

14 June 2006 | Victorian Rail Access Regime

**PACIFIC NATIONAL (VICTORIA)
LIMITED - COMPLIANCE WITH
COMMISSION INSTRUMENTS**

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| | | Page |
|-----|--|-------------|
| 1 | COMPLIANCE WITH ACCOUNT KEEPING RULES | 6 |
| 2 | RING-FENCING & CONFIDENTIAL INFORMATION | 10 |
| 3 | CAPACITY ALLOCATION & NETWORK MANAGEMENT PROTOCOLS | 14 |
| 3.1 | Matters to be addressed in protocols | 14 |
| 3.2 | Operating Handbook | 14 |
| 3.3 | Other Issues to be addressed in the Operating Handbook | 21 |

OVERVIEW

Background

The Essential Services Commission (**Commission**) is currently in the process of implementing the new Victorian Rail Access Regime (**VRAR**).

In accordance with sections 38R to 38V of the *Rail Corporations Act 1996* (**RCA**), the Commission has made Account Keeping Rules (**AK Rules**), Ring Fencing Rules (**RF Rules**), Capacity Use Rules (**CU Rules**), Network Management Rules (**NM Rules**) and the Negotiation Guidelines (together, the **Commission Instruments**).

The Commission Instruments require access providers to submit to the Commission for approval certain policies, protocols and other documents. These must be submitted to the Commission for approval at the same time that a proposed access arrangement is submitted for approval.

The policies, protocols and other documents that must be approved by the Commission include:

- forms to be used in the annual preparation and keeping of the financial statements, cost allocation statement, statement of maintenance and capital works costs (in respect of access activities), and information about sources of revenues (derived from access activities) that are required to be prepared under sections 2.2 to 2.5 of the AK Rules (see clause 2.6 of the AK Rules);
- the cost allocation policy required to be prepared under section 5 of the AK Rules;
- the ring-fencing separation arrangement required under section 5 of the RF Rules;
- capacity allocation protocols which address the requirements of clause 6.3 of the CU Rules; and
- a network operating handbook which contains (among other things) the protocols required to be prepared under sections 4, 5 and 8 of the NM Rules.

In each case the Commission's approval role (and the process for approval) is contained in the relevant Commission Instrument. This is a separate process from the process which applies to the consideration of proposed access arrangements.

However, when deciding whether to approve a proposed access arrangement the Commission must be satisfied that it is consistent with the Commission Instruments.

Process to date

The Commission's consideration of the policies, protocols and other documents that were lodged by Pacific National (Victoria) Limited (**Pacific National**) with its initial proposed access arrangement on 2 March 2006 (**initial proposed access**

arrangement) was detailed in Part 5 of the Commission's draft decision on the Pacific National proposed access arrangement (*Proposed Rail Access Arrangements – Draft Decision*, dated April 2006) (**Draft Decision**).

As explained above, while the Commission's consideration of policies, protocols and other documents follows the processes specified in the Commission Instruments themselves, and is separate to the process for considering proposed access arrangements, the Commission's decisions under the Commission Instruments were published with its decision about the proposed access arrangements.

In its Draft Decision, the Commission decided to not approve any of the policies, protocols and other documents submitted by Pacific National pursuant to the AK Rules, the CU Rules, the NM Rules and the RF Rules, and required amendments to be made and documents to be submitted for the purposes of compliance with those Commission Instruments. This decision was made in accordance with the approval processes established in those Commission Instruments.¹ In accordance with the processes contained in the Commission Instruments, Pacific National was provided with the opportunity to submit revisions to the relevant policies, protocols and other documents within 14 days of receiving a copy of the Draft Decision. This time period also matched the time period permitted for the submission of revisions to the proposed access arrangement under s 38ZC of the RCA.

On 1 May 2006, the Commission made its final decision in relation to the revised proposed access arrangement submitted by Pacific National: *Pacific National Rail Access Arrangement - Final Decision* (**Final Decision**).²

In the Final Decision, the Commission explained that many of the relevant policies, protocols and documents required under the Commission Instruments were not resubmitted within the required 14 day period (i.e. they were not received by 3 May 2006).

While Pacific National submitted additional documents on 12 May 2006 (**Additional Documents**), with the explanation that these had been intended to be part of its 3 May 2006 submission, the short statutory timeframes in the RCA meant that the Commission was not able to consider documents that were submitted late when it made its final decision in relation to the proposed access arrangements.

As the Additional Documents were not able to be considered as part of the process for considering the revised proposed access arrangements, the Commission decided that in relation to the Commission Instruments, the Final Decision would only address whether the revised proposed access arrangement was consistent with the Commission Instruments (as required under s 38X(5) of the RCA).³ For this reason, the Final Decision did not address whether the revisions to the protocols, policies and other documents required to be submitted under the Commission Instruments were adequate.

¹ Sections 2.6 and 5 of the AK Rules; section 5 of the RF Rules; 6.4 of the CU Rules; and section 10 of the NM Rules.

² The revised proposed access arrangement was submitted in accordance with s 38ZC of the RCA.

