

**NSW RAIL ACCESS UNDERTAKING**  
**Pursuant to Schedule 6AA of the Transport Administration Act 1988 (NSW)**

**RAIL INFRASTRUCTURE CORPORATION**

**AND**

**RAIL CORPORATION NEW SOUTH WALES**

## NSW RAIL ACCESS UNDERTAKING

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## **1. INTRODUCTION**

- 1.1** In accordance with Schedule 6AA of the Transport Administration Act, this Access Undertaking makes provision for third party access to that part of the NSW Rail Network in respect of which Rail Infrastructure Corporation (RIC) or Rail Corporation New South Wales (RailCorp) or Australian Rail Track Corporation (ARTC) is the Rail Infrastructure Owner.
- 1.2** For the purposes of the Independent Pricing and Regulatory Tribunal Act:
- (a) this is a public infrastructure access regime; and
  - (b) the Rail Infrastructure Owner is a government agency.
- 1.3** Except as specifically provided, this Access Undertaking operates in addition to all other laws.
- 1.4** Legislation relevant to this Access Undertaking includes the Transport Administration Act, the Rail Safety Act, the Independent Pricing and Regulatory Tribunal Act, the State Owned Corporations Act and the Commercial Arbitration Act.
- 1.5** This Access Undertaking applies to RIC and to RailCorp and to ARTC only insofar as each is a Rail Infrastructure Owner and only in respect of rail infrastructure in respect of which each is a Rail Infrastructure Owner and a reference to a Rail Infrastructure Owner is a reference to RIC and to RailCorp and to ARTC to that extent only.
- 1.6** This Access Undertaking applies to RIC and to RailCorp to the exclusion of any prior access undertaking under schedule 6AA of the Transport Administration Act.

## **2. USE OF THE NSW RAIL NETWORK**

- 2.1** The Rail Infrastructure Owner shall, subject to this Access Undertaking:
- (a) permit Access to the NSW Rail Network;
  - (b) limit Access to the NSW Rail Network for the purpose of Rail Operations; and
  - (c) use all facilities owned by, vested in or otherwise exclusively controlled and operated by it, in a manner that facilitates Access to the NSW Rail Network for the purpose of Rail Operations.

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- 2.2** The Rail Infrastructure Owner will only permit Access to Access Seekers, other than the National Rail Track Corporation, where in the opinion of the Rail Infrastructure Owner, Access is not intended for the purposes of trading in Access rights.

**3. NEGOTIATIONS**

- 3.1** The Rail Infrastructure Owner shall negotiate in good faith with Access Seekers for the purposes of entering Agreements.
- 3.2** The Rail Infrastructure Owner shall, on request from an Access Seeker in relation to Access on a Route, provide to the Access Seeker an initial indication of the availability of, and price for, Access on that Route within:
- (a) 28 days for proposed Rail Operations on a Route on which there already are one or more Rail Operators with similar Operational Specifications; or
  - (b) such period of time as agreed by the Rail Infrastructure Owner and the Access Seeker in all other cases.
- 3.3** The Rail Infrastructure Owner will commence Negotiations once:
- (a) it has received from the Access Seeker Operational Specifications which comply with available Capacity on the Route; and
  - (b) the Access Seeker has complied with clause 6.2 of this Access Undertaking.
- 3.4** At the commencement of Negotiations, the Rail Infrastructure Owner and the Access Seeker shall agree upon a time by which Negotiations will be completed, at which time either:
- (a) an Agreement will be concluded; or
  - (b) an extension of time for Negotiations is agreed; or
  - (c) Negotiations will lapse.
- 3.5** The Rail Infrastructure Owner shall advise the Minister if no Agreement has been concluded within a period of three months from the commencement of Negotiations.
- 3.6** The Rail Infrastructure Owner shall negotiate in good faith with Access Seekers in relation to New Investment if necessary so that:

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- (a) such New Investment is technically and economically feasible and consistent with the safe and reliable operation of the NSW Rail Network;
  - (b) the Rail Infrastructure Owner's legitimate business interests in the NSW Rail Network are protected; and
  - (c) the terms of Agreements take into account the costs borne by the parties for the New Investment and the economic benefits to the parties resulting from the New Investment.

#### **4. AGREEMENTS**

**4.1** Except as required by law, the Rail Infrastructure Owner must only permit Access through an Agreement.

**4.2** An Agreement must:

- (a) be in writing;
- (b) cover all matters in Schedule 2;
- (c) conform with the principles in Schedules 3;
- (d) relate to the use of the NSW Rail Network for the purpose of Rail Operations only:  
and
- (e) comply with the provisions of the Access Undertaking.

**4.3** The terms of an Agreement, and any terms or conditions expressed or implied by law, will constitute the whole Agreement between the parties.

**4.4** Nothing in an Agreement will affect:

- (a) the Minister's powers in relation to the Rail Infrastructure Owner, or any Rail Operator;  
or
- (b) the Transport Regulator's powers in relation to the Rail Safety Act.

