

TF301*

Railways (Access) Act 1998

Railways (Access) Amendment Code 2004

Made by the Minister under section 4 of the Act.

1. Citation

This Code may be cited as the *Railways (Access) Amendment Code 2004*.

2. Commencement

This Code comes into operation on the day on which it is published in the *Gazette*.

3. The Code amended and transitional provision

- (1) The amendments in this Code are to the *Railways (Access) Code 2000** (the “**principal Code**”).

[* *Published in Gazette 8 September 2000, p. 5123-81.*]

- (2) Sections 9, 14 and 15 and Schedule 4 clause 10(2) and (3) of the principal Code apply in relation to a proposal under that Code received by the railway owner before the commencement of this Code as if sections 7, 8, 9 and 15(7) of this Code had not been made.

4. Section 3 amended

- (1) Section 3 is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**expansion**”, in relation to a route, means an increase in the capacity of the route by an enhancement or improvement of the railway infrastructure associated with the route;

“**extension**”, in relation to a route, means the addition of railway infrastructure not forming part of the route at the time when the addition is proposed as mentioned in section 8(4) or (5);

”.

- (2) Section 3 is amended in the definition of “railway infrastructure” by deleting “to enable a railway to operate safely” and inserting instead —

“ for the operation of a railway ”.

5. Section 5 amended

After section 5(1) the following subsections are inserted —

“

- (1a) Subsection (1) does not prevent —

- (a) the making of a proposal that involves any extension or expansion, or both, of a route or the associated railway infrastructure, as mentioned in section 8(4); or
- (b) the proposal of such an extension or expansion being made in the course of negotiations under Part 3, as mentioned in section 8(5).

- (1b) If a route or the associated railway infrastructure is extended or expanded pursuant to an access agreement or a determination, this Code also applies to the route and infrastructure as so extended or expanded.

”.

6. Section 8 amended

After section 8(3) the following subsections are inserted —

“

- (4) A proposal may specify any extension or expansion, or both, of the route or the associated railway infrastructure that would be necessary to accommodate the proposed rail operations.
- (5) The fact that an extension or expansion is not specified in a proposal as mentioned in subsection (4) does not prevent the proposal of such an extension or expansion being made in the course of negotiations under Part 3 on the ground that such an extension or expansion would be necessary to accommodate the proposed rail operations.

”.

7. Section 9 amended

- (1) Section 9(1) is amended as follows:

- (a) by inserting after paragraph (b) —
“ and ”;
- (b) after paragraph (c)(iii) by deleting the semicolon and inserting a full stop instead;
- (c) by deleting paragraph (d) and “and” before it.

- (2) Section 9(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) If section 8(4) applies —

- (a) the sums notified to the proponent under subsection (1)(c)(i) and (ii) are to be assessed for access to the route and infrastructure as it exists and not for access to any proposed extension or expansion of the route and infrastructure; and
- (b) the railway owner must, within 30 days after the proposal is received, provide the proponent with —
 - (i) a reasonable preliminary estimate of the costs relating to any extension or expansion specified in the proposal; and
 - (ii) the railway owner’s opinion as to the share of those costs that is likely to be borne by the proponent.

- (3) In any negotiations or arbitration under Part 3 the railway owner is not bound by an estimate or opinion provided to a proponent under subsection (2)(b).

- (3a) The railway owner must give the proponent a draft access agreement not later than —
- (a) if clause 10 of Schedule 4 does not apply —
- (i) the day that is —
- (I) the 30th day; or
- (II) if section 8(4) applies, the 44th day,
- after the day on which the proposal was received by the railway owner; or
- (ii) if section 10 applies to the proposal and the Regulator gives approval under that section, the 23rd day after the Regulator's approval was given;
- (b) if clause 10 of Schedule 4 applies, the 7th day after the railway owner receives from the Regulator —
- (i) an approval under subclause (3)(a); or
- (ii) a determination under subclause (3)(b), of that clause.

”.

8. Section 14 amended

Section 14(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) it has the necessary financial resources —
- (i) to carry on the proposed rail operations; and
- (ii) if section 8(4) applies, to pay the share of costs referred to in section 9(2)(b).

”.

9. Section 15 replaced

Section 15 is repealed and the following section is inserted instead —

“

15. Proponent must show that its operations are within the capacity of the route or expanded route

- (1) The railway owner is entitled to require a proponent to show that, having regard to the capacity of the route and any information provided to the proponent under sections 6 and 7 —
- (a) the proposed entry time onto and exit time from the route to which the proposal relates; and
- (b) the speed and length of rolling stock proposed to be used in operations on the route,

either —

- (c) can be accommodated on the route; or
 - (d) if section 8(4) applies, could be so accommodated if the extension or expansion, or both, specified for the purposes of section 8(4) were undertaken by the railway owner.
- (2) If section 8(4) applies, the railway owner is also entitled to require the proponent to provide the railway owner with a preliminary assessment, based on information reasonably available to the proponent, showing that the proposed extension or expansion —
- (a) can be carried out in a technically and economically feasible way; and
 - (b) will be consistent with the carrying on of safe and reliable rail operations on the route.

