

Essential Services Commission
Victorian Rail Access Regime
Negotiation Guidelines

1. Background

1.1 Legislative Background

Section 38V of the *Rail Corporations Act 1996* provides that the Commission must make negotiation guidelines, in accordance with the procedures in section 38N. Section 38V provides as follows:

38V. Negotiation guidelines

- (1) *The Commission must make guidelines for or with respect to—*
 - (a) *the information an access provider must provide to an access seeker, including information that relates to—*
 - (i) *the management of the capacity of a rail network; and*
 - (ii) *the availability of train paths; and*
 - (iii) *timetabling; and*
 - (b) *the procedure under which an access seeker may make an application for the provision of a declared rail transport service to it by an access provider; and*
 - (c) *the procedure and method as to how an access provider will assess and determine applications referred to in paragraph (b); and*
 - (d) *specifying a period of time within which an access provider must assess and determine applications referred to in paragraph (b); and*
 - (e) *prohibiting an access provider from requiring or requesting the following persons to identify a consignee—*
 - (i) *an access seeker seeking the provision of declared rail transport services for the purpose of providing freight services; or*
 - (ii) *a user using declared rail transport services for the purpose of providing freight services.*
- (2) *The Commission may make guidelines for or with respect to—*
 - (a) *fees or levies that an access provider may charge for assessing and determining applications referred to in sub-section (1)(b);*
 - (b) *fees or levies that an access provider may charge an access seeker for information relating to a declared rail transport service;*
 - (c) *prohibiting fees or levies of the kind referred to in paragraphs (a) and (b) if those fees or levies exceed an amount specified in the guidelines;*
 - (d) *interconnection.*

Note: The procedure for the making of the negotiation guidelines is set out in section 38N.

These negotiation guidelines are made pursuant to section 38V.

1.2 Purpose

- (a) These guidelines establish requirements that must be observed by **access providers** and **access seekers**.
- (b) In addition to meeting the **Commission's** obligations under section 38V, these **negotiation guidelines** are intended to facilitate commercial negotiation and encourage access to **declared rail transport services** and **interconnection** to be made available on fair and reasonable terms. The **negotiation guidelines** also provide information to assist the parties to understand their rights and obligations under the legislative framework.
- (c) The **Act** requires **access arrangements** and specified decisions of the **Commission** to be consistent with these **negotiation guidelines**. For example:
 - (i) paragraph 38X(1)(e) of the **Act** requires that **access arrangements** describe procedures and methods by which the **access provider** will assess and determine applications for the provision of a **declared rail transport service**, and subsection 38X(4) requires such procedures and methods to be consistent with these **negotiation guidelines**; and
 - (ii) draft decisions made by the **Commission** under section 38ZB, and final decisions under section 38ZF, must be consistent with these **negotiation guidelines**.

1.3 Commencement

These **negotiation guidelines** commence with effect from 1 January 2006.

1.4 Good faith

When following the procedures and carrying out the obligations specified in these **negotiation guidelines**, **access providers** and **access seekers** must act in good faith.

2. Information provided by access provider

- (a) An **access provider** must publish on its website, and make available for inspection at its offices, a copy of each **access arrangement** of that **access provider** approved under section 38ZF, made under section 38ZJ or 38ZL or deemed by operation of section 38ZK of the Act.

Note: Under section 38W, an **access provider** must prepare a proposed access arrangement in relation to each **declared rail transport service** they provide or are capable of providing.

- (b) In respect of each **access arrangement** of an **access provider**, the **access provider** must prepare and maintain an information pack that must be made available to an **access seeker** on request by the **access seeker** within

5 **business days** of the date that the **access provider** receives the request. For clarification, such a request may be made by an **access seeker** prior to submitting an access application.

- (c) An information pack referred to in paragraph (b) must contain the following:
- (i) a copy of the relevant **access arrangement** and **access arrangement information**;
 - (ii) a detailed diagrammatic map and a physical description of the **rail network** to which the **access arrangement** relates, including in the case of **terminals** information about the location of fixed plant and equipment and in any other case information about the infrastructure, speed limits, gradients, curves and track standards, track quality and axle load limitations;
 - (iii) a description of the **rail network's** signalling systems, safe working systems and operational systems;
 - (iv) a copy of the **statement of capacity allocation protocols** and **operating handbook** (including a copy of the **access provider's rolling stock interface standards**);
 - (v) a copy of the **access provider's master train timetable**;
 - (vi) a copy of the prescribed form for an access application;
 - (vii) a copy of the **access provider's** standard terms and conditions in relation to the relevant **declared rail transport services**; and
 - (viii) the name and contact details of an employee of the **access provider** who has primary responsibility for responding to questions from **access seekers** prior to the lodgement of access applications under section 3 of these guidelines.

