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# V/LINE RAIL ACCESS ARRANGEMENT RENEWAL

ISSUES PAPER

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The Essential Services Commission (**Commission**) is the independent economic regulator in Victoria. One of the industries it is responsible for regulating is the rail industry. The *Rail Corporations Act 1996 (RCA)*, Part 2A, establishes a Victorian Rail Access Regime (**VRAR**), which applies to rail infrastructure and certain rail terminals. The current VRAR came into effect on 1 January 2006.

Under the RCA, an access provider must at all times have an approved access arrangement and must comply with that access arrangement (s38ZZT). An access arrangement must apply for a three to five year period and must be renewed at the end of its term.

In May and June 2006, a number of access arrangements were established for Victorian rail access providers through the initial access arrangement approval process. This includes the current Access Arrangement for V/Line Passenger Pty Ltd (**V/Line**), which expires on 29 June 2009. In April 2007, V/Line was substituted as the access provider for that access arrangement, replacing Pacific National (Victoria) Limited (**PN**) as the access provider for the Victorian regional rail network. V/Line has managed the Victorian country rail network since May 2007, when the Victorian Government completed its acquisition of the network from Pacific National. At the time of this acquisition V/Line entered into an access agreement with PN (as access seeker) under which PN operates freight trains on the V/Line network (**PN Access Agreement**).

Under s38ZR(1) of the RCA, an access provider must apply to the Commission to renew its access arrangement not later than 90 days prior to the expiry of its access arrangement.

## 1.1 Application for renewal of V/Line's access arrangement

On 31 March 2009, V/line submitted a proposed access arrangement for renewal of its existing access arrangement with respect to the Victorian country rail network. A copy of V/Line's proposed access arrangement is available on the Commission's website (<http://www.esc.vic.gov.au/public/Rail/>).

Below is a summary of the key changes V/line has made to the existing access arrangement, which is also available on the ESC website. The key changes include:

- amendments to the reference prices (including for grain and non-grain freight tasks). The amended reference prices are consistent with those in the PN Access Agreement and those that V/Line currently offers access seekers, as advised on V/Line's website. V/Line notes that the amended reference prices are lower those previously approved by the Commission

- annual escalation of access prices by a rate equal to 100% of CPI. Under the current access arrangement, access prices are escalated by an annual rate equal to 75% of CPI
- the introduction of charges for extended use of Somerton Sidings, Melbourne Arrival Sidings and Tottenham Yard, and a charge for use of the Geelong Grain Loop
- changes to the minimum track standards (expressed as an average maximum operating speed) for each line. The changes have the effect of increasing the applicable track standard on some lines and reducing the applicable track standard on other lines
- a provision for V/Line to vary the 'fit for purpose' track standards from time to time depending on the nature and extent of:
  - maintenance works that V/Line is obliged to undertake pursuant its annual works plan under the Regional Infrastructure Lease dated 2 May 2007 between V/Line and the Director; and
  - any rail projects that V/Line or the Director may undertake under the Regional Infrastructure Lease
- changes to the regulatory account keeping policy to reflect the IT system now used by V/Line, and
- variation to normal signal box hours.

## 1.2 Approval process

The approval process that the Commission is required to conduct is similar to the process previously undertaken for the initial approval/establishment of the access arrangements in 2006 (s38ZR(6)). In brief, when the Commission receives a copy of the proposed renewed access arrangement:

- The Commission must:
  - notify interested parties and publish a notice on the Commission's website and in a newspaper with a Victoria-wide circulation that the Commission has received the proposed access arrangement
  - allow 21 days from the date of the published notice to receive submissions and comments on the proposed access arrangement
  - consider all of the submissions received and make a draft decision on whether the Commission approves or does not approve the proposed access arrangement, stating the reasons and identifying all of the matters which must be rectified or amendments made in order to obtain approval
  - publish the draft decision on the Commission's website
  - provide a copy of the draft decision to the access provider and to each person who made a submission or comment on the proposed access arrangement to the Commission, and
  - invite submissions from each person who made a submission or comment to the Commission on the proposed access

arrangement, and allow 14 days from the date of the published decision to receive submissions on the draft decision.

- Once the access provider has received a copy of the Commission's draft decision, the access provider may within 14 days submit a revised proposed access arrangement to the Commission (s38ZC).
- The Commission must make a final decision to approve or not approve the (revised) proposed access arrangement within 90 days of the initial submission (s38ZG).