**4.5** An Agreement other than with the National Rail Track Corporation must not confer exclusive permanent or temporary rights of use and/or occupancy of part of the NSW Rail Network in favour of any person, including by way of sale, lease or assignment, except where exclusive permanent or temporary rights of use and/or occupancy would

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not compromise continuity of access to, and the functionality of, the through running line and is subject to:

- (a) The Rail Infrastructure Owner must give 30 days-notice to all Access Seekers of any intention to grant a exclusive right over part of the NSW Rail Network in accordance with this clause 4.5.
- (b) The Rail Infrastructure Owner must take into account comments received and attempt to resolve legitimate concerns or issues that have been raised by Access Seekers. The Rail Infrastructure Owner must give Access Seekers who have commented on the intention to grant exclusive rights a further 7 days-notice of its intention to implement such an arrangement.
- (c) An Access Seeker who considers that a proposal under this clause 4.5 will have a detrimental impact either on it's existing access rights or continuity of access to, and the functionality of, the through running may, after negotiations with the Rail Infrastructure Owner request arbitration by IPART under Section 4A of the Independent Pricing and Regulatory Tribunal Act. The Rail Infrastructure Owner must not implement the exclusive right of access until the arbitration decision is made by IPART, or the matter is otherwise resolved.

**4.6** An Agreement must not inhibit an Access Seeker or the Rail Infrastructure Owner providing information regarding Access, New Investment or an Agreement, to the Independent Pricing and Regulatory Tribunal, any relevant regulatory agency, or the Minister.

**4.7** An Agreement must not inhibit the Rail Infrastructure Owner from creating, maintaining and disclosing Information Packages in accordance with this Access Undertaking. Subject to this Access Undertaking, an Agreement need not contain the same terms and conditions as another Agreement.

**4.8** An Agreement may be executed prior to the Access Seeker gaining relevant approvals under the Rail Safety Act. No Agreement can require or enable Rail Operations to commence prior to all relevant approvals under the Rail Safety Act being granted.

## **5. NOTICE AND REGISTRATION OF AGREEMENTS**

**5.1** Agreements and proposed Agreements must be notified by the Rail Infrastructure Owner and registered consistent with Sections 12B, 12C, 12D and 12E of the Independent Pricing and Regulatory Tribunal Act.

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- 5.2** The Rail Infrastructure Owner must provide Public Notice of any intention to conclude an Agreement which covers a substantial proportion of the existing available Capacity on a Route for a significant period.

**6. ARBITRATION**

- 6.1** Part 4A of the Independent Pricing and Regulatory Tribunal Act applies to this Access Undertaking, including Schedule 3 Pricing.

- 6.2** Before the Rail Infrastructure Owner will negotiate Access with an Access Seeker, the Access Seeker must agree that if a dispute exists with respect to the Access Undertaking, only the Tribunal (or an alternative arbitrator appointed by the Tribunal in accordance with Part 4A of the Independent Pricing and Regulatory Tribunal Act) will act as arbitrator and that Part 4A of the Independent Pricing and Regulatory Act will apply to govern the Arbitration.

- 6.3** For the purposes of this clause 6 of the Access Undertaking and Part 4A of the Independent Pricing and Regulatory Tribunal Act, any determination or decision by IPART in relation to:

- (a) approving the Rate of Return to be applied for the purposes of Schedule 3;
- (b) reviewing or revising the estimate of remaining mine life under clause 3.2(c)(ii) of Schedule 3;
- (c) approving the Rail Infrastructure Owner's published policy for the operation of the Unders and Overs Account under clause 4(f) of Schedule 3;
- (d) determining whether the Rail Infrastructure Owner has complied with the Asset Valuation Roll Forward Principles and determining what Closing Regulatory Asset Base would comply with those principles, under clause 5(b)(i) of Schedule 3; and
- (e) determining whether the Rail Infrastructure Owner has complied with the ceiling test under clause 5(b)(ii) of Schedule 3,

is not subject to Arbitration and in any Arbitration a dispute shall not be taken to exist with respect to any matter which is the subject of a determination or decision by IPART in relation to paragraphs (a) to (e) above.

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**6.4** The Arbitrator shall publish the Determination and any information before the Arbitrator relevant to the Determination other than:

- (a) Confidential Information; or
- (b) information relating to the operation of the market which the Arbitrator considers should not be published.

**6.5** The Arbitrator may, at its discretion, publish Confidential Information in relation to clause 6.4 of this Access Undertaking provided that in the exercise of this discretion it takes into account any submissions by the parties to the dispute that the information is confidential and should not be published.

## **7. THE RAIL INFRASTRUCTURE OWNER**

**7.1** The Rail Infrastructure Owner must:

- (a) promote and provide Access consistent with this Access Undertaking;
- (b) use all reasonable endeavours to accommodate the Access and New Investment requirements of Access Seekers; and
- (c) maintain reasonable priority and certainty of access for railway passenger services in accordance with its obligations under the Transport Administration Act.