Note: For the purposes of paragraph (c)(i), the contents of **access arrangements** are described in section 38X of the **Act**, and include the terms and conditions for the provision of the relevant **declared rail transport service**. **Access arrangement information** is defined in section 38A of the **Act**.

- (d) At the time an information pack is available to an **access seeker** under paragraph (c) above, the **access provider** must also advise the **access seeker** that further information may be available under sections 3 and 5 of the **capacity use rules**.
- (e) Following the provision of an information pack under paragraph (b), if an **access seeker** makes a request for further information of a type described in paragraph (f) or (g) and provides the **access provider** with a description of the service it is considering seeking (including, except in the case of **terminals**, origin and destination points, frequency and timing between origin and destination points), the **access provider** must use **all reasonable endeavours** to provide the information requested to the **access seeker** in writing within 14 days after receiving the

request for further information and the description of the service from the **access seeker**.

- (f) If an **access seeker** is seeking access to a **declared rail transport service** other than a **terminal service** and has made a request for further information (and has provided a description of the service it is considering seeking) in accordance with paragraph (e), the **access provider** must provide the following information in accordance with paragraph (e) if and to the extent requested by the **access seeker**:
- (i) whether there is likely to be sufficient **available capacity** on the **rail network** to provide the **declared rail transport service** and, if so, the **train paths** that are likely to be available to the **access seeker**;
 - (ii) if there is not sufficient **available capacity** to provide that service, what **available capacity** exists on the relevant part of the **rail network** and, in general terms, what upgrades of the **rail network** would be required to provide that service;
 - (iii) a copy of the **access provider's** standard terms and conditions in respect of that **declared rail transport service**;
 - (iv) a description of any reasonably expected upgrades or modifications of the relevant part of the **rail network**;
 - (v) for each relevant **line**, typical sectional running times for the dominant or relevant train type using that **line**;
 - (vi) a copy of the **access provider's** protocols for undertaking an assessment of works required to provide **additional capacity** to meet an **access seeker's** request made pursuant to paragraph 4.4 of these guidelines;
 - (vii) an estimate of the access charge that would apply to the relevant service and an explanation as to how that charge has been calculated, with reference to the reference tariffs set out in the **access arrangement** and any relevant **internal transfer terms**; and
 - (viii) information about such other matters as an **access seeker** would reasonably require for the purpose of making an application for access as specified in the **access arrangement**.
- (g) If an **access seeker** is seeking access to a **terminal service**, and has made a request for further information (and has provided a description of the service it is considering seeking) in accordance with paragraph (e), the **access provider** must provide the following information in accordance with paragraph (e) if and to the extent requested by the **access seeker**:
- (i) whether there is capacity to provide access to that **terminal**;
 - (ii) a description of the relevant **terminal** of the **access provider**, including the layout of the **terminal** and interface with roads, ports or other relevant infrastructure used to access the **terminal**, and a description of any operational constraints to roadside access to the relevant **terminal**;

-
- (iii) an estimate of the access charge that would apply and an explanation as to how that charge has been calculated, with reference to the reference tariffs set out in the **access arrangement** and any relevant **internal transfer terms**; and
 - (iv) information about such other matters as an **access seeker** would reasonably require for the purpose of making an application for access as specified in the **access arrangement**.