In making the final decision, the Commission must be satisfied that the access provider has addressed or substantially addressed all of the matters that were previously identified in the draft decision as needing to be rectified or amended in order to obtain approval (s38ZF). The Commission must also be satisfied that the access arrangement addresses the matters listed in sections 38X(1) and 38ZF(2) and must take into account the matters listed in s38ZI (these matters are described in more detail in section 2 below).

### 1.3 Submissions & Purpose of the Issues Paper

Submissions are invited in relation to V/line's proposed access arrangement, and must be made by 27 April 2009. Due to the limited 90 day period in which the Commission must make a final decision about the proposed access arrangement, the Commission does not anticipate that it will be able to provide any extensions to this timeframe.

Submissions can be sent electronically to [railsubmissions@esc.vic.gov.au](mailto:railsubmissions@esc.vic.gov.au) or by mail to:

Rail Access Arrangement Approval Process 2009  
Essential Services Commission  
Level 2, 35 Spring Street  
Melbourne, VIC, 3000

The Commission will make submissions available on its website, with the exception of any commercially confidential or sensitive information which has been identified as such in the submission. Please direct any queries about this Issues Paper to Matthew Donoghue on (03) 9651 0221.

The purpose of this Issues Paper is to assist submitters by providing information on the relevant matters that the Commission must consider when deciding whether to approve or not approve the proposed access arrangement. It is not intended to stipulate or limit the matters that submitters may wish to comment on in relation to the proposed access arrangement.

The Commission has also decided to update its Rail Access Pricing Guideline and is releasing the 'Rail Access Pricing Guideline: Draft Version 2.0'. A copy of the Rail Access Pricing Guideline: Draft Version 2.0 is available on the Commission's website. In issuing a revised draft Rail Access Pricing Guideline, the Commission's intention is to ensure that the Guideline remains relevant in light of recent changes to the Victorian rail industry. These changes include the Victorian Government's buy-back of the Victorian country rail network and its decision to subsidise V/Line's access activities. Stakeholders may make a combined submission to both this

Issues Paper and the Draft Guideline if they wish. As it makes its draft decision the Commission will assess V/Line's proposed access arrangement in light of Version 2.0 of the Rail Access Pricing Guideline.

#### **1.4 Objectives of the Commission**

The objectives of the Commission include its rail-specific objectives in s38F of the RCA, its general objectives in s8 of the *Essential Services Commission Act 2001 (ESC Act)*, and the object of third party access regimes in Victorian regulated industries in s35A of the ESC Act, which is to:

*promote the economically efficient operation of, use of and investment in, the infrastructure by means of which services are provided, thereby promoting effective competition in upstream and downstream markets.*

Section 8A of the ESC Act also sets out a number of considerations the Commission must have regard to when seeking to achieve its objectives.

The specific considerations relating to the approval of access arrangements as set out in the RCA are described in the remainder of this Issues Paper.

#### **1.5 Timetable**

The following timetable has been established for this review:

- submissions in response to draft access arrangement: 27 April 2009
- draft decision: by end of May
- submissions in response to draft decision: 14 days from draft decision
- final decision: 29 June 2009.

#### **1.6 Structure of the Issues Paper**

The structure of this Issues Paper is as follows:

- Chapter 2 outlines the requirements of s38X of the RCA, as well as some of the requirements of the *Rail Network Pricing Order 2005 (Pricing Order)* and the Commission Instruments.
- Chapter 3 outlines the specific matters that the Commission must have regard to under s38ZI of the RCA.

An access arrangement must meet all of the requirements of s38X of the RCA. This chapter describes these requirements and directs stakeholders to relevant parts of the proposed access arrangement to facilitate comment.

## 2.1 Information about reference services

Section 38X(1)(a) of the RCA requires a proposed access arrangement to include the following information for every reference service to which the arrangement relates:

- a description of the service
- information as to whether that service is being provided by the access provider to itself or a related body corporate of the access provider
- the terms and conditions for the provision of that service, and
- the price, or methodology for the calculation of the price, to be charged in respect of the provision of that service. This must be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Order (s38X(3)).

