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## **Procedural Requirements for Approving Access Arrangements – Guidance Paper**

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## INTRODUCTION

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The Government has developed a new Victorian Rail Access Regime (VRAR) with the objective of promoting competitive access to the Victorian rail network. Legislation introducing the new VRAR passed through Parliament in June 2005. The VRAR requires that an access provider must submit a proposed access arrangement to the Commission for approval. An approved access arrangement sets out the terms and conditions on which the access provider will provide access to their relevant rail infrastructure.

The purpose of this Guidance Paper is to:

1. outline the statutory requirements for submitting access arrangements to the Commission for approval;
2. outline the access arrangement approval process; and
3. provide guidance on information that the Commission expects it will need in order to assess a proposed access arrangement submitted by an access provider.

The paper serves as a guide for the access provider by setting out what information and material needs to be provided to the Commission and provides an outline of the access arrangement approval process. This will help to improve the efficiency of the approval process, which is required by the RCA to be submitted within 60 days after 1 January 2006 and approved (or rejected) within 90 days by the Commission.

In this Guidance Paper, words and phrases starting with capitals are either defined in the *Rail Corporations Act 1996* (as amended), in the Pricing Order, the Rail Access Pricing Guideline, or in the Dictionary in Section 4.

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# 1 THE VRAR AND THE ACCESS APPROVAL PROCESS

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## 1.1 The statutory framework

Part 2A of the *Rail Corporations Act 1996* (RCA) establishes the VRAR and prescribes high level access related requirements that apply to all declared rail transport services in Victoria.<sup>1</sup> In summary, Part 2A:

1. Contains general obligations regarding conduct under the VRAR.
2. Specifically requires an access provider of a declared rail transport service to submit an access arrangement for approval by the Commission (section 38W).
3. Enables the Government to establish pricing principles through an Order in Council (section 38J). On 5 October 2005, the Governor in Council gazetted the *Rail Network Pricing Order 2005* (the Pricing Order)<sup>2</sup> which sets out certain pricing principles and authorises the Commission to make a rail access pricing methodology consistent with the Pricing Order.
4. Explicitly requires the Commission to make a number of instruments which must be in force at all times (section 38Q). These instruments comprise:
  - Account keeping rules (section 38R);
  - Ring fencing rules (section 38S);
  - Capacity use rules (section 38T); and
  - Network management rules (section 38U); and
  - Guidelines for negotiating access between an access provider and access seeker (section 38V).

The RCA together with the Pricing Order authorises the Commission to establish a rail access pricing methodology, and in December 2005 the Commission produced the Rail Access Pricing Guideline. The Pricing Order and the Commission's Rail Access Pricing Guideline provide the framework for setting the prices, or the methodologies for the calculation of the price, for reference services, to be included in the proposed access arrangement, and also non-reference prices. The RCA, Pricing Order and the Rail Access Pricing Guideline made by the Commission will also be relevant to the Commission's dispute resolution role, should disputes arise in relation to reference or non-reference prices.

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<sup>1</sup> Part 2A of the *Rail Corporations Act 1996* (Vic) is amended by the *Transport Legislation (Further Amendment Act) 2005* (Vic). Section 5 of that Act, dealing with Commission instruments and access arrangements, has not yet been proclaimed and will come into operation on 1 January 2006 if not proclaimed earlier. Unless otherwise stated, references in this document to the *Rail Corporations Act 1996* (RCA) are intended to be references to the RCA as amended by the *Transport Legislation (Further Amendment) Act 2005*.