3. Access application by access seeker

- (a) An access application must be in the form prescribed in the **access arrangement**.
- (b) In addition to the obligation in paragraph (a), an **access provider** may require that access applications made by an **access seeker** contain information about or relating to the **access seeker's** proposed service. This may include:
 - (i) a description of the proposed rail operation to be carried out by the **access seeker**, including points of origin and destination on the **access provider's rail network**, frequency and timing between the points of origin and destination, any stops en-route between origin and destination and the duration of any such stops;
 - (ii) details of the proposed **rolling stock**, including the nature and number of wagons, the number of locomotives and performance characteristics and axle loads and evidence that the **access seeker's rolling stock** complies with the requirements of the **access provider** specified in the information pack provided under section 2(b);
 - (iii) the type of freight to be carried (to the extent necessary to determine which reference tariff would apply if the **access provider's access arrangement** provides for different reference tariffs to apply depending on the type of freight to be carried) including tonnage, seasonal variations, handling requirements and any safe working requirements;
 - (iv) a statement of the additions and variations to the terms and conditions specified in the **access arrangement** that are proposed by the **access seeker** for the carrying out of the proposed rail operation, including the proposed period of the proposed access agreement;
 - (v) evidence of the **access seeker's** managerial and financial ability to carry on the proposed rail operation, including evidence that:
 - (A) the **access seeker's** management and staff have the necessary knowledge and experience to carry out the proposed rail operation; or
 - (B) the **access seeker** will be able to and will engage the services of another person whose management and staff have the necessary knowledge and experience to carry out the proposed rail operation; and

-
- (C) the **access seeker** has the necessary financial resources to carry on the proposed rail operation, including the ability of the **access seeker** to meet its financial obligations to the **access provider** under an access agreement and to any other persons (including excesses under insurance policies);
 - (vi) evidence that the **access seeker** has or will have the **accreditation** necessary lawfully to operate the service it is proposing to operate;
 - (vii) the **access seeker's** contact details;
 - (viii) the **access seeker's** requirements in relation to a request for access to a **terminal** of the **access provider**, and
 - (ix) any other information reasonably required by the **access provider** to assess and respond to an access application.
- (c) In addition to the obligation in paragraph (a), an **access provider** may require that access applications made by an **access seeker**:
- (i) specify the type of **train path** to which access is sought, being a "passenger train path", a "scheduled train path" or an "unscheduled train path" (as these terms are defined in the **capacity use rules**); and
 - (ii) provide information to the **access provider** as to the likely usage of the **train path**, which information may include (for example):
 - (A) a contractual commitment to transport passengers or freight (if such commitment has been entered into);
 - (B) an anticipated change in demand associated with a committed upgrade or expansion to plant;
 - (C) market growth or trend data; and
 - (D) a need for conditional or surge capacity based on historical usage patterns, market characteristics or other constraints such as shipping.
- (d) For the avoidance of doubt, an **access provider** may not require or request an **access seeker** seeking the provision of **declared rail transport services** for the purpose of providing **freight services** to identify a consignee.

4. Assessing and determining an application for access

4.1 Acknowledgment of receipt of application

- (a) The **access provider** must, by notice in writing to the **access seeker**, acknowledge receipt of an access application within 5 **business days** of receipt.
- (b) The **access provider** must, by notice in writing to the **access seeker** within 10 **business days** of receipt of an **access application** (or such longer period as the parties may agree), advise the **access seeker** that either:

-
- (i) the **access seeker's** access application is in the form prescribed in the **access arrangement** and contains the information referred to in section 3 that the **access provider** requires an access application to contain; or
 - (ii) the **access seeker's** access application is not in the form prescribed in the **access arrangement** or does not contain the information referred to in section 3 that the **access provider** requires an access application to contain (in which case the **access provider** may reject the **access application**).
- (c) If the **access provider** rejects an access application in accordance with paragraph (b), the **access provider** must, in the notice to the **access seeker** provided under paragraph (b), specify the additional information the **access provider** reasonably requires the **access seeker** to provide to the **access provider** for the application to be compliant.
- (d) Having received a notification pursuant to paragraph (c), an **access seeker** may elect to:
- (i) give further information to the **access provider**, in which case, paragraphs (a), (b) and (c) shall apply to the provision of such further information with such alterations and modifications as are necessary;
 - (ii) refer the matter to the **Commission** as an **access regime dispute** under section 38ZV of the **Act**; or
 - (iii) accept the rejection and not proceed further with that access application.
- Note:** Under section 38ZZA, the **Commission** may decide not to make a decision in respect of an **access regime dispute** (described as a “dispute resolution decision” in section 38ZZA).
- (e) If the **access provider** does not reject the access application within 10 **business days** of receipt of the access application or such longer period as the parties agree, the **access provider** is deemed to have given an acknowledgment under paragraph (b)(i).