### 2.1.1 Are the reference services described and do they meet the definition of reference services?

A “reference service” is a declared rail transport service that:

- a) is provided by an access provider to itself or a related body corporate, or
- b) is likely to represent a significant proportion of demand by access seekers for declared rail transport services, or
- c) is provided by means of a terminal.

Section 4.1 of the proposed access arrangement sets out V/Line’s description of its reference services.

### 2.1.2 Are the standard terms and conditions and prices for reference services included?

The standard terms and conditions include reference prices, price indexation, and the standard access agreement, and the service quality standard (or ‘fit for purpose’ standard) for railway tracks.

In its submission to the Commission, V/Line has expressed the concern that if it continues to be required to maintain the current service quality standard for its network, without the right to vary that standard in the circumstances described in section 1.1 above, it may need to take some lines out of service. V/Line's submission emphasises that it is dependent on Victorian Government funding to conduct its access activities, which in turn affect its ability to meet its obligations to maintain service quality standards on the network. The Commission notes the importance of this issue and will take it into consideration when making its draft and final decisions on the proposed access arrangement.

Unlike VicTrack, V/Line does not include a provision in its access arrangement about the circumstances in which V/Line will apply to the Commission to vary its access arrangement.

***Do you have any comments on V/Line's proposal to allow V/Line to amend service quality standards in the circumstances described in section 1.1? Should the Commission's approval be required before V/Line may vary the service quality standards in its access arrangement?***

The reference prices and their indexation are stated in Appendix 1 of the proposed access arrangement, and the standard access agreement is in Appendix 3. The proposed track standards are set out in Appendix 6. Table 2.1 shows the access prices proposed by V/Line.

**Table 2.1 V/Line Proposed Reference Prices**

	<i>Flagfall Rate</i>	<i>Variable Rate</i>
	<i>\$/km</i>	<i>\$/1000 GTK</i>
<b>Grain</b>	5.267	7.005
<b>Non-grain (other lines)</b>	0.806	1.517

**2.1.3 Are the prices consistent with the pricing order and methodology?**

The Pricing Order establishes a framework for setting prices for declared rail infrastructure services, including railway track and terminal services. The framework includes:

- general pricing principles
- the requirement that access arrangements for railway tracks (i.e. not including terminal services) must contain a revenue cap, and
- the requirement that prices for terminal services meet floor and ceiling constraints.

The Pricing Order is reproduced in Appendix A of this Issues Paper.

The Pricing Order also authorises the Commission to determine a methodology for calculating rail access prices that is consistent with the Pricing Order. This ability to

determine a methodology for rail access pricing enables the Commission to establish more specific requirements in relation to pricing to facilitate its roles of approving access arrangements and determining access disputes. In 2006 the Commission published the Rail Access Pricing Guideline. The Commission is currently releasing an updated Draft version of the Guideline for public comment. The Commission will assess V/Line's proposed access arrangement against the revised Guideline (Version 2.0).

Section 38ZB(2)(b)(vi) of the RCA states that the Commission must not make a final decision to approve a proposed access arrangement unless it is satisfied that the proposed access arrangement is consistent with the pricing principles and any methodology for calculation of prices determined by the Commission under the Pricing Order.

***Has V/Line provided the necessary information about reference services and the terms and conditions? Are these elements (ie, the information about reference services and the terms and conditions for the provision of reference services) of the proposed access arrangement satisfactory? If not, why not?***

## **2.2 Information about non-reference services**

Section 38X(1)(b) of the RCA requires a proposed access arrangement to include information on the availability of, and indicative terms and conditions for, declared rail transport services that are non-reference services.

This is addressed in Part 4 of the proposed access arrangement.

V/Line refers to non-reference services as unscheduled services at times that are Out of Hours. V/Line's charges for these services will be set based on the applicable charges set out in Appendix 1 and shall be further adjusted to reflect the "Operator pays incremental costs" principle (4.2h).

## **2.3 Information about the access application and negotiation process**

A proposed access arrangement must (s38X(1)(c), (d) & (e)):

- include a description of the information that the access provider will make available to an access seeker;
- set out the procedure for the making of an application by an access seeker for the provision to them of a declared rail transport service; and
- describe the procedure and method how the access provider will assess and determine an application for the provision by them of a declared rail transport service.