**7.2** The Rail Infrastructure Owner must provide Public Notice of its capacity transfer policy.

**7.3** The Rail Infrastructure Owner must not engage in the business of freight Rail Operations for reward. For the avoidance of doubt, the Rail Infrastructure Owner may undertake Rail Operations on the NSW Rail Network for the purpose of inspecting or maintaining the NSW Rail Network.

**7.4** The Rail Infrastructure Owner must structure its accounting, business and financial arrangements to facilitate:

- (a) the effective resolution of disputes;
- (b) transparency in its
  - (i) Agreements, including as among the various Access Seekers;



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- (ii) network funding relations with the Government; and
  - (c) effective access, within the meaning of Part IIIA of the Trade Practices Act.
- 7.5** The Rail Infrastructure Owner (other than ARTC) must maintain separate accounts for any elements of its business which do not relate to:
- (a) the holding, management and establishment of the NSW Rail Network for Rail Operations; or
  - (b) the provision of Access pursuant to this Access Undertaking.
- 7.6** The Rail Infrastructure Owner must not engage in conduct aimed at unreasonably hindering Access to the NSW Rail Network by Access Seekers.
- 7.7** For the avoidance of doubt, nothing in this Access Undertaking shall require the Rail Infrastructure Owner to do anything that is inconsistent with the maintenance of reasonable priority and certainty of access for railway passenger services in accordance with its obligations under the Transport Administration Act.
- 8. INFORMATION DISCLOSURE BY THE RAIL INFRASTRUCTURE OWNER**
- 8.1** The Rail Infrastructure Owner must provide the Information Package to an Access Seeker that requests the Information Package and that can demonstrate the capability necessary to become an Access Seeker.
- 8.2** The Information Package is to be provided to the Access Seeker within 28 days of the Access Seeker requesting a copy of the Information Package and paying of any applicable fee.
- 8.3** The Information Package must include the following:
- (a) this Access Undertaking;
  - (b) the categories of information described in Schedule 5 to the extent relevant to the proposed Rail Operations;
  - (c) a description of the Rail Infrastructure Owner's procedures relating to specific Access requests, including a detailed description of the information the Rail Infrastructure Owner requires in order to consider an Access request; and

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- (d) the pricing policy of the Rail Infrastructure Owner.

**8.4** The Rail Infrastructure Owner:

- (a) must not include in the Information Package information which could lead to material harm to any Access Seeker if disclosed; and
- (b) may recategorise or aggregate the Information Package to the extent necessary to ensure that the disclosure of information does not or is not likely to lead to material harm to the interests of Access Seekers and does not or is not likely to cause the Rail Infrastructure Owner to breach a confidentiality obligation.

**8.5** Subject to clause 8.4, nothing in this Access Undertaking diminishes the Rail Infrastructure Owner's:

- (a) obligation to provide Information Packages to Access Seekers, notwithstanding any agreements entered into by the Rail Infrastructure Owner and Access Seekers; and
- (b) rights to require appropriate confidentiality undertakings from Access Seekers.

**8.6** The Rail Infrastructure Owner may require the payment of a reasonable fee for copying the Information Package.

**8.7** The Information Package shall be available to Access Seekers from within 3 months of the publishing of this Access Undertaking in the Gazette including asset values associated with Access to parts of the NSW Rail Network listed in Schedule 6.

**8.8** Subject to Clause 8.4, an Access Seeker may request the Rail Infrastructure Owner to provide further information directly relating to the Access Seeker's request for specific train path(s), such further request may not be unreasonably refused by the Rail Infrastructure Owner.

## **SCHEDULE 1 - FACILITIES**

This schedule has been repealed.

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## SCHEDULE 2 - TERMS OF AGREEMENT

An Agreement must include the following terms

- (i) Terms which detail:
  - (a) the Operational Specifications;
  - (a) the facilities and services to be provided by each party;
  - (b) the period for which rights exist, and arrangements for renewals;
  - (c) train control procedures and time-tabling;
  - (d) compliance with operational standards;
  - (e) procedures for emergencies and service interruptions;
  - (f) distribution of liability for risks;
  - (g) any confidentiality requirements or restrictions on the use or dissemination of information;
  - (h) any mechanism which can be used by each party to revoke or modify the Agreement;
  - (i) where the Agreement is reached after the conclusion of Arbitration processes referred to in clause 6 of this Access Undertaking, a mechanism by which each party can revoke or modify the Agreement if there has been a material change in circumstances;
  - (j) prices and charges;
  - (k) any mechanism relating to an Access Seeker's investment in the NSW Rail Network;
- (ii) A term that the rights to Access may only be utilised for Rail Operations complying with the Operational Specifications;
- (iii) A term that the parties are not to engage in conduct aimed at hindering Access to the NSW Rail Network by another person;
- (iv) A term that the parties remain responsible for complying with relevant laws; and
- (v) A term that, if a dispute exists with respect to the Regime, or this Agreement:

- (a) only the Independent Pricing and Regulatory Tribunal (or an alternative arbitrator appointed by the Tribunal in accordance with Section 24B of the Independent and Regulatory Tribunal Act) will act as arbitrator; and

that Part 4A of the Independent Pricing and Regulatory Tribunal Act will apply to govern the Arbitration.