”.

10. Section 33 amended

- (1) Section 33(3)(d) is deleted and the following paragraph is inserted instead —

“

- (d) subject to subsection (4), require the railway owner to extend or expand a route or the associated railway infrastructure, or to do both.

”.

- (2) After section 33(3) the following subsection is inserted —

“

- (4) The determination must not require the railway owner to extend or expand a route or the associated railway infrastructure unless the arbitrator determines that the proponent —
 - (a) has the necessary financial resources to pay any costs relating to the extension or expansion for which the proponent is liable; and
 - (b) is able to secure such payment in a way that the arbitrator considers satisfactory.

”.

11. Section 34 amended

- (1) Section 34(2) is amended by deleting “The other” and inserting instead —

“ Except as provided by subsection (5), the other ”.

- (2) After section 34(4) the following subsection is inserted —

“

- (5) Subsection (2) does not apply to any provision of a determination that consists of a direction as to, or an award of, costs under section 34(1) or (4) of the

Commercial Arbitration Act 1985, and any such provision binds the other party in the same way as it binds the railway owner.

”.

12. Section 36 amended

After section 36(2) the following subsection is inserted —

“

(3) Subsection (2)(a) does not, where —

- (a) section 8(4) applies; or
- (b) an extension or expansion is proposed in the course of negotiations under Part 3, as mentioned in section 8(5),

prevent the making of an access agreement that involves the extension or expansion, or both, of a route or the associated infrastructure.

”.

13. Section 47 amended

(1) After section 47(2) the following subsection is inserted —

“

(2a) The over-payment rules may make provision for a scheme under which amounts are to be determined that the railway owner is to pay to any relevant operator for the purpose of giving effect to subsection (2)(b).

”.

(2) After section 47(5) the following subsections are inserted —

“

(6) The Regulator may in writing direct the railway owner to pay to an operator any amount determined under a scheme referred to in subsection (2a).

(7) The railway owner must comply with —

- (a) the provisions of the over-payment rules; and
- (b) a direction given to the owner by the Regulator under subsection (6).

”.

14. Schedule 1 replaced

Schedule 1 is repealed and following Schedule is inserted instead —

“

Schedule 1 — Routes to which this Code applies

[s. 5]

Standard Gauge Routes

1. The track between Avon and Kalgoorlie, including the loop and the arrival road adjacent to that track at West Kalgoorlie.

2. The track between Forrestfield South and Kewdale.
3. The track between Kalgoorlie and Leonora.
4. The track between West Kalgoorlie West and West Kalgoorlie South.
5. The track between West Kalgoorlie and Esperance.
6. The track between Kambalda and Redmine.
7. The track between Cockburn North and Robb Jetty.
8. All tracks servicing the facilities of Co-operative Bulk Handling Limited on the standard gauge network except private sidings that are excluded by paragraph (h) of the definition of "railway infrastructure" in section 3.
9. All spur line tracks servicing customer facilities on the standard gauge network except private sidings that are excluded by paragraph (h) of the definition of "railway infrastructure" in section 3.

Narrow Gauge Routes

10. The track between Kwinana and Mundijong Junction.
11. The track between Mundijong Junction and Picton Junction.
12. The track between Cockburn North and Robb Jetty.
13. The track between Picton Junction and Lambert.
14. The track between Boyanup and Capel.
15. The track between Picton Junction and Picton East.
16. The track between Picton Junction and Inner Harbour Junction.
17. The track between Picton Junction and Bunbury Terminal.
18. The track between Pinjarra and Alumina Junction.
19. The track between Alumina Junction and Pinjarra South.
20. The track between Brunswick Junction and Premier.
21. The track between Brunswick North and Brunswick East.
22. The track between Worsley and Hamilton including Worsley East to Worsley North.
23. The track between Avon and Albany.
24. The track between York and Quairading.
25. The track between Narrogin and West Merredin.
26. The track between Yilliminning and Kulin.
27. The track between Wagin and Newdegate including Wagin East to Wagin South.
28. The track between Lake Grace and Hyden.
29. The track between Katanning and Nyabing.
30. The track between Katanning East and Katanning South.
31. The track between Tambellup and Gnowangerup.
32. The track between West Merredin and Kondinin.