In doing so, the information, procedures and method must be consistent with the Negotiation Guidelines (s38X(4)). The Negotiation Guidelines are intended to facilitate commercial negotiation between access seekers and access providers, to encourage access to declared rail transport services and interconnection to be

made available on fair and reasonable terms and to provide information to access seekers and access providers, in order to assist parties to understand their rights and obligations under the legislative framework when applying for or responding to requests for access.<sup>1</sup>

The Negotiation Guidelines specify processes for:

- making and assessing access applications and negotiating access agreements;
- making and assessing requests for the interconnection of rail infrastructure; and
- making and assessing requests for additional capacity works.

With regard to the processes for making and assessing access applications and negotiating access agreements, the Negotiation Guidelines:<sup>2</sup>

- set out the requirements for an access provider to publish an application form and procedures by which an access seeker may make an application for access;
- specify the information that an access provider must provide to an enquiring party or an access seeker, including an Information Pack;
- outline the procedure and method of assessment of an application by an access provider, including the assessment of available capacity;
- specify the time periods within which the access provider must assess and respond to an application for access submitted by an access seeker, including making an offer of terms and conditions for access and the periods and processes applying to negotiation of an access agreement; and
- describe the elements of the negotiation protocol that an access provider is required to develop, which protocol contains the access provider's procedures for negotiating the terms and conditions of access agreements and interconnection, and the alternative dispute resolution process to be implemented by the parties prior to the notification of an access regime dispute to the Commission.

The negotiation process framework is set out in Part 3 and Appendix 8 of the V/Line proposed access arrangement. The procedure relating to additional capacity works is dealt with in section 3.5 of the proposed access arrangement.

***Are V/Line's proposed access application and negotiation processes satisfactory? Are its additional capacity processes satisfactory? If not, why not?***

## 2.4 Term

Under s.38X(1) the term of an access arrangement must be between 3 and 5 years.

The term of the proposed access arrangement is set out in section 2.2 of the proposed access arrangement to be 3 years.

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<sup>1</sup> Clause 1.2(b) of the Negotiation Guidelines

<sup>2</sup> Essential Services Commission (June 2007) 'Overview of the Victorian Rail Access Regime'

## 2.5 Consistency with the Account Keeping Rules

The proposed access arrangement must be consistent with the Account Keeping Rules (s38X(5)(a)).

An access provider must prepare and submit to the Commission at the same time that it submits a proposed access arrangement:

- proposed forms for it to use in keeping and reporting the statements required to be provided to the Commission annually, including the financial statements; cost allocation statement; statement of maintenance and capital works costs; and information about the sources of revenue (s2.6 of the Account Keeping Rules).
- a proposed cost allocation policy that explains the methodology and states the principles governing cost allocation between: access activities and other activities; declared terminal services and declared railway track services; freight and passenger services; reference and non-reference services; and between pricing zones (s5 of the Account Keeping Rules).

The requirements of the Account Keeping Rules with regard to the cost allocation policy are addressed in Part 6 and Appendix 7 of V/Line's proposed access arrangement.

V/Line has not submitted its proposed accounting forms but has indicated that it proposes to retain the same accounting forms as those previously approved by the Commission. A copy of these forms is available at:

<http://www.esc.vic.gov.au/public/Rail/Regulation+and+Compliance/Codes+and+Guidelines/Rail+access+templates/Rail+access+templates.htm>.

<p><b><i>Are V/Line's proposed cost allocation policy and accounting forms satisfactory? If not, why not?</i></b></p>
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## 2.6 Consistency with the Ring Fencing Rules

The Ring Fencing Rules are designed to apply to a vertically integrated provider of declared rail transport services, and originally applied only to PN in its capacity of lessee under the Primary Infrastructure Lease (s1.4 of the Ring Fencing Rules).

Part 8 of the proposed access arrangement notes that to date the Ring Fencing Rules have not applied to V/Line. This is because V/Line leases the regional rail network from the Victorian Government under the Regional Infrastructure Lease and is not a vertically integrated rail operator (other than in relation to regional passenger services). In Part 8 of the proposed access arrangement, V/Line outlines how it will respond if the Ring Fencing Rules are later applied to it.

## 2.7 Consistency with the Capacity Use Rules & Network Management Rules

The proposed access arrangement must be consistent with the Capacity Use Rules and the Network Management Rules (s38X(5)(c) and (d)).