4.2 Assessment of access application

- (a) Within 20 **business days** of issuing a notice to the **access seeker** under section 4.1(b)(i), or the date on which the **access provider** is deemed to have done so under section 4.1(e), the **access provider** must determine, consistent with the **access arrangement**, the **capacity use rules** and any protocols made under those rules, whether there is sufficient **available capacity** to meet the **access seeker's** request and, by notice in writing to the **access seeker**, advise the **access seeker** accordingly.
- (b) Subject to section 4.2(e), if the **access provider** determines under paragraph (a) that there is sufficient **available capacity** to meet the **access seeker's** request, the **access provider** must include in the notice provided to the **access seeker** in accordance with paragraph (a), the proposed terms and conditions, including price,

upon which the **access provider** will make the **declared rail transport service** requested available.

- (c) If the **access provider** determines under paragraph (a) that there is not sufficient **available capacity** to meet the **access seeker's** request (after assessing available capacity in accordance with section 4 of the **capacity use rules**), the **access provider** must, within 25 **business days** of issuing a notice to the **access seeker** under section 4.1(b)(i) or within 25 **business days** of the date on which the **access provider** is deemed to have done so under section 4.1(e):
- (i) provide reasons why the **declared rail transport service** cannot be made available to meet the **access seeker's** request;
 - (ii) if part but not all of the **access seeker's** request can be satisfied from **available capacity**, subject to section 4.2(e), notify the **access seeker** of the terms and conditions, including price, upon which the **access provider** will make the **declared rail transport service** requested available to the extent of the **access provider's available capacity**; and
 - (iii) if works are required to provide **additional capacity** necessary to meet the **access seeker's** request in full, at the time of providing the notice under section 4.2(c)(ii), either:
 - (A) provide the **access seeker** with an outline of the works, and an indicative assessment of the cost of such works, required to provide **additional capacity** necessary to meet the **access seeker's** request; or
 - (B) offer to undertake an assessment of the works required and the costs of those works in accordance with the protocols prepared and maintained by the **access provider** under section 4.4.
- (d) If an **access provider** does not comply with the **capacity use rules** and any protocols made under those rules (and approved by the **Commission**) when assessing an access application under section 4.2(a), the **access seeker** may refer the matter to the **Commission** as an **access regime dispute** under section 38ZV of the **Act**.
- Note:** Under section 38ZZA, the **Commission** may decide not to make a decision in respect of an **access regime dispute** (described as a “dispute resolution decision” in section 38ZZA).
- (e) When assessing an access application, an **access provider** may reject an access application if:
- (i) the **access seeker** does not have or will not have all necessary **accreditation** lawfully to operate the service it is proposing to operate;
 - (ii) the **access seeker's rolling stock** does not comply with the requirements of the **access provider** specified in the **access provider's information pack**;

-
- (iii) either the management and staff of the **access seeker** do not have the necessary knowledge and experience to carry on the proposed rail operations, or the **access seeker** will not be able to engage the services of another person whose management and staff have the necessary knowledge and experience to carry on the proposed rail operations; or
 - (iv) in carrying on the proposed rail operations, the **access seeker** does not have the necessary financial capability to meet its financial obligations to the **access provider** under an access agreement and the financial obligations it owes to any other persons (including excesses under insurance policies).
- (f) If the **access provider** determines to reject an access application under paragraph (e), the **access provider** must, within 25 **business days** of issuing a notice to the **access seeker** under section 4.1(a) or within 25 **business days** of the date on which the **access provider** is deemed to have done so under section 4.1(e), notify the **access seeker** of its determination and provide reasons why the **declared rail transport service** cannot be made available to meet the **access seeker's** request.

4.3 Negotiation protocol

- (a) An **access provider** must develop a **negotiation protocol** that contains the procedure and method for negotiating the terms and conditions of agreements for access to **declared rail transport services** and **interconnection**. In addition to the matters listed in section 4.3(b) below, the **negotiation protocol** must include:
- (i) identified and reasonable time periods within which negotiation about the terms and conditions should be conducted; and
 - (ii) procedures for resolving disputes arising between the **access provider** and the **access seeker** in relation to the terms and conditions of access. Such procedures must specify:
 - (A) the time periods that apply to the notification of a dispute by an **access seeker** to an **access provider**,
 - (B) the period within which the Chief Executive Officers of each of the **access provider** and the **access seeker** (or their nominees) must meet to attempt to resolve a dispute notified under paragraph (A); and
 - (C) the alternative dispute resolution process that may be implemented by the parties (including mediation or binding expert determination), prior to the notification of an **access regime dispute** to the **Commission**.
- (b) Following the provision by an **access provider** of a notice under section 4.2(a) or section 4.2(c), the **access provider** must:
- (i) meet and negotiate in good faith with the **access seeker** to seek to reach agreement on the terms and conditions, including price, on which the

access provider will make the requested **declared rail transport service** available (including if a notice has been provided under section 4.2(c)(ii) of availability or part availability of capacity, in relation to any works required to provide **additional capacity**); and