³ See 'Pacific National Rail Access Arrangement Final Decision', pp 102-103

That issue is addressed in this decision (**Commission Instruments Decision**).

Purpose

This Commission Instruments Decision assesses compliance with the Commission Instruments.

In making this Commission Instruments Decision, the Commission has had regard to the documents submitted on 3 May 2006. It has also had regard to the Additional Documents submitted by Pacific National on 12 May 2006, which include among other things, the *Operating Handbook 2006*.

While these documents were submitted late, the Commission acknowledges the short timeframes under the VRAR for the completion of a very broad range of regulatory compliance tasks. The Commission considers that it has some discretion about whether to accept late documents under the Commission Instruments (in contrast to the position under the RCA itself, where the Commission has no such discretion).

It should also be noted that with respect to the approval processes contained in the Commission Instruments, in some instances if the Commission rejects any of the relevant policies, protocols, or other documents a second time it can either require the access provider to resubmit the relevant policy, protocol or other document within 14 days, or it can make the relevant document itself.⁴

This is relevant to this Commission Instruments Decision, which constitutes the Commission's second decision on whether to approve or reject the policies, protocols or other documents submitted to comply with requirements in the Rules. The Commission's decision in relation to this issue is discussed in relation to each specific Commission Instrument (below).

Structure of the Decision

This Commission Instruments Decision is comprised of 3 chapters, addressing the compliance of Pacific National with the requirements of the AK Rules in chapter 1, the RF Rules in chapter 2, and the CU Rules and the NM Rules in chapter 3.

⁴ An exception to this is the case of the protocols that are required to be developed under section 6.3 of the Capacity Use Rules. If rejected by the Commission a second time, these must again be reconsidered and revised by the access provider.

1 COMPLIANCE WITH ACCOUNT KEEPING RULES

This chapter 1 sets out the Commission’s decisions for the purposes of sections 2.6(c) and 5.2 of the AK Rules. Under the AK Rules, Pacific National is required to submit to the Commission for approval at the same time as it submits its proposed access arrangement:

- a proposed cost allocation policy;⁵ and
- forms for it to use in the preparation and keeping of the financial statements, cost allocation statement, statement of maintenance and capital works costs (in respect of access activities), and information about sources of revenues (derived from access activities) that are required to be prepared under sections 2.2 to 2.5 of the AK Rules (**templates**).⁶

In the Draft Decision the Commission:

- found that Pacific National had not submitted the templates required under section 2.6 of the AK Rules;
- did not approve Pacific National’s “Cost Allocation Policy” contained in section 6.2 of the proposed access arrangement (and as elaborated in some supporting information); and
- found that a number of the elements of the Account Keeping Policy contained in section 6.1 of the proposed access arrangement were inconsistent with requirements in the AK Rules.

In the Final Decision the Commission noted that Pacific National had made only minor changes to section 6 of the revised proposed access arrangement, and had not addressed most of the issues that the Commission raised in the Draft Decision. These shortcomings are discussed in section 14.1.2 of the Draft Decision, and section 10 of the Final Decision, and therefore will not be further addressed here.

Forms for regulatory accounting statements (“templates”)

Pacific National states in clause 6.1.f of its revised proposed access arrangement that “data will be presented in approved format”.

The only specific template that has been submitted by Pacific National to the Commission is with respect to cost allocation. Pacific National states in clause 6.2.e of its revised proposed access arrangement that the cost allocation statement, “together with supporting information, is attached as Appendix 9”.

Pacific National has not submitted any forms for the purposes of reporting the information required under sections 2.2, 2.3 and 2.5 of the AK Rules. In addition, the Table in Appendix 9 of the proposed access arrangement does not meet all of the

⁵ Section 5 of the AK Rules.

⁶ Clause 2.6 of the AK Rules.

requirements of a cost allocation statement, as specified in section 2.4 of the AK Rules. In particular, it does not address the allocation of costs:

- between the access activities business unit and other activities business units;
- within the access activities business unit between declared and other activities; and
- between pricing zones (namely the Portland zone, and the remainder of the Network).

The Commission requires Pacific National to submit the remaining templates (which Pacific National will use when carrying out its obligations under sections 2.2, 2.3 and 2.5 of the AK Rules), and to make the required amendments to the template cost allocation statement (required under section 2.4 of the AK Rules), within 14 days of receiving a copy of this Decision.

Cost Allocation Policy

Chapter 14 of the Draft Decision (on pages 208-209) summarised the requirements of the cost allocation policy that must be made under clause 5.1 of the AK Rules (**Cost Allocation Policy**).

The Commission has considered section 6.2 (headed “Cost Allocation Policy”) of the revised proposed access arrangement submitted on 3 May 2006, and the Additional Documents submitted on 12 May 2006.

The Additional Documents contain some supporting information in relation to Pacific National’s proposed method of identifying costs that are directly attributable to passenger and freight services for the purpose of allocating costs between passenger and freight services (which the Commission adopted in the Final Decision).

However, there appear to be no Additional Documents that are intended to represent all or part of the Cost Allocation Policy.

