



Western Australia

Railways (Access) Act 1998

Railways (Access) Amendment Code 2023

Railways (Access) Amendment Code 2023

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Railways (Access) Amendment Code 2023

Made by the Minister under section 4 of the Act.

Part 1 — Preliminary

1. Citation

This code is the *Railways (Access) Amendment Code 2023*.

2. Commencement

This Code comes into operation as follows —

- (a) Part 1 — on the day on which this Code is published on the WA legislation website (*publication day*);
- (b) Part 3 — on the day after the period of 3 months beginning on publication day;
- (c) the rest of the Code — on the day after publication day.

Part 2 — Amendments commencing day after publication day

3. Code amended

This Part amends the *Railways (Access) Code 2000*.

4. Section 3 amended

- (1) In section 3 delete the definitions of:

capacity

operator

proponent

related body corporate

- (2) In section 3 insert in alphabetical order:

access holder means an entity to which access is provided under an access agreement;

access-related functions means the functions involved in arranging the provision of access to railway infrastructure under this Code;

access seeker means an entity that has made a proposal;

amendment day means the day on which the *Railways (Access) Amendment Code 2023 Part 2* comes into operation;

applicable railway infrastructure has the meaning given in section 47C(b);

applicable route section has the meaning given in section 47N(2);

available capacity, in relation to a route, means the infrastructure capacity of the route that is not committed to existing rail operations;

business day means a day other than a Saturday, a Sunday or a public holiday throughout Western Australia;

confidential information has the meaning given in section 31(2) of the Act;

current regulatory asset base has the meaning given in section 3B;

depreciated optimised replacement cost, in relation to railway infrastructure, means —

- (a) the lowest current cost to replace the railway infrastructure with assets that —
 - (i) have the capacity to provide the level of service that meets the actual and reasonably projected demand; and
 - (ii) are modern equivalent assets;
- less
- (b) accumulated depreciation in accordance with the costing principles for the time being approved or determined by the Regulator under section 47H;

economic life, in relation to an asset that is railway infrastructure, means the period over which the asset is reasonably expected to remain economically usable by 1 or more entities;

efficient costs means the costs that would be incurred by a prudent railway owner acting efficiently in accordance with good industry practice to achieve the lowest sustainable cost of providing access;

existing access agreement has the meaning given in section 8A(1);

infrastructure capacity, in relation to a route, means the total number of rail operations that can be

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accommodated on the route during a particular time having regard to —

- (a) the characteristics of the route; and
- (b) the length of the rolling stock comprising a train that can be operated on the route, and the speed at which it can be operated; and
- (c) the requirements of any written law; and
- (d) the technical requirements for the relevant rolling stock;

initial regulatory asset base has the meaning given in section 47J(7);

interim access agreement has the meaning given in section 8A(1);

interim access proposal has the meaning given in section 8A(3);

operating costs, in relation to railway infrastructure —

- (a) includes —
 - (i) train control costs, signalling and communications costs, train scheduling costs, emergency management costs, and the cost of information reporting; and
 - (ii) the cost of maintenance of railway infrastructure calculated on the basis of cyclical maintenance costs being evenly spread over the maintenance cycle; and

- (iii) payments made in respect of any lease or licence that the railway owner or an associate of the railway owner holds over any land, but only to the extent that the Regulator determines that those payments relate to land used for constructing, maintaining or operating the relevant railway and are not capital costs under Schedule 4 clause 2(5);

but

- (b) does not include costs that the Regulator has determined under section 47W(3) to be inefficient;

operating expenditure, in relation to railway infrastructure, means any of the following —

- (a) operating costs;
- (b) overheads attributable to the performance of the railway owner’s access-related functions, whether by the railway owner or an associate;

operating expenditure statement has the meaning given in section 47R;

rail operations of the railway owner includes the rail operations of an associate of the railway owner;

Regulator’s website means a website maintained by or on behalf of the Regulator;

regulatory asset base review statement has the meaning given in section 47P;

related body corporate has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

relevant day has the meaning given in section 3A;

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- (3) In section 3 in the definition of *associate* paragraph (b)(i) delete “partnership;” and insert:

partnership; or

- (4) In section 3 in the definition of *expansion* before “capacity” insert:

infrastructure

- (5) In section 3 in the definition of *railway infrastructure* after each of paragraphs (a) to (e) insert:

and

- (6) In section 3 in the definition of *railways network* after each of paragraphs (a) and (b) insert:

and

5. Sections 3A to 3C inserted

After section 3 insert:

3A. Relevant day in relation to proposal

- (1) In this section —
section 9B application means an application under section 9B(1);
section 9C notice means a notice under section 9C(1).

- (2) If a proposal is made to a railway owner, and the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure associated with every route section of the route to which access is sought under the proposal, the *relevant day* in relation to the proposal is —
- (a) unless paragraph (b), (c) or (d) applies — the day on which the proposal is received; or
 - (b) if the railway owner makes a section 9B application, but does not give a section 9C notice to the access seeker, in relation to the proposal — the day on which the section 9B application is resolved in the access seeker's favour; or
 - (c) if the railway owner gives a section 9C notice to the access seeker, but does not make a section 9B application, in relation to the proposal — the day on which the section 9C notice is resolved in the access seeker's favour; or
 - (d) if the railway owner makes a section 9B application, and gives a section 9C notice to the access seeker, in relation to the proposal, the day on which both of the following conditions are met —
 - (i) the section 9B application is resolved in the access seeker's favour;
 - (ii) the section 9C notice is resolved in the access seeker's favour.
- (3) If a proposal is made to a railway owner, and subsection (2) does not apply, the *relevant day* in relation to the proposal is —

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- (a) unless paragraph (b), (c) or (d) applies — the first day on which the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure associated with every route section of the route to which access is sought under the proposal; or
- (b) if the railway owner makes a section 9B application, but does not give a section 9C notice to the access seeker, in relation to the proposal, the first day on which both of the following conditions are met —
 - (i) the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure associated with every route section of the route to which access is sought under the proposal;
 - (ii) the section 9B application is resolved in the access seeker's favour;or
- (c) if the railway owner gives a section 9C notice to the access seeker, but does not make a section 9B application, in relation to the proposal, the first day on which both of the following conditions are met —
 - (i) the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure associated with every route section of the route to which access is sought under the proposal;

- (ii) the section 9C notice is resolved in the access seeker's favour;
- or
- (d) if the railway owner makes a section 9B application, and gives a section 9C notice to the access seeker, in relation to the proposal, the first day on which all of the following conditions are met —
 - (i) the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure associated with every route section of the route to which access is sought under the proposal;
 - (ii) the section 9B application is resolved in the access seeker's favour;
 - (iii) the section 9C notice is resolved in the access seeker's favour.
- (4) For the purposes of subsections (2) and (3), a section 9B application is ***resolved in the access seeker's favour*** if —
 - (a) the Regulator notifies the railway owner and the access seeker under section 9B(5)(b) that the Regulator has refused the application; or
 - (b) an arbitrator makes a determination that the proposal is not frivolous or vexatious.
- (5) For the purposes of subsections (2) and (3), a section 9C notice is ***resolved in the access seeker's favour*** if —
 - (a) the access seeker provides further information under section 9D(1)(a) in response to the notice and the railway owner does not give a further

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notice referred to in section 9C(3) within the period specified in section 9C(4)(b); or

- (b) the access seeker notifies the railway owner under section 9D(1)(b) that there is a dispute between them, and an arbitrator makes a determination that each of the requirements of section 8(3) that are the subject of the dispute have been met.

3B. Current regulatory asset base

The *current regulatory asset base* of a route section is —

- (a) if the updated regulatory asset base of applicable railway infrastructure associated with the route section has never been determined under section 47N(1) — the initial regulatory asset base of the route section; or
- (b) otherwise — the updated regulatory asset base of applicable railway infrastructure associated with the route section last determined under section 47N(1) (including as amended in accordance with any direction given by the Regulator under section 47M(2) or 47U(2)(b)).

3C. Notes not part of this Code

Notes in this Code are provided to assist understanding and do not form part of this Code.

6. Section 7 amended

- (1) In section 7(1):
 - (a) delete “ask” and insert:

request

(b) in paragraph (a)(i) after “current” insert:

infrastructure capacity and

(2) In section 7(2) delete “the 14th day” and insert:

10 business days

(3) After section 7(3) insert:

(4) In preparing the information referred to in subsection (1)(a)(i), the railway owner must not unfairly discriminate between the proposed rail operations of the entity and the rail operations of the railway owner.

7. Section 8 amended

(1) Delete section 8(3)(a) to (d) and insert:

- (a) set out each of the matters described in Schedule 2A; and
- (b) demonstrate each of the matters described in Schedule 2B; and
- (c) be accompanied by a notice in writing of the access seeker’s intention to enter into negotiations for an access agreement under this Code.

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- (2) In section 8(4A) delete “(3)(d).” and insert:

(3)(c).

8. Section 8A inserted

After section 8 insert:

8A. Proposals for interim access

- (1) In this section —

existing access agreement means —

- (a) an access agreement (including an interim access agreement); or
- (b) an agreement for access made otherwise than under this Code;

interim access agreement means an access agreement that relates to —

- (a) an interim access proposal; or
- (b) some modification of that interim access proposal agreed to by the railway owner and the entity that made the interim access proposal.

- (2) Sections 8(3)(a) and (b), 9B to 9D, and 9(1)(b)(i), (ii) and (iv) do not apply in relation to a proposal that is an interim access proposal.

- (3) A proposal is an *interim access proposal* if —

- (a) on the day on which the entity makes the proposal (*proposal day*), the entity and the railway owner are parties to an existing access agreement; and

- (b) the existing access agreement is due to expire within the period of 6 months after proposal day; and
- (c) the proposal is made —
 - (i) in respect of the same route to which access is provided to the entity under the existing access agreement; and
 - (ii) for the purpose of carrying on the same rail operations that the entity is carrying on under the existing access agreement; and
 - (iii) for access for a period of not more than 12 months.
- (4) Subsection (3)(c)(iii) does not prevent an entity that is party to an interim access agreement from making further interim access proposals for access for further periods each of not more than 12 months.

9. Section 9A amended

- (1) In section 9A(1):
 - (a) delete “A proponent” and insert:

An access seeker
 - (b) delete “26.” and insert:

26(1).
- (2) In section 9A(2)(a) delete “a proponent” and insert:

an access seeker

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- (3) Delete section 9A(5) and insert:
- (5) Subject to subsection (5B), nothing in this section prevents an access seeker that has withdrawn a proposal from, under section 8 —
 - (a) re-making the same proposal; or
 - (b) making a further proposal.
 - (5A) If an access seeker re-makes the same proposal under section 8, the access seeker and the railway owner must again take all steps and observe all requirements under this Code in respect of the re-made proposal.
 - (5B) If a determination declares under section 31B(1) that a proposal is frivolous or vexatious, the access seeker cannot re-make the same proposal under section 8 unless the re-made proposal addresses any reasons stated in the determination as to why the proposal is frivolous or vexatious.

10. Sections 9 to 11 replaced

Delete sections 9 to 11 and insert:

9B. Frivolous or vexatious proposals

- (1) If the railway owner to whom a proposal is made considers that the proposal is frivolous or vexatious the railway owner may apply in writing to the Regulator for notices to be issued under subsection (5)(a).
- (2) An application under subsection (1) must be made within 5 business days after the day on which the railway owner receives the proposal.

- (3) An application under subsection (1) must set out the reasons why the railway owner considers the proposal to be frivolous or vexatious.
- (4) The railway owner must, as soon as practicable after making an application under subsection (1), give the access seeker —
 - (a) written notice that the railway owner considers the proposal to be frivolous or vexatious; and
 - (b) a copy of the application.
- (5) On an application under subsection (1), the Regulator must —
 - (a) if the Regulator is satisfied that there are reasonable grounds for the railway owner to consider that the proposal is frivolous or vexatious — notify the railway owner and the access seeker in writing that there is a dispute between the railway owner and the access seeker as to whether the proposal is frivolous or vexatious; or
 - (b) otherwise — refuse the application and notify the railway owner and the access seeker in writing.

9C. Railway owner may request further information

- (1) A railway owner may give written notice to an access seeker under this subsection if —
 - (a) the access seeker has made a proposal to the railway owner; and
 - (b) the railway owner is not satisfied that the proposal meets the requirements of section 8(3).