- (ii) use **all reasonable endeavours** to meet the requirements of an **access seeker** who has complied with its obligations under the **Act**, these **negotiation guidelines** and the **negotiation protocol**.

Note: Consistent with paragraph 38X(1)(e) and subsection 38X(4) of the **Act**, the **Commission** expects that the **negotiation protocol** will form part of proposed access arrangements that are provided to the **Commission** for its approval under section 38W. Having regard to section 38ZZA of the **Act** and section 1.4 of these guidelines, the **Commission** also expects both access seekers and access providers to negotiate the terms and conditions of access to **declared rail transport services** in good faith.

- (c) For clarification, if an **access provider** and an **access seeker** are unable to agree as to the terms and conditions (including prices) for the provision of a **declared rail transport service**, including in circumstances where the **negotiation protocol** has been followed by both parties, this will be an **access regime dispute** for the purposes of Division 5 of Part 2 of the **Act**.

4.4 Assessment of works required to provide additional capacity

- (a) An **access provider** must prepare and maintain protocols with respect to undertaking an assessment of works required to provide **additional capacity** to meet an **access seeker's** request for access, which must provide for the following matters, without limitation:
 - (i) procedures for assessing the nature of the work required to undertake a detailed assessment of any works required to provide **additional capacity** to meet the **access seeker's** request for access and notifying the **access seeker** of such work;
 - (ii) procedures for carrying out or procuring the carrying out of any detailed assessment of works required to provide **additional capacity** to meet the **access seeker's** request for access;
 - (iii) procedures for allowing the **access seeker** to have input into any detailed assessment of any works required to provide **additional capacity** to meet the **access seeker's** request for access;
 - (iv) timeframes for:
 - (A) carrying out the work referred to in sub-paragraph (i); and
 - (B) providing a detailed assessment of any works required to provide **additional capacity** to meet an **access seeker's** request for access;
 - (v) procedures for varying any timeframe referred to in sub-paragraph (iv) with the consent of the **access seeker**;

-
- (vi) the basis upon which the **access provider** proposes to allocate any costs incurred in providing a detailed assessment of such works, which must be fair and reasonable having regard to the nature of the request for access, the work undertaken and the benefits to the **access provider** and the **access seeker** of any detailed assessment in relation to works required to provide **additional capacity** to meet the **access seeker's** request for access; and
 - (vii) procedures for resolving any dispute that may arise in connection with any matter referred to in the protocols.
- (b) An **access provider** must submit any protocols that the **access provider** is required to prepare and maintain under paragraph (a) to the **Commission** for approval at the same time as it submits a proposed access arrangement to the **Commission**.
 - (c) Any protocol made under paragraph (a) must:
 - (i) provide for the matters that these guidelines require the protocol to provide; and
 - (ii) be consistent with these guidelines.
 - (d) An **access provider** must comply with any protocol that the **access provider** has submitted to the **Commission** under paragraph (b).
 - (e) An **access provider** must:
 - (i) make available for inspection at its offices; and
 - (ii) publish on its website,a copy of each protocol that the **access provider** is required to prepare and maintain under paragraph (a).
 - (f) Paragraphs (a) to (e) apply to the variation of any protocol that the **access provider** is required to prepare and maintain under paragraph (a):
 - (i) with such alterations and modifications as are necessary; and
 - (ii) as if that variation were a proposed protocol submitted for approval under paragraph (b).

4.5 Extension of time periods

Any time period referred to in these **negotiation guidelines** may be extended by agreement between the **access provider** and the **access seeker** or, on the application of either of them, by the **Commission** by notice in writing.

