



Western Australia

Railways (Access) Act 1998

Railways (Access) Code 2000

**Incorporating the amendments proposed by the
*Railways (Access) Amendment Code 2025.***

**Note: Parts 3 to 7 and Schedules 1 and 2A to 5 have been
omitted as they are not amended by the *Railways
(Access) Amendment Code 2025.***

Railways (Access) Code 2000

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Railways (Access) Code 2000

Part 1 — Preliminary

1. Citation

This Code may be cited as the *Railways (Access) Code 2000*¹.

2. Commencement

This Code comes into operation on the day on which Part 3 of the Act comes into operation¹.

3.^{1M} Terms used

In this Code, unless the contrary intention appears —

access means —

- (a) the use of railway infrastructure; and
- (b) where applicable, includes the exercise of other rights of the kind described in section 3A(1) of the Act;

access agreement means an agreement in writing under this Code between the railway owner and an entity for access by that entity;

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;

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Act means the *Railways (Access) Act 1998*;

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);

associate, in relation to a railway owner, means —

- (a) a related body corporate; and
- (b) a unit trust, joint venture or partnership where the interest of the railway owner or of a related body corporate in the unit trust, joint venture or partnership entitles the railway owner or the related body corporate to —
 - (i) control the composition of the governing body of the unit trust, joint venture or partnership; or
 - (ii) cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
 - (iii) control the business affairs of the unit trust, joint venture or partnership;

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;

Commission has the same meaning as in the *Government Railways Act 1904*;

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;

determination means a determination by an arbitrator under Division 3 of Part 3;

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;

entity means a corporation, partnership, trustee or other person;

existing access agreement has the meaning given in section 8A(3)(a);~~(4);~~

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

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

Government railway means a railway, as defined in section 2 of the *Government Railways Act 1904*, that is under the

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management and control of the Commission as provided by section 13 of that Act;

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

proposal means a proposal under section 8;

rail operations means the operation of rolling stock on a part of the railways network;

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

railway infrastructure means the facilities necessary for the operation of a railway, including —

- (a) railway track, associated track structures, over or under track structures, supports (including supports for equipment or items associated with the use of a railway); and
- (b) tunnels and bridges; and
- (c) stations and platforms; and
- (d) train control systems, signalling systems and communication systems; and
- (e) electric traction infrastructure; and
- (f) buildings and workshops; and

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(g) associated plant machinery and equipment,
but not including —

- (h) sidings or spur lines that are excluded by section 3(3) or (4) of the Act from being railway infrastructure; and
- (i) rolling stock, rolling stock maintenance facilities, office buildings, housing, freight centres, and terminal yards and depots;

railway owner means the person having the management and control of the use of the railway infrastructure concerned;

railways network means —

- (a) all the railways that were Government railways when the Act received the Royal Assent; and
- (b) all the railways that are on land that is corridor land as defined in the *Rail Freight System Act 2000*; and
- (ba) the railway constructed pursuant to the TPI Railway and Port Agreement; and
- (c) any railway declared under section 3(2) of the Act to be part of the railways network;

Regulator means the person who holds, or is acting in, the office provided for by Part 3 of the Act;

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;

rolling stock means any vehicle, whether self-propelled or not, that operates on or uses a railway track;

route means those parts of the railways network and associated infrastructure to which this Code applies, and includes part of a route;

route section means the sections of the railways network into which the network is divided for management and costing purposes;

TPI Railway and Port Agreement has the meaning given to the term **the Agreement** in the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* section 3.

[Section 3 amended: Gazette 23 Jul 2004 p. 2989; 23 Jun 2009 p. 2409; Act No. 77 of 2004 s. 11; SL 2023/207 s. 4.]

[Section 3, modifications have effect under the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010* s. 11. See note 1M.]

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

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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.

(2A) If an interim access proposal is made to a railway owner, and subsection (2) does not apply, the *relevant day* in relation to the interim access proposal is the day on which the interim access proposal is received.