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- (2) A notice under subsection (1) must specify —
 - (a) each requirement of section 8(3) that the railway owner considers that the proposal does not meet; and
 - (b) the further information that the railway owner requires the access seeker to provide to meet those requirements.
- (3) If the access seeker provides further information to the railway owner under section 9D(1)(a) in response to a notice given under subsection (1) and the railway owner is not satisfied that the further information meets the requirements of section 8(3) specified in the notice, the railway owner may give a further notice under subsection (1) to the access seeker.
- (4) A notice under subsection (1) must be given —
 - (a) if it is the first notice given under that subsection in relation to the proposal — within 5 business days after the day on which the railway owner receives the proposal; or
 - (b) if it is a further notice referred to in subsection (3) — within 5 business days after the day on which the railway owner receives the further information referred to in subsection (3).

9D. Access seeker may provide further information or notify dispute

- (1) An access seeker must within 10 business days after the day on which it receives a notice under section 9C(1) or within a further period agreed in writing by the parties —
 - (a) provide the further information specified in the notice; or

- (b) if the access seeker considers that the notice is not justified — notify the railway owner in writing that there is a dispute between them as to whether the requirements of section 8(3) have, or any particular requirement of section 8(3) has, been met.
- (2) If an access seeker fails to comply with subsection (1), the proposal to which the notice under section 9C(1) relates is taken to be withdrawn for the purposes of section 9A(4).

9. Railway owner’s obligations on receipt of proposal

- (1) The railway owner to whom a proposal is made must —
 - (a) within 5 business days after the day on which the proposal is received — acknowledge receipt of the proposal; and
 - (b) within 5 business days after the relevant day in relation to the proposal — provide the access seeker with —
 - (i) the floor price and the ceiling price for the proposed access (including the floor price and the ceiling price for each year of the proposed access); and
 - (ii) the costs for each route section on which those prices have been calculated; and
 - (iii) a copy of the costing principles for the time being approved or determined by the Regulator under section 47H; and
 - (iv) the current regulatory asset base of each route section to which the proposal relates.

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- (2) The railway owner must give the access seeker a draft access agreement not later than —
- (a) if Schedule 4 clause 10 does not apply and the proposal does not specify an extension or expansion under section 8(4) and section 10(1) does not apply — 20 business days after the relevant day in relation to the proposal; or
 - (b) if Schedule 4 clause 10 does not apply and the proposal specifies an extension or expansion under section 8(4) or section 10(1) applies — 30 business days after the relevant day in relation to the proposal; or
 - (c) if Schedule 4 clause 10 applies —
 - (i) if section 10(1) applies and, on the day on which the railway owner receives from the Regulator an approval under Schedule 4 clause 10(4)(a) or a determination under Schedule 4 clause 10(4)(b), the railway owner has not yet provided to the access seeker the things referred to in section 10(1)(b) — the day on which the railway owner provides to the access seeker the things referred to in section 10(1)(b); or
 - (ii) if the proposal specifies an extension or expansion under section 8(4) and section 11(1) applies and, on the day on which the railway owner receives from the Regulator an approval under Schedule 4 clause 10(4)(a) or a determination under Schedule 4 clause 10(4)(b), the railway owner has not yet given the access seeker written notice under section 11(1) — the day on which the railway owner gives the

access seeker written notice under section 11(1); or

- (iii) otherwise — 5 business days after the day on which the railway owner receives from the Regulator an approval under Schedule 4 clause 10(4)(a) or a determination under Schedule 4 clause 10(4)(b).
- (3) Despite subsection (2), if the access seeker gives written notice to the railway owner under section 10A(1) to prepare a cost assessment under section 10A(3) —
- (a) the railway owner is taken to have complied with subsection (2); and
 - (b) the railway owner must give the access seeker a draft access agreement not later than 40 business days after the day on which the railway owner received the notice.
- (4) In subsection (1)(b)(i) —
- floor price* and *ceiling price* are the sums equal to the costs referred to in Schedule 4 clauses 7(1) and 8(1) respectively —
- (a) as determined by the Regulator under Schedule 4 clause 9; or
 - (b) if Schedule 4 clause 9 does not apply, as determined by the railway owner for the purposes of Schedule 4 clause 10(1).

10. Obligations if railway owner considers extension or expansion necessary

- (1) If a proposal is made to a railway owner and the railway owner considers that an extension or expansion, or both, of the route or the associated

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railway infrastructure would be necessary to accommodate the proposed rail operations —

- (a) the sums provided to the access seeker under section 9(1)(b)(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 20 business days after the relevant day in relation to the proposal, provide the access seeker with —
 - (i) a reasonable preliminary estimate of the efficient costs relating to any extension or expansion specified in the proposal and any other extension or expansion considered necessary by the railway owner; and
 - (ii) the railway owner's opinion as to the share of those costs that is likely to be borne by the access seeker, having regard to the requirements of Schedule 4 clause 7A; and
 - (iii) a preliminary assessment, based on information reasonably available to the railway owner, of whether each extension or expansion referred to in subparagraph (i) is technically feasible and would be consistent with safe and reliable rail operations on the route.
- (2) In any negotiations or arbitration under Part 3 the railway owner is not bound by an estimate, opinion or assessment provided to an access seeker under subsection (1)(b).

10A. Cost assessment of extension or expansion

- (1) On receipt of a preliminary estimate referred to in section 10(1)(b)(i), the access seeker may give written notice to the railway owner to prepare a cost assessment under subsection (3) for 1 or more of the extensions or expansions to which the preliminary estimate relates.
- (2) The access seeker's notice under subsection (1) must —
 - (a) specify each extension and expansion for which the access seeker requires a cost assessment; and
 - (b) include the access seeker's written consent to pay the railway owner's reasonable costs of preparing the cost assessment in accordance with subsection (3).
- (3) The railway owner must, within 40 business days after the day on which it receives a notice under subsection (1), provide to the access seeker a cost assessment that includes —
 - (a) a reasonable detailed estimate of the efficient costs of implementing each extension and expansion specified in the notice; and
 - (b) supporting material demonstrating how those costs have been calculated; and
 - (c) the railway owner's opinion as to the share of those costs that is likely to be borne by the access seeker, having regard to the requirements of Schedule 4 clause 7A.
- (4) The railway owner must comply with subsection (3) in relation to an extension or expansion regardless of whether the preliminary assessment under section 10(1)(b)(iii) is that the extension or expansion

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is not technically feasible or would not be consistent with safe and reliable rail operations on the route.

- (5) If the access seeker gives a notice to the railway owner under subsection (1), the access seeker must pay the railway owner's reasonable costs of preparing any detailed estimate and supporting material provided to the access seeker under subsection (3).

11. Obligations if railway owner does not consider extension or expansion necessary

- (1) The railway owner to whom a proposal is made must, within 10 business days after the relevant day in relation to the proposal, give written notice to the access seeker under this section if —
- (a) the proposal specifies an extension or expansion under section 8(4); and
 - (b) the railway owner does not consider that any extension or expansion of the route or the associated railway infrastructure would be necessary to accommodate the proposed rail operations.
- (2) A notice under subsection (1) must include a written explanation as to why an extension or expansion, or both, of the route or the associated railway infrastructure would not be necessary to accommodate the proposed rail operations.

11. Section 13 amended

Delete section 13(2) and insert:

- (2) The duty imposed on the railway owner by subsection (1) does not arise until the access seeker has given notice to the railway owner under section 19(1).

12. Sections 14 and 15 deleted

Delete sections 14 and 15.

13. Section 16 amended

(1) In section 16(1):

(a) in paragraph (a)(ii) delete “a proponent who has” and insert:

an access seeker that has

(b) delete paragraph (b) and insert:

(b) must not unfairly discriminate between —

(i) 1 access seeker and another access seeker; or

(ii) an access seeker and an access holder; or

(iii) an access seeker and an entity that is seeking access, or to which access is provided, otherwise than under this Code;

and

(c) must have regard to benefits provided to the railway owner in relation to a route or associated infrastructure by any foundation user of the route.

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(2) After section 16(1) insert:

(1A) For the purposes of subsection (1)(b), discrimination is not unfair discrimination if it reasonably reflects —

- (a) the railway owner’s different costs or risks associated with providing different entities with access to a route; or
- (b) all benefits provided to the railway owner by all foundation users of a route in relation to the route or associated infrastructure.

(1B) For the purposes of this section, an entity is a *foundation user* of a route if the entity contributed significant funding towards, or otherwise bore significant risk as part of —

- (a) the establishment of the route; or
- (b) an extension or expansion of the route; or
- (c) a significant enhancement or improvement of the railway infrastructure associated with the route that does not increase the infrastructure capacity of the route.

(3) In section 16(2):

(a) delete “a proponent” and insert:

an access seeker

(b) in paragraph (a) delete “paths;” and insert:

paths; and

(4) Delete section 16(3).

14. Section 17 amended

In section 17(1) after each of paragraphs (a) and (b) insert:

and

15. Sections 18 and 19 replaced

Delete sections 18 and 19 and insert:

19. Notice of readiness to commence negotiations

- (1) An access seeker who has made a proposal to a railway owner must, within 10 business days after the relevant day in relation to the proposal —
 - (a) notify the railway owner in writing of the access seeker's readiness to begin negotiations;
and
 - (b) nominate a day on which the negotiations will begin, which cannot be earlier than 5 business days after the day on which the access seeker gives the railway owner notice under this section.
- (2) If the access seeker fails to comply with subsection (1), the proposal is taken to be withdrawn for the purposes of section 9A(4) unless the railway owner and the access seeker otherwise agree in writing.

16. Section 20 amended

- (1) In section 20(1) delete "19(3)(b)." and insert:

19(1)(b).

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- (2) Delete section 20(3) and insert:

- (3) The initial termination day fixed under subsection (2) must be not later than —
 - (a) if the proposal is an interim access proposal — 5 business days after the day nominated under section 19(1)(b) (the *nominated day*); or
 - (b) otherwise — 10 business days after the nominated day.

17. Section 21 amended

- (1) In section 21(1):
 - (a) delete “A proponent” and insert:

An access seeker
 - (b) delete “clause 13(a) of Schedule 4.” and insert:

Schedule 4 clause 13(a).

- (2) In section 21(2) delete “applicant” and insert:

access seeker

- (3) In section 21(3):
 - (a) delete “his or her” and insert:

an

(b) in paragraph (a) delete “applicant” and insert:

access seeker

(c) in paragraph (a) delete “material;” and insert:

material; and

(d) in paragraph (b) delete “he or she thinks fit;” and insert:

the Regulator thinks fit; and

(e) in paragraph (c) delete “him or her by Division 2 of” and insert:

the Regulator by

(f) in paragraph (d) delete “he or she” and insert:

the Regulator

(4) In section 21(4) delete “applicant” and insert:

access seeker

18. Section 24 amended

In section 24(1)(a) delete “section 26(2)” and insert:

section 26(2A) or (2C)

19. Section 25 amended

(1) After section 25(1) insert:

(1A) For the purposes of subsection (1)(b), a proposal or entity does not fail to comply with this Code solely because the railway owner is not satisfied that the proposal meets the requirements of section 8(3).

(2) In section 25(2):

(a) before paragraph (a) insert:

(aa) the Regulator has notified the railway owner and the access seeker under section 9B(5)(a) that there is a dispute between the railway owner and the access seeker; or

(b) in paragraph (a) after “refused” insert:

or failed

(c) in paragraph (a) delete “13;” and insert:

13; or

(d) in paragraph (b) delete “proponent has notified the railway owner under section 18(3)” and insert:

access seeker has notified the railway owner under section 9D(1)(b)

(e) in paragraph (c) delete “entity” and insert:

access seeker

20. Section 26 amended

(1) In section 26(1) after “refer the dispute” insert:

(if it is not a dispute referred to in section 25(2)(aa))

(2) Delete section 26(2) and insert:

(1A) A dispute referred to in section 25(2)(aa) is by the operation of this subsection referred to arbitration when the Regulator notifies the railway owner and the access seeker under section 9B(5)(a) that there is a dispute between them.

(2) Subsection (2A) applies if the parties to a dispute (other than a dispute referred to in section 25(2)(aa)) have not, within 10 business days after the day on which the Regulator receives the notice under subsection (1) (or within a further period agreed in writing by the parties and notified to the Regulator), given written notice to the Regulator that they have agreed on the arbitrator who will hear and determine the dispute.

(2A) The Regulator must, within 20 business days after the day on which the Regulator receives the notice under subsection (1), appoint 1 or more persons whose names are on a panel established under section 24 to act as arbitrators to hear and determine the dispute.

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- (2B) Subsection (2C) applies if the parties to a dispute referred to in section 25(2)(aa) have not, within 10 business days after the day (***notification day***) on which they are notified by the Regulator under section 9B(5)(a), given written notice to the Regulator that they have agreed on the arbitrator who will hear and determine the dispute.
- (2C) The Regulator must, within 20 business days after notification day, appoint 1 or more persons whose names are on a panel established under section 24 to act as arbitrators to hear and determine the dispute.
- (2D) The Regulator may extend the 20 business day period referred to in subsection (2A) or (2C), either before or after the period has ended, by written notice to the parties in accordance with section 52.