The Commission has therefore considered section 6.2 of the revised proposed access arrangement (as considered for the purposes of the Final Decision) as representing the whole of the Cost Allocation Policy.

Although Pacific National has made some changes to section 6.2, none of these changes appear to address the matters identified by the Commission.

Accordingly, the Commission has formed the view that Pacific National has not addressed the outstanding issues that were identified on pages 212-213 of the Draft Decision and rejects the proposed Cost Allocation Policy for the purposes of section 5.2 of the AK Rules.

The Commission requires Pacific National to resubmit a revised Cost Allocation Policy within 14 days of the date of this Commission Instruments Decision.

Proposed Revision

Section 5.2(f) of the AK Rules provides that if the Commission twice rejects the cost allocation policy submitted by an access provider, then following the second rejection the Commission may either:

- return the amended cost allocation policy to the access provider and require it to be resubmitted within 14 days with such alterations and modifications as are necessary to address those matters that the Commission has identified must be addressed in order for the Commission to approve it; or
- amend the proposed cost allocation policy itself.

On 8 June 2006, Pacific National provided to the Commission (by e-mail) a table outlining its proposed approach to addressing the Commission's requirements in the Draft Decision in relation to account keeping and cost allocation. The following summarises the key elements of Pacific National's proposed approach:

- recording all maintenance costs, which can be directly coded to an individual location throughout the network by each line segment of the Network in the following cost categories: routine maintenance; major periodic maintenance; maintenance of signalling and communications equipment; maintenance of structures, buildings; facilities and terminals; and other maintenance;
- also recording against each line segment, from 1 July 2006, all capital works and depreciation costs that can be directly coded to an individual location throughout the network;
- allocating all other maintenance, capital works, depreciation and operational costs between the passenger network and the freight network on the basis of appropriate cost drivers;
- recording all revenues, prices charged and billing units for each access seeker;
- keeping an up to date contract administration program that documents the nature, value and substance of all contracts, which will be provided to the ESC upon request;
- preparing and submitting to the Commission annual accounts in an approved format within four months of the close of the relevant financial year (with proposed templates provided);
- providing with the accounts: a responsibility statement by a Director of Pacific National, or by a competent officer (if agreed by the Commission), and a report from a qualified and independent auditor stating whether the statements required under sections 2.2-2.4 of the AK Rules represent a true and fair representation of the regulated access provision business, which is also consistent with the Australian Auditing and Assurance Standards;
- provide with the accounts the capitalisation policy, overhead allocation policy form, and working papers detailing the allocation processes used in the preparation of the financial statements; and
- developing an approach that allocates the costs across access and other activities.

Without forming any view about the appropriateness or adequacy of the proposed changes, the Commission considers it appropriate to allow Pacific National to resubmit its cost allocation policy, rather than for the Commission to amend the cost allocation policy.

2 RING-FENCING & CONFIDENTIAL INFORMATION

Pacific National's initial proposed access arrangement contained a Ring-Fencing Policy in Part 8, and a proposed Separation Arrangement in Appendix 4.

The Separation Arrangement is subject to the Commission's approval pursuant to section 5.4 of the RF Rules.

In the Draft Decision, the Commission decided to not approve Pacific National's proposed Separation Arrangement because it did not satisfy all of the requirements of sections 5.2(a) and (b) of the RF Rules. The Commission identified various matters (set out in section 15.1.1 of the Draft Decision) which required amendment.

In its Draft Decision, the Commission required Pacific National to resubmit its Separation Arrangement by 3 May 2003 (in accordance with section 5.4(d)(iii) of the RF Rules).

In Pacific National's revised proposed access arrangement (which was considered by the Commission when making its Final Decision), Part 8 (Ring Fencing) was substantially unchanged from Part 8 of the initial proposed access arrangement. A revised Separation Arrangement was not included with the documents provided on 3 May 2006 or on 12 May 2006 (with the Additional Documents).

In the absence of a resubmitted Separation Arrangement in the Additional Documents, the Commission has assumed that Pacific National has intended to resubmit the Separation Arrangement previously submitted on 15 March 2006.

Conclusion on Additional Documents

The Commission identified a range of shortcomings in the Separation Arrangement in its Draft Decision. As none of these matters have been addressed, the Commission's previous conclusion that the Separation Arrangement does not satisfactorily address the requirements of the RF Rules remains unchanged. Accordingly, the Commission rejects the Separation Arrangement for the purposes of clause 5.4(c) of the RF Rules.

As this is the second rejection of the Separation Arrangement, the Commission can, pursuant to section 5.4(f) of the RF Rules, either:

- return the proposed Separation Arrangement to the access provider for reconsideration (in which case the process in clause 5.4(e) of the RF Rules will apply); or
- amend the proposed separation arrangement itself, so that it provides for the matters in section 5.2 of the RF Rules and is consistent with the objectives in s 38F of the RCA.

The Commission has decided to require Pacific National to resubmit its proposed Separation Arrangement within 14 days of this Decision under section 5.4(f) of the RF Rules.