- (3) If a proposal, other than an interim access proposal, ~~proposal~~ is made to a railway owner, and subsection (2) does not apply, the *relevant day* in relation to the proposal is —
 - (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

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- (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 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.

[Section 3A inserted: SL 2023/207 s. 5.]

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)).

[Section 3B inserted: SL 2023/207 s. 5.]

3C. Notes not part of this Code

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

[Section 3C inserted: SL 2023/207 s. 5.]

4A. Parties have option to negotiate agreements outside this Code

- (1) To avoid doubt it is declared to be the case that —
 - (a) the parties concerned may choose whether negotiations for an agreement for access are carried on under this Code or otherwise; and
 - (b) if the parties choose to negotiate an agreement for access otherwise than under this Code, nothing in this Code applies to or in relation to the negotiations or any resulting agreement; and
 - (c) in particular, without limiting paragraph (b), a Part 5 instrument, as defined in section 40(3), is not to be taken into account in determining the rights, powers, duties and remedies of parties to negotiations carried on or an agreement made otherwise than under this Code, except to the extent that the parties concerned agree otherwise.
- (2) The enactment of subsection (1) by the *Railways (Access) Amendment Code 2009* section 5 is not to be taken as showing that this Code did not have the same effect before the commencement of that section as it has by operation of that subsection.

[Section 4A inserted: Gazette 23 Jun 2009 p. 2410.]

4. Other laws not affected

Nothing in this Code is to be read as affecting the operation of any other written law.

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5. Routes to which this Code applies

- (1) This Code applies only to —
 - (a) those parts of the railways network; and
 - (b) the associated railway infrastructure,that come within the routes specified in Schedule 1.
- (1a) Subsection (1) does not prevent —
 - (a) the making of a proposal that involves any extension or expansion, or both, of a route or the associated railway infrastructure, as mentioned in section 8(4); or
 - (b) the proposal of such an extension or expansion being made in the course of negotiations under Part 3, as mentioned in section 8(5).
- (1b) If a route or the associated railway infrastructure is extended or expanded pursuant to an access agreement or a determination, this Code also applies to the route and infrastructure as so extended or expanded.
- (2) This Code ceases to apply to a Government railway that is part of the railways network, and the associated railway infrastructure, referred to in subsection (1) if it ceases by or under a written law to be a railway as defined in section 2 of the *Government Railways Act 1904*.

[Section 5 amended: Gazette 23 Jul 2004 p. 2989.]

Part 2A — Publication of information

[Heading inserted: Gazette 23 Jun 2009 p. 2411.]

6. Terms used

In this Part —

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

calendar year means a period of 12 months beginning on 1 January;

required information means —

- (a) the standard access provisions for the time being approved or determined under section 47A in respect of the railway owner; and
- (b) the information described in Schedule 2 in respect of the relevant part of the railways network; and
- (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).

[Section 6 inserted: Gazette 23 Jun 2009 p. 2411; amended: SL 2023/207 s. 57.]

7A. Information must be published

- (1) The railway owner in relation to a part of the railways network to which this Code applies must —
 - (a) ensure that the required information is published on a website maintained by or on behalf of the railway owner; and

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- (b) make a publication containing the required information available for purchase in hard copy format.
- (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.
- (2) The publication made available under subsection (1)(b) may be in loose-leaf form or may be constituted by a number of separate documents.
- (3) The railway owner may make a reasonable charge for supplying to a person a hard copy of the publication made available under subsection (1)(b) or an amendment to it.

[(4) *deleted*]

[Section 7A inserted: Gazette 23 Jun 2009 p. 2411; amended: SL 2023/207 s. 58.]

7B. Regulator may grant exemption for information about gross tonne kilometres~~Regulator may grant exemption for information about gross tonne kilometres of freight carried~~

- (1) The Regulator may, on application by a railway owner, exempt the owner from the obligation to publish some or all of the information described in Schedule 2 item 4(1) if the Regulator is satisfied that the publication of the information might reasonably be expected to adversely affect the business of the owner.
- (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.