An Agreement may include additional provisions, including provisions, which in addition to (v) above, provide in the first instance for mediation or any other alternative dispute resolution mechanisms to be used to assist in the resolution of disputes.

## SCHEDULE 3 - PRICING PRINCIPLES

### 1. Pricing Principles

Prices will be negotiated so that the following requirements are satisfied

- (a) Access revenue from every Access Seeker must at least meet the Direct Cost imposed by that Access Seeker. In addition, for any Sector or group of Sectors, revenue from Access Seekers together with Line Sector CSOs (if applicable) should, as an objective, meet the Full Incremental Costs of those Sectors ("**floor test**").
- (l) For any Access Seeker, or group of Access Seekers, Access revenue must not exceed the Full Economic Costs of the Sectors which are required on a stand-alone basis for the Access Seeker or group of Access Seekers ("**ceiling test**").
- (m) The Rail Infrastructure Owner's total Access revenues together with Line Sector CSOs (if applicable) must not exceed the stand alone Full Economic Costs of that part of the NSW Rail Network for which it is the Rail Infrastructure Owner.

### 2. Definitions and Interpretation

#### 2.1 Definitions

In this Schedule the following words and phrases have the corresponding meaning unless the contrary intention appears:

**Asset Valuation Roll Forward Principles** means the provisions of clause 3 of this Schedule by which the Opening Regulatory Asset Base in any year is adjusted to derive the Closing Regulatory Asset Base in that year.

**Closing Regulatory Asset Base** means the value of the Regulatory Asset Base at the end of a financial year determined in accordance with clause 3 of this Schedule.

**Capital Contribution** means a direct payment other than by way of an access price or charge by any person in connection with Capital Expenditure or New Investment undertaken by the Rail Infrastructure Owner. Where a Capital Contribution is to be paid over a period of years, the value of the Capital Contribution may be represented as one figure calculated on a net present value basis.

**Capital Expenditure** means expenditure undertaken in order to increase the capacity, service quality or useful life of an asset but not including maintenance or operating expenditure.

**Corridor Formation Assets** means cuttings, embankments and tunnels (including lighting and ventilation).

**Depreciation** means depreciation of the Regulatory Asset Base, over the useful life of the Regulatory Assets calculated on a straight line basis.

**Direct Costs** means efficient, forward-looking costs which vary with the usage of a single operator within a 12 month period, plus a levelled charge for variable MPM costs, but excluding Depreciation.

**Full Incremental Costs** means all costs which could be avoided if a Sector was removed from the system.

**Full Economic Costs** are Sector specific costs including a permitted Rate of Return and Depreciation and an allocation of non-Sector specific costs such as train control and overheads including a Rate of Return and Depreciation on non-Sector specific assets. All included items are to be assessed on a stand alone basis.

**Hunter Valley Coal Network** means the group of Sectors located in the Hunter Valley utilised for the purpose of coal train movements as specified in Schedule 6.

**Major Periodic Maintenance** and/or MPM means planned maintenance expenditure on infrastructure assets at intervals of more than one year, including activities that renovate and refurbish the assets to achieve their predetermined service life and service level.

**Opening Regulatory Asset Base** means the value of the Regulatory Asset Base at the start of a financial year determined in accordance with clause 3 of this Schedule.

**Rate of Return** means a rate of return in percentage terms approved by IPART for a period of five years to be applied to the average of the Opening and Closing Regulatory Asset Base. The Rate of Return approved by IPART for the period from 1 July 1999 is 8.0 percent on a real, pre-tax basis.

**Regulatory Assets** means the facilities and associated assets used in the provision of Access to the NSW Rail Network and where the term is used in relation to a Sector or group of Sectors shall include the facilities and associated assets used in the provision of Access to that Sector or those Sectors and includes non-Sector Specific Assets.

**Regulatory Asset Base** means the capital value of the Regulatory Assets as determined in accordance with clause 3 of this Schedule and further:

- (a) Shall be based on an initial valuation of the Regulatory Asset Base calculated using the depreciated optimised replacement cost methodology.
- (b) Where applied in relation to a Sector or group of Sectors means the capital value of that Sector or group of Sectors determined in accordance with clause 3 of this Schedule and includes that portion of non-Sector specific assets allocated in accordance with the Rail Infrastructure Owner's asset allocation policy.

**Routine Maintenance** means inspections and unplanned minor maintenance carried out annually or at more frequent cycles and includes track inspection, track patrolling, replacing broken track components, corridor maintenance, fence maintenance and signal testing.

**Unders and Overs Account** means the account established by the Rail Infrastructure Owner pursuant to clause 4 of this Schedule.