The Commission's decision to give Pacific National another opportunity to address the relevant issues raised in the Draft Decision acknowledges the short timeframe provided in the RCA and under the Commission Instruments for Pacific National and other access providers to complete a broad range of regulatory tasks

Also, as Pacific National has not made any of the required amendments set out by the Commission in its Draft Decision in relation to compliance with the RF Rules, and as Pacific National does not appear to have attempted to address these issues in other ways, the Commission considers that it is appropriate for Pacific National to address these requirements at this time. The amendments specified in the Draft Decision as being required are still relevant, and they should be addressed. To provide some examples, Pacific National should:

- establish and implement an auditable policy, procedure and system for handling complaints made about Pacific National's compliance with the RF Rules (section 4(b)(ix) of the RF Rules); and
- establish and implement an auditable policy, procedure or system for reporting a breach of a policy, procedure or system to the Commission (section 4(b)(x) of the RF Rules.

Proposed Revision

On 6 June 2006, Pacific National provided to the Commission (by e-mail) a table outlining its proposed approach to addressing the Commission's requirements in the Draft Decision in relation to the RF Rules.

Some of the changes that Pacific National proposes to make to the Separation Arrangement, other ring fencing protocols, and to its procedures for handling confidential information may be summarised as follows:⁷

- include two new schedules to the Separation Arrangement: firstly, to summarise the services provided to PNNA by other divisions of Pacific National, or vice versa (excluding the "Corporate" division, as this supplies Shared Services), and to certify that these services are provided in accordance with the requirements of sections 2.6 and 2.7 of the RF Rules; and secondly, to provide a copy of each "arm's length" agreement;
- ensure all new service arrangements between other Pacific National divisions except "Corporate" as provider, and PNNA as recipient, will be developed in accordance with the requirements under section 2.6 of the RF Rules (cost effective and arm's length contracts);
- delete the reference in the Separation Arrangement that the Operating Services division would fall within the definition of "Shared Services";
- define "Access Seeker Information" to be "all information provided in confidence by an Access Seeker, in or developed by PNNA as a result of an application for Access on the Network, including but not limited to the identity

⁷ Where capitalised terms were used in Pacific National's correspondence with the Commission, these have been retained in this summary.

of the Access Seeker”, and define “Access Seeker Information – Operational” to be “part of Access Seeker Information that describes the operational and technical characteristics of the Access sought by the Access Seeker, and shall not include any information that provides or reveals the identity of the Access Seeker”;

- amend Clause 7 of the Ring Fencing Policy and Clause 8.1.g of the Access Arrangement to ensure that no party other than PNNA staff or Shared Services Staff would receive “Access Seeker Information” or “Access Seeker Information – Operational”;
- amend the Ring Fencing Policy and the Access Arrangement to ensure possible recipients of “Access Seeker Information” or “Access Seeker Information” are trained appropriately;
- incorporate a dispute resolution procedure into the Ring Fencing Policy;
- develop a policy, procedure or system to ensure that day-to-day dealings between PNNA and Pacific National’s other business units are at arm’s length;
- incorporate in the Ring Fencing Policy descriptive and explanatory statements to comply with section 5.2(a)(iv) of the RF Rules;
- provide in the Separation Arrangement statements by a Director of Pacific National and certification to comply with section 5.2(b) of the RF Rules;
- state in the Access Arrangement that PNNA will not disclose to parties or personnel other than Shared Services Staff either “Access Seeker Information” or “Access Seeker Information – Operational”;
- provide in the Access Arrangement that the use of confidential access seeker or user information except for a “relevant purpose” is prohibited in accordance with s 38ZZZB(1) of the RCA;
- address the same confidential information issue in the Operating Handbook.

In addition, in relation to the requirements in the RF Rules regarding provision of services to PNNA (clause 2.6) and regarding the establishment of a register for Pacific National’s staff and the policies, procedures and systems referred to in section 4 of the RF Rules (clause 5.2(a)(ii)), Pacific National has included an (informal) request that the Commission exercise its discretion under clause 6.2 of the RF Rules to:

- define “Shared Services” to include within its scope commercial, legal, regulatory, public/government relations and corporate governance services;⁸
- relax the constraints on staff transfers between units so that they apply only to recipients of “Access Seeker Information” or “Access Seeker Information – Operational”; and

⁸ Under the RF Rules, “shared services” “means corporate administrative functions or services, human resources, accounting, finance, information technology and information technology support services, and includes the functions carried out by the executive officer or officers identified in a separation arrangement to who all staff report either directly or indirectly”.

- relax the requirement to maintain a register of staff in the access activities business unit to be confined to only those staff who are recipients of “Access Seeker Information” or “Access Seeker Information – Operational”.

Without forming any view about the appropriateness or adequacy of the proposed changes, the Commission considers it appropriate to allow Pacific National to resubmit the Separation Arrangement, the other ring fencing protocols, and its procedures for handling confidential information (required under the RF Rules).

It would assist the Commission’s consideration of these documents if they are accompanied by a table that identifies where each of the protocols, procedures and policies that are required to be developed under the RF Rules are addressed.