<sup>2</sup> <http://www.doi.vic.gov.au/doi/internet/freight.nsf>

## 1.2 Timeframe

A number of the elements of the VRAR will come into effect with the commencement of section 5 of the *Transport Legislation (Further Amendment) Act 2005* (Vic), which commences on proclamation or on 1 January 2006 (if not been proclaimed before that date). These include:

- Firstly, Declaration Orders covering freight services and V/Line Passenger services on the intrastate rail network, as well as terminal services provided at the Dynon Terminals;
- Secondly, the Commission has finalised the Commission Instruments, which will come into effect with their Gazettal on, or as soon as practicable after, 1 January 2006;
- Thirdly, the Pricing Order will also come into effect on the same date. As noted, the Pricing Order will authorise the Commission to make a rail access pricing methodology, and the Commission has consulted on how it should exercise this authority, and has released the Rail Access Pricing Guideline.

Within 60 days of the Declaration Orders coming into effect, access providers must submit to the Commission for approval a proposed access arrangement in relation to a declared rail transport service provided by, or capable of being provided by, the access provider.

At the time an access provider submits their proposed access arrangement they will also have to submit:

- access arrangement information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement (section 38W(2));
- supporting information and material to establish that their proposed access arrangement complies with the requirements of the Act. For example, the proposed access arrangement must be consistent with the Pricing Order and any pricing methodology the Commission has made (section 38X(3));
- certain other accompanying material in compliance with account keeping rules, ring fencing rules, capacity use rules and network management rules, issued by the Commission (section 38X(5)); and
- proposed business rules for the use and handling of access seeker information (section 38ZZZB).

This Guidance Paper is designed to assist access providers by setting out the information and supporting material that should be submitted to the Commission at the time of the lodgement of an access arrangement in order for the Commission to assess and approve the proposed access arrangement.

The Commission notes the very short time frame provided in the RCA for the approval or rejection of proposed access arrangements. In order to make this process as efficient as possible, access providers are encouraged to lodge draft material in advance of final lodgement, in order to enable the Commission to identify any gaps or issues in relation to the materials to be submitted prior to their submission.

## 1.3 What the access provider is required to submit

The sections below highlight the material that an access provider is required to prepare and submit to the Commission.

### 1.3.1 Obligation to submit a proposed access arrangement

Under section 38W of the Act, an access provider must submit to the Commission for approval a proposed access arrangement within 60 days of the relevant rail transport service being declared by the Governor in Council.

The contents of proposed access arrangements are set out in section 38X(1) of the Act and reproduced in Box 1.

Section 38X(3) to 38X(5) require a proposed access arrangement to be consistent with the:

- Pricing Order;
- any pricing methodology made by the Commission;
- Negotiation Guidelines;
- Account keeping rules;
- Ring fencing rules;
- Capacity use rules; and
- Network management rules.

A proposed access arrangement can include any other matter, in addition to the above requirements, that the access provider considers relevant (section 38X(2)).

**Box 1: Section 38X of the Act****Content of proposed access arrangements**

- (1) A proposed access arrangement must—
  - (a) in relation to every reference service to which the arrangement relates, include—
    - (i) a description of the service; and
    - (ii) information as to whether that service is being provided by the access provider to itself or a related body corporate of the access provider; and
    - (iii) the terms and conditions for the provision of that service; and
    - (iv) the price, or methodology for the calculation of the price, to be charged in respect of the provision of that service; and
  - (b) include information in relation to the availability and the indicative terms and conditions, for the provision of declared rail transport services that are not reference services; and
  - (c) include a description of the information that the access provider will make available to an access seeker; and
  - (d) 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
  - (e) 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; and
  - (f) specify a date for the expiry of the access arrangement, being a date that is not less than 3 years, and not more than 5 years, after the date on which the access arrangement may be approved by the Commission under this Part in a final decision.
- (2) A proposed access arrangement may also include any other matter that the access provider considers relevant.
- (3) The price or methodology referred to in sub-section (1)(a)(iv) must be consistent with the pricing principles and any methodology for the calculation of prices determined by the Commission under the Pricing Principles Order.
- (4) Information referred to in sub-section (1)(c), the procedure referred to in sub-section (1)(d) and the procedure and method referred to in sub-section (1)(e) must be consistent with the negotiation guidelines.
- (5) The proposed access arrangement must also be consistent with—
  - (a) the account keeping rules; and
  - (b) the ring fencing rules; and
  - (c) the capacity use rules; and
  - (d) the network management rules.