5. General obligations

-
- (a) An **access provider** must not request or require the following persons to identify a consignee:

-
- (i) an **access seeker** seeking the provision of **declared rail transport services** for the purpose of providing **freight services**; or
 - (ii) a **user** using **declared rail transport services** for the purpose of providing **freight services**.
- (b) In providing information pursuant to section 2, and in assessing and determining applications for access, an **access provider** must not have regard to the interests of itself or a **related body corporate** to the extent that the **access provider** or that **related body corporate** also acts in the capacity of **access seeker** or **user** in priority to the interests of other **access seekers** or **users** with respect to the supply of **declared rail transport services**.

6. Fees and levies

6.1 Fees and levies for the provision of information

An **access provider** is entitled to charge an **access seeker** a fee for the provision of (and as a pre-condition to providing) an information pack under section 2(a) and the additional information required to be provided under section 2(d), the combined cost of which must not exceed \$1,000. This fee may be refunded by the **access provider** if an access agreement is entered into with the relevant **access seeker**.

6.2 Fees and levies for assessing works

- (a) Where an **access seeker** has accepted the **access provider's** offer under section 4.2(c)(iii)(B) and the **access provider** has carried out the detailed assessment of the works and the cost of the works, the **access provider** may charge a fee for providing such detailed assessment.
- (b) An **access provider** must, on request by the **access seeker**, provide to the **access seeker** in writing a breakdown of the component costs of the fee charged by the **access provider** under paragraph (a).
- (c) A fee charged in under paragraph (a) must be calculated in accordance with the protocols made under section 4.4.

6.3 No other fees or levies

Except as provided in sections 6.1 and 6.2, an **access provider** may not charge a fee or levy for assessing and determining access applications or providing information in relation to a **declared rail transport service**.

7. Interconnection

Note: Under section 38V(2)(d) of the **Act**, the Commission may make guidelines for or with respect to **interconnection**. Under section 38ZT of the **Act**, subject to that section, on receipt by an **access provider** of a notification from an **access seeker** who owns or operates a railway track or railway siding, or intends to own or operate a proposed railway track or railway siding, that the **access seeker** desires to connect that railway track or railway siding to the **access provider's relevant railway track**, the **access provider** must

do all things reasonably necessary to enable the **access seeker** to connect the railway track or railway siding, or proposed railway track or railway siding, to the **access provider's relevant railway track**.

7.1 Preliminary information to be provided by an access provider

Upon receipt of an expression of interest by an **access seeker** who owns or operates a railway track or railway siding or who intends to own or operate a proposed railway track or railway siding, that the **access seeker** desires to connect their railway track or railway siding or proposed railway track or railway siding to the **access provider's** relevant railway track, the **access provider** must, within 14 days of receipt of such expression of interest, make available to the **access seeker**:

- (a) overview information about the **access provider's rail network** and **capacity**;
- (b) a description of the physical infrastructure at the location of the proposed **interconnection**;
- (c) the **access provider's** procedural and physical interface arrangements at the site of the **interconnection**;
- (d) the **access provider's** engineering and operational standards; and
- (e) the **access provider's** reliability and safety guidelines, standards or operating procedures.

7.2 Information to be provided by the access seeker

An **access provider** may require an **access seeker** who makes an application for **interconnection** to demonstrate (within 30 days) that:

- (a) the proposed **interconnection**:
 - (i) can be carried out in a technically and economically feasible way; and
 - (ii) will be consistent with the carrying on of safe and reliable rail operations on the line;
- (b) the **access seeker** has obtained and will maintain all **approvals** in relation to the construction, commissioning, operation and maintenance of the **interconnection**;
- (c) the configuration of the **interconnection** to the **access provider's rail network** is such that the **interconnection** will not, by virtue of its existence, reduce the **practical capacity** of that component of the **rail network**;
- (d) either:
 - (i) the management and staff of the **access seeker** have the necessary knowledge and experience; or
 - (ii) the **access seeker** will be able to and will engage the services of another person whose management and staff have the necessary knowledge and experience,to design, construct, commission, operate and maintain the proposed **interconnection**; and

-
- (e) the **access seeker** has the necessary financial resources to design, construct, commission, operate and maintain the proposed **interconnection**.

