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OVERVIEW OF THE VICTORIAN RAIL ACCESS REGIME

INFORMATION PAPER

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1 | INTRODUCTION

This information paper provides an overview of the Victorian Rail Access Regime (**VRAR**) to better inform access seekers and access providers about the regime. This is intended to be of assistance to parties negotiating access agreements. This information paper is also intended to complement the Draft Rail Access Regime Dispute Resolution Guideline that the Essential Services Commission (the **Commission**) has released for public comment. The Draft Rail Access Regime Dispute Resolution Guideline sets out the Commission's processes, procedures and preferred strategies for resolving access regime disputes under the *Rail Corporations Act 1996* (Vic) (**RCA**).

The purpose of this information paper is to describe the key features of the VRAR and briefly outline the rights and responsibilities of access providers, access seekers and users under the regime.

The paper provides an overview of the VRAR and outlines the context in which access regime disputes may arise. The paper is organised as follows:

- Chapter 2 describes the statutory framework for the VRAR;
- Chapter 3 outlines the obligations of access providers under the RCA; and
- Chapter 4 summarises the Commission's role within the statutory access framework.

2 | STATUTORY FRAMEWORK

The VRAR is established in Part 2A of the RCA, which came into full effect on 1 January 2006. The statutory framework has, among other things, the following elements:

- declaration by the Governor in Council (on the recommendation of the Minister) of a rail transport service to be a 'declared rail transport service' (s 38I);
- declaration by the Governor in Council that a person who provides, or is capable of providing, a rail transport service is an 'access provider' (s 38D) and thereby subject to the provisions of the access regime;
- a requirement that the Commission make certain rules and guidelines (called 'Commission Instruments') for the purposes of implementing and administering the VRAR and the processes to be followed when making these Instruments (Division 2 of Part 2A);
- a 'pricing principles order' made by the Governor in Council that specifies the principles an access provider must apply when determining the prices that an access provider may charge for the provision of a declared rail transport service (s 38J);
- a rail access pricing methodology for the calculation of prices that an access provider may charge for the provision of a declared rail transport service made by the Commission pursuant to the pricing principles order;
- a requirement that each access provider submit a proposed access arrangement for approval by the Commission, which must include the matters prescribed by the RCA (s 38W);
- the process for approving a proposed access arrangement and the circumstances in which an approved access arrangement can be varied or renewed (Division 3 of Part 2A);
- the rights of access seekers and obligations of access providers in relation to interconnection of rail lines (s 38ZT);
- a dispute resolution process, including a description of what constitutes an 'access regime dispute', the rules that govern the process for making an application to the Commission to decide the dispute and the processes that the Commission must observe when deciding the dispute (Division 5 of Part 2A);
- specific obligations that bind access providers (Division 6 of Part 2A), including that access providers must not engage in conduct for the purpose of or having the effect of hindering or preventing access (s 38ZZS);
- specific obligations of access providers, access seekers and users with respect to the treatment of confidential information (Division 7 of Part 2A);

- mechanisms for the enforcement of the statutory provisions and regulatory decisions, including access regime dispute resolution decisions (Division 8 of Part 2A);
- the principle of passenger priority, whereby priority is given to the provision of declared rail transport services to passenger service users over other users (s 38H); and
- the objectives of the Commission in administering the RCA (s 38F), which are in addition to the Commission's objectives under the *Essential Services Commission Act 2001* (Vic) (**ESC Act**).

2.1 Declared services

The access regime applies to rail transport services that are declared by Order of the Governor in Council to be 'declared rail transport services' pursuant to section 38I of the RCA.

On 16 December 2005 three Declaration Orders were published in the *Victoria Government Gazette*:¹ the *Freight Network Declaration Order 2005*, the *Passenger Network Declaration Order 2005*, and the *Dynon Terminal Order 2005*. These Declaration Orders came into effect on 1 January 2006.

In effect, the Declaration Orders provide that:

- a freight service provided by means of Relevant Rail Infrastructure is declared to be a declared rail transport service;
- a passenger service provided by means of Relevant Rail Infrastructure is declared to be a declared rail transport service; and
- the Dynon Terminals are declared to be rail infrastructure.

