the likelihood that an arbitrator would reach an inappropriate price in the absence of pricing principles). This also reflects the Commission's preference to not introduce or encourage unnecessary regulation.

> ***Issue 1***
>
> ***Is there any merit in the Commission not establishing any pricing principles, that is, simply abolishing the existing ones?***

Notwithstanding the above question, the following sections discuss what the pricing principles should be, if they are to exist. This is done for completeness, it does not pre-empt any particular outcome.

If pricing principles are to apply, the Commission must then determine how best to reflect the s. 27(2) definitions of "without incurring a loss" and a fair maximum. This requires the Commission to decide what will best align with the objects of the ROA Act and achieve its objectives under the ESC Act.

2.3 The floor price

The key question for a floor price is the definition of a loss. The current pricing principles for a floor price are based on the incremental cost concept. Incremental cost looks at what

[3] The term "fair maximum" is used here to summarise the words "the highest price that could fairly be asked".

additional net costs might be incurred by the operator as a result of the access occurring. Typically the focus is on direct costs incurred, including any maintenance costs brought forward, and the cost of any additional capital required to provide the service.

An incremental cost approach may be appropriate for a floor price given that, in this Access Regime, the floor is to be the lowest price "without incurring a loss". It is clear that an access price less than incremental cost would cause a loss of some definition.

There can also be argument to suggest that it would be appropriate to define "loss" differently, even, for example, to the extent of ensuring that no loss (of any definition) could be incurred. This would involve the floor price covering a broader range of costs, including an allocation of fixed/overhead costs. Moves in this direction bring more costs into the equation, tending therefore to raise the floor price.

An additional consideration is the term over which costs should be assessed. This can be limited to the term of the proposed access (which might be very brief), or can extend to longer timeframes (which may also raise the floor price if it brings more costs to account).

A second level question also arises as to how any choice of approach should be described and implemented. For example, the current pricing principles are based upon incremental cost, but then dictate the proportion of certain cost categories to be applied. This may make application easier (notwithstanding potential debate over cost categorisation and allocation), but could result in a divergence of the calculated and the "true" incremental cost in any given situation.

The Commission will need to decide how to define any floor pricing principles.

> ***Issue 2***
>
> ***How should the Commission design the floor pricing principles to best reflect the requirements of the ROA Act, and why?***

2.4 The ceiling price

The key question for a ceiling price is the definition of a fair maximum. The current pricing principles for a ceiling price are based on the full economic cost concept. This concept considers all costs (including a reasonable return) required to serve the access request – taking into account other revenues that the facilities would generate. The full economic cost concept as applied also looks only at the minimum (or efficient) facilities required, that is, it does not seek to cover unnecessary costs.

In its Final Report on the Ports Access Regime[4], the Commission described the term "fair commercial terms" as being "terms into which well informed commercial parties would freely choose to enter, in the presence of a workably competitive market". In the case of

[4] Ports Access Review, Final Report, p.37 at www.escosa.sa.gov.au

this Access Regime the Commission views a fair maximum price as being the highest price at which well informed commercial parties would freely choose to enter, in the presence of a workably competitive market. Suffice it to say that it is unlikely that a well informed access seeker would agree to a price where it would be cheaper to build their own rail infrastructure.

In simple terms the approach represents what an access seeker would have to spend to provide their own railway service – an efficient bypass. This is not necessarily to suggest that the access seeker is likely, in practice, to construct their own rail infrastructure, rather it sets that proposition as the fair maximum.

As in the case of the floor price, the Commission could consider the case for other approaches to the ceiling pricing principles. For example, it may be possible to bypass a railway service by road, suggesting that the fair maximum may not be described by the full economic cost of the railway service but by the full economic cost of an alternative means of moving goods (competitive imputation pricing). This approach is applied in the AustralAsia Railway (Third Party Access) Code, covering the Tarcoola-Darwin railway.