### 2.7.1 Capacity Use Rules

Section 6.1 of the Capacity Use Rules requires that each access provider prepare and maintain capacity allocation protocols statement, which must contain each of the protocols required under section 6.3(a) of the Capacity Use Rules which have been approved by the Commission (binding protocols). Capacity allocation protocols must also be submitted to the Commission for approval at the same time as a proposed access arrangement is submitted for approval.

The protocols an access provider is required to prepare and maintain under section 6.3(a) include:

- the policies, guidelines and procedures that the access provider will apply when assessing whether capacity is available to satisfy a request for a declared rail transport service including a request for a train path<sup>3</sup> (as part of the access application process);
- a description of the required degrees of utilisation in respect of scheduled train paths and unscheduled train paths and the decision criteria that the access provider will employ, in relation to the “use it or lose it” provisions;
- guidelines, principles and procedures that the access provider will apply when responding to or issuing a request to permanently vary a train path, and when determining whether to vary permanently or require the surrender of a train path, as well as a description of the circumstances in which an access provider may permanently vary or require the surrender of a train path;
- guidelines, principles and procedures that the access provider will apply when determining whether a user is no longer able or will no longer be able to utilise or fully utilise a freight train path (i.e. “use it or lose it”);
- a description of the circumstances in which an access provider may vary a train path on a temporary basis (i.e. “track possessions”) and the procedures and communications protocols that the access provider will follow in these circumstances; and
- principles and procedures for addressing complaints from access seekers or users about an alleged failure of the access provider to comply with the Capacity Use Rules.

V/Line's response to the requirements of the Capacity Use Rules, including its capacity allocation protocols and principles are addressed in Part 5 of the proposed access arrangement.

### 2.7.2 Network Management Rules

Under the Network Management Rules each access provider is required to prepare an Operating Handbook which contains:

- binding protocols for the management of a rail network;
- a binding protocol for addressing complaints;
- communications protocols; and

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<sup>3</sup> “Train path” is to be read here as referring also to designated time slots within terminals.

- the rolling stock interface standards.

The binding protocols required under the first two of the foregoing items are subject to approval by the Commission, and must be submitted by the access provider at the same time as it is required to submit a proposed access arrangement

V/Line has also submitted its proposed Operating Handbook. A copy can be found alongside V/Line's proposed access arrangement on the ESC website (<http://www.esc.vic.gov.au/public/Rail/Consultations/VLine+application+for+renewal+March+2009/VLine+application+for+renewal+March+2009.htm>).

***Do you have any comments on V/Line's proposed responses to the requirements of the Capacity Use Rules and the Network Management Rules?***

## **2.8 Confidentiality of information**

Each access provider is required to submit a system and business rules concerning the handling and disclosure of confidential access seeker and user information for the Commission's approval on the same day as it submits its proposed access arrangement for approval (s38ZZZB of the RCA).

V/Line's system and rules for dealing with confidential access seeker and user information are addressed in section 8.1c and Appendix 10 of the proposed access agreement.

***Do you have any comments on V/Line's proposed system and business rules for the handling and disclosure of confidential access seeker and user information?***

## **2.9 Other matters**

A proposed access arrangement may also include any other matter that the access provider considers relevant (s38X(2) of the RCA).

***Are there any other matters relating to the V/Line proposed access arrangement that are relevant to a decision by the Commission to approve the access arrangement?***

Section 38ZI of the RCA requires the Commission to take certain matters into account. These include:

- the rail-specific objectives in s38F of the RCA (s38ZI(a));
- the matters that reflect clause 6(4)(i) of the Competition Principles Agreement (CPA) (see s38ZI(b) to (i) of the RCA); and
- any other matter that the Commission considers relevant (s38ZI(j)).

### 3.1 Rail-specific objectives

The regulatory objectives of the Commission, as stated in s38F of the RCA, are:

*in addition to the objectives under section 8 of the Essential Services Commission Act 2001 (but subject to section 5(2) of that Act):*

*(a) to ensure access seekers, and any other person the Commission considers may want to be provided declared rail transport services, have a fair and reasonable opportunity to be provided declared rail transport services; and*

*(b) to promote competition in rail transport services to achieve an increase in the use of, and efficient investment in, rail infrastructure or tram infrastructure (as the case requires).*

***Are there specific matters relevant to the Commission's objectives described in s38F to which you consider that the Commission should have particular regard?***