In practical terms, subject to some exclusions (e.g., for certain sidings), Relevant Rail Infrastructure is the rail infrastructure that is the subject of:

- the former *Primary Infrastructure Lease* (this was between the State and Pacific National. This lease has now been replaced by a new lease between the State and V/Line Passenger²);
- the *Infrastructure Lease – Train* (between the State and Connex Melbourne Pty Ltd (**Connex**)); and
- the *Dynon Intermodal Terminal Lease* (operated in part by Victorian Rail Track (**VicTrack**) and in part by P&O Ports) and the *South Dynon Lease* (leased from

¹ No. S 259 of 2005.

² V/Line Passenger refers here to V/Line Passenger Pty Ltd, and to its sole shareholder V/Line Passenger Corporation (a statutory corporation established by Division 2A of Part 2 of the RCA). V/Line Passenger has become the lessee of the regional rail network following the reacquisition by the State of that rail network from Pacific National. Some of the declaration orders refer to areas described in maps contained in the Primary Infrastructure Lease.

the State by Pacific National), as well as some sidings and common user areas of VicTrack in the Dynon precinct.

The Declaration Orders effectively declare the following kinds of declared rail transport services:

- certain below rail services provided to freight operators on the rural and metropolitan intrastate rail networks;
- certain services provided to V/Line Passenger (in its capacity as a user of declared rail transport services) for regional passenger operations on the rural and metropolitan rail networks; and
- terminal services at the Dynon rail terminals.

2.2 Regulatory instruments

Detailed requirements of the VRAR are established under the following regulatory instruments.

2.2.1 Commission Instruments

As noted, the RCA requires the Commission to make 'Commission Instruments'. These include rules about regulatory accounting keeping, ring fencing, capacity use and network management, and the Negotiation Guidelines (for the negotiation of access). The Commission Instruments were published in the *Victoria Government Gazette*³ on 4 January 2006 and came into effect on 1 January 2006. The Commission Instruments, and the Commission's explanation of the approach it adopted in making them, are available in the *Commission Instruments Paper* dated 30 December 2005 on the Commission's website.⁴

2.2.2 Pricing Order

As contemplated by section 38J of the RCA, the Governor in Council (on the recommendation of the Minister) made *the Rail Network Pricing Order 2005 (Pricing Order)*⁵ on 5 October 2005. The Pricing Order prescribes the principles that an access provider must apply when determining the price that may be charged for the provision of a declared rail transport service. The Commission must also comply with the pricing principles in the Pricing Order when performing its regulatory functions under the VRAR (e.g., approving an access arrangement, or making a dispute resolution decision). The Pricing Order came into effect on 1 January 2006.

³ No. S 2 of 2006.

⁴ www.esc.vic.gov.au

⁵ See Victorian Government Gazette No S 184 of 2005.

2.2.3 Guidelines

The Pricing Order authorises the Commission to determine a rail access pricing methodology for the calculation of prices to be charged by an access provider in respect of declared rail transport services. After a consultation process which included the release of the *Rail Access Pricing Consultation Paper* in October 2005, and after considering submissions from stakeholders in response to that paper, the Commission released its *Rail Access Pricing Guideline* on 6 January 2006. The *Rail Access Pricing Guideline* sets out the Commission's views in relation to the appropriate rail access pricing methodology within the governing principles of the Pricing Order.

On 5 January 2006 the Commission released the *Procedural Requirements for Approving Access Arrangements: Guidance Paper* to provide guidance to access providers in relation to the information and material the Commission requires to be provided at the same time a proposed access arrangement is submitted for approval. The Guidance Paper also provides an outline of the access arrangement approval process.

Both the *Rail Access Pricing Guideline* and the *Procedural Requirements for Approving Access Arrangements: Guidance Paper* are available on the Commission's website.