### 1.3.2 Obligation to submit Access Arrangement Information

A proposed access arrangement must also contain Access Arrangement Information, which is defined in section 38W(2) of the RCA to be ‘information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement so as to form an opinion as to whether the access arrangement complies with [Part 2A of the RCA]’.

It should be noted that there is a similar requirement (in relation to the preparation of Access Arrangement Information) in the *National Third Party Access Code for Natural Gas Pipeline Systems* (November 1997), as approved by the Australian Competition and Consumer Commission. That scheme provides some general guidance about what Access Arrangement Information should include.

The Commission considers that information included in Access Arrangement Information must be made available to access seekers and the public.

### 1.3.3 Supporting information and material

In addition to the Access Arrangement Information, the access provider should provide supporting information and material to establish compliance of their proposed access arrangement with the requirements of the RCA and, in particular, that the proposed access arrangement is consistent with, among other things, the Pricing Order and any pricing methodology made by the Commission.

The information and material required to be provided to establish compliance with the Pricing Order (and any pricing methodology) is set out in further detail below at section 2. The Commission may decide to accept such supporting information and material on a confidential basis, if it is satisfied that it is not Access Arrangement Information. This is discussed in further detail below at section 3.

Furthermore, the access provider should provide:

- details of any consultation with industry stakeholders on the proposed access arrangement, or drafts of the proposed access arrangement; and
- a detailed explanation and rationale for the proposed approaches to those pricing methodology issues that the Commission has stated in its Rail Access Pricing Guideline<sup>3</sup> that it has not formed a final view on at the present time, including: the price smoothing mechanism; pricing zones; the allocation of common costs between passenger and freight services; and certain elements of the price structure.

### 1.3.4 Other material to accompany the proposed access arrangement

When an access provider submits a proposed access arrangement to the Commission for approval, it must at the same time, submit:

<sup>3</sup> Essential Services Commission (December 2006) *Rail Access Pricing Guideline*, p.3



1. A ‘cost allocation policy’ and ‘templates’ for providing accounting information to the Commission under the account keeping rules;
2. A ‘separation arrangement’ under the ring fencing rules;
3. A statement of ‘capacity management protocols’ under the capacity use rules; and
4. A ‘network operating handbook’ and ‘rolling stock interface standards’ under the network management rules.

In addition, pursuant to section 38ZZZB of the RCA, an access provider must, on the same day as it submits a proposed access arrangement, submit to the Commission for approval, system and business rules for:

- (a) The use or handling of information supplied to the access provider in confidence by an access seeker or a user, including the use or handling of that information by an officer, employee or agent of the access provider; and
- (b) The disclosure of information supplied to the access provider in confidence by an access seeker or a user, including the disclosure of that information by an officer, employee or agent of the access provider.<sup>4</sup>

## 1.4 The Commission’s approval process

The table below summarises the process for access arrangement approval. The process begins when the Commission receives a proposed access arrangement from an access provider and ends when the Commission publishes its final decision, or appeals on the final decision are determined.

Step	Summary of procedure
1	The access provider prepares and submits a proposed access arrangement under section 38W along with any required accompanying material.
2	<p>The Commission receives a proposed access arrangement from the access provider under section 38W.</p> <p>The Commission must, as soon as practicable, acknowledge receipt of the proposed access arrangement by notifying every interested party in writing and by publication on its website and in a state newspaper (section 38Y(1)).</p> <p>The Commission must provide no less than 21 days for written submissions to be made in respect of the proposed access arrangement from the date of notification (section 38Y(2)).</p>

<sup>4</sup> Section 38ZZZB of the Act.