21. Section 27 amended

In section 27(2) delete “his or her” and insert:

the Regulator’s

22. Section 28 amended

(1) In section 28(1) after “a dispute” insert:

(other than a dispute referred to in section 25(2)(aa))

(2) In section 28(3) after “10” insert:

business

- (3) In section 28(4) delete “he or she” and insert:

the arbitrator

23. Section 29 amended

- (1) After section 29(1)(a) insert:

and

- (2) Delete section 29(3) and insert:

- (3) In subsection (1)(a)(ii) —

matters determined by the Regulator means —

- (a) the train management guidelines under section 43; and
- (b) the statements of policy under section 44; and
- (c) the over-payment rules under section 47; and
- (d) the costing principles under section 47H; and
- (e) approvals and determinations under section 47J; and
- (f) the applicable depreciation schedule under section 47K; and
- (g) approvals and directions under section 47U; and
- (h) determinations under sections 47V and 47W; and
- (i) determinations under section 47X(1)(b); and
- (j) determinations under Schedule 4 clauses 3 and 9; and

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- (k) approvals and determinations under Schedule 4 clause 10(4).

24. Section 30 amended

- (1) In section 30(1) delete “his or her” and insert:

the Regulator’s

- (2) In section 30(2) delete “he or she” and insert:

the arbitrator

25. Section 31 amended

In section 31(2) delete “*Rail Safety Act 1998.*” and insert:

Rail Safety National Law (WA) Act 2015.

26. Sections 31A and 31B inserted

After section 31 insert:

31A. Time limit for determination

- (1) The arbitrator must determine a dispute as soon as practicable, and in any event within the following period (the *determination period*) after the day on which the arbitrator is appointed —
 - (a) if the dispute is a dispute referred to in section 25(2)(aa) or (b) — 20 business days;

- (b) if the dispute is a dispute referred to in section 25(2)(a) or (c) and the proposal to which the dispute relates is an interim access proposal — 20 business days;
 - (c) otherwise — 120 business days.
- (2) The arbitrator may extend the determination period for a dispute —
 - (a) for a period agreed in writing by the parties; or
 - (b) if the arbitrator directs a party to provide further information within a specified period of time — for that period.

31B. Determinations where section 25(2)(aa) applies

- (1) Where the determination is made for the purposes of a dispute referred to in section 25(2)(aa), the determination must declare that the proposal to which the dispute relates is frivolous or vexatious, or not frivolous or vexatious, as the case may require.
- (2) If the determination declares that the proposal is frivolous or vexatious, the proposal is taken to be withdrawn for the purposes of section 9A(4).

27. Section 32 amended

In section 32 delete “sections 14 and 15” and insert:

section 8(3)

28. Section 33 amended

- (1) In section 33(1) delete “paragraph (a) or (c) of section 25(2).” and insert:

section 25(2)(a) or (c).

(2) After section 33(4) insert:

(5) If the proposal to which the dispute relates is an interim access proposal, the determination must not require the railway owner to allow the other party to use railway infrastructure for a period of more than 12 months.

Note: The heading to amended section 33 is to read:

Determinations where section 25(2)(a) or (c) applies

29. Section 34 amended

(1) In section 34(2) and (4)(a) delete “14 days” and insert:

10 business days

(2) In section 34(5) delete the passage that begins with “to any provision” and continues to the end of the subsection and insert:

to —

- (a) any provision of a determination that consists of a direction as to, or an award of, costs under section 33B(1) or (7) of the *Commercial Arbitration Act 2012*, and any such provision binds the other party in the same way as it binds the railway owner; or
- (b) a determination under section 31B.

30. Section 36B inserted

At the end of Part 3 Division 3 insert:

36B. Transitional provision relating to the *Railways (Access) Amendment Code 2023*

- (1) This section applies to a dispute to which this Division applies if, before amendment day, the dispute has been referred to arbitration.
- (2) If this section applies to a dispute, this Division continues to apply to and in relation to that dispute as if the amendments made by the *Railways (Access) Amendment Code 2023* sections 18 to 29 had not been made.

31. Section 36 amended

- (1) In section 36(2)(a) delete “infrastructure;” and insert:

infrastructure; or
- (2) Delete section 36(3) and insert:
- (3) Subsection (2)(a) does not prevent the making of an access agreement that involves the extension or expansion, or both, of a route or the associated infrastructure if —
 - (a) the proposal specifies an extension or expansion under section 8(4); or
 - (b) section 10(1) applies; or

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- (c) an extension or expansion is proposed in the course of negotiations under Part 3, as mentioned in section 8(5).

32. Section 39 amended

In section 39(3):

- (a) delete “register —” and insert:

register the following received by the Regulator under this section —

- (b) in paragraph (a) delete “agreements; and” and insert:

agreements;

- (c) delete the passage that begins with “applies,” and ends with “section.” and insert:

applies.

33. Section 39A inserted

At the end of Part 4 Division 2 insert:

39A. Publication of determinations

- (1) The Regulator may publish on the Regulator’s website all or part of a determination received by the Regulator under section 39(2).
- (2) The Regulator must not publish any part of a determination under this section unless the Regulator is satisfied that it is in the public interest to do so.

- (3) Before publishing a determination or part of a determination the Regulator must —
- (a) give the parties to the determination —
 - (i) written notice of the Regulator’s intention to publish the determination or part of the determination (as the case may be); and
 - (ii) a copy of the determination or the part of the determination that the Regulator intends to publish;
- and
- (b) invite the parties to make written submissions within a period specified in the notice as to whether the determination or the part of the determination should be published.
- (4) For the purpose of making a decision under subsection (2) the Regulator —
- (a) may be informed in such manner as the Regulator thinks fit; but
 - (b) must have regard to any submission relevant to the decision made in accordance with a notice under subsection (3).

34. Part 5 heading amended

In the heading to Part 5 delete “**approval functions of Regulator**” and insert:

Regulator functions

35. Part 5 Division 1 heading inserted

At the beginning of Part 5 insert:

Division 1 — General

36. Section 40 amended

- (1) In section 40(1) delete “Part 3, Division 2” and insert:

Part 3

- (2) Delete section 40(3) and insert:

- (3) In subsection (2) —

Part 5 instrument means the following —

- (a) the train management guidelines for the time being approved or determined by the Regulator under section 43;
- (b) the statements of policy for the time being approved or determined by the Regulator under section 44;
- (c) the over-payment rules for the time being approved or determined by the Regulator under section 47;
- (d) the costing principles for the time being approved or determined by the Regulator under section 47H;
- (e) the applicable depreciation schedule for the time being approved or determined by the Regulator under section 47K(3).

37. Section 41 amended

- (1) In section 41:
- (a) delete “For” and insert:
 - (1) For
 - (b) delete “his or her” and insert:

the Regulator’s
 - (c) delete “section 43 or 44” and insert:

section 43, 44, 47, 47A, 47H, 47J, 47K, 47M, 47Q, 47S,
47T, 47U, 47V, 47W or 47X
 - (d) in paragraph (a) delete “he or she” and insert:

the Regulator
 - (e) delete paragraph (b)(i) and insert:
 - (i) submissions relevant to the function
made in accordance with a notice under
section 41A(1) or 42(1), as the case may
be; and
 - (f) in paragraph (b)(iii) delete “he or she” and insert:

the Regulator

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(2) At the end of section 41 insert:

(2) Subsection (1)(b)(i) does not apply in relation to the performance of the Regulator's functions under section 47M.

38. Section 41A inserted

After section 41 insert:

41A. Public comment on matters under this Part

- (1) Before the Regulator performs a function set out in column 1 of an item of the Table, the Regulator must publish on the Regulator's website a notice that —
- (a) sets out the matter specified in column 2 of that item that relates to the function; and
 - (b) includes the following information —
 - (i) that written submissions relating to the matters set out in the notice may be made to the Regulator by any person within a specified period;
 - (ii) the address (including an email address) to which the submissions may be delivered or sent.

Table

Item	Column 1 Function	Column 2 Matter to be set out in notice
1.	Approving a statement prepared by a railway owner under section 43(3), 44(2), 47(1), 47A(1), 47H(1) or 47K(1)	A copy of the statement prepared by the railway owner under section 43(3), 44(2), 47(1), 47A(1), 47H(1) or 47K(1)
2.	Approving a determination set out in a statement submitted by a railway owner under section 47J(1)(b)	A copy of the statement submitted by the railway owner under section 47J(1)(b)
3.	Approving a railway owner to amend or replace standard access provisions under section 47A(6) or costing principles under section 47H(6)	A copy of the amended or replacement standard access provisions or costing principles proposed by the railway owner
4.	Directing a railway owner to amend or replace standard access provisions under section 47A(7) or costing principles under section 47H(7)	A copy of the direction proposed to be given to the railway owner under section 47A(7) or 47H(7)
5.	Approving an application made by a railway owner under section 47Q(2)	A copy of the application made by the railway owner under section 47Q(2)

Item	Column 1 Function	Column 2 Matter to be set out in notice
6.	Approving capital expenditure or operating expenditure proposed by a railway owner in an application under section 47S(1) or 47T(1)	A copy of the application made by the railway owner under section 47S(1) or 47T(1)
7.	Making a determination under section 47V(2), (3) or (4) in relation to a regulatory asset base review statement submitted by a railway owner under section 47P	A copy of the regulatory asset base review statement submitted by the railway owner under section 47P and details of the proposed determination under section 47V(2), (3) or (4)
8.	Making a determination under section 47W(2) or (3) in relation to an operating expenditure statement submitted by the railway owner under section 47R	A copy of the operating expenditure statement submitted by the railway owner under section 47R and details of the proposed determination under section 47W(2) or (3)
9.	Reviewing costs under section 47X(1)(a) for the purposes of making a determination under section 47X(1)(b)	Details of the proposed review of costs to be carried out under section 47X(1)(a)

- (2) The period specified under subsection (1)(b)(i) must be not less than the period of 20 business days after the day on which the notice is published under subsection (1).

39. Section 42 amended

- (1) In section 42(1):
- (a) delete “he or she is to —” and insert:

the Regulator must —
 - (b) in paragraph (a) delete “cause” and insert:

publish
 - (c) in paragraph (a) delete the passage that begins with “to be published” and continues to the end of the paragraph and insert:

on the Regulator’s website; and
 - (d) in paragraph (b)(iii) after “address” insert:

(including an email address)
 - (e) in paragraph (b)(iii) delete “posted.” and insert:

sent.

s. 40

- (2) Delete section 42(2) and insert:
- (2) The period specified under subsection (1)(b)(ii) must be not less than the period of 20 business days after the day on which the notice is published under subsection (1)(a).
- (3) Subsection (1) does not apply in respect of a variation mentioned in section 29(1) of the Act if the Regulator is satisfied that the variation will not effect a material change to any arrangement made under section 28 of the Act.

40. Part 5 Division 2 heading inserted

After section 42 insert:

Division 2 — Certain approval functions

41. Section 43 amended

- (1) In section 43(4)(b) delete “he or she” and insert:
- the Regulator
- (2) After section 43(4) insert:
- (4A) If the Regulator approves the statement submitted by the railway owner, the Regulator must publish the statement (including any amendments made under subsection (4)(a)) and notice of the approval on the Regulator’s website.

42. Section 44 amended

- (1) In section 44(1) delete “a proponent” and insert:

an access seeker

- (2) In section 44(3)(b) delete “he or she” and insert:

the Regulator

- (3) After section 44(3) insert:

- (3A) If the Regulator approves a statement of policy submitted by the railway owner, the Regulator must publish the statement (including any amendments made under subsection (3)(a)) and notice of the approval on the Regulator’s website.

43. Sections 45 and 46 deleted

Delete sections 45 and 46.

44. Section 47 amended

- (1) In section 47(1):

- (a) delete “the commencement of this Code” and insert:

amendment day

- (b) delete “clause 8 of Schedule 4” and insert:

Schedule 4 clause 8

s. 44

(2) In section 47(2):

(a) in paragraph (a) delete “clause 8(4) of Schedule 4 in respect of an operator or group of operators” and insert:

Schedule 4 clause 8(4) (the *clause 8(4) excess*) in respect of an access holder or group of access holders

(b) in paragraph (b) delete “an operator or group of operators” and insert:

an access holder or group of access holders

(c) in paragraph (b) delete “that operator or group of operators.” and insert:

that access holder or group of access holders;

(d) after paragraph (b) insert:

(c) if a clause 8(4) excess in respect of an access holder or group of access holders arises as a result of a determination by the Regulator under section 47X(1)(b), there must be no clause 8(4) excess in respect of that access holder or group of access holders after the period of 60 business days beginning on the day on which the Regulator makes the determination.