A second level question also arises here, as to how any choice of approach should be described and implemented. For example, the current pricing principles dictate the proportion of certain cost categories to be applied and how capital costs are to be calculated. As in the case of the floor pricing principles, this may make application easier, but could also result in a divergence of the calculated and the "true" full economic cost. Hence the Commission will need to decide how to describe any ceiling pricing principles.

Issue 3

How should the Commission design the ceiling pricing principles to best reflect the requirements of the ROA Act, and why?

2.5 Class

Section 27 also provides that pricing principles may be established for railway services generally or for railway services of a particular class.

This could allow the Commission to establish different pricing principles for services derived from different gauges of track, yards, stations and other types of infrastructure. This allows for recognition of the differences in the:

- ▲ nature of the services;
- ▲ cost structure of the services; and
- ▲ likelihood of access disputes arising.

It also allows the Commission to not establish pricing principles for some classes of railway services. For example, the Commission might determine that there should be

different pricing principles applicable to track and yard access, to take account of the different nature and cost structure of the services offered by track and yards. The Commission might also determine that pricing principles should not apply to access to metropolitan stations, given the limited likelihood of access being sought.

Issue 4

Should the Commission establish different pricing principles for different classes of railway services (including the option of not establishing pricing principles for some classes of railway services)?

Which pricing principles should apply to which classes of railway services, and why?

2.6 Other regimes

In addressing pricing principles (and other elements of this review) the Commission will examine practices in other access regimes, including other South Australian access regimes, such as:

- the AustralAsia Railway (Third Party Access) Code, with its use of competitive imputation pricing;
- rail access regimes interstate;
- the ARTC access undertaking; and
- the South Australian Ports Access Regime.

For example, the ARTC access undertaking is of some significance to this Access Regime, given that the Murray-Mallee lines connect to the ARTC system, and interactions between ARTC and local systems occur around Adelaide. The Victorian Rail Access Regime, which is currently under redevelopment, is also relevant as movement of border region grain onto rail systems in both states is possible, and there is potential for direct connection of the Pinnaroo and Ouyen lines (subject to standardisation of the Ouyen line) and reopening of the Mount Gambier to Portland line.

Whilst the scope for effective harmonisation across rail access regimes is a relevant consideration, the Commission must remain within the legislative structure of the ROA Act. Legislative differences between regimes can limit the transferability of desirable practices from elsewhere. However, if such limitations are identified in this review the Commission may bring them to the attention of the South Australian Government.

Issue 5

Which practices from other access regimes are or are not applicable to the pricing principles in the South Australian Rail Access Regime, and why?

3 INFORMATION ABOUT ACCESS

Division 2 of Part 4 (ss. 28-30) of the ROA Act establishes requirements for the initial provision of information by an operator to a prospective access seeker. The division deals with information requests and exchanges that might typically arise prior to a specific access proposal being lodged, and includes a requirement for an Information Brochure.

The purpose of the Division is to establish minimum rights and obligations to facilitate the exchange of preliminary information about access. However, it does not dictate how a party must start or conduct its commercial negotiations, other than requiring that the obligations be met as required. For example, a prospective access seeker does not necessarily have to request the Information Brochure available under s. 28 before lodging an access proposal under s. 31 (although it would be well advised to do so).

The Commission has specific roles in ss. 28-29.

3.1 Information Brochure

Section 28 requires an operator to provide an Information Brochure to an industry participant upon the written application of that participant.[5] The industry participant need not have otherwise applied for, or even enquired about, access. This suggests that the Information Brochure is intended to be relatively generic, meaning that an operator could have a pre-prepared, standard Information Brochure covering its railway services.

Section 28 provides that the Information Brochure must contain:

- if the operator carries on the business of providing passenger or freight services, a statement of the terms and conditions on which the operator provides the services;
- the terms and conditions on which the operator is prepared to make the operator's railway infrastructure available for use by others; and
- other information required by the Commission.

The Information Brochure must also refer to any relevant pricing principles and show how the terms and conditions relate to, or compare with, relevant pricing principles.