Step	Summary of procedure
3	<p>Before making a draft decision, the Commission must consider all written submissions received within the specified time, and may, but is not required to, consider late submissions (section 38ZA).</p> <p>The Commission must make a draft decision to approve or not approve the proposed access arrangement, stating reasons for its decision. When making a draft decision, the Commission must take into account matters listed in section 38ZI. If the Commission does not approve the proposed access arrangement it needs to specify any amendments that should be made and any matters that should be addressed for approval (section 38ZB).</p> <p>The Commission must give a copy of the draft decision to every party who submitted comments to the proposed access arrangement and to the access provider. The Commission must also publish the draft decision on its website and make it available for inspection at its offices (section 38ZB(5)).</p> <p>The Commission must provide no less than 14 days, from the date the draft decision is published, for written comments to be submitted (section 38ZB(6)).</p>
4	<p>The access provider may, within 14 days of being given a copy of the draft decision, submit revisions to the initial proposal (section 38ZC).</p>
5	<p>Before making a final decision, the Commission must consider all written submissions received within the specified time, and may, but is not required to, consider late submissions (section 38ZE).</p> <p>The Commission must make a final decision to approve or not approve the proposed access arrangement, stating reasons for its decision (section 39ZF). When making a final decision, the Commission must take into account matters listed in section 38ZI. The Commission is required to give notice of its final decision as specified in section 38ZH.</p> <p>The Commission's final decision must be made within 90 days of the access provider submitting the initial proposed access arrangement (section 38ZG).</p>
6	<p>Appeals on the final decision can be made pursuant to section 55 of the <i>Essential Services Commission Act 2001</i> (Vic).</p>

## 2 SPECIFIC INFORMATION REQUIREMENTS IN RELATION TO ACCESS PRICES

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Specific information will be required by the Commission to enable it to assess whether an applicant's proposed access arrangement is consistent with the principles set out in the Pricing Order and/or the Rail Access Pricing Guideline made by the Commission pursuant to the Pricing Order.

The Pricing Order requires that the prices 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. Further, the proposed access arrangement is required to comply with the Pricing Order and any pricing methodology issued by the Commission.

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 the access provider over an access period (but excluding terminal services) which is referred to as the "forecast revenue requirement".

In order to approve the revenue cap contained in a proposed access arrangement and to determine whether prices that an access provider proposes to charge in respect of declared rail transport services, including internal transfer prices, are set so as to comply with that revenue cap the Commission should have information at hand to develop a:

1. Comprehensive build-up of costs forming the forecast revenue requirement; and
2. Forecast revenue from declared rail transport services, including internal transfer services.

To assist the timely assessment of the access provider's proposed access arrangement, detailed information and supporting material will be required of these costs and forecast revenues, including:

- a comprehensive break-down of forecast operating maintenance and capital expenditures for the initial access period and subsequent access period/s including cost drivers and assumptions, and supported by a detailed asset management plan;
- calculation of the initial asset base, including previous capitalisation policies and allocation of costs to above and below rail components of the business (the Commission expects this data to be audited);
- the estimated cost of capital applied or proposed to be applied to the asset base, and the basis for the estimated value;
- forecasts of other non-capital costs, including depreciation, and operating margins with justification of the levels proposed;
- reference prices, or pricing methodologies, including transfer prices, and forecast usage (as applicable to each element of access charges) to enable an assessment of whether prices comply with the revenue cap; and

- forecast non-reference service revenue with supporting information on the assumptions, including separate forecasts for V/Line Passenger, freight non-reference services, revenues from “existing access agreements” (as defined in section 3.3 of the Rail Access Pricing Guideline), and any other non-reference services.

With this type of access information at hand, the Commission expects to be in a position to assess an applicant’s draft pricing proposal, and if necessary, to advise on revisions that would be required to satisfy the requirements of the RCA and the Pricing Order and the Rail Access Pricing Guideline made by the Commission.

Each of these items is considered in more detail in the sections below.

## 2.1 Disaggregation reporting

Information in relation to costs, and usage of the network that is provided on an aggregated basis, will also need to be provided on a disaggregated basis as well to enable the Commission to properly assess the relevant components.