2.3 Access arrangements

2.3.1 Purpose of an access arrangement

One of the objectives of an access arrangement is to facilitate third party access to the rail network of an access provider. This is achieved, in part, by providing indicative terms and conditions of access to an access provider's 'reference services'. ('Reference services' are defined in section 2.3.4.) An access arrangement is also required to set out the processes to be followed by the access provider for assessing and determining access applications and for determining available network capacity. This is intended to facilitate the commercial negotiation process and reduce the likelihood of disputes arising between access providers and access seekers that require regulatory intervention.

The access arrangement also provides greater regulatory certainty for the access provider as, once approved, it provides clear guidance in relation to conduct that is consistent with the Pricing Order and the Commission Instruments. In the event that a dispute arises during the negotiation of an access agreement, the overarching access arrangement will be relevant to the determination of that dispute, and the decision made by the Commission must not be inconsistent with the terms and conditions contained in the binding access arrangement.

2.3.2 Basic requirements of an access arrangement

An access arrangement must provide for and address each of the matters specified in section 38X(1) of the RCA, including:

- a description of the reference service(s) to which the access arrangement relates;
- information as to whether that service is being provided by the access provider to itself or a related body corporate of the access provider;
- the terms and conditions for the provision of that service;
- the price, or methodology for the calculation of the price, to be charged in respect of the provision of that service;
- information on the availability and the indicative terms and conditions for the provision of declared rail transport services that are not reference services;
- the procedure for making an access application;
- the procedure and method the access provider will use to assess and determine an access application; and
- a date for the expiry of the access arrangement.

When submitted for approval it must be accompanied by the information that an access seeker would reasonably require to understand the derivation of the elements of the access arrangement ('access arrangement information'), pursuant to section 38W(2).

The access arrangement must also be consistent with:

- other provisions of the RCA (including, without limitation, provisions relating to discriminatory pricing (s 38ZZY) and the principle of passenger priority (s 38H));
- the Pricing Order (s 38X(3));
- the Commission Instruments (ss 38X(4) and 38X(5)); and
- the *Rail Access Pricing Guideline* (s 38X(3)).

In order to comply with the relevant Commission Instruments, the following documents must be submitted by the access provider at the same time that a proposed access arrangement is submitted:

- a 'cost allocation policy' and 'forms' for providing accounting information to the Commission under the Account Keeping Rules (s 2.6(a));
- a 'separation arrangement' under the Ring Fencing Rules (s 5.1(a));
- a statement of 'capacity allocation protocols' under the Capacity Use Rules (ss 6.1 and 6.4); and
- protocols for the management of a rail network and a protocol for addressing complaints under the Network Management Rules (s 10.1).

The Commission also notes that access providers must prepare and maintain, in accordance with section 3.1 of the Network Management Rules, an operating handbook containing:

- the protocols for the management of a rail network and the protocol for addressing complaints, each approved by the Commission;
- the communication protocols; and
- the rolling stock interface standards.

Section 38ZZZB of the RCA also requires that each access provider must submit to the Commission, at the same time as submitting its proposed access arrangement, a system and business rules for:

- 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
- 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.

2.3.3 Access arrangements established to date

The access arrangements that have been established to date are set out in Table 1.

Table 1 Rail access arrangements

<i>Access Provider</i>	<i>Access Arrangement</i>	<i>Date</i>
VicTrack	VicTrack Access Arrangement	31 May 2006
Connex	Connex Access Arrangement	29 June 2006
Pacific National	South Dynon Access Arrangement	29 June 2006 and as amended on 29 November 2006
V/Line Passenger	Access Arrangement made by Essential Services Commission Victoria in respect of V/Line Passenger Pty Ltd	29 June 2006 (as varied on 24 April 2007 to substitute V/Line Passenger for Pacific National (Victoria) Limited)

2.3.4 Reference Services

Access arrangements contain standing offer terms and conditions for all 'reference services'. Under the RCA, a reference service is defined in section 38A as:

a declared rail transport service that —

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

In the access arrangements made for V/Line Passenger and Connex a wide range of freight services are reference services. Services to V/Line Passenger by Connex are non-reference services.⁶

In the case of Connex, reference services are defined as:

Mainline running of a Freight Train from its origin to its destination; including

- o the use of passing loops to facilitate the mainline running of the Freight Train; and*
- o the use of sidings for operational and incidental purposes.*

Access includes, in addition to the use of the Network, the benefit of other services essential to the use of the Network such as signalling and train control services. Access explicitly excludes the use of electric trains by an Operator.

