

Annexure A – Detailed response to undertaking and schedules (Volume 1)

The table below is Aurizon Network’s Annexure A, with a further column added (the last column, “QRC Response”) with the QRC’s response to Aurizon Network’s comments. It should be noted that the “Industry Response” is Aurizon Network’s summary of the industry response and is not industry’s statement. The “Industry Response” is selective in what it reports on and by no means a complete or wholly accurate summary of industry’s response. Regard should be had to the QRC’s Main Submission.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
Intent and Scope [Part 2]						
1	Statement of intent in relation to non-discriminatory treatment	2.2	It has been submitted that the removal of clause 2.2 from Part 2 of the 2010 Access Undertaking (AU) is seen as substantially weakening Aurizon Network’s commitment to non-discriminatory treatment.	<p>Aurizon Network has no intention to weaken the commitment to non-discrimination in Part 2 (or any other part) of the 2013 Draft Access Undertaking (DAU). The concept of non-discriminatory treatment is expressed in clause 2.2(b)(i) and (e)(iii) in the 2013 DAU. A clear statement of the principles of non-discrimination remains in Part 3.</p> <p>Aurizon Network will, nevertheless, include an additional clause in Part 2 to reinforce this point.</p>	<p>Amend clause 2.2 to include two new provisions which specify that the intent of the 2013 DAU is to:</p> <ul style="list-style-type: none"> a. ensure Aurizon Network acts in a manner that is consistent with the unfair differentiation obligations under sections 100(2) and (3) and 168C of the <i>Queensland Competition Authority Act 1997</i> (QCA Act); and b. ensure Aurizon Network will apply the provisions of the 2013 DAU consistently to all Access Seekers, Access Holders, Train Operators, Access Applications and negotiations for Access, except where there is an express provision in the 2013 DAU to the contrary. 	The QRC agrees with Aurizon Network’s proposed change.

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2	Commercial negotiation	2.2(a)	It has been requested that the word “commercial” be removed from “commercial negotiation”.	Aurizon Network considers there is no apparent difference between a ‘negotiation’ and a ‘commercial negotiation’.	Aurizon Network will delete the word “commercial” from clause 2.2(a).	The QRC agrees with Aurizon Network’s proposed change.
3	Removal of the ultimate holding company deed from Part 2	n/a	Feedback received is that removal of the ultimate holding company deed from Part 2 to Part 3 of the 2013 DAU could suggest that this Deed is specific to ring-fencing and does not have broader application (and indeed the Deed has been drafted in a manner that reflects this narrower intention).	Whilst Part 3 is titled ‘Ringfencing’ it also includes the general non-discrimination provisions. Under the ultimate holding company deed, Aurizon Holdings commits, amongst other matters, to the entirety of Part 3. The ultimate holding company deed has a wider application than solely ringfencing matters.	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC agrees that no change is necessary.
4	Principles in relation to coal supply chains	2.2	<p>Aurizon Network has not included the provisions from the 2010 Access Undertaking (AU) in the 2013 DAU, which required Aurizon Network to:</p> <ul style="list-style-type: none"> establish principles and processes to guide cooperation of all elements of coal supply chains (in respect of which access forms a part) in order to seek to maximize the performance of those supply chains; and 	Part 2 of the 2013 DAU only covers the intent and objective of the 2013 DAU. The objective of supply chain cooperation and performance is included in clause 2.2(e)(iv). As such, Part 2 does not include provisions that involve establishing actual processes – it is the remainder of the 2013 DAU which includes the operative provisions. Aurizon Network considers that it is appropriate for matters in relation to the participation in the coal supply	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC agrees that this issue should be addressed in Part 8 of UT4.

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			<ul style="list-style-type: none"> do so on an annualised basis. <p>Feedback received is that these provisions should not have been removed.</p>	chain to be dealt with in Part 8 of the 2013 DAU (clause 8.8).		
5	Core Access related functions narrows scope of Undertaking	2.3	Feedback received is that the approach of Aurizon Network in seeking to limit the scope of the 2013 DAU to 'Core-Access-related functions' is unacceptable as it narrows the scope of the 2013 DAU.	<p>'Core access related functions' is a term used in Part 3. It is used in provisions that give effect to Aurizon Network's functional separation from the Aurizon Group. It is not relevant to the scope of the 2013 DAU.</p> <p>Rather, the 2013 DAU applies to the negotiation and provision of Access (clause 2.3(a)) which is defined as "the non-exclusive utilisation of a specified section of Rail Infrastructure...". Rail Infrastructure is then defined with reference to both the <i>Transport Infrastructure Act 1994</i> and the QCA Act, such that the scope of the 2013 DAU mirrors the declaration itself.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC agrees that this issue should be addressed in Part 3 of UT4.
6	Associated Services	2.3(a)	Feedback received is that the 2013 DAU should include a definition of 'Associated Services', which identifies	The 2013 DAU applies only to the negotiation and provision of Access to the declared service, and is not applicable to the	Aurizon Network considers the request is outside of the scope of the regulatory regime. Aurizon Network will continue	The QRC does not agree with Aurizon Network's position. The QRC's position in relation