33. The track between West Merredin and Trayning.
34. The track between Avon Yard and McLevie.
35. The track between Goomalling and Mukinbudin.
36. The track between Amery and Kalannie.
37. The track between Burakin and Beacon.
38. The track between Millendon Junction and Geraldton.
39. The track between Dongara and Eneabba South.
40. The track between Narngulu and Maya.
41. The track between Toodyay West and Miling.
42. All tracks servicing the facilities of Co-operative Bulk Handling Limited on the narrow gauge network except private sidings that are excluded by paragraph (h) of the definition of “railway infrastructure” in section 3.
43. All spur line tracks servicing customer facilities on the narrow gauge network except private sidings that are excluded by paragraph (h) of the definition of “railway infrastructure” in section 3.

Dual Gauge Routes

44. The track between Midland and Avon.
45. The track between Midland and Kwinana and the western leg of the Woodbridge Triangle from Signal 94 to Woodbridge South.
46. The track between Cockburn North and Cockburn East.
47. The track between Cockburn North and Cockburn South.
48. All spur line tracks servicing customer facilities on the dual gauge network except private sidings that are excluded by paragraph (h) of the definition of “railway infrastructure” in section 3.

Urban Network

49. The narrow gauge double tracks between Perth and —
 - (a) Currabmine;
 - (b) Fremantle;
 - (c) Armadale; and
 - (d) Midland.
50. The dual gauge track between Robb Jetty and Leighton and the spur line between Leighton and North Fremantle.
51. The narrow gauge mainline track between Armadale and Mundijong Junction.

”.

15. Schedule 4 amended

- (1) Schedule 4 clause 1 is amended, in the definition of “operating costs”, by deleting “being costs that would be incurred were the

infrastructure replaced using modern equivalent assets” and inserting instead —

“

and if, for particular infrastructure, modern equivalent assets are determined to be appropriate for the purposes of clause 2(4)(c)(ii), the operating costs in relation to that infrastructure are to be the costs that would be incurred were that infrastructure replaced using those modern equivalent assets

”.

- (2) Schedule 4 clause 3(1)(a)(i) is amended by deleting “20, 21 and 22” and inserting instead —

“ 49, 50 and 51 ”.

- (3) After Schedule 4 clause 2(2) the following subclause is inserted —

“

- (2a) Despite subclause (2), railway infrastructure is to be taken, for the purposes of this clause, to include a cutting or embankment that is made after the commencement of this Code for any reason, but the value of any such cutting or embankment as railway infrastructure is not to include the value of the land of which it forms part.

”.

- (4) Schedule 4 clause 6 is amended as follows:

- (a) by inserting before “Subject” the subclause designation “ (1) ”;
- (b) by deleting “clauses 7 and 8” and inserting instead — “ this Schedule ”.

- (5) At the end of Schedule 4 clause 6 the following subclause is inserted —

“

- (2) If any extension or expansion of the route or the associated railway infrastructure is to be provided for by an access agreement, the parties must, in negotiating the price to be paid for the provision of access, take into account —
- (a) the costs to be borne by the railway owner or the proponent in respect of the extension or expansion; and
- (b) any economic benefit to the railway owner or the proponent resulting from the extension or expansion.

”.

- (6) Schedule 4 clause 8(2) is repealed and the following subclause is inserted instead —

“

- (2) For the avoidance of doubt it is declared that the calculation of total costs under subclause (1) —
- (a) is for the whole of the route and associated railway infrastructure; and

(b) is to be the same for all operators,

regardless of the extent of the operations or use of the route and infrastructure by any particular operator.

”.

- (7) Schedule 4 clause 10(2) and (3) are repealed and the following subclauses are inserted instead —

“

- (2) The railway owner is to notify the Regulator of the costs determined under subclause (1) (including the costs for each route section) at the same time as it provides the proponent with the information specified in section 9(1)(c).

- (3) The Regulator is to either —

- (a) approve the railway owner’s determination; or
- (b) if he or she is not willing to do so, determine the relevant costs,

and the Regulator is to give that approval or make that determination not later than the 30th day after —

- (c) the day on which he or she receives notice under subclause (2); or

- (d) if —

- (i) an application is made under section 11(2); and
 - (ii) an approval is given for the purposes of section 10(1),

the day on which that approval is so given.

”.

- (8) Schedule 4 clause 13 is amended as follows:

- (a) in paragraph (e) by deleting the full stop and inserting a semicolon instead;
- (b) by inserting after paragraph (e) the following paragraph —

“

- (f) prices should allow a railway owner to recover over the economic life of the railway infrastructure concerned the costs of the owner in respect of any extension or expansion to accommodate the requirements of an operator.

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ERIC RIPPER, Treasurer.