In the V/Line Passenger Access Arrangement, reference services are also defined broadly, with two exceptions.

- Freight train paths outside normal signal box block working hours are not reference services if used on an 'unscheduled' (or ad hoc) basis, but become reference services if they are sought and allocated on a 'scheduled' (or recurrent) basis (s 4.2.d). Use of unscheduled train paths outside normal hours incurs additional costs related to additional use of signal personnel and train operators out of hours (and a margin) (ss 4.2.e and 4.2.h).
- Provision of services to a higher service standard than the minimum service standard specified in the access arrangement (whether within normal hours or out of hours) is also a non-reference service. The same principle for pricing these non-standard services applies, namely the standard access price, plus the incremental costs, plus a specified margin (ss 4.2.c and 4.2.h).

The V/Line Passenger Access Arrangement specifies that certain ancillary services will be provided free of charge as part of the reference service, but will attract additional charges if used in excess of the permitted free-of-charge level of usage (s 4.4.c(iii)).

⁶ Note that although services provided by V/Line Passenger to itself would technically constitute reference services, the Passenger Network Declaration Order only applies to rail transport services provided to V/Line Passenger. Hence, rail transport services provided by V/Line Passenger to another passenger service provider do not constitute 'declared rail transport services' for the purposes of the RCA.

Reference services, under the South Dynon Access Arrangement, include:

- services provided on a one off basis which are necessary for the establishment and ongoing provision of terminal services to the access seeker;
- loading and unloading services provided to each train which arrives and departs the terminal;
- extended container storage;
- dangerous goods management;
- locomotive storage;
- wagon storage;
- truck driver induction;
- locomotive driver induction;
- additional shunting services;
- inconsistent maintenance, including provision of essential repairs to wagons; and
- administration services.

It is noted that Pacific National, in operating the South Dynon Terminal, uses all the above services.

3 | OBLIGATIONS OF AN ACCESS PROVIDER

3.1 Statutory requirements

Division 6 of Part 2A of the RCA sets out certain obligations of the access provider. Each of these statutory obligations is a penalty provision.⁷ In summary, the obligations in Division 6 provide that the access provider must:

- not hinder access to declared rail transport services and rail infrastructure;
- comply with its binding access arrangement and the Commission Instruments; and
- not calculate different prices between users (including between third party users and itself) for like services.

In addition, Division 7 contains obligations in relation to the handling of confidential access seeker and user information.

3.1.1 Hindering access

Section 38ZZS prohibits the access provider from engaging in conduct for the purpose of or having the effect of hindering or preventing:

- access by an access seeker to a declared rail transport service;
- an access seeker from entering into an agreement for the provision of a declared rail transport service;
- the provision of a declared rail transport service to which a person is entitled under an access agreement or a dispute resolution decision; or
- interconnection.

3.1.2 Compliance with access arrangement and Commission Instruments

Sections 38ZZT, 38ZZU, 38ZZV, 38ZZW and 38ZZX require that an access provider must comply with:

- the terms and conditions of an access arrangement in relation to each declared rail transport service; and
- the Account Keeping Rules, the Ring Fencing Rules, the Capacity Use Rules and the Network Management Rules.

⁷ Section 38ZZC(2) provides that the Commission can bring civil proceedings against an access provider in respect of a penalty provision.

In addition to these requirements, s 38ZU(2) provides that an access regime dispute can arise if there is alleged non-compliance with the Negotiation Guidelines or the Pricing Order.

3.1.3 Price discrimination

Section 38ZZY(1) prohibits certain forms of price discrimination in relation to the pricing of declared rail transport services. If the characteristics and nature of the declared rail transport services are the same, then an access provider must not calculate different prices for the provision of that declared rail transport service as between:

- different access seekers;
- an access seeker and itself; or
- an access seeker and a related body corporate of the access provider.