(3) In section 47(2a):

(a) delete “operator” and insert:

access holder

(b) delete “(2)(b).” and insert:

(2)(b) or (c).

(4) In section 47(3)(b) delete “he or she” and insert:

the Regulator

(5) After section 47(3) insert:

(3A) If the Regulator approves the statement submitted by the railway owner, the Regulator must publish the statement (including any amendments made under subsection (3)(a)) and notice of the approval on the Regulator’s website.

(6) In section 47(6) delete “operator” and insert:

access holder

45. Section 47A inserted

At the end of Part 5 Division 2 insert:

47A. Standard access provisions

(1) As soon as practicable after amendment day, each railway owner must prepare and submit to the Regulator a statement of the standard terms and conditions (*standard access provisions*) that the railway owner would want to be included in an access agreement entered into by the railway owner.

- (2) The terms and conditions in a statement submitted by the railway owner under subsection (1) must —
 - (a) be reasonable; and
 - (b) be sufficiently detailed and complete to form the basis of a commercially workable access agreement; and
 - (c) not seek to restrict an access holder from disclosing the terms and conditions of an access agreement or proposed access agreement to —
 - (i) the Regulator; or
 - (ii) an arbitrator in relation to an arbitration under Part 3 Division 3.
- (3) The railway owner may prepare and submit more than 1 statement under subsection (1).
- (4) The Regulator may, in respect of each statement submitted by the railway owner —
 - (a) approve the statement either with or without amendments; or
 - (b) if the Regulator is not willing to do so, determine what is to constitute the standard access provisions.
- (5) The Regulator must —
 - (a) if the Regulator approves a statement under subsection (4)(a) — publish the statement (including any amendments made under subsection (4)(a)) and notice of the approval on the Regulator’s website; or
 - (b) if the Regulator determines what is to constitute the standard access provisions under subsection (4)(b) — give the railway owner written reasons why the Regulator is not willing

to approve the statement submitted by the railway owner.

- (6) Standard access provisions may be amended or replaced by the railway owner with the approval of the Regulator.
- (7) The Regulator may, by written notice, direct the railway owner to —
 - (a) amend standard access provisions; or
 - (b) replace standard access provisions with other standard access provisions determined by the Regulator.
- (8) The railway owner must comply with a direction under subsection (7).
- (9) The Regulator must publish notice of the following on the Regulator’s website —
 - (a) an approval given under subsection (6);
 - (b) a direction given under subsection (7).

46. Part 5 Divisions 3 and 4 inserted

At the end of Part 5 insert:

Division 3 — Regulatory asset base functions

Subdivision 1 — General

47B. Terms used

In this Division —

applicable part of the railways network has the meaning given in section 47C(a);

contributed capital means railway infrastructure that has been funded wholly or in part by an entity other than the railway owner or an associate of the railway owner, including by the entity doing any of the following —

- (a) providing cash or in-kind contributions to the railway owner or an associate of the railway owner;
- (b) undertaking work, or paying for work to be undertaken, for the railway owner or an associate of the railway owner;
- (c) making payments to the railway owner or an associate of the railway owner that —
 - (i) fund the recovery of capital in relation to the railway infrastructure; and
 - (ii) are not payments of prices and charges for access;

double counting of assets has the meaning given in section 47F(2);

existing railway owner means a person who —

- (a) is a railway owner; and
- (b) was a railway owner immediately before amendment day;

first included in a regulatory asset base has the meaning given in section 47F(3);

relevant existing railway owner has the meaning given in section 47D.

47C. Applicable part of the railways network and applicable railway infrastructure

If a railway owner is for the time being the railway owner in relation to a part of the railways network to which this Code applies —

- (a) that part is an *applicable part of the railways network* in relation to the railway owner; and
- (b) railway infrastructure associated with that part is *applicable railway infrastructure* in relation to the railway owner.

47D. Relevant existing railway owners

An existing railway owner is a *relevant existing railway owner* if, during the period of 2 years immediately before amendment day —

- (a) no entity other than the following carried on rail operations on an applicable part of the railways network —
 - (i) the existing railway owner;
 - (ii) an associate of the existing railway owner;
 - (iii) a contractor engaged by the existing railway owner or an associate of the existing railway owner to carry on railway operations for the benefit of the existing railway owner or an associate of the existing railway owner;
- and
- (b) no entity other than an entity referred to in paragraph (a)(ii) or (iii) was in negotiations, whether under this Code or otherwise, with the existing railway owner for access to applicable railway infrastructure by the entity; and
 - (c) the existing railway owner did not receive, or take a step under this Code in relation to, a proposal.

47E. Notices to relevant existing railway owners

- (1) For the purposes of section 47I(b) and 47L(2)(b), the Regulator must give a relevant existing railway owner written notice under this subsection if on or after amendment day —
 - (a) the Regulator is satisfied that —
 - (i) an entity other than an entity referred to in section 47D(a)(i) to (iii) is carrying on rail operations on an applicable part of the railways network; or
 - (ii) an entity other than an entity referred to in section 47D(a)(i) to (iii) is in negotiations with the relevant existing railway owner for access to applicable railway infrastructure by the entity, either under this Code or otherwise; or
 - (iii) an entity has made a proposal to the relevant existing railway owner;
 - or
 - (b) both of the following apply —
 - (i) an entity has notified the Regulator in writing that the entity is likely to seek access to applicable railway infrastructure, either under this Code or otherwise;
 - (ii) the Regulator is satisfied that, before notifying the Regulator under subparagraph (i), the entity has made a genuine attempt to engage with the relevant existing railway owner regarding the access.

- (2) A notice under subsection (1) must —
- (a) specify the date on which the notice is given; and
 - (b) set out the reasons why the notice is given; and
 - (c) state the effect of sections 47I(b) and 47L(2)(b).

47F. Double counting of assets prohibited

- (1) A railway owner must not, when valuing railway infrastructure under or for the purposes of this Code, engage in double counting of assets.
- (2) A railway owner engages in *double counting of assets* if the sum of the return of capital that is attributable to an asset over its economic life, via depreciation or otherwise, exceeds the value of the asset at the time at which it is first included in a regulatory asset base.
- (3) The value of an asset is *first included in a regulatory asset base* when the first of the following occurs —
- (a) the Regulator approves or determines under section 47J(3) the depreciated optimised replacement cost of the railway infrastructure that includes the asset;
 - (b) the railway owner determines under section 47N(1) the updated regulatory asset base of railway infrastructure that includes the asset.

47G. Contributed capital prohibited

A railway owner must not, when valuing railway infrastructure under or for the purposes of this Code, include the following —

- (a) if particular contributed capital is funded wholly by an entity other than the railway

- owner or an associate of the railway owner —
the value of that contributed capital;
- (b) if particular contributed capital is funded in part by an entity other than the railway owner or an associate of the railway owner — the value of the portion of the contributed capital that is not funded by the railway owner or an associate of the railway owner.

Subdivision 2 — Matters to be approved or determined by Regulator

47H. Costing principles

- (1) Each railway owner must, within the period that applies under section 47I, prepare and submit to the Regulator a statement of the principles, rules and practices (the *costing principles*) that are to be applied and followed by the railway owner —
- (a) when determining the depreciated optimised replacement cost of applicable railway infrastructure under section 47J(1)(a); and
 - (b) when determining the updated regulatory asset base of applicable railway infrastructure under section 47N(1); and
 - (c) when determining the costs referred to in Schedule 4 clauses 7 and 8; and
 - (d) in the keeping and presentation of the railway owner's accounts and financial records so far as they relate to the determination of those costs.
- (2) The statement must —
- (a) specify the route sections into which each applicable part of the railways network is divided; and

- (b) describe the intended method for calculating —
 - (i) accumulated depreciation for the purpose of determining the depreciated optimised replacement cost of applicable railway infrastructure under section 47J(1)(a); and
 - (ii) depreciation for the purposes of determining the updated regulatory asset base of applicable railway infrastructure under section 47N(1) and determining the costs referred to in Schedule 4 clauses 7 and 8;and
- (c) specify if assets will be grouped for the purposes of determining the matters referred to in subsection (1)(a) to (c) and, if so, how assets will be grouped; and
- (d) prohibit any double counting of assets by providing that the sum of the return of capital that is attributable to an asset over its economic life, via depreciation or otherwise, must not exceed the value of the asset at the time at which it is first included in a regulatory asset base; and
- (e) prohibit the inclusion of the following in relation to contributed capital —
 - (i) if the contributed capital is funded wholly by an entity other than the railway owner or an associate of the railway owner — the value of the contributed capital;
 - (ii) if the contributed capital is funded in part by an entity other than the railway owner or an associate of the railway

owner — the value of the portion of the contributed capital that is not funded by the railway owner or an associate of the railway owner.

- (3) The Regulator must, within 40 business days after the day on which the Regulator receives the statement submitted by the railway owner —
 - (a) approve the statement submitted by the railway owner either with or without amendments; or
 - (b) if the Regulator is not willing to do so, determine what are to constitute the costing principles.
- (4) If the statement specifies that assets will be grouped for the purpose of determining the depreciated optimised replacement cost of applicable railway infrastructure, the Regulator must not approve the statement under subsection (3)(a) unless the Regulator is satisfied that —
 - (a) assets will only be grouped with other assets that are —
 - (i) in the same route section; and
 - (ii) the same, or a similar, category of railway infrastructure; and
 - (iii) of a similar age and condition;and
 - (b) assets will not be grouped in a way that will result in access holders paying for assets they do not use; and
 - (c) assets will not be grouped in a way that will interfere with the Regulator’s ability to monitor compliance by the railway owner with the provisions of this Code.

- (5) The Regulator must —
- (a) if the Regulator approves the statement under subsection (3)(a) — publish the statement (including any amendments made under subsection (3)(a)) and notice of the approval on the Regulator’s website; or
 - (b) if the Regulator determines what is to constitute the costing principles under subsection (3)(b) — give the railway owner written reasons why the Regulator is not willing to approve the statement submitted by the railway owner.
- (6) The costing principles may be amended or replaced by the railway owner with the approval of the Regulator.
- (7) The Regulator may, by written notice, direct the railway owner to —
- (a) amend the costing principles; or
 - (b) replace the costing principles with other costing principles determined by the Regulator.
- (8) The railway owner must comply with a direction under subsection (7).
- (9) The Regulator must publish the following on the Regulator’s website —
- (a) notice of an approval given under subsection (6);
 - (b) a copy of a direction given under subsection (7).
- (10) The costing principles must be consistent with the requirements of the *Corporations Act 2001* (Commonwealth) relating to financial administration, and are of no effect to the extent of any inconsistency.

47I. Period that applies for s. 47H(1)

For the purposes of section 47H(1), the period is —

- (a) in the case of an existing railway owner (other than a relevant existing railway owner) — 60 business days after amendment day; or
- (b) in the case of a relevant existing railway owner — 60 business days after the day on which the Regulator gives the relevant existing railway owner a notice under section 47E(1); or
- (c) in any other case — 60 business days after the day on which the railway owner becomes a railway owner.

47J. Initial regulatory asset base

- (1) Each railway owner must, within the period that applies under section 47L —
 - (a) determine, for each route section of an applicable part of the railways network, the depreciated optimised replacement cost of applicable railway infrastructure associated with the route section; and
 - (b) submit to the Regulator a statement setting out —
 - (i) each of the railway owner's determinations made under paragraph (a); and
 - (ii) supporting material demonstrating the basis of each determination.
- (2) A determination by the railway owner under subsection (1)(a) must be made in accordance with the costing principles for the time being approved or determined by the Regulator under section 47H.

- (3) The Regulator must, within 120 business days after the day on which the Regulator receives a statement submitted by the railway owner under subsection (1), for each route section —
- (a) approve the railway owner's determination made under subsection (1)(a); or
 - (b) if the Regulator is not willing to do so, determine the depreciated optimised replacement cost of applicable railway infrastructure associated with the route section.
- (4) The Regulator may extend the period referred to in subsection (3), either before or after the period has ended, by written notice to the railway owner in accordance with section 52.
- (5) The Regulator must not give an approval or make a determination under subsection (3) in relation to applicable railway infrastructure unless the Regulator has approved or determined the applicable depreciation schedule under section 47K(3) in relation to that railway infrastructure.
- (6) The Regulator must, for each route section —
- (a) if the Regulator approves the railway owner's determination under subsection (3)(a) — publish the determination and notice of the approval on the Regulator's website; or
 - (b) if the Regulator determines the depreciated optimised replacement cost of applicable railway infrastructure associated with the route section under subsection (3)(b) — give the railway owner written reasons why the Regulator is not willing to approve the railway owner's determination made under subsection (1)(a).