## **2.2 Interpretation**

- (a) Unless the contrary intention appears, words and phrases defined in Schedule 7 have the same meaning when used in this Schedule.
- (b) Unless the contrary intention appears, the singular includes the plural and vice versa.
- (c) The assessment of costs on a standalone basis requires calculation based on the optimal configuration of rail infrastructure in order to serve all Access Seekers operating in a common end market.

## **3. Regulatory Asset Base**

### **3.1.1 General**

The Regulatory Asset Base shall be calculated in accordance with the following formula RAB

$$RAB_t = RAB_{t-1} + (RAB_{t-1} * CPI_t) + Add_t + Capex_t - Dep_t - Disp_t$$



Where:

- $RAB_t$  is: The Regulatory Asset Base in any given year  $t$  and represents the closing value of the Regulatory Asset Base for that year.
- $RAB_{t-1}$  is: The Regulatory Asset Base in the year prior to year  $t$  and represents the closing value of the Regulatory Asset Base for that year and is the Opening Regulatory Asset Base in year  $t$ .
- $CPI_t$  is: The percentage change in the CPI from the year  $t-2$  to the year  $t-1$ , calculated by using the average of the ABS Sydney All Groups Consumer Price Index for the four quarters to June in the year  $t-1$  when compared to the average for the four quarters to June in the year  $t-2$ .
- $Add_t$  is: The addition of an existing Sector or an existing group of Sectors due to changes in demand in a common end market, valued at depreciated optimised replacement cost.
- $Capex_t$  is: The actual Capital Expenditure for assets commissioned in relation to the Regulatory Asset Base for the year  $t$ , where that Capital Expenditure is incurred in accordance with the provisions of clause 3.3, less that portion of any Capital Contribution which is to recover Capital Expenditure.
- $Dep_t$  is: The Depreciation allowance for the year  $t$ .
- $Disp_t$  is: The value of Asset Disposals in the year  $t$  as determined by the written down value attributed to them in the Regulatory Asset Base.
- $Year_t$  is: The current year commencing on 1 July for which Access Charges are to apply.

### **3.2 Hunter Valley Coal Network**

In determining the Regulatory Asset Base for the Hunter Valley Coal Network the following specific provisions apply.

- (a) For the purposes of calculating the Opening Regulatory Asset Base as at the year commencing 1 July 1999, the  $RAB_1$  for that year is as set out in the letter from the Minister for Transport to **RIC** dated 7 December 2001, and is to apply for all purposes as the valuation of the Opening Regulatory Asset Base in that year;

- (b) For the purposes of calculating the Capital Expenditure
- (i) Only Capital Expenditure which relates to coal traffic on a standalone basis is to be included.
  - (ii) Capital expenditure which is prudently incurred including Capital Expenditure which is reasonably anticipated to be required to meet minimum demand within a five year horizon (from the date of commencement of construction) is to be included.
  - (iii) In determining whether Capital Expenditure is prudently incurred including whether Capital Expenditure is reasonably anticipated to be required to meet minimum demand within a five year horizon (from the date of commencement of construction), the Rail Infrastructure Owner must undertake the consultation process set out in clause 3.4.
  - (iv) If Capital Expenditure is not prudently incurred including Capital Expenditure which is not reasonably anticipated to be required to meet minimum demand within a five year horizon (from the date of commencement of construction), then it may subsequently be included provided that the Rail Infrastructure Owner has not otherwise recovered the expenditure by way of a Capital Contribution; and:
    - A. circumstances have subsequently changed so that the Capital Expenditure is, at the time at which it is to be included in the Regulatory Asset Base, reasonably anticipated to be required to meet demand within a five year horizon; or
    - B. prior to being commissioned. Access Seekers agree to its inclusion in the Regulatory Asset Base.
- (c) For the purposes of calculating the Depreciation allowance in any year:
- (i) Depreciation is to be calculated at the beginning of each financial year, using a straight-line methodology and the estimate of the remaining useful life of the assets.
  - (ii) The useful life of a Sector or group of Sectors is to be determined by reference to the remaining mine life of Hunter Valley coal mines utilising that Sector or those Sectors.

- (iii) The initial estimate of remaining mine life is 40 years from 1 July 1999.
- (iv) The estimate of remaining mine life will be reviewed and if necessary revised every five years from and including 1 July 2004 by IPART or an independent consultant appointed by IPART.
- (v) Ongoing depreciation for future capital investment should be made based on the unexpired portion of the most recently estimated remaining mine life at the time the asset becomes operational.
- (vi) Depreciation is to be charged each year on the opening balance of the Regulatory Asset Base and on 100% of the actual Capital Expenditure of assets commissioned determined in accordance with clause 3.2 (b) for a period of half the year.