Forecast disaggregated information should be prepared using principles consistent with the Pricing Order, the Rail Access Pricing Guideline made by the Commission, and should also be consistent with the Account Keeping Rules and any Cost Allocation Policy approved under those rules.

The access provider must explain the process for deriving disaggregated information, and this process must also be consistent with the proposed cost allocation policy, as provided by the access provider to the Commission under section 5 of the Account Keeping Rules.

The Pricing Order makes it clear that disaggregated reporting is necessary for freight services and V/Line passenger services at a minimum, and in each case the directly attributable costs and the allocation of indirect costs must be separately identified by types of lines.

Disaggregated reporting on a zonal basis will be required (if any pricing zones apply) for the Commission to assess differentiated prices across each of the proposed pricing zones.

The access provider must also provide:

- (i) The process for identifying (from the access provider’s audited general purpose financial statements) the cost base for the access activities business unit, separate from other services provided by the access provider, including the allocation of shared services costs to the access activities business unit (see clause 2.3 of the Account Keeping Rules – “Cost Allocation Statement”); and
- (ii) The separate identification of the costs of the access activities business unit that are attributable to the provision of declared rail transport services from those that are attributable to other activities, such as the management of State Government rail projects, and the manning of certain rural stations and platforms (see clause 2.3 of the Account Keeping Rules).

## 2.2 General reporting requirements

### 2.2.1 Reporting periods and values

All data should be provided on an annual basis for each year of the access period. The cost benchmarks should be provided for a ten year period. All benchmarks should be expressed in real terms using a consistent base year.

### 2.2.2 Model

It is preferred that a full financial/pricing model be provided to clearly show how calculations have been made, along with the rationale for the many assumptions that typically support such financial/pricing models. To ensure consistency of assumptions, the financial model and its inputs should all be in constant (real) dollars using a consistent base year.

### 2.2.3 Historical data

All cost and volume benchmarks should be accompanied by corresponding historical data covering a five year period immediately preceding the relevant access period.

## 2.3 Cost building blocks

### 2.3.1 Regulatory asset base

For the purpose of calculating the revenue cap, the initial regulatory asset base (RAB) is to include only efficient capital expenditure incurred by that access provider in respect of declared rail transport services since 30 April 1999 for the purpose of extending or replacing that infrastructure (“new capital expenditure”). Any relevant asset disposals and capital contributions should be subtracted from the initial RAB.

The access provider should provide a:

- detailed cost build-up of new capital assets supported by an asset register;
- figure for the assumed life of each asset group for the purpose of calculating the depreciated value of the new capital assets;
- depreciation schedule setting out the average remaining life of new capital expenditure; and
- description of any averaging used in aggregating various depreciation schedules.

The access provider will also need to provide the methodology used to calculate the initial RAB, including the primary basis for valuation. This should include:

- A description of the methodology employed by the access provider in regard to the capitalisation of costs from 30 April 1999 through to the date on which the data was extracted (capitalisation policy); and
- The methodology used to allocate any capital costs that might be shared between access activities and other activities (that is generally, allocation between above and below rail activities).

The starting value of the RAB should be adjusted to provide the forecast value as at the start of the access period. Any material deviations from the most recent actual observed value due to additions and indexation should be set out by the access provider such that the results are replicable by the Commission.

### 2.3.2 The WACC

The access provider should set out the basis on which it has calculated its estimate of the weighted average cost of capital (WACC) in relation to its access activities. At a broad level, this should include information that would allow the Commission to replicate the access provider's calculation of the WACC, including the formula used and all relevant transformations.

The Commission's Rail Access Pricing Guideline will prescribe the use of standard forms of the WACC and the use of the "Capital Asset Pricing Model" (CAPM) as the basis for estimating the cost of equity.

