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ECONOMIC REGULATION AUTHORITY ACT 2003

**ECONOMIC REGULATION
AUTHORITY (RAILWAYS
ACCESS FUNDING)
REGULATIONS 2019**

Western Australia

Economic Regulation Authority (Railways Access Funding) Regulations 2019

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Economic Regulation Authority Act 2003

Economic Regulation Authority (Railways Access Funding) Regulations 2019

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Economic Regulation Authority (Railways Access Funding) Regulations 2019*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 July 2019.

3. Terms used

- (1) In these regulations —

allowed period, in relation to the payment of a charge under these regulations, means the period referred to in regulation 5(4) or 7(2) (whichever is relevant) or that period as extended by the Authority under regulation 9;

Code means the *Railways (Access) Code 2000*;

core function costs, for a quarter, means costs that —

- (a) are incurred by the Authority in the quarter in connection with the performance of its functions under the *Railways (Access) Act 1998* and the Code; and
- (b) cannot be recovered through the imposition of specific charges;

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covered route means a route to which the Code applies;

prescribed rate, in relation to interest on amounts not paid within an allowed period, means the interest rate that is 5 percentage points higher than —

- (a) the Australian Stock Exchange Bank Bill Swap Rate (BBSW) for a 1 month security for the first day after the allowed period for which the rate is published; or
- (b) if a rate is not published as described in paragraph (a) — the rate determined by the Authority having regard to comparable indices then available;

quarter means the period of 3 months ending on 30 September, 31 December, 31 March or 30 June;

specific charge means a charge payable under regulation 5(2);

standing charge means a charge payable under regulation 6(1).

- (2) A reference to a railway owner in relation to a quarter includes a reference to a person who was a railway owner at any time in the quarter.
- (3) If a term is given a meaning in the Code, it has the same meaning in these regulations.

4. Application of these regulations

These regulations apply to and in relation to the railway owners of covered routes.

5. Specific charges: liability and amount

- (1) The following functions of the Authority are listed for the purposes of subregulation (2) —
 - (a) functions under section 10 of the Code, in relation to negotiations on a proposal that a railway owner considers might preclude access to railway infrastructure;
 - (b) functions under section 21 of the Code, in relation to the price sought by a railway owner in negotiations for an access agreement;

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- (c) functions under section 26 of the Code, in relation to appointing an arbitrator;
 - (d) functions under section 30 of the Code, in relation to a question referred by an arbitrator;
 - (e) functions under Part 5 of the Code, in relation to approving guidelines, policies, principles or rules of a railway owner;
 - (f) functions under Schedule 4 clause 9 of the Code, in relation to costs relating to a proposal that is likely to be made to a railway owner;
 - (g) functions under Schedule 4 clause 10 of the Code, in relation to a railway owner's determination of costs relating to a proposal;
 - (h) functions under Schedule 4 clause 12 of the Code, in relation to costs approved or determined in respect of a proposal.
- (2) If the Authority performs a function listed in subregulation (1), the railway owner in relation to which the function is performed is liable to pay a charge for the performance of the function.
- (3) The Authority must give the railway owner a notice that specifies —
- (a) the amount of the charge; and
 - (b) the day on which the notice was issued.
- (4) The amount specified in the notice is payable to the Authority within 30 days after the day on which the notice was issued.
- (5) The amount of the charge is an amount equivalent to the costs described in subregulation (6) that —
- (a) have been incurred by the Authority; and
 - (b) are directly attributable to the performance of the function or to the doing of anything that was necessary to be done for or in connection with the performance of the function.

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- (6) For the purposes of subregulation (5), the costs are —
- (a) costs of consultants or contractors engaged by the Authority including accommodation costs, travel costs and equipment costs; and
 - (b) remuneration of staff members; and
 - (c) photocopying, mailing, publishing and advertising costs; and
 - (d) costs associated with public consultation conducted under the *Railways (Access) Act 1998* or the Code.
- (7) The Authority must, at the request of the railway owner, give the railway owner an itemised account of the costs covered by the charge.
- (8) If the railway owner does not pay the amount of the charge in full within the allowed period, interest on any outstanding amount is payable to the Authority at the prescribed rate calculated daily.