### **3.3 New Investment**

- (a) At the request of an Access Seeker, or at its own instigation, the Rail Infrastructure Owner may undertake New Investments for the purposes of facilitating Access.
- (b) The Rail Infrastructure Owner will undertake those works provided that the requested works are not inconsistent with the implementation of its network management plan, including the timing of works to be undertaken under its network management Plan.
- (c) The cost of works undertaken under this Part can be recovered by the Rail Infrastructure Owner, at its election, through a Capital Contribution or in accordance with the pricing principles and methodology contained in this Schedule.
- (d) Notwithstanding that the Rail Infrastructure Owner recovers the cost of works in accordance with clause 3.3(c) to this Schedule, facilities constructed by or on behalf of the Rail Infrastructure Owner are owned by the Rail Infrastructure Owner.
- (e) Nothing in this part shall oblige the Rail Infrastructure Owner to undertake New Investment where the Access Seeker does not meet in full the costs of the New Investment, including any attributable costs associated with developing, operating and maintaining assets, including Major Periodic Maintenance costs, Routine Maintenance costs, depreciation and a rate of return on assets, and any attributable non-Sector specific costs. A Capital Contribution may be paid over a period of a number of years.

### **3.4 Capital Expenditure Consultation Process**

- (a) The Rail Infrastructure Owner shall:
  - (i) work with Access Seekers to identify and prioritise future network investments, and to refine capital works programs; and
  - (ii) formally evaluate significant future investments, including alternatives, in consultation with Access Seekers.
- (b) As part of the consultation process with Access Seekers, the Rail Infrastructure Owner shall:
  - (i) explain the Rail Infrastructure Owner's planning approach, including the trade-off between Routine Maintenance and Major Periodic Maintenance and Capital Expenditure;
  - (ii) identify the proposed capital investment needs for the forthcoming year, and include forecasts of Capital Expenditure for at least the following four years;
  - (iii) explain the inputs to and outcomes of the evaluations undertaken for the proposed Capital Expenditure for the forthcoming year;
  - (iv) provide an assessment of the impact of the proposed Capital Expenditure for the forthcoming year on the Regulatory Asset Base;
  - (v) identify the projects that will be funded or partly funded by Capital Contributions; and
  - (vi) establish a process for Access Seekers' input.

### **4. Unders and Overs Account**

- (a) The Rail Infrastructure Owner will establish an Unders and Overs Account to manage average deviations around the maximum rate of return.
- (b) The Rail Infrastructure Owner will keep an account for Access Seekers and groups of Access Seekers who could potentially breach the Ceiling Test.
- (c) The Rail Infrastructure Owner will provide an annual reconciliation of each account to the applicable Access Seekers.

- (d) The Rail Infrastructure Owner will attempt to return the account balance to zero each year.
- (e) The Unders and Overs Account balance should not exceed +/-5percent of forecast access revenue.
- (f) The Rail Infrastructure Owner will develop and publish a policy for the operation of the Unders and Overs Account in consultation with Access Seekers and submit to IPART for approval.

## **5. Compliance**

- (a) The Rail Infrastructure Owner shall submit to IPART by 31 October each year in respect of the financial year completed on 30 June of that year:
  - (i) documentation demonstrating its compliance with the Asset Valuation Roll Forward Principles;
  - (ii) details as to the compliance with the ceiling test, including the operation of its Unders and Overs Account.
- (b) IPART shall determine whether:
  - (i) the Rail Infrastructure Owner has complied with the Asset Valuation Roll Forward Principles and, in the event that IPART determines that the Rail Infrastructure Owner has not complied with the Asset Valuation Roll Forward Principles, it shall determine what Closing Regulatory Asset Base would comply with those principles.
  - (ii) the Rail Infrastructure Owner has complied with the ceiling test, having regard to the operation of its Unders and Overs Account.
- (c) In determining whether the Rail Infrastructure Owner has complied with the Asset Valuation Roll Forward Principles, IPART may have regard to the submissions of users to the consultation process in clause 3.4, but not otherwise have regard to the submissions of users which are inconsistent with such submissions.
- (d) IPART shall publish its findings on its web site and/or circulate to operators in relation to the matters for its determination as set out in clause 5(b).

- (e) The Rail Infrastructure Owner shall revise the Closing Regulatory Asset Base and manage its Unders and Overs Account in accordance with any determination by IPART pursuant to clause 5(b).
- (f) This subclause 5 does not apply where the Rail Infrastructure Owner can demonstrate to the reasonable satisfaction of IPART that Access revenue is no more than 80% of the Access revenue likely to be derived by application of the Ceiling Test. For the purposes of this clause, IPART must have regard to an indicative Regulatory Assets valuation, based on Depreciated Optimised Replacement Cost (DORC) methodology, as provided by the Rail Infrastructure Owner. This subclause 5 (f) does not apply to the assets defined as the Hunter Valley Coal Network.

#### **SCHEDULE 4 - PASSENGER ARRANGEMENTS**

This schedule has been repealed.

## SCHEDULE 5 - INFORMATION PACKAGE

The Information Package will include

(i) Network Configuration

Diagrammatic map of the Rail Infrastructure Owner's network, showing track configuration

Diagrammatic map showing Sector codes, as used for asset management and costing purposes

Route kilometres and track kilometres by Sector

Curve and gradient diagrams, and ruling grades by Sector

Line class and track design characteristics, by Sector

(ii) Recurrent Costs

The Rail Infrastructure Owner' Total Costs disaggregated into:

Infrastructure maintenance, further disaggregated into:

Routine maintenance

Major Periodic Maintenance

Network control costs

Terminal management costs

Depreciation, where applicable

Technical services costs

Interest.