### 3.2 Matters in s38ZI (b) to (i) of the RCA

The matters that reflect the CPA and to which the Commission must have regard (as set out in s38ZI(b) to (i)) are:

*38ZI(b) the access provider's legitimate business interests and investment in the rail network owned or operated by that access provider; and*

*(c) the costs to the access provider of providing access, including any costs of extending the rail network owned or operated by that access provider but not including costs associated with*

*losses arising from increased competition in upstream or downstream markets; and*

- (d) the economic value to the access provider of any additional investment that an access seeker or the access provider has agreed to undertake; and*
- (e) the interests of users; and*
- (f) existing contractual obligations of the access provider and users of the rail network owned or operated by that access provider; and*
- (g) the operational and technical requirements necessary for the safe and reliable operation of the rail network owned or operated by the access provider; and*
- (h) the economically efficient operation of the rail network owned or operated by the access provider; and*
- (i) the benefit to the public in having competitive markets*

***Are there any specific issues arising from the matters listed above to which you consider that the Commission should have regard?***

### **3.3 Other relevant matters**

Under s38Zl(j), the Commission must have regard to any other matter that the Commission considers relevant.

***Are there any other matters that you consider to be relevant and to which you consider the Commission should have regard?***

# APPENDIX A | RAIL ACCESS PRICING ORDER 2005

## **Rail Corporations Act 1996**

### **RAIL NETWORK PRICING ORDER**

#### **ORDER IN COUNCIL**

The Lieutenant-Governor as the Governor's deputy, with the advice of the Executive Council under section 38J(1) of the Rail Corporations Act 1996 on the recommendation of the Minister, hereby makes the following Order.

#### **1. Citation**

This Order may be cited as the Rail Network Pricing Order 2005.

#### **2. Preamble**

This Order:

- (a) specifies the principles for the calculation of prices that an access provider may charge in respect of declared rail transport services that it may provide;
- (b) authorises the Commission to determine the methodology, in accordance with the principles specified in this Order, for the calculation of prices that:
  - (i) an access provider may charge in respect of declared rail transport services that the access provider may provide;
  - (ii) the Commission may, in a relevant decision, decide an access provider may charge in respect of declared rail transport services provided by that access provider.

#### **3. Interpretation**

Where a term used in this Order is defined in the *Rail Corporations Act 1996*, it has the meaning given to it in the *Rail Corporations Act 1996*.

In the event of any inconsistency between this Order and a provision of the *Rail Corporations Act 1996*, the *Rail Corporations Act 1996* will prevail.

The provisions of the *Interpretation of Legislation Act 1984* apply to the interpretation of this Order as they apply to subordinate instruments.

**Access Period** means, in respect of declared rail transport services that may be provided by an access provider, the period of operation of an access arrangement approved or prepared by the Commission, as the case may be, in respect of those declared rail transport services. (see note 1.)

**Terminal Services** are declared rail transport services provided by means of terminal infrastructure that would not be rail infrastructure but for the operation of an order under section 38B of the *Rail Corporations Act 1996*.

#### 4. Pricing Principles

The prices that an access provider may charge in respect of declared rail transport services that it may provide must be calculated in accordance with the principles set out in this Order and with any methodologies determined by the Commission.

##### 4.1 General principles

- (a) Prices charged by an access provider, including internal transfer prices, must be set with the objective of generating revenue such that across all declared rail transport services the expected revenue is equal to a reasonable forecast of the access provider's efficient cost of providing those services (taking account of the amount of any capital contributions from third parties), having regard to the standard and quality of those services, including the reasonably estimated financing costs associated with efficient capital expenditure incurred by that access provider since 30 April 1999. (see note 2.)
- (b) The structure of prices may allow for multi-part pricing and price discrimination when it aids efficiency. (see note 3.)
- (c) The framework for setting prices must seek to provide an access provider with incentives, including within an Access Period and between Access Periods, to incur an efficient level of costs of providing declared rail transport services.
- (d) The framework for setting prices must seek to avoid volatility in prices arising by reason of volatility in freight traffic.

Where an access seeker or user, or a third party on behalf of an access seeker or user, makes any contribution towards capital or maintenance expenditure incurred in relation to the provision of declared rail transport services to that access seeker or user, the prices for the provision of those declared rail transport services must be reduced so that the revenue to be derived from the provision of those services is to be adjusted to take account of the contribution and any ongoing capital or maintenance savings.