For clarification, to the extent that the revisions proposed by Pacific National (above) are relevant to its proposed Separation Arrangement, its protocols and its procedures for handling confidential information, the Commission expects Pacific National to include these in the revised versions of these documents that are provided to the Commission within 14 days of this Decision.

3 CAPACITY ALLOCATION & NETWORK MANAGEMENT PROTOCOLS

Among the Additional Documents submitted to the Commission on 12 May 2006 was a document entitled “Operating Handbook”. The Commission understands that the Operating Handbook replaces three protocols previously submitted by Pacific National, the “Train Operating Protocol”, the “Track Occupation Protocol” and the “Train Service Planning (Timetables) Procedures”.

The Operating Handbook addresses some of the requirements of the Capacity Use Rules (CU Rules) and Network Management Rules (NM Rules), as discussed below.

3.1 Matters to be addressed in protocols

In its Draft Decision the Commission identified a number of matters that needed to be addressed in the “Train Service Planning (Timetables) procedure” and the “Train Operating Protocol”, before these protocols could be approved by the Commission in accordance with section 6.4 of the CU Rules and section 10 of the NM Rules. As these documents have been replaced by the Operating Handbook, the Commission now needs to be satisfied that these matters have been adequately addressed in the Operating Handbook, and that other features of the new document do not raise further issues that the Commission would need to address for it to approve the Operating Handbook.

In the Final Decision, the Commission found that Pacific National had not incorporated or otherwise addressed any of the specific amendments identified in the Draft Decision as being required for the purposes of the CU Rules and the NM Rules. Pacific National’s revisions to its revised proposed access arrangement were limited to replacing references to the “Train Service Planning (Timetables) procedure”, the “Network Map”, and the “Train Operating Protocol” with references to the “Operating Handbook”.

The Commission has now considered whether the issues identified in the Draft Decision have been addressed in the Operating Handbook. In doing so, the Commission has also noted numerous inconsistencies between the revised proposed access arrangement provided by Pacific National and the Operating Handbook, which will also need to be addressed.

These matters are discussed below.

3.2 Operating Handbook

As noted, the Operating Handbook replaces three “protocols” previously submitted by Pacific National: the Train Operating Protocol, Track Occupation Protocol and Train Service Planning (Timetables) Procedures. The Operating Handbook comprises a set of protocols for capacity allocation and network management. It is identified, together with a number of documents, in section 5.4 of the revised proposed access

arrangement as part of Pacific National's network protocols and work procedures, which include:

- the *Network Service Plan (NSP)*;
- the *Network Operating Requirements*;
- the *Network Service Plan Addenda*;
- the *Operating Handbook*;
- the *Emergency Management Plan*;
- Pacific National Officer Responsibilities For Access Agreement Obligations; and
- *Rolling Stock Access*.

The matters addressed by the Operating Handbook are outlined below.

Capacity allocation principles

Section 1 of the Operating Handbook is headed "PNNA Capacity Allocation Principles".

Clause 1.1 requires capacity allocation activities to be carried out in a manner consistent with the principle of passenger priority and in a manner which also encourages maximum use of the network for declared rail transport services. Clause 1.2 provides that Pacific National use "all reasonable endeavours" in terms of meeting access seekers' requests for train paths. Clauses 1.3 and 1.4 contain capacity availability assessment procedures and what needs to occur when there is insufficient capacity in relation to a particular train path. Clauses 1.5 and 1.6 address how a freight train path that is requested by multiple access seekers will be allocated, and what will be considered in order to assess how the "greatest utilisation" of the train path will be achieved (described below as the "**greatest utilisation criterion**"). It has been assumed that clause 1.5 is intended to impose obligations upon Pacific National, and it is suggested that the drafting of this clause make this clear.

In assessing the "greatest utilisation criterion", clause 1.5 states that Pacific National will look at a number of factors, including train path duration, frequency of train path usage, and aggregate tonnage. This clause does not clarify the relative importance of each of these factors, and, to the extent that duration is given primacy over the gross tonnage of the train. For example, it may be questioned whether "greatest utilisation" is adequately reflected in these criteria.

The required degrees of utilisation in respect of scheduled freight train paths for the purposes of clause 6.3(a)(iv) of the CU Rules are addressed in clauses 5.2(ii) and (iii) (although this could be further clarified). These clauses require the surrender of a train path if it is not utilised on at least 50% of the days on which the train was scheduled in the preceding six calendar months, subject to consideration of certain seasonal aspects of usage.

Network Service Plan

Section 2 of the Operating Handbook briefly describes the NSP and its components, including the *Network Operating Requirements*, the *Addenda to the NSP*, and the *Master Train Timetable*. The Commission notes that some of these documents were provided with the initial proposed access arrangement, and assessed in the Draft Decision. There have been no revisions to them.

It is not clear whether Pacific National intends this part of the Operating Handbook to address the matters in sections 6.3(a)(i), (ii) and (iii) of the CU Rules – being protocols for the allocation of capacity that identify each line of Pacific National’s network, that define the standard “freight train path” (that Pacific National uses for allocating freight train paths) or that represent the policy, guidelines and procedures that Pacific National will apply when assessing a request for access.