- (7) The depreciated optimised replacement cost of applicable railway infrastructure associated with a route section approved or determined by the Regulator under subsection (3) (including as amended in accordance with a direction given under section 47M(2)) is the *initial regulatory asset base* of that route section.

47K. Applicable depreciation schedule

- (1) Each railway owner must prepare and submit to the Regulator a statement of the depreciation schedule (the *applicable depreciation schedule*) to be applied by the railway owner when determining —
 - (a) the updated regulatory asset base of applicable railway infrastructure under section 47N(1);
and
 - (b) the costs referred to in Schedule 4 clauses 7 and 8.
- (2) The railway owner must submit the statement to the Regulator on the same day that the railway owner submits the statement containing the railway owner's determination of the depreciated optimised replacement cost of the relevant applicable railway infrastructure to the Regulator under section 47J(1).
- (3) The Regulator must, within 120 business days after the day on which the Regulator receives the statement submitted by the railway owner under subsection (1) —
 - (a) approve the statement submitted by the railway owner either with or without amendments; or
 - (b) if the Regulator is not willing to do so, determine what is to constitute the applicable depreciation schedule.

- (4) The Regulator may extend the period referred to in subsection (3), either before or after the period has ended, by written notice to the railway owner in accordance with section 52.
- (5) The Regulator must not approve the statement submitted by the railway owner unless the Regulator is satisfied that the statement —
- (a) sets out an annual depreciation profile for each asset or group of assets that is applicable railway infrastructure; and
 - (b) provides for each asset or group of assets to be depreciated over its economic life (whether the depreciation is distributed uniformly or otherwise); and
 - (c) provides for each asset to be depreciated only once, that is, so that the sum of the return of capital that is attributable to an asset over its economic life, via depreciation or otherwise, does not exceed the value of the asset at the time at which it is first included in a regulatory asset base; and
 - (d) is designed so that access prices will vary over time in a way that promotes efficient growth in the market for rail access; and
 - (e) allows, as far as reasonably practicable, for adjustments that reflect changes in the expected economic life of a particular asset or group of assets; and
 - (f) allows for the legitimate business interests of the railway owner, access seekers and access holders.

Note for this subsection:

Section 60 provides for certain transitional arrangements that apply despite paragraphs (d) and (f) of this subsection.

- (6) If the statement submitted by the railway owner provides for depreciation of an asset or group of assets not to be distributed uniformly across each year of the economic life of the asset or group of assets, the Regulator must have regard to the following when performing its functions under subsection (3) —
- (a) if the statement provides for depreciation of the asset or group of assets to be accelerated — whether it is appropriate for depreciation of the asset or group of assets to be accelerated in the manner provided in the statement to avoid asset stranding;
 - (b) if the statement provides for depreciation of the asset or group of assets to be deferred — whether it is appropriate for depreciation of the asset or group of assets to be deferred in the manner provided in the statement on the basis that the market for access to the asset or group of assets is relatively immature.

Note for this subsection:

Section 60 provides for certain transitional arrangements that apply despite this subsection.

- (7) The Regulator must —
- (a) if the Regulator approves the statement under subsection (3)(a) — publish the statement (including any amendments made under subsection (3)(a)) and notice of the approval on the Regulator’s website; or
 - (b) if the Regulator determines what is to constitute the applicable depreciation schedule under subsection (3)(b) — give the railway owner written reasons why the Regulator is not willing to approve the statement submitted by the railway owner.

- (8) For the purposes of this Code, a reference to the applicable depreciation schedule for the time being approved or determined by the Regulator under subsection (3) is a reference to that applicable depreciation schedule —
- (a) as amended in accordance with any direction under section 47M(2); and
 - (b) as amended or replaced under section 47Q.

47L. Period that applies for s. 47J(1)

- (1) For the purposes of section 47J(1), the period that applies is —
- (a) if the applicable part of the railways network referred to in section 47J(1)(a) is part of the railways network on amendment day — the period that applies under subsection (2); or
 - (b) if the applicable part of the railways network referred to in section 47J(1)(a) becomes part of the railways network after amendment day — the period that applies under subsection (3).
- (2) For the purposes of subsection (1)(a), the period is the following period after the day on which the Regulator approves or determines costing principles under section 47H(3) in relation to the railway owner —
- (a) in the case of an existing railway owner (other than a relevant existing railway owner) —
 - (i) if on amendment day the railway owner has the management and control of the use of 600 km or less of railway track to which this Code applies — 6 months; or
 - (ii) if on amendment day the railway owner has the management and control of the use of more than 600 km but less than

- 2 000 km of railway track to which this Code applies — 9 months; or
 - (iii) if on amendment day the railway owner has the management and control of the use of 2 000 km or more of railway track to which this Code applies — 12 months;
 - (b) in the case of a relevant existing railway owner to whom the Regulator gives a notice under section 47E(1) —
 - (i) if on the day (**notification day**) on which the Regulator gives the notice under section 47E(1) the railway owner has the management and control of the use of 600 km or less of railway track to which this Code applies — 6 months; or
 - (ii) if on notification day the railway owner has the management and control of the use of more than 600 km but less than 2 000 km of railway track to which this Code applies — 9 months; or
 - (iii) if on notification day the railway owner has the management and control of the use of 2 000 km or more of railway track to which this Code applies — 12 months.
- (3) For the purposes of subsection (1)(b), the period is the following —
 - (a) in the case where the railway owner was, immediately before the day (**application day**) on which the applicable part of the railways network referred to in section 47J(1)(a) becomes part of the railways network, the

railway owner in relation to another part of the railways network to which this Code applies —

- (i) if on application day the railway owner has the management and control of the use of 600 km or less of railway track to which this Code applies — the period of 6 months after application day; or
 - (ii) if on application day the railway owner has the management and control of the use of more than 600 km but less than 2 000 km of railway track to which this Code applies — the period of 9 months after application day; or
 - (iii) if on application day the railway owner has the management and control of the use of 2 000 km or more of railway track to which this Code applies — the period of 12 months after application day;
- (b) in the case where paragraph (a) does not apply —
- (i) if on application day the railway owner has the management and control of the use of 600 km or less of railway track to which this Code applies — the period of 6 months after the day on which the Regulator approves or determines costing principles under section 47H(3) in relation to the railway owner; or
 - (ii) if on application day the railway owner has the management and control of the use of more than 600 km but less than 2 000 km of railway track to which this Code applies — the period of 9 months after the day on which the Regulator

approves or determines costing principles under section 47H(3) in relation to the railway owner; or

- (iii) if on application day the railway owner has the management and control of the use of 2 000 km or more of railway track to which this Code applies — the period of 12 months after the day on which the Regulator approves or determines costing principles under section 47H(3) in relation to the railway owner.

47M. Regulator may direct correction of material error or deficiency

- (1) In this section —
error or deficiency means —
 - (a) a clerical mistake or an accidental slip or omission; or
 - (b) a miscalculation or misdescription; or
 - (c) an error or deficiency resulting from the provision of false or misleading information to the Regulator.
- (2) The Regulator may, by written notice, direct a railway owner to amend any of the following matters that relate to the railway owner if the Regulator considers that the amendment is required to correct a material error or deficiency —
 - (a) the depreciated optimised replacement cost of applicable railway infrastructure associated with a route section approved or determined by the Regulator under section 47J(3);

- (b) the applicable depreciation schedule for the time being approved or determined by the Regulator under section 47K(3);
 - (c) the updated regulatory asset base of a route section determined by the railway owner under section 47N(1).
- (3) A direction under subsection (2) may direct the railway owner to amend the matter generally, or in relation to particular railway infrastructure specified in the direction.
 - (4) The railway owner must comply with a direction given under subsection (2).
 - (5) The Regulator must publish a copy of a direction given under subsection (2) on the Regulator's website.
 - (6) The Regulator's power to give a direction under subsection (2) is in addition to, and does not limit, the Regulator's power to give a direction under section 47U(2)(b).

Subdivision 3 — Updated regulatory asset base

47N. Railway owner to update regulatory asset base

- (1) A railway owner must, within 60 business days after 30 June of each year, determine the updated regulatory asset base of applicable railway infrastructure associated with each applicable route section.
- (2) For the purposes of subsection (1), a route section is an ***applicable route section*** if the Regulator has approved or determined the depreciated optimised replacement cost of railway infrastructure associated with the route section under section 47J(3).

- (3) A determination under subsection (1) must be made by —
- (a) taking the current regulatory asset base of the route section; and
 - (b) adding asset indexation over the relevant period of applicable railway infrastructure associated with the route section; and
 - (c) adding the value of capital expenditure incurred by the railway owner during the relevant period in relation to applicable railway infrastructure associated with the route section; and
 - (d) deducting depreciation over the relevant period of applicable railway infrastructure associated with the route section, in accordance with the applicable depreciation schedule for the time being approved or determined by the Regulator under section 47K(3); and
 - (e) deducting the value of railway infrastructure that —
 - (i) was disposed of by the railway owner or became redundant or stranded during the relevant period; and
 - (ii) was applicable railway infrastructure associated with the route section immediately prior to being disposed of or becoming redundant or stranded.

Notes for this subsection:

For the purposes of paragraph (c):

- (a) Under section 47P, the railway owner must submit updated regulatory asset base determinations made under section 47N(1) to the Regulator for review.
- (b) The Regulator must assess each updated regulatory asset base determination and determine in accordance with section 47V whether capital expenditure added under paragraph (c) for the

- purposes of making the updated regulatory asset base determination is efficient or inefficient.
- (c) If the Regulator determines under section 47V(4) that the capital expenditure is inefficient, the Regulator may direct the railway owner under section 47U(2)(b) to amend the updated regulatory asset base determination.
- (4) For the purposes of subsection (3), the *relevant period* in relation to a route section is —
- (a) if the updated regulatory asset base of applicable railway infrastructure associated with the route section has never been determined under section 47N(1) — the period beginning on the day on which a statement setting out a determination under section 47J(1)(a) for the route section was submitted to the Regulator and ending on 30 June of the last completed financial year; or
- (b) otherwise — the last completed financial year.
- (5) In subsection (3)(c) and (e), a reference to the railway owner includes a reference to any person who, during the relevant period, was the railway owner in respect of the applicable railway infrastructure mentioned in subsection (3)(c) or (e).
- (6) A determination under subsection (1) must be made in accordance with the costing principles for the time being approved or determined by the Regulator under section 47H.

Division 4 — Regulator review

47O. Terms used

In this Division —

necessary capital expenditure means capital expenditure that, at the time it was incurred, was necessary to —

- (a) maintain or improve the safety of rail operations; or
- (b) maintain the integrity of rail operations; or
- (c) comply with a regulatory obligation or requirement; or
- (d) maintain capacity to meet the existing level of demand for access;

proposed capital expenditure has the meaning given in section 47S(1);

proposed operating expenditure has the meaning given in section 47T(1);

relevant determination has the meaning given in section 47U(1)(a);

review period means the following —

- (a) the period beginning on amendment day and ending on the last day of the 6th full review year after amendment day;
- (b) each period of 5 years after that period;

review year means a period of 12 months beginning on 1 October.

47P. Railway owner to submit updated regulatory asset base

A railway owner must, within 5 business days after the end of each review period, prepare and submit to the Regulator a statement (a **regulatory asset base review statement**) setting out, for each applicable route section —

- (a) each updated regulatory asset base of applicable railway infrastructure associated

with the route section determined under section 47N(1) (whether by the railway owner or another person) during the review period; and

- (b) supporting material demonstrating the basis of each determination.

47Q. Railway owner to submit applicable depreciation schedule

- (1) The railway owner must, on the day on which it submits a regulatory asset base review statement to the Regulator under section 47P, submit to the Regulator the applicable depreciation schedule for the time being approved or determined by the Regulator under section 47K(3).
- (2) The railway owner may, on the day on which it submits the applicable depreciation schedule to the Regulator under subsection (1), apply to the Regulator for approval to amend or replace the applicable depreciation schedule.
- (3) The Regulator must not approve an application under subsection (2) unless —
 - (a) the Regulator is satisfied that the applicable depreciation schedule, as amended or replaced in accordance with the application, will meet the requirements of section 47K(5)(a) to (f); and
 - (b) if the application proposes that depreciation of an asset or group of assets be accelerated — the Regulator has had regard to whether it is appropriate for depreciation of the asset or group of assets to be accelerated in the manner proposed in the application to avoid asset stranding; and

- (c) if the application proposes that depreciation of an asset or group of assets be deferred — the Regulator has had regard to whether it is appropriate for depreciation of the asset or group of assets to be deferred in the manner proposed in the application on the basis that the market for access to the asset or group of assets is relatively immature.
- (4) If the Regulator approves an application under subsection (2), the Regulator must publish notice of the approval on the Regulator’s website.