7.3 Additional information to be provided by the access seeker

An **access provider** may require an application for **interconnection** to contain the following:

- (a) a description of the **access seeker's** infrastructure and the proposed **interconnection**, including information about the design and construction of the **interconnection**;
- (b) a commissioning plan for the proposed **interconnection**;
- (c) a maintenance plan for the **interconnection**;
- (d) an explanation of how the **interconnection** will comply with the **access provider's** engineering and operational standards;
- (e) an explanation of the procedural and physical interface arrangements of the **interconnection** and an undertaking that such arrangements will comply with all procedural and physical interface arrangements of the **access provider**; and
- (f) an undertaking from the **access seeker** in relation to each of the following matters that:
 - (i) the **access seeker** will bear all construction, operation, maintenance and upgrade costs associated with the **interconnection**; and
 - (ii) the **access seeker** will comply with any reasonable requirements of the **access provider** in relation to the construction of the **interconnection**; and
 - (iii) the **access seeker** will maintain and comply with all **approvals** in relation to the construction, commissioning, operation and maintenance of the **interconnection**.

7.4 Determining application for interconnection

An **access provider** may refuse to consent to an application for **interconnection** in the circumstances permitted under section 38ZT(3) of the **Act**.

7.5 Timeframes

- (a) Upon receipt of an application for **interconnection**, an **access provider** must notify the **access seeker** that it consents or does not consent to the application for **interconnection** within 30 days. This is the time period for the purposes of section 38ZT(3).
- (b) The timeframe stipulated in paragraph (a) may be extended at any time by agreement between the **access seeker** and the **access provider**.

7.6 General obligations

The **access provider** and an **access seeker** must negotiate with each other in good faith.

8. Application

8.1 Application of negotiation guidelines to joint ventures

- (a) This section applies if there is more than one **access provider** in connection with **rail infrastructure**, including if:
- (i) the relevant **rail infrastructure** is owned or operated by two or more persons as a joint venture or partnership; or
 - (ii) the **rail infrastructure** is owned and operated by different persons; or
 - (iii) **rail infrastructure** is legally owned by a person or persons on trust for others.

In such a case each **access provider** in connection with the rail infrastructure is referred to in this section as a **participant**.

- (b) If these **negotiation guidelines** require or permit something to be done by the **access provider**, that thing may be done by one of the **participants** on behalf of all the **participants**.
- (c) If a provision of these **negotiation guidelines** refers to the **access provider** bearing any costs, the provision applies as if the provision referred to any of the **participants** bearing any costs.
- (d) If a provision of these **negotiation guidelines** refers to the **access provider** doing something, the provision applies as if the provision referred to one or more of the **participants** doing the thing on behalf of all the **participants**.

8.2 Waiver

The Commission may at its sole discretion and by notice in writing to an **access provider** waive any of an **access provider's** obligations under these **negotiation guidelines** where the **Commission** considers this would be consistent with the **Commission's** statutory obligations and that compliance with the obligation would not be necessary to achieve the purpose of these **negotiation guidelines** as set out in section 1.2.

9. Definitions

In these guidelines unless the context otherwise requires:

- (a) terms which appear **like this** and which are not otherwise defined in these guidelines have the same meaning as in the **Act**, and
- (b) **access arrangement** means an access arrangement approved in a final decision under section 38ZF of the **Act**, or made under section 38ZJ or 38ZL of the **Act**, or a proposed access arrangement that is deemed to be an access arrangement pursuant to section 38ZK of the **Act**;
- (c) **access arrangement information** means 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 the requirements in Part 2 of the **Act**;
- (d) **access provider** has the meaning set out in the **Act**;
- (e) **access regime dispute** means:
- (i) a dispute described in section 38ZU(1) of the **Act**; or
 - (ii) a belief of an access seeker or a user of a kind described in section 38ZU(2) of the **Act** that is taken to give rise to an access regime dispute by operation of that subsection;
- (f) **access seeker** means a person seeking to be provided a **declared rail transport service** by an **access provider**, or a person seeking **interconnection**;
- (g) **Act** means the *Rail Corporations Act 1996* (Vic);
- (h) **accreditation** means accreditation in accordance with Division 3 of Part VI of the *Transport Act 1983*;
- (i) **additional capacity** means:
- (i) with respect to a rail **line**, any capacity additional to the existing **practical capacity** of the **line**;
 - (ii) with respect to a rail **terminal**, any capacity additional to the existing **practical capacity** of the **terminal**;
- (j) in deciding whether an **access provider** has used **all reasonable endeavours**, regard shall be had to relevant **standards**, **good industry practice** and other regulatory requirements, the performance of other **access providers** and to interstate, national and international benchmarks;
- (k) **approval** means a consent, licence, permit or other approval required by any **legislation** or lawfully required by the Crown in relation to the design, construction, commissioning, operation and maintenance of the **interconnection**, including any:
- (i) necessary construction or planning approvals including any planning scheme amendment, planning permit or development approval;
 - (ii) approval required under environmental legislation (if any); and
 - (iii) consent, licence, permit or other approval required in respect of any artefacts etc in, on or below the surface of, the site;
- (l) **available capacity** means;
- (i) with respect to a rail **line**, the availability of **train paths**, as determined in accordance with the **capacity allocation protocols**;
 - (ii) with respect to a **terminal**, the capability of providing **declared rail transport services** at that **terminal** after taking into account existing contractual commitments and any requirements to reserve capacity for prudent operation of the **terminal** in accordance with all applicable **standards** and **good industry practice**;