If so, this part of the Operating Handbook is not adequate. If not, it needs to be clarified by Pacific National where these matters are addressed.

Network Map

Section 3 of the Operating Handbook contains a Network Map showing the regional “mainlines” on Pacific National’s network (but excludes the Albion – Jacana and Tottenham – Newport lines). In this section, Pacific National has also provided a table (headed “Train Paths”) detailing the numbers of Passenger train paths, Scheduled (including “Reserved”) freight train paths, Unscheduled ‘Out of Hours’ freight train paths, and Available freight train paths that are not shown in the Master Time Table for each mainline.

This section falls short of the requirements in section 3.2(b) of the CU Rules (which contain the network map requirements). For example, the Network Map does not show each line on the network – for the purposes of section 3.2(b)(i).⁹

Further, it is not clear how the table headed “Train Paths” should be read. It appears that the sum of the rows will provide the total number of train paths, (whether currently allocated to a user or not) on that line. If this is the case, some of the lines appear to have a very low number of train paths in total, and a very low number of “Available” freight train paths (only 16 on the entire network).

For instance the lines from Yaapeet to Kulwin all have only 2 train paths in total. It is not clear if a train path on a line includes a return trip or a one way trip, or whether they are defined in terms of number per day.¹⁰ It may be that information on Available ‘Out of Hours’ paths has been omitted from the table. However, in its present form it does not satisfy section 3.2(b)(ii) of the Capacity Use Rules (this is the provision that requires a network map to show for each line, the number of scheduled passenger train paths, scheduled freight train paths, unscheduled freight train paths and any available train paths). These issues need to be addressed.

⁹ For example, in other information provided to the Commission, Pacific National has identified 62 line segments.

¹⁰ Alteration of the safeworking system may facilitate much greater capacity utilisation (e.g. taking into account passing loops when determining capacity for each line).

Applications for Train Paths

The production of the Master Train Timetable and the Daily Train Timetable, are outlined in section 4 of the Operating Handbook. While section 4 is entitled “applications”, this section of the Operating Handbook focuses upon variations of these timetables.

In this context, existing users may apply to vary their scheduled train paths or may apply for unscheduled train paths. The priority orders that apply in resolving conflicting timetabling requests are included (see clause 4.1.4). Section 4.1 appears to correspond to the section “Production of the Country Network Service Plan” in the previous *Train Operating Protocol*, with clauses 4.1.10 and 4.1.11 being the new additions.¹¹

It appears that this part of the Operating Handbook is intended to address section 6.3(a)(v) of the CU Rules. However, the procedures for varying scheduled Train Paths do not make clear:

- whether the variations requested or made under section 4.1 of the Operating Handbook are temporary or permanent, and whether any difference in process arises in relation to this distinction (it is noted that section 6.3(a)(v) of the CU Rules requires protocols relating to permanent variations, with temporary variations to be addressed in the protocols developed under section 6.3(a)(ix) and (x));
- whether PNNA itself can initiate changes to the Master Train Timetable, and if so, under what circumstances;
- why the applications for variation must be made three months in advance of the “timetable change date” (under clause 4.1.1), and why a shorter period of time (e.g. 2-3 weeks) is not appropriate;
- what the frequency of “timetable change dates” is (for the purposes of clause 4.1.1), and in the absence of such clarification, how Operators could know when to apply for a variation to ensure that they do so three months prior to the “timetable change date”;
- what notice affected operators will be given of proposed variations (under clause 4.1.3)
- why access to the Rail Access Management System (**RAMS**) is only provided “where practicable” (under clause 4.2.3.2);
- the principles that guide the train path reallocation process. In particular, the Commission has not identified reference to the principle that existing scheduled train paths specified in an access agreement will not be altered without the agreement of the Operator or the intervention of the Director of Public Transport (in relation to Passenger Train Paths); and

¹¹ Clause 4.2 addresses the Daily Train Timetables and will be discussed below.

- why an Operator needs to resubmit its request for final consideration by PNNA (under clauses 4.1.5 and 4.1.6) – this requirement appears to make the process longer than necessary.

In relation to temporary train path variations, in the Draft Decision the Commission required the inclusion of a discussion of the circumstances in which variations will be granted (in order to comply with section 5.7 of the CU Rules, and to address the protocol-making requirements in section 6.3(a)(ix) and (x) of the CU Rules). It appears that section 9 of the Operating Handbook is intended to address some of these requirements. However, Pacific National should ensure that all of the matters specified in these sections of the CU Rules are reflected in the Operating Handbook.

Daily Train Timetable

Clause 4.2 explains the purpose of the “Daily Train Plan” and its components.¹² The Commission notes that specific obligations in the NM Rules have been addressed through references to the priority ordering (passenger, scheduled freight, and out of hours unscheduled freight), and the “greatest utilisation criterion” (e.g. in 4.2.3.2(iv) and 4.2.8 respectively).

Pacific National has not included procedures dealing with variations to the Daily Train Timetable after it has been “closed off”, which were included in the replaced Train Operating Protocol.