Example: A Government makes a contribution to an access provider for expenditure on an upgrade of the rail network and states that the contribution is on behalf of all, or a particular category of, access seekers and users. The revenue to

be recovered through charges for the provision of declared rail transport services to all, or the particular category of, access seekers and users is reduced to take account of the contribution.

## 4.2 Revenue cap

- (a) Prices that an access provider may charge in respect of declared rail transport services, including internal transfer prices, must be set so as to comply with a revenue cap included in an access arrangement approved by the Commission under section 38ZF(1) or 38ZK of the *Rail Corporations Act* 1996 or made by the Commission under section 38ZJ(1) or 38ZL(1) of the *Rail Corporations Act* 1996.
- (b) The revenue cap must provide for the recovery of a reasonable forecast of the efficient costs of providing access to all declared rail transport services provided by that access provider over an Access Period, but excluding Terminal Services, including the estimated financing costs associated with efficient capital expenditure incurred by that access provider since 30 April 1999, having regard to the standard and quality of those services and an efficiency carry over mechanism in accordance with paragraph (d) (**the Forecast Revenue Requirement**).
- (c) (**Under and over recovery adjustment mechanism**)
  - (i) Subject to paragraph (ii), where the revenue derived over an Access Period is more or less than the Forecast Revenue Requirement for that Access Period, a corresponding adjustment must be made to the Forecast Revenue Requirement for the subsequent Access Period;
  - (ii) such adjustment may make allowance for usage above that reasonably forecast in the previous Access Period.
- (d) (**Efficiency carry over mechanism**) The revenue cap must contain an efficiency carry over mechanism such that where an access provider's actual costs in an Access Period differ from the access provider's Forecast Revenue Requirement for that Access Period:
  - (i) no adjustment is to be made to the revenue cap for that Access Period, subject to the operation of any cost pass-through mechanism;
  - (ii) an allowance may be made in a subsequent Access Period for increases or decreases in efficiency such that the access provider may retain all or part of lower costs due to efficiency increases and may bear all or part of higher costs due to efficiency decreases.
- (e) (**Cost pass-through mechanism**) The revenue cap may contain a cost pass-through mechanism.
- (f) (**Service and quality standard adjustment mechanism**) The revenue cap may contain a mechanism for the adjustment of the revenue cap having regard to whether the access provider meets the service and quality standards

required to be met under an access arrangement approved by the Commission under section 38ZF(1) or 38ZK of the *Rail Corporations Act 1996* or made by the Commission under section 38ZJ(1) or 38ZL(1) of the *Rail Corporations Act 1996*.

- (g) The revenue cap must be consistent with the revenues that would be derived by the application of any internal transfer prices relating to an access provider's provision of the relevant declared rail transport services to its vertically integrated operations.

### **4.3 Freight specific pricing principles**

- (a) Prices that an access provider may charge in respect of declared rail transport services that are freight services must be set with the objective of recovering the reasonable forecast of the access provider's efficient costs of providing all declared rail transport services that are freight services and excluding:
  - (i) those reasonably expected efficient costs directly attributable to the operation of passenger trains, including, without limitation:
    - A. the estimated additional operations and maintenance expenditure that will be incurred in each Access Period in operating and maintaining the rail infrastructure to a higher standard than would be required if only non passenger trains operated on the rail infrastructure;
    - B. the estimated financing costs associated with the amount of existing capital expenditure incurred by that access provider since 30 April 1999 and new capital expenditure that is estimated to be incurred by that access provider in each Access Period which would not be required if only non-passenger trains operated on that rail infrastructure; and
  - (ii) a share of the reasonably expected costs of providing declared rail transport services to users of passenger services not directly attributable to passenger services or freight services, proportionate to the use of the rail infrastructure for passenger services and freight services.
- (b) The prices that an access provider may charge in respect of declared rail transport services that are freight services are to be set having regard to:
  - (i) the desirability of prices being consistent for access seekers and users with common freight use requirements;
  - (ii) the desirability of prices being consistent for access seekers and users who are provided declared rail transport services provided by means of rail infrastructure in the same geographic zones;
  - (iii) the desirability of minimising administrative requirements and costs imposed on access seekers, access providers and the Commission;
  - (iv) the principles of efficient price discrimination for relevant freight and end market characteristics.