Section 38ZZY(2) clarifies the interpretation of 38ZZY(1) in relation to the criterion that the 'characteristics and nature of declared rail transport services are the same'. In determining whether the characteristics or nature of declared rail transport services are the same, regard must be had to all relevant matters, including:

- the location, duration and quality of the train path;
- the nature of the rolling stock;
- the duration of any agreement for the provision of those declared rail transport services; and
- the arrival and departure times of trains.

By implication, if the services being compared are not similar in regard to the foregoing matters, then they may not have the same 'characteristics or nature' and hence the limitations on price discrimination under s 38ZZY(1) may not apply.

3.1.4 Confidential information obligations

Division 7 of Part 2A of the RCA sets out certain specific obligations on an access provider in relation to the use and handling of confidential information provided by access seekers or users. There are similar obligations applying to access seekers and users in relation to the use of confidential information provided by an access provider.

By section 38ZZZ(2), an access provider must not use information given to it by an access seeker or a user in confidence other than for:

- assessing and responding to a request by the access seeker for the provision of a declared rail transport service to the access seeker;
- providing a declared rail transport service to the user; or
- assessing and responding to a request by the access seeker for interconnection.

Pursuant to section 38ZZZA(2), an access seeker or user must not use information given to it by an access provider in confidence other than for:

- seeking to be provided, or using, a declared rail transport service provided by the access provider; or
- interconnection.

An access provider must not disclose information given to it by an access seeker or a user in confidence without the written consent of the access seeker or user (s 38ZZZ(4)). A similar obligation applies to access seekers and users with respect to confidential information provided by an access provider (s 38ZZZA(4)).

Section 38ZZZB also requires each access provider to establish a system and business rules for the handling and disclosure of confidential information supplied by an access seeker or user and to submit it to the Commission for approval.

3.2 Requirements in the access arrangements and Negotiation Guidelines

A binding access arrangement contains, among other things, the processes for applying for and negotiating access agreements, as well as for additional capacity works or interconnections. This section discusses the required processes for:

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

3.2.1 Application for access

The Negotiation Guidelines aim to assist the parties to undertake negotiation in good faith, with the appropriate information available and in a timely manner. The application and negotiation framework in the Negotiation Guidelines addresses:

- the requirements for an access provider to publish an application form and procedures by which an access seeker may make an application for access (s 3);
- information that an access provider must provide to an enquiring party or an access seeker, including an Information Pack as required under section 2(b) of the Negotiation Guidelines;
- the procedure and method of assessment of an application by an access provider, including the assessment of available capacity (s 4);
- the time periods within which the access provider must assess and respond to an application for access submitted by an access seeker, including making an offer of terms and conditions for access and the periods and processes applying to negotiation of an access agreement (s 4.2); and
- the negotiation protocol to be developed by the access provider that contains the procedure for negotiating the terms and conditions of access agreements and interconnection, and the alternative dispute resolution process to be implemented by the parties prior to the notification of an access regime dispute to the Commission (s 4.3).

The negotiating frameworks established in existing rail access arrangements are found in:

- Part 3 (Negotiation Process) of the V/Line Passenger Access Arrangement;
- Attachment B (Train Path Request Process and Protocol) to the Connex Access Arrangement; and
- Section 4 (Application Process) of the VicTrack Access Arrangement.

3.2.2 Additional capacity works

An access seeker may request additional capacity works to be done to the network. Access arrangements are required to have a well defined process and framework to expedite the application. As set out in section 4.4(a) of the Negotiation Guidelines, the access arrangement must address such matters, without limitation as:

- procedures for assessing the nature of work required and notifying the access seeker of such work;
- procedures for allowing the access seeker to have input into the process of assessment;
- timeframes for carrying out the work;
- the basis upon which the access provider proposes to allocate costs; and
- procedures for resolving any dispute (s 4.4(a)).

For example, section 3.5 of the V/Line Passenger's Access Arrangement contains a procedure for assessment of works to provide additional capacity. On receiving a request for additional capacity, V/Line Passenger must:

- arrange a scoping meeting within seven (7) business days or as agreed with the access seeker;
- provide the access seeker with copies of the protocols developed for the purposes of section 4.4 of the Negotiation Guidelines at the scoping meeting;
- involve the access seeker in all aspects of assessing works required to provide additional capacity;
- consult with the access seeker on how the preferred option should be selected if there are several options for the delivery of additional capacity;
- negotiate costs and a schedule of payments with the access seeker; and
- provide project management for the implementation of the additional capacity in consultation with the access seeker.