In the Draft Decision, the Commission required weekly preparation of the Daily Train Plan to be mandated in Pacific National protocols in order to comply with the obligation in section 4.1(b)(i) of the NM Rules. Pacific National has incorporated this obligation in the definition for the Daily Train Plan in the Operating Handbook. It has also addressed the matter of priority in section 4.1(b)(vi) of the NM Rules.

However, the Operating Handbook must also contain an obligation for Pacific National to minimise disruptions that result if the Daily Train Plan varies from the Master Train Timetable (as required by section 4.1(b)(vi)(A) of the NM Rules), and must specify when Pacific National must obtain the consent of users to train path allocations in the Daily Train Plan that differ from the Master Train Timetable (as required by section 4.1(b)(viii) of the NM Rules).

Train path surrender

Section 5 of the Operating Handbook sets out the principles for train path surrender, and confirms that an “out of hours unscheduled train path” or an “available train path” can be requested as a scheduled train path.

Clause 5.2 specifies the circumstances in which a train path may be surrendered, including a breach of access agreement conditions or a failure to utilise a scheduled train path on least 50% of the days on which the train was scheduled in the preceding six calendar months.

¹² This section corresponds to the section “Country Daily Train Plan” in the former Train Operating Protocol.

Section 5 appears to seek to address previous findings of the Commission in the Draft Decision that Pacific National’s protocols lacked the level of necessary detail in relation to train path surrender, variation and reassignment that is required under sections 5 and 6.3 of the CU Rules (particularly section 6.3(a)(viii)).

However, some remaining issues include the following:

- section 5.2 states that PNNA may require a Train Operator to surrender a Train Path in the event of a breach of the access agreement. If retained, this should be a “material breach”, and not a more minor breach (e.g. late payment of access fees);
- the threshold for surrendering a Train Path that has not been utilised for 50% of the days it was scheduled to be operated in the preceding 6 months should exclude circumstances where the reason for non-use was caused or contributed to by PNNA (e.g. as a result of possessions or track failures);
- the notice processes in section 6.3(a)(viii) need to be reflected in the Operating Handbook.

‘Out of Hours’ paths

Section 6.1 states that “Train Control” is staffed continuously for the delivery of the Daily Train Plan. It also states that additional staffing may be required for the operation of unscheduled train paths ‘Out of Hours’, and that the relevant train operator will need to meet the costs of such additional staffing requirements.

It is not clear how this cost will be measured (given that the existing and minimum levels of staffing are not specified) or how any additional charges would be calculated.

The Commission considers that any requirements for additional costs or access fees to be paid for “Out of Hours” unscheduled train paths should be addressed in the access arrangement, rather than the Operating Handbook.

Train path utilisation

Section 7 of the Operating Handbook states that Pacific National will maintain records of “actual mainline train movements”, including the utilisation of scheduled and unscheduled train paths; notices to operators for train path surrender; Pacific National initiated train cancellations; details of network unavailability to scheduled train path; and *force majeure* events. This is required to ensure that the required degrees of utilisation can be monitored (for the purposes of the Capacity Use Rules). However, as noted above, such degrees of utilisation also need to be specified.

Train control

Clause 8.1 of the Operating Handbook contains “train control” principles. Some of the clauses in sections 9 and 10 of the initial proposed access agreement are now contained in clauses 8.2 (Train manifest and operating requirements), clauses 8.3

(Operational Control) and 8.4 (Operational Communication). Clause 8.5 deals with interface issues.

Several recommendations were made in the Draft Decision in relation to train control. In summary, Pacific National was required to:

- further develop its protocols to address “entry requirements” and “reasonable endeavours” regarding train control under sections 4.2(b)(i) and (iii) of the NM Rules
- address the management of operational conflicts between healthy and unhealthy trains; and
- include additional detail to address the matters of clearing network blockage and failed trains.

In relation to communications, the Draft Decision also noted the requirement for continuous recording of all voice and data transmissions (section 5.3, NM Rules).

As section 8 of the Operating Handbook mainly consists of excerpts from the Train Operating Protocol and the initial proposed access agreement (with the main exception being clause 8.5), it does not represent a material change to Pacific National’s original train control protocols. Therefore, the Commission considers that the issues that it raised previously still need to be addressed.

In this context, the Commission would expect the Operating Handbook to include a complete decision making matrix in relation to management of priority between healthy and unhealthy passenger trains and freight trains, which is also consistent with the passenger priority principle.

Track Occupation

Section 9 of the Operating Handbook (Track Possessions) replaces the previous Track Occupation Protocol, and contains similar principles, with the exception that details relating to the “Occupations Committee” have been removed. Clauses 9.2.6, 9.5 and 9.7(ix) address the additional matters of track warrants; “service impact compensation” for possessions implemented for third party or State works; and recording the details of all scheduled train paths impacted by the track possessions; are the new additions.

