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RAILWAYS (ACCESS) ACT 1998

**RAILWAYS (ACCESS)
AMENDMENT CODE 2009**

Railways (Access) Act 1998

Railways (Access) Amendment Code 2009

Made by the Minister under section 4 of the Act.

1. Citation

This is the *Railways (Access) Amendment Code 2009*.

2. Commencement

This Code comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Code is published in the *Gazette*;
- (b) the rest of the Code — on the day after that day.

3. Code amended

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

4. Section 3 amended

In section 3 in the definition of *route section* delete “has the meaning given to it in Schedule 2.” and insert:

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

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5. Section 4A inserted

After section 3 insert:

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.

6. Section 6 deleted

Delete section 6.

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s. 7**7. Part 2A inserted**

Before Part 2 insert:

Part 2A — Publication of information**6. Terms used**

In this Part —

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

required information means —

- (a) the form of the railway owner's standard access agreement; and
- (b) the information described in Schedule 2 in respect of the relevant part of the railways network.

7A. Information to be published in hard copy format

- (1) The railway owner in relation to a part of the railways network to which this Code applies must make a publication containing the required information available for purchase in hard copy format.
- (2) The publication 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 copy of the publication or an amendment to it.
- (4) A person that is a railway owner at the commencement of the *Railways (Access) Amendment Code 2009* section 7 is not required to comply with this section, until the expiration of 6 months after that commencement.

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7B. Regulator may grant exemption for information about freight carried

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(m) if the Regulator is satisfied that the publication of the information might reasonably be expected to adversely affect the business of the owner.

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 2 yearly intervals starting with the end of the second calendar year following the commencement of the *Railways (Access) Amendment Code 2009* section 7.
- (3) This section does not apply to the information referred to in sections 7D and 7E.

7D. Particular provision for information as to gross tonnages and tonnages of freight

- (1) The first information published under Schedule 2 item 4(l) and (m) is to be for the 3 calendar years before the commencement of the *Railways (Access) Amendment Code 2009* section 7.

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- (2) The railway owner must update the information published under Schedule 2 item 4(l) and (m) as soon as is practicable after the last day of December in each year so as to show the information mentioned in those paragraphs for the 3 calendar years ending on that day.

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 7.
- (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 capital works proposed to be carried out during the 5 calendar years following that day.

8. Section 7 amended

In section 7(1):

- (a) in paragraph (a)(i) after “the” insert:

current

- (b) delete paragraphs (b) and (c) and “and” after paragraph (c) and insert:

- (b) any update of the required information, as defined in section 6, that is reasonably available to the railway owner; and

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(c) after paragraph (a) insert:

and

(d) after paragraph (a)(i) insert:

and

9. Section 8 amended

(1) In section 8(3):

(a) in paragraph (c) delete “operations.” and insert:

operations; and

(b) after paragraph (c) insert:

(d) be accompanied by a notice in writing of the proponent’s intention to enter into negotiations for an access agreement under this Code.

(c) after paragraph (a) insert:

and

(2) After section 8(3) insert:

(4A) The proponent 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)(d).

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s. 10**10. Section 9A inserted**

After section 8 insert:

9A. Withdrawal of proposal

- (1) A proponent 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.
- (2) Subsection (1) does not affect —
 - (a) any right that a proponent has in law not to continue with a referral to arbitration; or
 - (b) the operation of section 34(2).
- (3) A proposal is withdrawn by the proponent 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) Nothing in this section prevents a proponent that has withdrawn a proposal from —
 - (a) re-making the same proposal; or
 - (b) making a further proposal,

under section 8, and if paragraph (a) applies the proponent and the railway owner must again take all steps and observe all requirements under this Code in respect of the re-made proposal.

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- (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 10; and
 - (b) in respect of which an access agreement has not been made.

11. Section 9 amended

In section 9(2)(b)(ii) delete “proponent.” and insert:

proponent, having regard to the requirements of Schedule 4 clause 7A.

12. Schedule 1 amended

(1) In Schedule 1 delete item 49 and insert:

49. The narrow gauge double tracks between Perth and —
- (a) Clarkson; and
 - (b) Fremantle; and
 - (c) Armadale; and
 - (d) Midland; and
 - (e) Mandurah.

(2) In Schedule 1 after item 49 insert:

- 50A. The narrow gauge single track between Beckenham Junction and Thornlie.

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Delete Schedule 2 and insert:

Schedule 2 — Information to be made available

[s. 6]

Terms used

1. In item 4 of this Schedule —
gross tonnage of a train means the total of the weights of the rolling stock of the train and of the freight carried;
tonnage of freight carried means the gross tonnage of the train less the weight of the rolling stock.

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;

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- (l) the total gross tonnage of all trains operated during a period provided for by section 7D;
 - (m) subject to any exemption under section 7B, the total tonnage of freight carried on all trains operated during a period provided for by section 7D;
 - (n) the communication systems;
 - (o) the available 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.

14. Schedule 4 amended

After Schedule 4 clause 6 insert:

7A. Apportionment of costs of extension or expansion

- (1) This clause applies where —
- (a) an extension or expansion of the route or the associated railway infrastructure is to be provided for by an access agreement; and
 - (b) it is necessary to determine the costs referred to in clause 6(2)(a).
- (2) The costs are to be apportioned so that each entity that will use the route or the associated railway infrastructure as extended or expanded (the *enhanced facilities*) is required to bear a share of the costs according to —
- (a) the extent that the entity will use the enhanced facilities compared to all other users of those facilities; and
 - (b) the economic benefit that the entity is expected to derive from use of the enhanced facilities.

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- (3) Subclause (2) applies in respect of an entity only so far as —
- (a) it is consistent with any agreement between the railway owner and the entity for the entity to be required to bear a share of the costs; or
 - (b) the railway owner is otherwise able to require the entity to bear a share of the costs.
- (4) This clause does not apply to a proposal made under section 8 before the commencement of the *Railways (Access) Amendment Code 2009* section 14.

T. BUSWELL, Treasurer.