The access provider should also set out the values of the following parameters (where applicable to the specific form of WACC applied) and justification of those values:

- Risk Free Rate (Nominal);
- Risk Free Rate (Real);
- Market risk premium;
- Equity Beta;
- Debt Margin;
- Tax Rate;
- Gamma;
- Debt (%);
- Equity (%); and
- Inflation Forecast.

### 2.3.3 Forecast capital expenditure

The Pricing Order provides that costs of efficient capital expenditure are recovered under the revenue cap. Within the building blocks approach, prudent capital additions during the access period will be rolled into the RAB providing a return on net capital additions and a return of capital in the form of capital adjusted depreciation.

The access provider should submit to the Commission its proposed capital expenditure plan as part of its wider detailed asset management plan. The asset management plan should identify the major, once-off and routine works that are planned to be carried out over a ten year period, consistent with efficiently achieving a “fit for purpose” standard, including the estimated efficient cost of these works.

The ten year capital expenditure forecasts should be accompanied by appropriate supporting information, including an explanation of any relevant factors underpinning these forecasts, such as:

- disaggregation in terms of major periodic maintenance and renewal, upgrade, and extension capital expenditure;
- discussion of key cost drivers and underlying assumptions made in regard to forecasts of these key cost drivers; and
- explanation of significant proposed variances (increases) in major periodic maintenance and renewal, upgrade, and extension capital expenditure as compared to recent actuals.

Where costs of capital projects are shared across access activities and other activities, the cost allocations should be set out in terms of the total cost of the capital project, proportions of costs assigned to each activity, and the methodology and assumptions used in determination of proposed cost allocations.

The asset life for new capital expenditure should be provided to support the depreciation calculations.

### 2.3.4 Operating and maintenance expenditure

The proposed operating and maintenance expenditure benchmarks should also be submitted with sufficient explanatory information as will be reasonably required by the Commission to satisfy itself that these benchmarks are prudent, and that where applicable, any costs shared by access activities and other activities are appropriately allocated.

The access provider should submit:

- Details of their actual operating and maintenance expenditure for the previous three financial years, together with a forecast of operating expenditure for a ten year period.
- An explanation of the changes in expenditure forecast for the relevant access period compared to the actual expenditure on comparable activities over a comparable period prior to the access period.

- The proposed operating expenditure for each year of the access period, on the following basis:
  - Routine maintenance - reflecting operating expenses of a more recurrent and uniform nature;
  - Major periodic maintenance where accounted for as an operating expense; and
  - Other maintenance – including abnormal, or one-off requirements (e.g. addressing maintenance deficits).
- The assumptions as to annual trends in expenditure items, together with an explanation of the reasons for those trends, covering such matters as anticipated productivity gains, input price trends and the impact of demand growth.

### 2.3.5 Corporate overheads and shared services

The access activities business unit will likely rely on a number of central services, including corporate support and shared services in operating and maintenance.

Cost allocations should be made between access activities and other activities. The access provider should clearly set out total costs of each component and the proportional split between access activities and other activities.

The access provider must set out the methodology used in allocating such costs. For example:

- (i) Where costs are directly incurred, or assets directly used, in the performance of below rail services, those costs and assets are directly identified as below rail costs;
- (ii) Where costs are incurred, or assets are used, in common for the provision of above rail services, below rail services and/or other activities, and where there is a causal relationship between the resources used and above rail services, below rail services or other activities, these costs are attributed on a reasonable basis of cost causality; and
- (iii) Where assets, costs, revenues and investments are used jointly for the provision of above rail services, below rail services and/or other activities, and where there is no direct causal relationship between the resources used and above rail services, below rail services or other activities, these costs are allocated using a reasonable allocator.

The access provider should submit a clear breakdown of corporate costs in terms of what is expensed and what is capitalised.

### 2.3.6 Operating margin

With respect to operating margin, the access provider should clearly set out:

- the scope of the operating margin and what components of operating expenditures the margin would be applied to;
- provide justification for the proposed value of the margin (in percentage terms) and providing relevant benchmarks used in setting the proposed margin; and



- provide the calculation of the dollar amount of the margin (i.e. assumed values of revenue and earnings that lead to a target margin in percentage terms).