Overhead costs, further disaggregated into:

Corporate overheads

Marketing overheads

Asset management overheads

Train operations and network control overheads

Cost attribution methodology used to allocate costs to Sectors for the purpose of this Schedule

Attributed costs by Sector

Indicative variable cost rates by region

(iii) Capital Costs

Asset values by asset class, allocated by Sector.

Treatment of depreciation

Committed capital works and capital investment

Cost of debt



Capital structure

(iv) System Usage

Gross tonnes per annum by Sector, aggregated into the following tonnage bands

*gross tonnes per annum*

0-200,000

200,001-500,000

500,001-1 million

1-2.5 million

2.5-5 million

5-7.5 million

7.5-10 million

10-15 million

15-20 million,

thereafter in increments of 10 million gross tonnes

(v) Operational and other information:

Indicative sectional running times for various types of standard train.

Indicative maximum trailing tonnages for locomotives of various characteristics, by Sector.

Maximum axle loads and speed restrictions, by Sector.

Indicative maximum train lengths, by Sector.

The Rail Infrastructure Owner's Transit Space Standards (defining dimensional requirements for Rolling Stock).

The Rail Infrastructure Owner's standard access agreement

The Rail Infrastructure Owner's credit policy, when available

(vi) Unutilised Capacity

Indicative figures for the number of unutilised Train Paths for representative trains of various configurations and characteristics as follows:

by Sector;  
by time period; and  
by day of week.

That part of the master timetable (excluding Rail Operator identity) that is directly relevant to the Access Seeker

(vii) Arbitration Information

A copy of any Determinations published by the Arbitrator in relation to this Access Undertaking

**SCHEDULE 6 - HUNTER VALLEY NETWORK SECTORS**

	<b>Route KM</b>
441 SANDY HOLLOW JCT TO ULAN COLLIERY JCT	103.42
418 CAMBERWELL JUNCTION TO GLENNIES CREEK	6.89
419 GLENNIES CREEK TO NEWDELL JUNCTION	8.59
448 MUSWELLBROOK TO BENGALLA	5.20
449 BENGALLA TO SANDY HOLLOW	37.98
460 TELERAH TO FARLEY	0.50
423 MUSWELLBROOK TO DARTBROOK JCT	7.53
422 DRAYTONS JCT TO MUSWELLBROOK	17.04
421 NEWDELLJCTTO DRAYTONS JCT	9.57
417 WHITTINGHAM TO CAMBERWELL JCT	12.66
428 BRANXTON TO WHITTINGHAM	18.57
416 FARLEY TO BRANXTON	21.59
415 MAITLAND TO FARLEY	1.29
510 THORNTON TO MAITLAND (VIA COAL)	10.40
509 SANDGATE TO THORNTON (VIA COAL)	12.33
504 HANBURY JCT TO SANDGATE (VIA COAL)	1.64
503 WARATAH TO HANBURY JCT (VIA COAL)	2.26
502 SCHOLEY ST JCT TO WARATAH (VIA COAL)	1.40
411 ISLINGTON JCT TOW ARATAH	1 .50
410 WOODVILLE JCT TO ISLINGTON JCT	0.87
497 BROADMEADOW TO WOODVILLE JCT	0.85
407 ADAMSTOWN TO BROADMEADOW (VIA MAIN)	1.60
490 SULPHIDE JCT TO ADAMSTOWN	8.05
406 COCKLE CREEK TO SULPHIDE JCT	3.15
405 NEWSTAN JCT TO COCKLE CREEK	7.18
500 ISLINGTON JCT TO SCHOLEY ST JCT	0.49
501 SCHOLEYST JCT TO PORT WARATAH	4.94
506 KOORAGANG EAST JCT TO SANDGATE	0.87
505 HANBURY JCT TO KOORAGANG EAST JCT	1.11
507 KOORAGANG EAST JCT TO KOORAGANG ISLAND	9.20
532 WHITTINGHAM TO SAXONVALE JCT	7.97
534 SAXONVALE JCT TO MOUNT THORLEY	4.97
536 NEWDELL BRANCH	2.66
457 DUNGOG TO CRAVEN	46.54
456 MARTINS CREEK TO DUNGOG	26.70
451 TELERAH TO MARTINS CREEK	23.60
450 MAITLAND TO TELARAH	2.16

## **SCHEDULE 7 - DEFINITIONS**

### **DEFINITIONS**

**Access** means the right to enter onto the NSW Rail Network to operate or move rolling stock.

**Access Purchaser** means a person who has contracted with a Rail Operator in respect of the operation or movement of Rolling Stock.

**Access Undertaking** means this access undertaking prepared in accordance with Schedule 6AA of the Transport Administration Act.