[Section 7B inserted: Gazette 23 Jun 2009 p. 2412; amended: SL 2023/207 s. 59.]

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;
 - (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

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- (b) revokes under subsection (2) an exemption granted to the railway owner.

[Section 7BA inserted: SL 2023/207 s. 60.]

7C. Information to be kept up-to-date

- (1) The railway owner must review, and amend or replace, the information published under section 7A.
- (2) A review, and any necessary amendment or replacement, under subsection (1) must be carried out —
 - (a) as often as is necessary to ensure that the information remains reasonably up-to-date at all times; and
 - (b) in any case, at not less than yearly intervals starting with the end of the second calendar year following the commencement of the *Railways (Access) Amendment Code 2009* section 7¹.
- (3) This section does not apply to the information referred to in sections 7D, 7E or 7F.

[Section 7C inserted: Gazette 23 Jun 2009 p. 2412; amended: SL 2023/207 s. 61.]

**7D. Particular provision for information as to gross tonne kilometres
~~Particular provision for information as to gross tonne kilometres of freight~~**

- (1) The first information published under Schedule 2 item 4(1) as amended by the [*Railways \(Access\) Amendment Code 2025* section 9\(2\)](#)~~*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 2025* section 9](#)~~*Railways (Access) Amendment Code 2023 Part 3*~~ comes into operation.
- (2) The railway owner must update the information published under Schedule 2 item 4(1) as soon as is practicable after the last day of December in each year so as to show the information

mentioned in that paragraph for the 3 calendar years ending on that day.

*[Section 7D inserted: Gazette 23 Jun 2009 p. 2412-13;
amended: SL 2023/207 s. 62.]*

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).
- (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.

[Section 7DA inserted: SL 2023/207 s. 63.]

7E. Particular provision for information as to proposed improvements and capital works

- (1) The first information published under Schedule 2 item 6 is to be for the 5 calendar years following the commencement of the *Railways (Access) Amendment Code 2009* section 7¹.
- (2) The railway owner must update the information published under Schedule 2 item 6 as soon as is practicable after the last day of December in each year so as to show the improvements and

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capital works proposed to be carried out during the 5 calendar years following that day.

[Section 7E inserted: Gazette 23 Jun 2009 p. 2413.]

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.

[Section 7F inserted: SL 2023/207 s. 64.]

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
 - (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

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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.

[Section 7G inserted: SL 2023/207 s. 64.]

Part 2 — Proposals for access

7. Preliminary information

- (1) An entity that is interested in making a proposal in respect of a particular route may request the railway owner in writing to provide it with —
 - (a) an initial indication of —
 - (i) the current infrastructure capacity and available capacity of that route; and
 - (ii) the price that the entity might pay for access; and
 - (iii) the terms, conditions and obligations that the railway owner would want to be included in any access agreement;
 - and
 - (b) any update of the required information, as defined in section 6, that is reasonably available to the railway owner; and
 - [(c) deleted]*
 - (d) the origin and destination of any train paths proposed by the railway owner for the route.
- (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.
- (3) In providing the information, the railway owner must give to the entity technical information about any aspect of the railway owner's railway infrastructure that affects the design of rolling stock.
- (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.

[Section 7 amended: Gazette 23 Jun 2009 p. 2413-14; SL 2023/207 s. 6 and 65.]

8. Proposals for access

- (1) An entity may make to the railway owner a proposal in writing for access by the entity.
- (2) A proposal can be made —
 - (a) only in respect of a route to which this Code applies; and
 - (b) for the purpose of carrying on rail operations, and for no other purpose.
- (3) A proposal must —
 - (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.
 - [d) deleted.]*
- (4A) The access seeker must, as soon as is practicable after a proposal is made, give to the Regulator a copy of the notice referred to in subsection (3)(c).

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

[Section 8 amended: Gazette 23 Jul 2004 p. 2990; 23 Jun 2009 p. 2414; SL 2023/207 s. 7 and 55.]