The information should be provided in electronic form such that the Commission can replicate the calculations.

## 2.4 Volumes

Volume estimates are required to calculate forecast revenue, which can then be compared to the (cost build-up) forecast revenue requirement.

The practical challenge is in developing a robust set of volume estimates that match against each reference service and price for that service.

Usage forecasts should be provided for both train kilometres (TK) and gross tonne kilometre (GTK) for each service on each line, and aggregation of these forecasts into pricing zones (if any). The usage forecasts must be at a level of detail compatible with reference prices so that forecast revenue from reference services can be calculated from the information provided on reference prices and usage forecasts. For example, if a separate charge applies to siding movements, a forecast of these movements should be provided.

For the disaggregated volume forecasts, the following must be provided for each year of the access period:

- details of historical volumes – ideally in terms of annual train movements, GTK and train kilometres (TK), per service and geographic zone;
- forecast volumes (train movements, GTK and TK) for each year of the access period on an aggregate and disaggregated basis (covering each reference service); and
- an explanation of the reasons for assumptions regarding forecast trends from average, and any forecast variations from recent historical averages, including volume drivers and underlying assumptions regarding volume drivers.

Non-reference services will not require ex ante pricing and correspondingly will not require volume forecasts. However, a forecast of total revenue expected from non-reference services will still need to be provided in regard to the revenue cap. To the degree that forecast revenue from non-reference services is thought to be material, the access provider should provide at least a qualitative discussion on how the forecast was compiled.

## 2.5 Key Performance Indicators

Information on key performance indicators of the service standards for the rail network should also be provided by the access provider, and to support the reasonableness of the operating and maintenance costs and capital expenditure benchmarks. This should be accompanied by an explanation of the relationship between expenditure benchmarks and performance indicator outcomes.

The service standards should include the availability of each line during the access period, including all assumptions about lines open and closed during the term of the access arrangement, as well as average availability of train paths on each line.

### 3 CONFIDENTIALITY

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As discussed at section 1.3.2 above, Access Arrangement Information must be made available to access seekers and the public.

Access providers may also provide other supporting information and material to the Commission (as discussed at 1.3.3 above), and may request the Commission to accept it on a confidential basis. Access seekers may also provide the Commission with information that they consider to be confidential.

Where an access provider or an access seeker or another party provides information to the Commission which it considers to be confidential or commercially sensitive it should:

- clearly identify the particular information or contents of the document which are said to be confidential;
- state the basis for their belief that the information and/or contents of the document is confidential;
- advise as to whether they will suffer any detriment as a result of the information or the content of the document being disclosed and, if so, what that detriment will be; and
- advise as to whether any other person will suffer any detriment as a result of the information or the content of the document being disclosed and, if so, who that person is and what that detriment will be.

The Commission will consider such submissions and advise whether the information is accepted on a confidential basis or not.

In this context, it should be noted that nothing in the VRAR limits the capacity of the operator and the access seeker to agree on appropriate confidentiality arrangements between themselves. The operator may choose to provide information to the access seeker in addition to the Access Arrangement Information pursuant to such a private agreement, and the access seeker may seek to provide confidential information pursuant to such an agreement.

Also, it should be noted that the Commission has power to compel the production of information under the VRAR.

## 4 DICTIONARY

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*Access Arrangement Information* has the meaning in section 38W(2) of the RCA

*Commission Instruments* mean the instruments and guidelines developed under sections 38R to 38V of the RCA.

*Declaration Order* means an order made under section 38I of the RCA.

*Pricing Methodology* means a methodology developed by the Essential Services Commission in accordance with the Pricing Order.

*Pricing Order* means the *Rail Network Pricing Order 2005*

*RCA* means the *Rail Corporation Act 1996*, as amended by the *Transport Legislation (Further Amendment Act) 2005* (Vic).