47R. Railway owner to submit operating expenditure

A railway owner must, on the day on which it submits a regulatory asset base review statement to the Regulator under section 47P, submit to the Regulator a statement (an *operating expenditure statement*) setting out, for each applicable route section, the operating expenditure incurred in relation to applicable railway infrastructure associated with the route section during the review period to which the regulatory asset base review statement relates.

47S. Regulator may approve proposed capital expenditure

- (1) A railway owner may apply to the Regulator to approve capital expenditure (the *proposed capital expenditure*) proposed by the railway owner in relation to applicable railway infrastructure.
- (2) On an application under subsection (1), the Regulator must —
 - (a) if the Regulator is satisfied that the proposed capital expenditure, if incurred as proposed, would meet the requirements of

section 47V(3)(a) and (b) — approve the proposed capital expenditure; or

(b) otherwise — refuse the application.

- (3) The Regulator must give the railway owner written notice of the Regulator's decision under subsection (2).
- (4) If the proposed capital expenditure is approved by the Regulator under subsection (2)(a), and incurred as proposed, the incurred capital expenditure is approved capital expenditure for the purposes of section 47V(2).
- (5) If the Regulator approves the proposed capital expenditure, the Regulator must publish notice of the approval on the Regulator's website.

47T. Regulator may approve proposed operating expenditure

- (1) A railway owner may apply to the Regulator to approve operating expenditure (the *proposed operating expenditure*) proposed by the railway owner in relation to applicable railway infrastructure.
- (2) On an application under subsection (1), the Regulator must —
 - (a) if the Regulator is satisfied that the proposed operating expenditure, if incurred as proposed, would meet the requirements of section 47W(2)(b) — approve the proposed operating expenditure; or
 - (b) otherwise — refuse the application.
- (3) The Regulator must give the railway owner written notice of the Regulator's decision under subsection (2).
- (4) If the proposed operating expenditure is approved by the Regulator under subsection (2)(a), and incurred as proposed, the incurred operating expenditure is

approved operating expenditure for the purposes of section 47W(2)(a).

- (5) If the Regulator approves the proposed operating expenditure, the Regulator must publish notice of the approval on the Regulator's website.

47U. Regulator to review updated regulatory asset base

- (1) On receipt of a regulatory asset base review statement submitted under section 47P by a railway owner the Regulator must —
- (a) assess whether each updated regulatory asset base determination under section 47N(1) set out in the regulatory asset base review statement (a *relevant determination*) has been made in accordance with —
 - (i) section 47N(3); and
 - (ii) the costing principles for the time being approved or determined by the Regulator under section 47H;
- and
- (b) comply with section 47V in relation to each relevant determination.
- (2) After complying with subsection (1) the Regulator must, for each relevant determination set out in the regulatory asset base review statement —
- (a) approve the relevant determination; or
 - (b) if the Regulator is not willing to do so, direct the railway owner in writing to amend the relevant determination.
- (3) A direction under subsection (2)(b) must specify the applicable railway infrastructure affected by the amendment to the relevant determination.

- (4) A direction under subsection (2)(b) must not require the railway owner to amend a relevant determination to exclude the value of particular capital expenditure unless —
 - (a) the Regulator has determined under section 47V(4) that the capital expenditure is inefficient; and
 - (b) the capital expenditure and the relevant determination are specified in a notice under section 47V(5)(a).
- (5) The railway owner must comply with a direction under subsection (2)(b).
- (6) The Regulator must —
 - (a) if the Regulator approves a relevant determination under subsection (2)(a) — publish notice of the approval on the Regulator’s website; or
 - (b) if the Regulator directs the railway owner under subsection (2)(b) to amend a relevant determination — give the railway owner written reasons why the Regulator is not willing to approve the determination.

47V. Regulator to assess efficiency of capital expenditure

- (1) Before the Regulator approves a relevant determination under section 47U(2)(a), or gives a direction in relation to a relevant determination under section 47U(2)(b), the Regulator must determine in accordance with this section whether the capital expenditure the value of which was added under section 47N(3)(c) for the purposes of making the relevant determination is efficient or inefficient.

- (2) The Regulator must determine that capital expenditure referred to in subsection (1) is efficient if the capital expenditure is approved capital expenditure under section 47S(4).
- (3) The Regulator must determine that capital expenditure referred to in subsection (1) is efficient if the Regulator is satisfied that the capital expenditure —
 - (a) would have been incurred by a prudent railway owner acting efficiently in accordance with good industry practice to achieve the lowest sustainable cost of providing access; and
 - (b) either —
 - (i) has an overall positive economic value, having regard only to the economic value that has accrued and is likely to accrue to the railway owner and access holders; or
 - (ii) is necessary capital expenditure.
- (4) If capital expenditure referred to in subsection (1) does not meet the requirements of subsection (2) or (3) the Regulator must determine that the capital expenditure is inefficient.
- (5) If the Regulator makes a determination under subsection (2), (3) or (4) the Regulator must —
 - (a) give the railway owner written notice of the determination; and
 - (b) in the case of a determination under subsection (2) or (3) — publish notice of the determination on the Regulator’s website; and
 - (c) in the case of a determination under subsection (4) — give the railway owner written reasons why the capital expenditure that the Regulator has determined under

subsection (4) to be inefficient does not meet the requirements of subsection (2) or (3).

- (6) A notice under subsection (5)(a) of a determination under subsection (4) must specify —
- (a) the capital expenditure that the Regulator has determined under subsection (4) to be inefficient; and
 - (b) each relevant determination set out in the regulatory asset base review statement to which the Regulator's determination under subsection (4) relates.

47W. Regulator to assess efficiency of operating expenditure

- (1) On receipt of an operating expenditure statement submitted under section 47R by a railway owner, the Regulator must determine in accordance with this section whether the operating expenditure set out in the operating expenditure statement is efficient or inefficient.
- (2) The Regulator must determine that operating expenditure referred to in subsection (1) is efficient if —
- (a) the operating expenditure is approved operating expenditure under section 47T(4); or
 - (b) the Regulator is satisfied that the operating expenditure would have been incurred by a prudent railway owner acting efficiently in accordance with good industry practice to achieve the lowest sustainable cost of providing access.
- (3) If operating expenditure referred to in subsection (1) does not meet the requirements of subsection (2)(a) or

- (b) the Regulator must determine that the operating expenditure is inefficient.
- (4) If the Regulator makes a determination under subsection (2) or (3) the Regulator must —
 - (a) give the railway owner written notice of the determination; and
 - (b) in the case of a determination under subsection (2) — publish notice of the determination on the Regulator’s website; and
 - (c) in the case of a determination under subsection (3) — give the railway owner written reasons why the operating expenditure that the Regulator has determined under subsection (3) to be inefficient does not meet the requirements of subsection (2)(a) or (b).
- (5) A notice under subsection (4)(a) of a determination under subsection (3) must specify —
 - (a) the operating expenditure that the Regulator has determined under subsection (3) to be inefficient; and
 - (b) the applicable railway infrastructure to which the operating expenditure relates.

47X. Redetermination of costs following Regulator review

- (1) If the Regulator gives a railway owner a direction under section 47U(2)(b), a notice under section 47V(5)(a) of a determination under section 47V(4), or a notice under section 47W(4)(a) of a determination under section 47W(3), the Regulator must —
 - (a) carry out a review of the costs approved or determined by the Regulator under Schedule 4

clause 9 or 10 in respect of any proposal (an *affected proposal*) made to the railway owner on or after amendment day for access to the applicable railway infrastructure specified in the direction or the notice; and

- (b) make a fresh determination of those costs.
- (2) The Regulator must —
- (a) give the railway owner written notice of a fresh determination of costs under subsection (1)(b) and specify in the notice the day on which the determination was made; and
 - (b) publish notice of the determination on the Regulator’s website.
- (3) The costs determined under subsection (1)(b) in respect of an affected proposal are the costs that apply under Schedule 4 clauses 7 and 8 for the purposes of —
- (a) the affected proposal; and
 - (b) any access agreement that relates to —
 - (i) the affected proposal; or
 - (ii) some modification of the affected proposal agreed to by the railway owner and the entity that made the affected proposal.
- (4) For the purposes of Schedule 4 clauses 7 and 8, a fresh determination of costs under subsection (1)(b) has effect as if it had been made immediately after the Regulator first approved or determined costs under Schedule 4 clause 9 or 10 in respect of the affected proposal.

Note for this section:

Section 47(2)(c) requires the over-payment rules to give effect to the basic requirement that, if an excess referred to in Schedule 4 clause 8(4) in respect of an access holder or

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a group of access holders arises as a result of a determination by the Regulator under section 47X(1)(b), there must be no excess referred to in Schedule 4 clause 8(4) in respect of that access holder or group of access holders after the period of 60 business days beginning on the day on which the Regulator made the determination.

47. Section 48 replaced

Delete section 48 and insert:

48. Railway owner must supply certain information if requested

- (1) If a railway owner has provided to an access seeker the information described in section 9(1)(b) in respect of a route section, another entity may request the railway owner to provide it with that information.
- (2) If the railway owner receives a request for information under subsection (1), the railway owner must —
 - (a) comply with the request; and
 - (b) if the information does not remain current, indicate the time at which the information was correct.

48. Section 50 amended

Delete section 50(3).

49. Section 50A inserted

After section 50 insert:

50A. Disclosure of confidential information by Regulator

- (1) In this section —
given includes notified, provided or submitted.
- (2) The Regulator may, in the performance of the Regulator’s functions under this Code, disclose confidential information given to the Regulator under this Code.
- (3) The Regulator must not disclose confidential information under subsection (2) unless the Regulator is satisfied that it is in the public interest to do so.
- (4) Before disclosing confidential information given to the Regulator under this Code, the Regulator must —
 - (a) give the person who gave the confidential information to the Regulator —
 - (i) written notice of the Regulator’s intention to disclose the confidential information; and
 - (ii) a copy of the confidential information;and
 - (b) give any other person who the Regulator considers to have a significant interest in the disclosure of the confidential information —
 - (i) written notice of the Regulator’s intention to disclose the confidential information; and

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- (ii) a general description of the confidential information that does not disclose the confidential information;
 - and
 - (c) invite each person to make written submissions within the period of 10 business days after the day on which notice is given to the person under this subsection as to whether the confidential information should be disclosed.
- (5) For the purpose of making a decision under subsection (3) the Regulator —
- (a) may be informed in such manner as the Regulator thinks fit; but
 - (b) must have regard to any submission relevant to the decision made in accordance with a notice under subsection (4).
- (6) The Regulator must, before disclosing confidential information under subsection (2), give the person who gave the confidential information to the Regulator written notice that the Regulator is satisfied that it is in the public interest to do so.

50. Sections 52 and 53 replaced

Delete sections 52 and 53 and insert:

52. Requirements of notice extending time

A notice under section 26(2D), 47J(4), 47K(4) or Schedule 4 clause 10(6) must specify, for each period that the notice extends —

- (a) why the extension is required; and

- (b) the new period that applies as a result of the extension; and
- (c) the last day of the new period.

51. Part 7 inserted

After Part 6 insert:

Part 7 — Transitional provisions for *Railways (Access) Amendment Code 2023*

56. Terms used

In this Part —

former Code means this Code as in force immediately before amendment day.

57. Former Code continues to apply to proposals

On and from amendment day, the former Code continues to apply in relation to a proposal made before amendment day.

58. Existing over-payment rules

- (1) This section applies in relation to a railway owner if, immediately before amendment day, over-payment rules (*existing over-payment rules*) approved or determined under section 47 of the former Code were binding on the railway owner.
- (2) On and from amendment day —
 - (a) the railway owner must comply with the provisions of the existing over-payment rules; and

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- (b) the reference in Schedule 4 clause 8(4) to the over-payment rules approved or determined under section 47 includes, in relation to the railway owner, a reference to the existing over-payment rules.
- (3) On or after amendment day, the Regulator may in writing direct the railway owner to pay to an access holder any amount determined under a scheme referred to in section 47(2a) of the former Code.
- (4) The railway owner must comply with a direction given to the railway owner by the Regulator under subsection (3).
- (5) This section (other than subsection (4)) ceases to apply in relation to the railway owner on the day on which the Regulator approves or determines under section 47(3) over-payment rules in relation to the railway owner.