**Access Purchaser** means a person who has contracted with a Rail Operator in respect of the operation or movement of Rolling Stock.

**Access Seeker** means the following:

- (a) a Rail Operator; or
- (b) a prospective Rail Operator who, in the opinion of the Rail Infrastructure Owner, has the capacity to provide rail services of the type for which Access is sought; or
- (c) an Access Purchaser; or
- (d) a prospective Access Purchaser who, in the opinion of the Rail Infrastructure Owner, has the capacity to secure and properly manage the services of a Rail Operator; or
- (e) the National RailTrack Corporation.

**Agreement** means an agreement under which the Rail Infrastructure Owner grants Access to an Access Seeker.

**Arbitrator** means the Independent Pricing and Regulatory Tribunal established under the Independent Pricing and Regulatory Tribunal Act or a person appointed to act as arbitrator under section 24B(1) of that Act.

**Arbitration** means the procedures specified in Part 4A of the Independent Pricing and Regulatory Tribunal Act.

**Australian Rail Track Corporation** means the Australian Rail Track Corporation (ACN 081 455 754).

**Capacity** means the number of Rail Operations which can be accommodated on a Route during a particular time, having regard to the characteristics of that Route, the Operational Specifications for Rail Operations on that Route and of the relevant Rolling Stock.

**Commercial Arbitration Act** means the Commercial Arbitration Act 1984 (NSW).

**Competition Policy Reform Act** means the Competition Policy Reform Act 1995 (Cth).

**Competition Principles Agreement** means the Competition Principles Agreement made on 11 April 1995 by the Commonwealth, the Territories and the States, as in force for the time being.

**Confidential Information** means information which is not publicly available and the disclosure of which might reasonably be expected to affect materially the commercial affairs of a person.

**Determination** means a determination made by the Arbitrator under s 24C of the Independent Pricing and Regulatory Tribunal Act in arbitrating a dispute under this Access Undertaking.

**IPART** means the Independent Pricing and Regulatory Tribunal

**Independent Pricing and Regulatory Tribunal Act** means the *Independent Pricing and Regulatory Tribunal Act* 1992 (NSW).

**Information Package** means the information package described in schedule 5.

**Line Sector CSOs** means payments made to either RIC or RailCorp (but not the National Rail Track Corporation) to enable each of them to meet their obligations to renew, restore, manage, upgrade and grant access to the NSW Rail Network, but excludes any incentive payments, such as payments in respect of the achievement of key performance indicators.

**Minister** means the Minister responsible for the Transport Administration Act.

**National Rail Track Corporation** has the same meaning as "national rail track corporation" as defined in clause 9 of Schedule 6AA of the Transport Administration Act.

**Negotiations** means negotiations leading, or intended to lead, to an Agreement.

**New Investment** means investment which extends or increases the capacity or efficiency of the NSW Rail Network.

**NSW Rail Network** has the same meaning as "NSW rail network" in the Transport Administration Act.

**Operational Specifications** means the technical specifications for Rail Operations on a Route, including, where relevant, time of entry to and exit from the Route, duration of use of the Route, maximum speeds, maximum axle loads, commodities to be transported, technical specifications of Rolling Stock, and Operational and Safety Standards.

**Operational Standards** means those standards which relate to the safe operation of any or all of the following - the NSW Rail Network, Rolling Stock, assets utilised by the Rail Infrastructure Owner, assets used by Rail Operators.

**Public Notice** includes notification in the national, state capital and local press and in the NSW Government Gazette.

**RailCorp** means the Rail Corporation New South Wales constituted under the Transport Administration Act.

**Rail Infrastructure Owner** has the same meaning as "rail infrastructure owner" in the Transport Administration Act.

**Rail Operations** means the operation or moving, by any means, of any Rolling Stock on the NSW Rail Network.

**Rail Operator** means a person who is responsible for the operation or moving, by any means, of any Rolling Stock on the NSW Rail Network.

**Rail Safety Act** means the *Rail Safety Act 1993* (NSW).

**RIC** means the Rail Infrastructure Corporation constituted under the Transport Administration Act.

**Rolling Stock** means a vehicle that operates on or uses a railway track and that is used or proposed to be used to transport passengers or freight (or both) on a railway track.

**Route** means that geographic part of the NSW Rail Network for which an Access Seeker is seeking to negotiate, or is negotiating, or has entered into an Agreement with the Rail Infrastructure Owner.

**Sector** means a continuous length of track with end points, usually delineated by major junctions or traffic origins and including all facilities associated with the track on that sector.

**State Owned Corporations Act** means the *State Owned Corporations Act 1989* (NSW).

**Trade Practices Act** means the *Trade Practices Act 1974* (Cth)

**Transport Administration Act** means the *Transport Administration Act 1988* (NSW).

**Transport Regulator** means the Independent Transport Safety and Reliability Regulator constituted under the Transport Administration Act.

**Tribunal** means the Independent Pricing and Regulatory Tribunal of New South Wales established by the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

established by the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW)