However, the Operational Handbook has omitted the requirement that track occupations be implemented on the conditions agreed to by Pacific National and all operators affected (in the context of the Occupation Committee) (see clause 9.4(ii)). The Commission considers that section 9 must include an obligation for PNNA to use all reasonable endeavours to minimise disruptions caused by Possessions (per section 4.5(b)(iii) of the NM Rules) and otherwise reflect the requirements under section 4.5 of the NM Rules.

Emergency management

Section 10 of the Operating Handbook addresses emergency issues. It provides that Pacific National will act as the control agency responsible for emergency management where the emergency is rail based and does not involve serious injuries.

However, if serious injuries occur, Pacific National will act as a support agency (e.g. under direction of the police or fire brigade, depending on the nature of the emergency).

In relation to managing emergency or *force majeure* events, in the Draft Decision the Commission required Pacific National to amend its Track Occupation Protocol and Emergency Management Plan to comply with section 4.6 of the NM Rules, which requires Pacific National to specify procedures for matters such as closure, taking possession, provision of services during emergency or *force majeure* events and the measures that the access provider is taking or will take to reinstate the network. Section 4.6 also requires Pacific National to comply with train path priorities and use all reasonable endeavours to minimise disruptions and provide alternative train paths.

However, the Operating Handbook has not addressed these requirements. It is not clear whether Pacific National intends that these be addressed in the “Emergency Management Plan”. Also, there should be an obligation upon Pacific National to use “all reasonable endeavours” for the purposes of 4.2(b)(vii)(B) and (C) of the NM Rules.

Communication and consultation

Section 11 of the Operating Handbook addresses matters in relation to communication and consultation. Clause 11.1 states that two established committees are in place for track possession and train operations. Clause 11.2 provides the details of the relevant contacts within Pacific National for train operators.

However, Pacific National needs to clarify how it meets the requirements for communications protocols under section 5.1 of the NM Rules.

3.3 Other Issues to be addressed in the Operating Handbook

Definitions

There is an inconsistency in the definitions of the terms “Scheduled Services” and “Unscheduled Services” contained in the Operating Handbook and their definitions in the revised proposed access arrangement. The Commission considers that the definitions in the access arrangement should apply (and that the definitions should be consistent).

There are a number of other definitional shortcomings, including:

- while the definition of Available Train Path is largely consistent with the definition of the CU Rules, its inclusion within other definitions in the Operating Handbook raises issues. Sub-section (a) of the definition states that an Available Train Path is a train path that is “operationally achievable but is not allocated to a User” or included in the Master Train Timetable. Sub-section (c) of the definition states that an Available Train Path includes, with respect to a Passenger Service, any Freight Train Path. However “Freight Train Path” is defined as an “entitlement” of a User, which appears inconsistent with the definition of “Available Train Path” (as such

“entitlement” can be displaced by passenger services). For clarification, it could be made subject to clause 5 of the CU Rules.

- Sub-clause (d) of the definition of “Available Train Path” states that an Available Train Path includes, with respect to an application for a Scheduled Train Path, any other Freight Train Path. However, the definition of Scheduled Train Path includes Freight Train Path which appears to lead to a circular result.
- A standard definition of Business Day should be used that refers to “a day other than a Saturday, Sunday or a public holiday”;
- the term “or person” can be deleted from the definition of Train Operator, since all Train Operators appear to be Users (and vice versa);
- “Out of Hours” is undefined; and
- it is not clear why there need to be definitions for “Conditional” and “Flexible” train paths.

Other matters

The Commission also required in the Draft Decision that Pacific National address the following matters required under sections 2(a) and 2(b) of the CU Rules:

- not to unreasonably favour itself or another person over any other person,
- act in a manner consistent with passenger priority,
- encourage maximum use of the network, and
- use all reasonable endeavours to allocate request train paths to access seekers.

The first of these points has not been addressed, however Pacific National has addressed the remaining points in the Operating Handbook.

The Commission also required Pacific National to specify procedures to address the specific examples in section 4.7 of the NM Rules, which included the management of historic trains, use of network for military, safety, testing, or driver training purposes. This requirement has not been addressed in the Operating Handbook.

In relation to protocols for addressing complaints required under section 8 of the NM Rules, the Commission suggested that Pacific National adapt its existing dispute resolution procedure (e.g. the dispute resolution procedure with respect to the Daily Train Timetable in the Train Operating Protocol) for the purpose of complying with section 8. Pacific National has not addressed this issue in its Operating Handbook.

However, broadly speaking, PNNA’s Operating Handbook appears to have included most of the topics required by the NM Rules. The two main areas that are not fully addressed are complaints handling procedures, and clearing of network blockages. These are matters that the Commission expects to be addressed in the revised version of the Operating Handbook.

The Commission requires Pacific National to resubmit its proposed Operating Handbook within 14 days of this Decision under section 6.5 of the CU Rules and section 10 of the NM Rules. It would assist the Commission's consideration of the Operating Handbook if it could be accompanied by a table that identifies where each of the protocols that are required to be developed under the CU Rules and the NM Rules are addressed.

The operating handbook must contain a copy of each binding protocol that the access provider is required to prepare and maintain under sections 4 and 8 of the NM Rules, as well as the communications protocols required under section 5 and the rolling stock interface standards.