59. Existing costing principles

- (1) This section applies in relation to a railway owner if, immediately before amendment day, costing principles (*existing costing principles*) approved or determined under section 46 of the former Code were binding on the railway owner.
- (2) On and from amendment day —
 - (a) the existing costing principles continue to be binding on the railway owner; and
 - (b) the reference in section 29(3)(d) to the costing principles under section 47H includes, in relation to the railway owner, a reference to the costing principles under section 46 of the former Code.

- (3) This section ceases to apply in relation to the railway owner on the day on which the Regulator approves or determines under section 47H(3) costing principles in relation to the railway owner.

60. Regulator must give effect to certain transitional depreciation arrangements when performing function under s. 47K(3)

- (1) In this section —
- amended Code* means this Code as in force on and after amendment day;
- transition period* means the period beginning on amendment day and ending on the day that is 5 years after amendment day.
- (2) This section applies in relation to a statement submitted by a railway owner to the Regulator under section 47K(1) if —
- (a) the statement provides for depreciation of an asset or group of assets to be accelerated during the transition period; and
 - (b) the Regulator is satisfied that —
 - (i) during the period of 2 years immediately before amendment day the railway owner provided an entity (a *relevant entity*) other than an associate of the railway owner, or a contractor engaged by the railway owner or an associate of the railway owner, with access to a route, or part of a route, and associated railway infrastructure under an access agreement or an agreement for access otherwise than under the former Code; and

- (ii) the relevant entity paid for that access a sum that is greater than the sum equal to the costs referred to in Schedule 4 clause 8(1) that would be relevant to that access if that access had occurred under the amended Code and commenced on amendment day; and
 - (iii) accelerating depreciation of the asset or group of assets in the manner provided in the statement will not result in the capital costs determined in accordance with Schedule 4 clause 2 in relation to particular railway infrastructure exceeding the capital costs that would have been determined in accordance with Schedule 4 clause 2 of the former Code in relation to that railway infrastructure if Schedule 4 clause 2 of the former Code had continued to apply during the transition period.
- (3) Despite section 47K(5)(d) and (f) and (6), the Regulator must perform its functions under section 47K(3) in a way that allows depreciation of the asset or group of assets to be accelerated during the transition period in the manner provided in the statement.

52. Schedules 2A and 2B inserted

After Schedule 2 insert:

Schedule 2A — Matters to be set out in a proposal

[s. 8]

Access seeker's details

1. The access seeker's name and contact details.

Details of the access sought

2. The route in respect of which access is sought, including each route section or part of a route section.
3. The railway infrastructure in respect of which access is sought, including any loading or unloading facilities.
4. The period for which access is sought.
5. Whether the access is sought for new or existing rail operations.

Details of the proposed rail operations

6. The commencement date of the proposed rail operations.
7. The origin and destination of the proposed rail operations.
8. The proposed method of transporting freight (for example, louvered wagons or bulk wagons).
9. If any product proposed to be transported will require separation from other trains, the separation requirements.
10. The forecast net tonnes of product to be transported per annum for each year of access.
11. The proposed travel speed.
12. The proposed sectional run times.
13. Any stabling requirements.
14. The points on the route that will be used for provisioning and, if required, stabling.
15. The proposed time for provisioning, loading, unloading and, if required, stabling.

Timetabling requirements

16. The timetabling requirements of the proposed rail operations, including —
- (a) the required frequency, including weekly requirements, seasonal variations and any trends over the proposed term of access; and
 - (b) preferred days of operation and preferred departure and arrival times; and
 - (c) any requirements for shunting or dwell times.

Rolling stock details

17. Details of the rolling stock to be operated as part of the proposed rail operations, including —
- (a) the number of locomotives and wagons per consist; and
 - (b) total train length.

Breach of existing or previous agreement

18. Whichever of the following applies —
- (a) if the access seeker or a related body corporate of the access seeker has, at any time during the period of 2 years before the day on which the access seeker makes the proposal, been in breach of a fundamental term of an access agreement or an agreement for access made otherwise than under this Code (a **relevant breach**) — details of each relevant breach; or
 - (b) if paragraph (a) does not apply — confirmation that paragraph (a) does not apply in respect of the proposal.

Schedule 2B — Matters to be demonstrated in a proposal

[s. 8]

Ability to use access rights

1. That the access seeker is actively seeking the following —
 - (a) other supply chain rights (for example, port access) required to facilitate the proposed rail operations;
 - (b) if required, a rail haulage agreement for the proposed rail operations during the proposed term of access;
 - (c) access to facilities (including rolling stock, provisioning facilities, maintenance facilities and storage facilities) required to carry on the proposed rail operations.

Financial and managerial ability

2. That the access seeker is solvent (as defined in section 95A(1) of the *Corporations Act 2001* (Commonwealth)).
3. That, having regard to the access seeker's ownership structure, the access seeker has the ability to access the financial resources required to meet the access seeker's potential liabilities under an access agreement for the proposed access, including without limitation the payment of —
 - (a) prices and charges for access; and
 - (b) insurance premiums and deductibles under any required policies of insurance.

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53. Schedule 3 amended

- (1) In Schedule 3 items 3 and 4 delete “operator.” and insert:

access holder.

- (2) In Schedule 3 item 9:

- (a) delete “operator’s” and insert:

access holder’s

- (b) in paragraph (b) delete “section 9 of the *Rail Safety Act 1998*.” and insert:

any written law.

- (3) In Schedule 3 item 11 delete “operator.” and insert:

access holder.

- (4) In Schedule 3 item 12:

- (a) in paragraph (a) delete “of;” and insert:

of; and

- (b) delete “operator’s” and insert:

access holder’s

54. Schedule 4 amended

- (1) In Schedule 4 clause 1 delete the definitions of:

access-related functions

incremental costs

operating costs

- (2) In Schedule 4 clause 1 insert in alphabetical order:

incremental costs, in relation to an access holder or a group of access holders, means the following that the railway owner or an associate would be able to avoid if it were not to provide access to that access holder or group of access holders —

- (a) the operating costs;
- (b) where applicable —
 - (i) the capital costs; and
 - (ii) the overheads attributable to the performance of the railway owner's access-related functions whether by the railway owner or an associate;

- (3) Delete Schedule 4 clause 2(3) and (4) and insert:

- (3) Capital costs must be determined as the annual cost of providing the railway infrastructure for each year of the relevant period calculated in accordance with subclause (4).

- (4) The calculation must be made by —
- (a) multiplying the current regulatory asset base of each relevant route section, which must be updated annually throughout the relevant period, by the weighted average cost of capital appropriate to the railway infrastructure; and
 - (b) adding depreciation in accordance with the applicable depreciation schedule for the time being

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approved or determined by the Regulator under section 47K(3).

- (4) In Schedule 4 clause 3:
- (a) in subclause (1) delete “clause 2(4)(b),” and insert:

clause 2(4)(a),
 - (b) in subclause (1)(a)(i) after “49,” insert:

50A,
 - (c) in subclause (3) delete “he or she is to —” and insert:

the Regulator must —
 - (d) delete subclause (3)(a) and insert:
 - (a) publish a notice describing the requirements of subclause (1) on the Regulator’s website; and
 - (e) in subclause (3)(b)(ii) after “address” insert:

(including an email address)
 - (f) in subclause (3)(b)(ii) delete “posted.” and insert:

sent.

(g) delete subclause (4) and insert:

(4) The period specified under subclause (3)(b)(i) must be not less than the period of 20 business days after the day on which the notice is published under subclause (3)(a).

(5) In Schedule 4 clause 6(1) delete “operators” and insert:

access holders

(6) In Schedule 4 clause 7:

(a) in subclause (1) delete “operator” and insert:

access holder

(b) delete subclause (2) and insert:

(1A) Subclause (1) does not apply in relation to access under an interim access agreement.

(2) The total of the following must not be a sum that is less than the relevant total —

(a) the payments to the railway owner by —

(i) all access holders that are provided with access to a route, or part of a route, and associated infrastructure (the *route*); and

(ii) all other entities that are provided with access to the route;

(b) the revenue that the railway owner’s accounts and financial statements show as being attributable to its own operations on the route.

(3) For the purposes of subclause (2), the *relevant total* is the total of the incremental costs resulting from the combined

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operations on the route of all access holders and other entities and the railway owner.

(7) In Schedule 4 clause 8:

(a) in subclause (1) delete “operator that is provided with access to a route” and insert:

access holder that is provided with access to a route, or part of a route,

(b) in subclause (1) delete “route” (2nd occurrence) and insert:

route, or that part of the route,

(c) delete subclauses (2) and (3) and insert:

(2) For the avoidance of doubt it is declared that, regardless of the extent of the operations or use of the route, or the part of the route, and infrastructure by any particular access holder, the calculation of total costs under subclause (1) —

(a) is only for the route, or the part of the route, and associated railway infrastructure to which the access holder is provided access; and

(b) must be the same for all access holders that are provided with access to that route, or that part of the route, and that infrastructure.

(2A) Subclauses (1) and (2) do not apply in relation to access under an interim access agreement.

- (3) The total of the following must not be a sum that is more than the total costs attributable to a route, or part of a route, and associated infrastructure (the *route*) —
- (a) the payments to the railway owner by —
 - (i) all access holders that are provided with access to the route; and
 - (ii) all other entities that are provided with access to the route;
 - (b) the revenue that the railway owner’s accounts and financial statements show as being attributable to its own operations on the route.
- (8) In Schedule 4 clause 9:
- (a) in subclause (1) delete “he or she” and insert:

the Regulator
 - (b) in subclause (1) after “proposal” (1st occurrence) insert:

(other than an interim access proposal)
 - (c) delete subclause (1)(a) and (b) and insert:
 - (a) the costs referred to in clause 7 in respect of the operations and use of infrastructure that the proposal would involve (including the costs for each year of the period for which the Regulator considers access would be sought under the proposal); and
 - (b) the costs referred to in clause 8 attributable to the route and associated infrastructure (including the costs for each year of the period for which the Regulator considers access would be sought under the proposal).

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- (d) in subclause (2) delete “he or she” and insert:

the Regulator
- (e) in subclause (2) after “costs” insert:

(including for each year of the period for which the Regulator considers access will be sought under the proposal)
- (f) delete subclauses (3) and (4) and insert:

(3) Before the Regulator makes a determination under subclause (1) the Regulator must —
 - (a) publish a notice of the Regulator’s intention to do so on the Regulator’s website; and
 - (b) include in the notice the following information —
 - (i) a statement that written submissions relating to the determination may be made to the Regulator by any person within a specified period;
 - (ii) the address (including an email address) to which the submissions may be delivered or sent.
- (4) The period specified under subclause (3)(b)(i) must be not less than the period of 20 business days after the day on which the notice is published under subclause (3)(a).
- (g) delete subclause (6) and insert:

(6) The Regulator must —
 - (a) give the railway owner written notice of the costs determined under subclause (1); and

- (b) publish the determination on the Regulator's website.

(9) Delete Schedule 4 clauses 10 and 11 and insert:

10. Determination of costs where clause 9 does not apply

- (1) If a proposal (other than an interim access proposal) has been made and clause 9 does not apply, the railway owner must determine the costs referred to in clauses 7 and 8 that are relevant to the proposal (including the costs for each year of the period for which access is sought under the proposal).
- (2) A determination under subclause (1) must be made in accordance with the costing principles for the time being approved or determined by the Regulator under section 47H.
- (3) The railway owner must, on or before the day on which it provides the access seeker with the information described in section 9(1)(b), provide to the Regulator —
 - (a) the costs determined under subclause (1) (including the costs for each route section); and
 - (b) the current regulatory asset base of each route section; and
 - (c) supporting material demonstrating the basis of the costs referred to in paragraph (a) and the current regulatory asset bases referred to in paragraph (b); and
 - (d) the applicable depreciation schedule for the time being approved or determined by the Regulator under section 47K(3).
- (4) The Regulator must, within 40 business days after the day on which the Regulator is provided with the information referred to in subclause (3)(a) to (d) by the railway owner —
 - (a) approve the costs determined by the railway owner under subclause (1); or

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- (b) if the Regulator is not willing to do so, determine the relevant costs (including the costs for each year of the period for which access is sought under the proposal).
- (5) The Regulator must —
 - (a) give the railway owner and the access seeker written notice of the costs approved or determined under subclause (4); and
 - (b) publish the approved costs or the determination (as the case may be) on the Regulator’s website.
- (6) The Regulator may extend the period referred to in subclause (4), either before or after the period has ended, by written notice to the railway owner in accordance with section 52.
- (7) If the Regulator extends the period referred to in subclause (4), the Regulator must give the access seeker a copy of the written notice given to the railway owner under subclause (6).
- (8) The costs approved or determined by the Regulator under subclause (4) in respect of a proposal are the costs that are to apply under clauses 7 and 8 for the purposes of the proposal.