Chapter 5 of the *Information Kit* sets out the current requirements for the Information Brochure. The requirements are quite detailed and include:

- a description of the operator's railway infrastructure that the access regime covers;
- proposed terms and conditions of access that would comprise an access contract;

[5] Section 4 of the ROA Act defines an "industry participant" as an "operator" or a person who operates, or proposes to operate, railway rolling stock on the railway network. An "operator" is a person who provides, or is in a position to provide, railway services in relation to the railway network.

- floor and ceiling prices for access, as well as reference tariffs, showing how the proposed terms and conditions of access relate to the pricing principles; and
- corporate information about the operator.

The requirement to provide terms and conditions (other than price) for access is reasonable, to the extent that the terms and conditions are of a general nature. Naturally, there may be grounds in particular cases for special or additional terms and conditions to apply, depending upon the specific railway services being accessed.

The requirement to include floor and ceiling prices and reference tariffs is more problematic as the Information Brochure only involves preliminary information and an access proposal is unlikely to yet exist. Therefore, the floor and ceiling prices, and reference tariffs provided, can only be of a general nature. If an access dispute went to arbitration, the arbitrator would need to calculate floor and ceiling prices specific to the access proposal in dispute. The arbitrator could not rely on the calculations in the Information Brochure.

Section 28 also provides that the form of the Information Brochure must comply with any requirements imposed by the Commission. Chapter 5 of the *Information Kit* sets out some form requirements for an Information Brochure. These are predominantly outcomes-based (such as being easy to read and reproduce), noting the limited value in specifying exact forms (e.g. fonts, page size, colours).

The Commission is reviewing the obligations it imposes on Information Brochures, including considering what:

- information is necessary to further the objectives of the Access Regime;
- information is relevant given the role and placement (in the preliminary stage) of an Information Brochure in the Access Regime;
- information is useful to a prospective access seeker at the preliminary stage;
- relevant examples are there of Information Brochures (or their equivalent) in other access regimes; and
- form obligations are appropriate for an Information Brochure, including electronic?

The Commission will also give attention to the question of reference tariffs to determine what role they might have in this regime and, if they are to have a role, how they might be constructed. For example, this will include looking at whether:

- reference tariffs provided through the Information Brochure can be of use when an access proposal does not yet exist;
- an appropriately methodology, or series of methodologies, for reference tariffs can be developed for the range of railway services covered in the Access Regime;
- there are any railway services with sufficient demand as to warrant the use of, and the up-front effort required to develop, reference tariffs.

Issue 6

What additional content, beyond that mandated in the ROA Act, should the Commission require in the Information Brochure, and why?

What role is there for reference tariffs in the Access Regime and how might they be constructed?

3.2 Section 29

Section 29 sets out obligations to provide information of a more detailed nature, such as:

- the extent of utilisation (and hence spare capacity);
- the feasibility of expanding capacity; and
- an indication of an operator's preparedness to provide a service, and the likely terms and conditions (including price) of that service.

Although an actual access proposal need not have been made, the nature of the information provided under s. 29 is becoming more specific to the particular access proposal that a prospective access seeker might have in mind. Accordingly, it may be difficult for an operator to pre-prepare this information, although it should certainly be prepared for the possibility of a request.

Section 29 provides that an operator may make a reasonable charge for the provision of s. 29 information. An operator does not have to charge and may prefer not to for customer relations reasons. It is a Commission function to decide or approve the basis for any such charges. That is, to decide what is "reasonable".

The Commission proposes to include a decision on what should be considered when determining or approving a reasonable charge for the purposes of s. 29 in the new *Information Kit*. Relevant considerations are likely to include:

- the cost of gathering and providing information;
- the extent to which charging would be consistent with a competitive market for the provision of railway services;
- the degree of hindrance that a charging arrangement may pose to access; and
- the requirement in s. 30 of the ROA Act to be non-discriminatory in information provision.