6. Standing charges: liability and amount

- (1) If a railway owner (the *railway owner*) is the railway owner of a covered route at any time in a quarter, the railway owner is liable to pay a charge for the quarter in connection with the core function costs of the Authority.
- (2) The amount of the charge payable by the railway owner for the quarter is, if each railway owner liable to a charge under subregulation (1) for the quarter was a railway owner of a covered route for the whole of the quarter, worked out in accordance with this formula —

$$\frac{C}{N}$$

where —

C is the amount of the core function costs for the quarter;

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N is the number of railway owners liable to a charge under subregulation (1) for the quarter.

- (3) The amount of the charge payable by the railway owner for the quarter is, if at least 1 railway owner liable to a charge under subregulation (1) for the quarter was not a railway owner of a covered route for the whole of the quarter, worked out in accordance with this formula —

$$C \times \frac{D}{T}$$

where —

C is the amount of the core function costs for the quarter;

D is the number of days in the quarter on which the railway owner was a railway owner of a covered route;

T is the sum of the number of days each railway owner, who was a railway owner of a covered route at any time during the quarter, was such a railway owner in the quarter.

7. Standing charges: assessment and payment

- (1) As soon as is practicable after the end of each quarter the Authority must —
- (a) assess the standing charge payable by a railway owner for the quarter; and
 - (b) give a notice of assessment to the railway owner specifying —
 - (i) the amount of the charge payable; and
 - (ii) the amount of the core function costs used in calculating the charge; and
 - (iii) the day on which the notice of assessment was issued.
- (2) The amount specified in the notice is payable to the Authority within 30 days after the day on which the notice was issued.

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- (3) If the railway owner does not pay the amount specified in the notice in full within the allowed period, interest on the outstanding amount is payable to the Authority at the prescribed rate calculated daily.
- (4) The Authority must, at the request of the railway owner, give the railway owner a written explanation of how the core function costs specified in the notice were calculated, including reasonable details of what the core function costs relate to.

8. Recovery of unpaid amounts

- (1) The Authority may recover a charge that is unpaid in whole or in part, together with any interest payable, in a court of competent jurisdiction as a debt due to the Authority.
- (2) In proceedings under subregulation (1) an evidentiary certificate is, without proof of the appointment of the chairman or of the authenticity of the signature, sufficient evidence of the matters specified or stated.

- (3) In subregulation (2) —

evidentiary certificate means a certificate —

- (a) purporting to be signed by the chairman; and
- (b) specifying an amount as being all or part of a specific charge or standing charge; and
- (c) specifying an amount as being interest payable under regulation 5(8) or 7(3); and
- (d) specifying a person as being liable to pay the specified amounts; and
- (e) stating that the specified amounts are unpaid.

9. Extension of time within which to pay

The Authority may, in a particular case, extend the period referred to in regulation 5(4) or 7(2) (whichever is relevant) if satisfied that it is appropriate to do so.

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10. Authority's annual report

The annual report submitted by the Authority under the *Financial Management Act 2006* section 61 must include details of the following matters in respect of the financial year to which the annual report relates —

- (a) the total amount of specific charges paid or payable by each railway owner who was liable to pay a specific charge during the year;
- (b) the total amount of standing charges paid or payable by each railway owner who was liable to pay a standing charge during the year.

11. Review

- (1) The Authority must carry out reviews of the method, in these regulations, of recovering the Authority's costs in connection with the performance of its functions under the *Railways (Access) Act 1998* and the Code.
- (2) The Authority must —
 - (a) carry out the first review, and give the Minister a written report based on it, before 1 July 2029; and
 - (b) carry out subsequent reviews, and give the Minister written reports based on them, as soon as practicable after each 10th anniversary of the first report.

M. INGLIS, Clerk of the Executive Council.

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Defined terms

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
allowed period.....	3(1)
Code.....	3(1)
core function costs	3(1)
covered route.....	3(1)
evidentiary certificate.....	8(3)
prescribed rate.....	3(1)
quarter	3(1)
railway owner	6(1)
specific charge	3(1)
standing charge	3(1)