3.2.3 Interconnection

A party who owns or operates a railway track or railway siding may desire to connect that rail line to the access provider's railway track. In these circumstances the party seeking to interconnect to the railway track is also referred to as an 'access seeker'.

If the access provider receives notification from an interested access seeker, section 38ZT of the RCA obliges the access provider to do all things reasonably necessary to facilitate the interconnection. Section 7 of the Negotiation Guidelines contains a detailed process that must be followed in response to an application for

interconnection. As part of this process, the access provider and access seeker must exchange certain types of information⁸. For example, pursuant to section 7.1, the access provider must make available:

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

The access seeker, on the other hand, must demonstrate that it has the necessary knowledge or else that it will be able to and will engage the services of another person with the requisite knowledge to design, construct, commission, operate and maintain the proposed interconnection (section 7.2(d) of the Negotiation Guidelines). The access seeker must also be able to demonstrate that it has the necessary financial resources to do the same (section 7.2(e)). The access provider may also require the access seeker to demonstrate that the proposed interconnection complies with the access provider's engineering and operational standards (section 7.3(d)).

Access arrangements must reflect these requirements. For example, section 3.6 of the V/Line Passenger Access Arrangement sets out the procedure for interconnection. V/Line Passenger must:

- within 14 days of receiving a request for interconnection from an access seeker, provide certain information to the access seeker to assist the access seeker where it is necessary to install physical infrastructure to connect to the track (s 3.6.b(i));
- operate and maintain all mainline rail infrastructure at the interconnection at the expense of the access seeker (s 3.6.a);
- negotiate terms and conditions for interconnection in good faith (s 3.6.a); and
- within 30 days of receipt of an application for interconnection, approve or reject the proposal and provide reasons for the rejection, if applicable (s 3.6.d).

The access seeker is also obliged to provide certain information including, but not limited to:

- evidence to demonstrate that the installation is of a type approved for operation in Victoria on the access provider's network or else sufficient information for V/Line Passenger to undertake an engineering assessment (s 3.6.c(i));
- a fully-costed maintenance plan for maintaining the interconnection, including the proposed annual fee payment to V/Line Passenger for that part of the interconnection that is mainline rail infrastructure (s 3.6.c(iii)).

⁸ See sections 7.1 to 7.3 of the Negotiation Guidelines.

The access seeker is liable to pay for all of the construction costs of the interconnection and for the ongoing operation and maintenance of the interconnection, and must assume liability for the removal of the interconnection on termination of the agreement (s 3.6.c(v)(2)).

3.3 Dispute resolution frameworks in access arrangements

The Negotiation Guidelines require that access providers develop a negotiation protocol that outlines the procedure and method for negotiating the terms and conditions of access agreements and includes an alternative dispute resolution mechanism. This section describes – as examples – the commercial dispute resolution frameworks contained in some of the current Victorian rail access arrangements.

3.3.1 Connex

In the Connex access arrangement (see Attachment B: Train Path Request Process and Protocol), if there is a dispute concerning access, then:

- within 10 business days of a party notifying the other party of a dispute, the chief executive officers (or equivalent) of each party must meet and use reasonable endeavours to resolve the dispute by joint discussions;
- if the parties are unable to resolve the dispute, they will refer the dispute to an independent expert jointly chosen and appointed by the parties within 10 business days of the date it becomes clear that a resolution cannot be reached;
- in the absence of an agreement as to an independent expert, an independent expert will be appointed on the application of Connex by the President of the Institute of Arbitrators and Mediators Australia;
- the independent expert must make a determination or finding on the issues in dispute as soon as practicable, and if possible, within 20 business days after appointment;
- the independent expert's decision is binding on Connex as the access provider — but not the access seeker; and
- the parties will bear the costs of the independent expert equally or as otherwise determined by the independent expert.