-
- (m) **business day** means a day that is not a Saturday, Sunday or public holiday in the State of Victoria;
- (n) **business unit** means a distinct division, department, branch, group, team or unit of an **access provider** or a **related body corporate** of an **access provider**;
- (o) **capacity** means:
- (i) with respect to a rail **line**, the capability of providing **train paths**;
 - (ii) with respect to a **terminal**, the capability of providing **terminal services**;
- (p) **declared rail transport service** means a rail transport service declared by an Order under section 38I of the **Act**;
- (q) **freight service** means a service for the carrying of freight by a railway;
- (r) **good industry practice** means all those practices followed in the commercial railway industry when an activity is undertaken:
- (i) in accordance with all applicable **legislation** and **standards**; and
 - (ii) with due care and skill;
- (s) **interconnection** means the connection of an **access seeker's** railway track or railway siding to an **access provider's** relevant railway track as provided for by section 38ZT of the **Act**;
- (t) **internal transfer terms** means the terms and conditions upon which, including prices, an **access provider** provides a **declared rail transport service** to itself or a **related body corporate**;
- (u) **legislation** means Commonwealth, Victorian or local government legislation including regulations, orders, by-laws, rules and other subordinate legislation or other document enforceable under any such legislation, regulations, orders, by-laws, rules or subordinate legislation;
- (v) **line** in respect of the **rail network** of an **access provider**, means the rail path between two locations on the **rail network** that has a common volume of capacity;
- (w) **master train timetable** means the master train timetable that an **access provider** is required to prepare and maintain under the **capacity use rules**;
- (x) **negotiation protocol** is the document described in clause 4.3(a) of these **negotiation guidelines**;
- (y) **operating handbook** means the operating handbook that an **access provider** is required to prepare and maintain under section 3 of the **network management rules**;
- (z) **practical capacity** means:
- (i) with respect to a rail **line**, the maximum theoretical capacity of a **line** adjusted to reflect the requirements for prudent maintenance and operational contingencies in accordance with **good industry practice**;

-
- (ii) with respect to a **terminal**, the maximum theoretical capacity of a **terminal** adjusted to reflect the requirements for prudent maintenance and operational contingencies in accordance with **good industry practice**;
- (aa) **rail network** means the **rail infrastructure** used to provide **declared rail transport services**;
- (bb) **related body corporate** has the meaning set out in the *Corporations Act 2001* (Cth);
- (cc) **rolling stock** means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the rail track;
- (dd) **rolling stock interface standards** means the rolling stock interface standards required to be prepared and maintained by an **access provider** under and in accordance with the **network management rules**;
- (ee) **standards** means any standard or code of practice issued from time to time by Standards Australia (an incorporated body formerly known as the Standards Association of Australia), the Association of American Railroads, the International Union of Railways, British Standards, Federal Railroad Administration, the Australasian Railway Association or such similar body to the extent that the standard or code is applicable to the Victorian railway industry; and
- (ff) **statement of capacity allocation protocols** means the statement of capacity allocation protocols required to be prepared and maintained by an **access provider** under the **capacity use rules**;
- (gg) **terminal** means a facility at which freight is loaded or unloaded from **rolling stock**, or stored, and includes hard stands, equipment and other infrastructure used for the loading or unloading of freight from **rolling stock** at the facility;
- (hh) **terminal services** mean services provided by means of a terminal that has been declared to the **rail infrastructure** under section 38B of the **Act**; and
- (ii) **train path** means a right (whether arising under an agreement or otherwise) to operate **rolling stock** between particular locations on a railway at particular times.