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) and (4), 9B to 9D, 9(1)(b)(i), (ii) and (iv) and 10(1)(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 agreement (the *existing access agreement*) that is —

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- (i) an access agreement (including an interim access agreement); or
- (ii) an agreement for access made otherwise than under this Code;
- and
- ~~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.
- (5) Despite section 8(1), an entity can make an interim access proposal to a railway owner only if —
 - (a) the entity has made another proposal (the *long term access proposal*) to the railway owner that is not an interim access proposal; and
 - (b) the long term access proposal is made —
 - (i) in respect of a route that includes, or is within, the route to which access is provided to the entity under the existing access agreement; and
 - (ii) for the purpose of carrying on rail operations that include, or are within, the rail operations that the

entity is carrying on under the existing access agreement;

and

(c) the long term access proposal has not been finalised.

(6) For the purposes of subsection (5)(c), the long term access proposal is **finalised** when any of the following occurs —

(a) the entity and the railway owner enter into an access agreement that relates to —

(i) the long term access proposal; or

(ii) some modification of the long term access proposal agreed to by the railway owner and the entity;

(b) the proposal is withdrawn under section 9A(3) or taken to be withdrawn for the purposes of section 9A(4);

(c) a dispute referred to in section 25(2)(a) or (c) between the entity and the railway owner in relation to the long term access proposal is referred to arbitration under section 26(1) and that arbitration ends;

(d) the proposal is abandoned or otherwise finally resolved.

[Section 8A inserted: SL 2023/207 s. 8.]

9A. Withdrawal of proposal

(1) An access seeker may at any time before an access agreement is made withdraw a proposal for access made to a railway owner, but only if there has not been a referral to arbitration under section 26(1).

(2) Subsection (1) does not affect —

(a) any right that an access seeker has in law not to continue with a referral to arbitration; or

(b) the operation of section 34(2).

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- (3) A proposal is withdrawn by the access seeker giving notice in writing of the withdrawal to —
 - (a) the railway owner; and
 - (b) the Regulator.
- (4) If a proposal is withdrawn —
 - (a) the railway owner is under no further obligation under this Code in respect of the proposal; and
 - (b) any matter in progress under this Code in respect of the proposal lapses.
- (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.
- (6) The application of this section extends to a proposal —
 - (a) that has been made under section 8 before the commencement of the *Railways (Access) Amendment Code 2009* section 10¹; and
 - (b) in respect of which an access agreement has not been made.

*[Section 9A inserted: Gazette 23 Jun 2009 p. 2415-16;
amended: SL 2023/207 s. 9 and 55.]*

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.

[Section 9B inserted: SL 2023/207 s. 10.]

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

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- (b) the railway owner is not satisfied that the proposal meets the requirements of section 8(3).
- (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).

[Section 9C inserted: SL 2023/207 s. 10.]

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).

[Section 9D inserted: SL 2023/207 s. 10.]

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.

(1A) If the proposal is an interim access proposal, the railway owner must give the access seeker a draft access agreement not later than 5 business days after the relevant day in relation to the proposal.

- (2) If the proposal is not an interim access proposal, the ~~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).

[Section 9 inserted: SL 2023/207 s. 10.]

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 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

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- (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).

[Section 10 inserted: SL 2023/207 s. 10.]

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 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).

[Section 10A inserted: SL 2023/207 s. 10.]

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

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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.

[Section 11 inserted: SL 2023/207 s. 10.]

12. Record of proposals to be kept

- (1) The railway owner must keep a register relating to all proposals made to it under section 8.
- (2) The register must show —
 - (a) a general description of the proposal;
 - (b) the name and address of the access seeker;
 - (c) the day on which it was received by the railway owner;
 - (d) the day on which each step required by this Code was taken; and
 - (e) the final outcome of the proposal.
- (3) The register may be kept in electronic form, but must be capable of being reproduced in written form.

[Section 12 amended: SL 2023/207 s. 55.]

Schedule 2 — Information to be made available

[s. 6]

[Heading inserted: Gazette 23 Jun 2009 p. 2417.]