#### **4.4 Passenger specific pricing principles**

Prices that an access provider may charge in respect of declared rail transport services that are passenger services must be set having regard to the efficient costs of providing those services to meet any quality and service levels and standards specified by the Secretary or Director.

#### **4.5 Terminal Services and non-reference services**

Prices that an access provider may charge in respect of Terminal Services and declared rail transport services that are not reference services must be set with the objective of generating revenue that in respect of each of those declared rail transport services:

- (a) at least covers the directly attributable or incremental costs of providing the service;
- (b) does not recover more than the stand alone costs of providing that service.

#### **5. Commission authorised to determine methodology for the calculation of prices**

- (a) The Commission is authorised to determine the methodology, in accordance with the pricing principles set out in this Order, for the calculation of prices that:
  - (i) an access provider may charge in respect of declared rail transport services that the access provider may provide;
  - (ii) the Commission may, in a relevant decision, decide an access provider may charge in respect of declared rail transport services provided by that access provider.
- (b) The methodologies that the Commission is authorised to determine include a methodology:
  - (i) to provide an access provider with incentives, including within an Access Period and between Access Periods, to incur an efficient level of costs of providing declared rail transport services;
  - (ii) to avoid volatility in prices arising by reason of volatility in Freight traffic;
  - (iii) for taking account of any contribution made by an access seeker or user, or a third party on behalf of an access seeker or user, towards capital or maintenance expenditure incurred in relation to the provision of declared rail transport services in the prices for the provision of those services;
  - (iv) for setting a revenue cap, including:
    - A. an under and over recovery adjustment mechanism;
    - B. an efficiency carry over mechanism;

- C. a cost pass-through mechanism for the pass-through of identified categories of unforeseen costs beyond the access provider's control;
- D. a service and quality standard adjustment mechanism;
- (v) for calculating prices for freight services that are consistent for access seekers and users with common freight use requirements;
- (vi) for calculating prices for freight services that are consistent for access seekers and users who are provided declared rail transport services provided by means of rail infrastructure in the same geographic zones;
- (vii) for calculating prices for freight services to minimise administrative requirements and costs imposed on access seekers, access providers and the Commission;
- (viii) for efficient price discrimination having regard to relevant freight and end market characteristics;
- (ix) for the assessment and allocation of costs in respect of declared rail transport services that are freight services and passenger services, including those that are directly attributable and those that are not attributable to those services;
- (x) for calculating prices for passenger services having regard to the efficient costs of providing those services to meet any quality and service levels and standards specified by the Secretary or Director;
- (xi) to allow for multi-part pricing and price discrimination when it aids efficiency; (see note 4.)
- (xii) for the calculation of prices that an access provider may charge in respect of Terminal Services that the access provider may provide.

## 6. Commencement

This Order comes into effect on the day section 5 of the *Transport Legislation (Further Amendment) Act 2005* comes into operation.

### Notes

1. The period of operation of an access arrangement is as set out in section 38ZM of the *Rail Corporations Act 1996*. It is anticipated that an access arrangement will be in operation for three to five years (see section 38X(1)(f)).
2. Under section 38R(2) of the *Rail Corporations Act 1996*, the Commission is required to make rules that require an access provider to prepare, maintain and keep records relating to internal transfer terms and to provide those records to the Commission.

Sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b) and 38ZZD(2) prohibit the Commission from specifying a price for the provision of a declared rail transport service in an access arrangement or a dispute resolution decision

that is higher than the price included in the access provider's internal transfer prices.

Pursuant to section 38J(3) of the *Rail Corporations Act 1996*, the pricing principles specified in this Order must not require, entitle or allow a relevant access provider to recover from a relevant user any capital expenses incurred by that relevant access provider in respect of relevant rail infrastructure other than expenses that have been or are incurred on or after 30 April 1999 for the purpose of extending or replacing that infrastructure.

3. Provisions in sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b), 38ZZD(2) and 38ZZY of the *Rail Corporations Act 1996* will apply.
4. Provisions in sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b), 38ZZD(2) and 38ZZY of the *Rail Corporations Act 1996* will apply.

NB: The notes referred to above do not form part of the Order.

Dated:

Responsible Minister:

**PETER BATCHELOR**

**MINISTER FOR TRANSPORT**

Clerk of the Executive Council