11. Public submissions must be sought

- (1) Before the Regulator gives an approval or makes a determination under clause 10(4), the Regulator must —
 - (a) publish on the Regulator’s website a notice setting out the information referred to in clause 10(3)(a) to (d) provided to the Regulator by the railway owner under that clause; and
 - (b) include in the notice the following information —
 - (i) that written submissions relating to those matters may be made to the Regulator by any person within a specified period;

- (ii) the address (including an email address) to which the submissions may be delivered or sent.
- (2) The period specified under subclause (1)(b)(i) must be not less than the period of 20 business days after the day on which the notice is published under subclause (1)(a).

- (10) In Schedule 4 clause 12:
 - (a) in subclauses (1) and (2)(b) delete “he or she” and insert:

the Regulator
 - (b) delete subclause (3) and insert:

 - (3) Before the Regulator carries out a review under subclause (2)(a), the Regulator must —
 - (a) publish on the Regulator’s website a notice setting out details of the proposed review; and
 - (b) include in the notice the following information —
 - (i) that written submissions relating to the determination of the costs in question may be made to the Regulator by any person within a specified period;
 - (ii) the address (including an email address) to which the submissions may be delivered or sent.

 - (4) The period specified under subclause (3)(b)(i) must be not less than the period of 20 business days after the day on which the notice is published under subclause (3)(a).

(11) After Schedule 4 clause 12 insert:

12A. Prices for access under interim access agreement

- (1) Except as provided in subclause (2), an access holder that is provided with access to a route and associated railway infrastructure under an interim access agreement must pay for the access the same prices as the prices required to be paid by the access holder to the railway owner for access to the route and associated railway infrastructure under the relevant existing access agreement.
- (2) The prices that the access holder must pay for access under the interim access agreement —
 - (a) must be proportionate to any difference in the period for which access is to be provided under the interim access agreement compared to the period for which access is provided under the relevant existing access agreement; and
 - (b) may be adjusted to take into account asset indexation over the period during which the relevant existing access agreement is in force.
- (3) For the purposes of subclauses (1) and (2), the ***relevant existing access agreement*** is the existing access agreement —
 - (a) to which the access holder and the railway owner were party when the access holder made the interim access proposal to which the interim access agreement relates; and
 - (b) the impending expiry of which gave rise to that interim access proposal.

- (12) In Schedule 4 clause 13:
- (a) in paragraph (c)(i) delete “proponent;” and insert:

access seeker; and
 - (b) in paragraph (f) delete “operator.” and insert:

access holder.

55. Various references to “proponent” amended

In the provisions listed in the Table:

- (a) delete “proponent” (each occurrence) and insert:

access seeker
- (b) delete “proponent” and insert:

access seeker

Table

s. 8(4A)	s. 9A(3)
s. 12(2)(b)	s. 17(1)
s. 20(1), (2) and (4)	s. 33(4)
s. 36(1)	Sch. 4 cl. 6(2)(a) and (b)
Sch. 4 cl. 13(c)(iii)	

Part 3 — Amendments commencing on the day after the period of 3 months beginning on publication day

56. Code amended

This Part amends the *Railways (Access) Code 2000*.

57. Section 6 amended

- (1) In section 6 insert in alphabetical order:

alternative information has the meaning given in section 7BA(1)(b)(i);

- (2) In section 6 in the definition of *required information*:

- (a) delete paragraph (a) and insert:

- (a) the standard access provisions for the time being approved or determined under section 47A in respect of the railway owner; and

- (b) in paragraph (b) delete “network.” and insert:

network; and

- (c) after paragraph (b) insert:

- (c) if the Regulator has granted the railway owner an exemption under section 7BA(1)(b) — the alternative information specified in the railway owner’s application under section 7BA(1); and
- (d) any standing offer that the railway owner has prepared in compliance with a notice given

under section 7G(1), but that is not the subject
of a notice under section 7G(8).

58. Section 7A amended

- (1) In section 7A(1) delete the passage that begins with “must” and ends with “format.” and insert:

must —

- (a) ensure that the required information is published on a website maintained by or on behalf of the railway owner; and
- (b) make a publication containing the required information available for purchase in hard copy format.

- (2) After section 7A(1) insert:

- (1A) Despite subsection (1), the publication made available under subsection (1)(b) need not contain the following —

- (a) the information described in Schedule 2 item 7;
- (b) if the Regulator has granted the railway owner an exemption under section 7BA(1)(b) — the alternative information specified in the railway owner’s application under section 7BA(1);
- (c) a standing offer described in paragraph (d) of the definition of *required information* in section 6.

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(3) In section 7A(2) after “publication” insert:

made available under subsection (1)(b)

(4) In section 7A(3):

(a) after “person a” insert:

hard

(b) after “publication” insert:

made available under subsection (1)(b)

(5) Delete section 7A(4).

Note: The heading to amended section 7A is to read:

Information must be published

59. Section 7B amended

(1) In section 7B:

(a) delete “The” and insert:

(1) The

(b) delete “item 4(m)” and insert:

item 4(l)

- (2) At the end of section 7B insert:
- (2) The Regulator may revoke an exemption granted under subsection (1).
 - (3) The Regulator must give the railway owner written notice if the Regulator —
 - (a) grants an exemption under subsection (1) to the railway owner; or
 - (b) revokes under subsection (2) an exemption granted to the railway owner.

Note: The heading to amended section 7B is to read:

Regulator may grant exemption for information about gross tonne kilometres of freight carried

60. Section 7BA inserted

After section 7B insert:

7BA. Regulator may grant exemption for other information

- (1) The Regulator may, on application by a railway owner, exempt the owner from the obligation to publish some or all of the information (the *exempt information*) described in Schedule 2 item 7 if —
 - (a) the Regulator is satisfied that the railway owner is not able to collect the exempt information; or
 - (b) both of the following apply —
 - (i) the application specifies other information (the *alternative information*) that the railway owner will publish as an alternative to publishing the exempt information;

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- (ii) the Regulator is satisfied that the alternative information would be of similar utility to an entity that is interested in making a proposal in respect of a route to which the exempt information relates.
- (2) The Regulator may revoke an exemption granted under subsection (1).
- (3) The Regulator must give the railway owner written notice if the Regulator —
 - (a) grants an exemption under subsection (1) to the railway owner; or
 - (b) revokes under subsection (2) an exemption granted to the railway owner.

61. Section 7C amended

- (1) In section 7C(2)(b) delete “2”.
- (2) In section 7C(3) delete “7D and 7E.” and insert:

7D, 7E or 7F.

62. Section 7D amended

- (1) Delete section 7D(1) and insert:
 - (1) The first information published under Schedule 2 item 4(1) as amended by the *Railways (Access) Amendment Code 2023* section 66 must be for the 3 calendar years immediately before the day on which

the *Railways (Access) Amendment Code 2023* Part 3 comes into operation.

- (2) In section 7D(2):
- (a) delete “and (m)”;
 - (b) delete “those paragraphs” and insert:

that paragraph

Note: The heading to amended section 7D is to read:

Particular provision for information as to gross tonne kilometres of freight

63. Section 7DA inserted

After section 7D insert:

7DA. Particular provision for information as to running times

- (1) The information published under Schedule 2 item 4(g) must be in a form that does not identify, or permit the identification of, an access holder or any particular train.
- (2) The Regulator may, on application by a railway owner, exempt the owner from the obligation to publish the information described in Schedule 2 item 4(g) if the Regulator is satisfied that it is not possible to publish the information in a form that complies with subsection (1).
- (3) The Regulator may revoke an exemption granted under subsection (2).

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- (4) The Regulator must give the railway owner written notice if the Regulator —
 - (a) grants an exemption under subsection (2) to the railway owner; or
 - (b) revokes under subsection (3) an exemption granted to the railway owner.

64. Sections 7F and 7G inserted

At the end of Part 2A insert:

7F. Particular provision for monthly route section information

- (1) The first information published under Schedule 2 item 7 must be for the 12 months immediately before the day on which the *Railways (Access) Amendment Code 2023* Part 3 comes into operation.
- (2) The railway owner must update the information published under Schedule 2 item 7 as soon as is practicable after the last day of March, June, September and December in each year.

7G. Standing offers

- (1) The Regulator may, by written notice, require the railway owner to prepare a standing offer for access to a route (the *specified route*) and associated railway infrastructure specified in the notice for the purpose of carrying on rail operations (the *specified rail operations*) specified in the notice if the Regulator is satisfied that —
 - (a) 2 or more entities are carrying on, or are likely to carry on, similar rail operations on the specified route; and

- (b) 1 or more of the entities is not the railway owner or an associate of the railway owner.
- (2) For the purposes of subsection (1)(a), *similar rail operations* are rail operations that are similar having regard to the train length, axle load and freight type of the rolling stock being operated.
- (3) The Regulator must not give the railway owner a notice under subsection (1) before the day that is 20 business days after the day on which the Regulator has approved or determined under section 47J(3) the depreciated optimised replacement cost of railway infrastructure associated with every route section within the specified route.
- (4) The railway owner must, as soon as practicable after being given a notice under subsection (1), comply with the notice.
- (5) A standing offer prepared in compliance with a notice given under subsection (1) must set out —
 - (a) the specified route and specified rail operations; and
 - (b) the terms and conditions that the railway owner would want to be included in an access agreement for access to the specified route for the purpose of carrying on the specified rail operations, including the price that an entity might pay for access to the specified route for the purpose of carrying on the specified rail operations.
- (6) The terms and conditions under subsection (5)(b) must —
 - (a) be reasonable; and

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- (b) be sufficiently detailed and complete to —
 - (i) form the basis of a commercially workable access agreement; and
 - (ii) enable an access seeker to determine the value represented by the provision of access to the specified route for the purpose of carrying on the specified rail operations;and
 - (c) not seek to restrict an access holder from disclosing the terms and conditions of an access agreement or proposed access agreement to —
 - (i) the Regulator; or
 - (ii) an arbitrator in relation to an arbitration under Part 3 Division 3.
- (7) The price set out under subsection (5)(b) must not be —
- (a) less than the costs referred to in Schedule 4 clause 7(1) that would apply if an entity were provided with access to the specified route for the purpose of carrying on the specified rail operations; or
 - (b) more than the costs referred to in Schedule 4 clause 8(1) that would apply if an entity were provided with access to the specified route for the purpose of carrying on the specified rail operations.
- (8) The Regulator may give written notice to a railway owner that a standing offer prepared by the railway owner in compliance with a notice under subsection (1) is no longer required.

65. Section 7 amended

- (1) Delete section 7(2) and insert:
 - (2) If the railway owner receives a request from an entity under subsection (1), the railway owner must, not later than 10 business days after the day on which the request is received —
 - (a) provide the information sought by the entity;
and
 - (b) if the railway owner has prepared a standing offer for the route in compliance with a notice given under section 7G(1) —
 - (i) confirm that the information referred to in section 7G(5)(b) and set out in the standing offer is an initial indication of the information referred to in subsection (1)(a)(ii) and (iii) that is sought by the entity; or
 - (ii) provide an explanation as to why that is not the case.

66. Schedule 2 amended

- (1) Delete Schedule 2 item 1 and insert:
 1. In this Schedule —

gross tonne kilometres of freight, of a train, means the weight of the freight carried on the train multiplied by the distance travelled by the train in kilometres.

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- (2) In Schedule 2 item 4:
- (a) delete paragraphs (l) and (m) and insert:
 - (l) subject to any exemption under section 7B, the total gross tonne kilometres of freight of all trains operated during a period provided for by section 7D;
 - (b) in paragraph (o) delete “capacity.” and insert:

capacity;
 - (c) after paragraph (o) insert:
 - (p) the infrastructure capacity;
 - (q) the underlying assumptions used by the railway owner to calculate available capacity and infrastructure capacity.
- (3) After Schedule 2 item 6 insert:
7. For each route section, and for each month, details of the following —
- (a) the minimum, maximum and average run time for each category of axle load;
 - (b) the number of trains delayed on entry to or exit from the network, the average length of delays, and the number of delays caused by each of the following —
 - (i) an access holder;
 - (ii) the railway owner;
 - (iii) a third party;

- (c) the number of trains cancelled, and the number of cancellations caused by each of the following —
 - (i) an access holder;
 - (ii) the railway owner;
 - (iii) a third party;
- (d) the number of days during which a temporary speed restriction applied;
- (e) the criteria used by the railway owner to determine whether a temporary speed restriction applied;
- (f) the average duration of all temporary speed restrictions;
- (g) the average distance of track to which each temporary speed restriction applied.

R. SAFFIOTI, Treasurer