Terms used

1. In this Schedule —

gross tonnage, of a train, means the total weight of the rolling stock of the train and the freight carried by the train;

gross tonne kilometres, of a train, means the gross tonnage of the train multiplied by the distance travelled by the train in kilometres.

~~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.~~

Information

2. A map showing a geographical description of the railways network.
3. A map of the routes listed in Schedule 1 showing the configuration of the tracks on each route.
4. For each route section, details of the following —
 - (a) the track diagrams and type of track;
 - (b) the length;
 - (c) the curves and gradients;
 - (d) the operating gauge;
 - (e) the location and length of passing loops;
 - (f) the track and formation characteristics;
 - (g) the running times of existing trains;
 - (h) the maximum axle loads and maximum train speeds;
 - (i) the permanent speed restrictions;
 - (j) the rolling stock dimension limits;
 - (k) the indicative maximum train lengths;

- (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;
 - [(m) deleted]*
 - (n) the communication systems;
 - (o) the available capacity;
 - (p) the infrastructure capacity;
 - (q) the underlying assumptions used by the railway owner to calculate available capacity and infrastructure capacity.
5. The train control systems operating on the network.
6. A summary of improvements and capital works proposed to be carried out during a period provided for by section 7E.
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.

[Schedule 2 inserted: Gazette 23 Jun 2009 p. 2417-18; amended: SL 2023/207 s. 66.]

Consultation Draft

Notes

This is a compilation of the *Railways (Access) Code 2000* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Citation	Published	Commencement
<i>Railways (Access) Code 2000</i>	8 Sep 2000 p. 5123-81	1 Sep 2001 (see s. 2 and <i>Gazette</i> 28 Aug 2001 p. 4795)
<i>Railways (Access) Amendment Code 2004</i> ¹	23 Jul 2004 p. 2988-97	23 Jul 2004 (see s. 2)
<i>Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004</i> Pt. 3 Div. 2 assented to 8 Dec 2004	1 Jul 2008 (see s. 2(2) and <i>Gazette</i> 17 Jun 2008 p. 2543)	
<i>Railways (Access) Amendment Code 2009</i>	23 Jun 2009 p. 2407-19	s. 1 and 2: 23 Jun 2009 (see s. 2(a)); Code other than s. 1 and 2: 24 Jun 2009 (see s. 2(b))
Reprint 1: The Railways (Access) Code 2000 as at 5 Feb 2010 (includes amendments listed above)		
<i>Railways (Access) Amendment Code 2011</i>	20 Sep 2011 p. 3801-2	s. 1 and 2: 20 Sep 2011 (see s. 2(a)); Code other than s. 1 and 2: 21 Sep 2011 (see s. 2(b))
<i>Railways (Access) Amendment Code 2013</i>	19 Jul 2013 p. 3269-71	s. 1 and 2: 19 Jul 2013 (see s. 2(a)); Code other than s. 1 and 2: 7 Aug 2013 (see s. 2(b) and <i>Gazette</i> 6 Aug 2013 p. 3677)
<i>Railways (Access) Amendment Code 2015</i>	4 Dec 2015 p. 4846-7	s. 1 and 2: 4 Dec 2015 (see s. 2(a)); Code other than s. 1 and 2: 5 Dec 2015 (see s. 2(b))
<i>Railways (Access) Amendment Code 2023</i>	SL 2023/207 18 Dec 2023	Pt. 1: 18 Dec 2023 (see s. 2(a)); Code other than Pt. 1 and 3: 19 Dec 2023 (see s. 2(c)); Pt. 3: 18 Mar 2024 (see s. 2(b))
<u><i>Railways (Access) Amendment Code 2025</i></u>		

Other notes

^{1M} Under the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010* Pt. 3, this Code must be applied with the modifications set out in that Part. Those modifications have effect on and from 15 Aug 2015 until that Part expires in accordance with s. 15 of that Act.

¹ The *Railways (Access) Amendment Code 2004* s. 3(2) reads as follows:

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