3.3.2 VicTrack

Under the VicTrack Access Arrangement, any unresolved disputes that arise during negotiations between VicTrack and the access seeker are to be addressed as follows:

- if the access seeker notifies VicTrack of a dispute, VicTrack must further assess the issue and respond within 14 days advising whether there is a possibility for agreement or an altered position;
- if no agreement is reached within 21 days of the receipt of the notice of dispute, the CEOs of both companies must discuss the issue within a further seven (7) days to attempt to resolve the matter; and

- if no agreement is reached, the matter will be referred to the Commission as a dispute for resolution.

3.3.3 V/Line Passenger

Under the V/Line Passenger Access Arrangement, in the event of a dispute between V/Line Passenger and an access seeker in connection with negotiations for the provision of access:

- either party may give a Dispute Notice;
- the CEOs of the parties must attempt to resolve the dispute within 10 business days from the receipt of the Dispute Notice using reasonable endeavours and acting in good faith;
- if the dispute is not resolved at the end of the 10 business day period, the parties may refer the dispute to an independent expert appointed by the parties or, failing agreement as to the independent expert, to an independent expert appointed on the application of V/Line Passenger by the President of the Institute of Arbitrators and Mediators Australia, to provide a report containing a recommendation as to the basis on which the dispute should be resolved;
- the independent expert must provide a report as soon as practicable and, if possible, within 20 business days of the referral of the dispute to the independent expert;
- the costs of the independent expert will be borne equally by the parties;
- the parties will use their best endeavours to resolve the dispute on the basis set out in the expert report (which will not be binding on the parties) within 10 business days of its receipt; and
- if either party refers the dispute to the Commission, either party may provide the Commission with a copy of the expert report.

3.3.4 South Dynon

The dispute resolution procedure in the South Dynon Access Arrangement is similar to the process in the V/Line Passenger Access Arrangement set out above.

4.1 The Commission's regulatory functions

Under the RCA, the Commission's regulatory functions under the VRAR include:

- the obligation to establish and maintain Commission Instruments, which consist of detailed rules for regulatory account keeping, ring fencing, capacity use and network management, and the Negotiation Guidelines for the operation of the access regime (Division 2 of Part 2A);
- the ability to determine an access pricing methodology (s 38J);
- the obligation to approve access arrangements, or if it does not approve an access arrangement proposed by an access provider, or an access arrangement is not submitted by an access provider within the required period, to make an access arrangement (Division 3 of Part 2A);
- the power to determine access regime disputes (Division 5 of Part 2A); and
- the power to enforce compliance with the VRAR and binding access arrangements (Division 8 of Part 2A).

The performance of the Commission's role of making the Commission Instruments, the access pricing methodology, and the approval of access arrangements have each been discussed. The Commission's Rail Access Regime Dispute Resolution Guideline sets out in detail how the Commission will perform its role of deciding access regime disputes and also outlines in more detail the Commission's enforcement role.

4.2 The Commission's statutory objectives

As part of its statutory objectives under section 8 of the ESC Act, in performing its regulatory role under the RCA the Commission must:

- protect the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services;
- facilitate efficiency in regulated industries and the incentive for efficient long-term investment;
- facilitate the financial viability of regulated industries;
- ensure that the misuse of monopoly or non-transitory market power is prevented;
- facilitate effective competition and promote competitive market conduct;

- ensure that regulatory decision making has regard to the relevant health, safety, environmental and social legislation applying to the regulated industry;
- ensure that users and consumers benefit from the gains from competition and efficiency; and
- promote consistency in regulation between States and on a national basis.

In addition to these objectives, section 38F of the RCA contains further objectives of the Commission specific to performing its functions under the VRAR. These are:

- to ensure access seekers, and any other person the Commission considers may want to be provided declared rail transport services, have a fair and reasonable opportunity to be provided declared rail transport services; and
- to promote competition in rail transport services to achieve an increase in the use of, and efficient investment in, rail infrastructure.

In all of its decision making activities under the VRAR framework, including access regime dispute resolution, the Commission is guided by the foregoing objectives.