Issue 7

What should be considered a reasonable charge for section 29 information, and why?

Note that the absence of an equivalent provision for making charges in s. 28 means that an operator cannot charge for an Information Brochure.

4 REGULATORY INFORMATION REQUIREMENTS

Part 7 of the ROA Act sets out the information gathering and monitoring powers of the Commission in respect of the Access Regime. Any reporting obligations are at the discretion of the Commission, other than the s. 61 obligation for an operator to provide a copy of every access contract to the Commission.

Chapter 6 of the *Information Kit* sets out the current reporting obligations. These require six monthly reporting to the Commission of information about:

- the extent and nature or railway services provided;
- railway use;
- recurrent and capital expenditures; and
- the operator's corporate profile.

There are several major purposes for the collection of regulatory information on an ongoing basis, including to:

- provide some assurance that an appropriate information base exists should an access dispute arise;
- monitor compliance with the Access Regime; and
- allow the Commission to keep up to date with industry activity and developments.

The Commission will revisit the regulatory information requirements it imposes on operators in the light of any changes it makes to other parts of the *Information Kit*. This reflects the Commission's acknowledgement that information reporting is not costless, and should only be required if it is relevant to the regulatory regime it serves.

Issue 8

What information should the Commission require an operator to report on an ongoing basis, and why?


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5 THE *INFORMATION KIT*

The *Information Kit* is, at present, the Commission's principal regulatory publication in relation to the Access Regime. In comparison to Commission publications in the other industries it regulates, the *Information Kit* is a combination of an Information Paper and three Guidelines, covering the:

- ▲ pricing principles;
- ▲ Information Brochure requirements; and
- ▲ regulatory reporting obligations.

The three "guideline" parts of the *Information Kit* have legal effect as they are made pursuant to the ROA Act. Hence an operator must abide by the obligations in those parts of the *Information Kit*.

The Commission's usual practice in the other industries it regulates has been to publish each paper and guideline as a separate document. However, the Commission intends to continue with the practice of publishing a single *Information Kit* for this Access Regime, noting that the document itself is not large and that the intended readership is specialised, relatively limited and likely to value easy access to the full suite of information contained in the *Information Kit*.

5.1 Additional Information Kit content

The Commission intends that at the completion of this process of review, various changes will flow into a new version of the *Information Kit*. These changes will largely reflect the discussions and subsequent deliberations highlighted in the previous sections.

In addition to this, the Commission also intends to add to the *Information Kit* a further information section that sets out in greater detail some of the procedural requirements of the Access Regime. This will cover the various requirements leading up to an arbitration, and provide guidance, where possible, as to how the Commission expects to administer the access processes and what it expects of the parties involved. Topics expected to be covered include:

- ▲ what is an affected industry participant;
- ▲ what might constitute an access proposal;
- ▲ what might constitute negotiation in good faith;
- ▲ how matters that are trivial, misconceived or lacking in substance might be identified;
- ▲ how a conciliation process could be conducted; and
- ▲ how an arbitrator would be identified and appointed.

Issue 9

Are there any issues concerning the procedural matters identified above that the Commission should consider describing?

The Commission is also prepared to consider including other information in the *Information Kit* if doing so would:

- help stakeholders to understand the Access Regime; or
- otherwise promote the objectives of the Access Regime.

Issue 10

What additional matters should the Commission consider for inclusion in the Information Kit?

6 NEXT STEPS

The Commission invites submissions on this Issues Paper. Submissions are due by **Thursday, 9 June 2005**.

The Commission will consider all submissions received and prepare a Draft Decision covering the various matters under consideration for publication by 30 July 2005. The Commission also intends to release an accompanying Draft *Information Kit*, revised to reflect the Draft Decision.

Further comment will then be sought on the Draft Decision and accompanying Draft *Information Kit* with a view to publishing a Final Decision and issuing a new *Information Kit* by 30 September 2005.

Note that the current *Information Kit* continues in effect until changed.