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			<p>ancillary matters that are practicable only for Aurizon Network to provide. 'Associated Services' should include:</p> <ul style="list-style-type: none"> • RIM and train control for all rail spurs; • Level and other crossing services; • Leasing to Customers of corridor land and land owned by Aurizon Network; • Payment for Associated Services. 	<p>negotiation or provision of services other than Access (other than clause 2.4 in relation to the supply of electric energy).</p>	<p>discussions with customers on this issue, and remains willing to discuss with customers the commercial model for the provision of these services.</p>	<p>to "Associated Services" is as set out in Section 3 of Part 2 of the QRC's Main Submission. The QRC considers that Aurizon Network is the only practicable service provider available to access holders and access seekers for "Associated Services" (as defined in the QRC's Main submission) and that the provision of "Associated Services" should be set out in UT4 to ensure access seekers and access holders have efficient access to those services.</p> <p>The QRC appreciates Aurizon Network's preparedness to engage on this issue and is willing to discuss this issue further with Aurizon Network.</p>
7	Review relevant parts of Private Infrastructure Compliance with Standards	2.3(a)	<p>It has been suggested that Aurizon Network should be required to provide as part of Associated Services, assurance work regarding the compliance of private infrastructure with standards.</p>	<p>Whilst Aurizon Network requires that relevant parts of the Private Infrastructure have been designed and constructed in line with standards, these assurance works need not be undertaken by Aurizon Network.</p>	<p>As with associated services, this is beyond the scope of the regulatory regime. No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC's position in relation to design, scope and standard reviews of private infrastructure is as set out in Section 3 of Part 2 of the QRC's Main Submission. The QRC considers it appropriate for Aurizon Network to provide</p>

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						review and comment services where Aurizon Network requires infrastructure connecting to the network to comply with minimum standards when acting in its capacity as RIM or land owner/lessor/lessee only.
8	Notification of ownership of land	2.3(b)(ii)	It is suggested that Aurizon Network be required to advise access holders promptly if Aurizon Network does not own or have a legal right to allow access holders to access land on which Rail Infrastructure is situated.	Aurizon Network has retained the obligation from the 2010 AU to provide access seekers with information regarding access to land that is not within Aurizon Network's control. This information is provided during the negotiation period. (see clause 4.9.2(a)(ii) and Sch A, clause 2).	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. Clause 4.9.2(a)(ii) and Schedule A apply to access seekers only. Aurizon Network should be under an ongoing obligation to advise access holders if Aurizon Network does not have an existing legal right to authorise access to land which Rail Infrastructure is located on. The QRC's Mark-Up of Part 2 of UT4 contains a proposed amendment to clause 2.3(b)(ii) to this effect.
9	Uncapitalised term: 'train operations agreement'	2.3(d)	Feedback received is that it is not clear what the uncapitalised term "train operations agreement" means in clause 2.3(d). This clause already provides for the inclusion of a	The use of "train operations agreement" in clause 2.3(d) was intended to refer a Train Operations Access Agreement entered into under the 2010 AU. This was drafted prior to	Aurizon Network will remove reference to the uncapitalised 'train operations agreement'.	The QRC agrees with Aurizon Network's proposed change.

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			“Train Operations Agreement” as defined.	the QCA’s approval of the alternate form of access agreement. The references to “train operations agreement” can now be deleted.		
10	Obligation to supply electric energy	2.4	There is no specific obligation on Aurizon Network not to refuse to sell or supply electric energy and there is no right to go to dispute resolution in relation to any dispute. This is not seen as acceptable.	Whilst electricity supply is not included as part of Access, Aurizon Network <u>will</u> be obliged to supply electric energy under clause 2.4 of the 2013 DAU. This commitment is provided regardless of whether Aurizon Network supplies electric energy to a related party operator or not.	Aurizon Network considers the obligation to supply electric energy provides greater certainty to customers than the 2010 AU drafting. No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC does not agree with Aurizon Network’s position. The QRC considers that the framework for Aurizon Network to provide electricity to access holders has been inappropriately relaxed in UT4. The QRC’s position in relation to the supply of electric energy by Aurizon Network is as set out in Section 2 of Part 2 of the QRC’s Main Submission and in the QRC’s Mark-Up of Part 2.
11	Cost of supply of electric energy	2.4(a)(ii) and 2.4(b)(i)	It has been commented that the inclusion of the words “except to the extent that any Reference Tariff includes EC” creates uncertainty as to what is governed and not governed in relation to Aurizon Network’s supply of electric energy. For example it should be clarified how the AT ₅ tariff would be treated.	Through the approval of the AT ₅ tariff, the QCA has oversight of the cost to access the electric traction infrastructure. Aurizon Network recovers its costs associated with the on-selling of electric energy to access holders and train operators through EC, which is	Aurizon Network will: <ul style="list-style-type: none"> delete clause 2.4(a)(ii) of the 2013 DAU; and clarify that EC will be based on Aurizon Network’s costs associated with the on-selling of electricity. 	In principle, the QRC agrees.

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subject to review by the QCA.

12	Reference to Schedule G	2.4(c)	It is suggested that the reference to Schedule G should be removed as it assumes that the principles for pricing electric traction services in the Blackwater system is approved.	Aurizon Network acknowledges that the principles for pricing electric traction services in the Blackwater system are not yet approved. These provisions were included in the 2013 DAU to reflect Aurizon Network's current proposal in relation to the pricing of electric traction services.	Aurizon Network will reflect in the 2013 DAU the provisions approved by the QCA in relation to the pricing of electric traction services in the Blackwater system.	The QRC agrees with Aurizon Network's proposed change.
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Ringfencing [Part 3]

13	Primary function of Aurizon Network	3.1(c)	It is proposed that clause 3.1(c) should be amended so that the primary function of Aurizon Network is to manage the provision of below rail services.	The intent of clause 3.1(c) is to provide context in relation to what the provisions in Part 3 are seeking to address, in particular, to clarify that Aurizon Network provides both regulated and non-regulated services. The primary function of Aurizon Network, in relation to the regulated services is addressed in clause 3.4.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees that clause 3.1 should provide context in relation to what the provisions of Part 3 are seeking to address. However, the QRC considers that clause 3.1 needs to be wholly re-written. Section 3.1 of the QRC's Mark-Ups contains the QRC's proposed re-draft. Clause 3.1 of the QRC's re-draft captures this concept.
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14	Purpose of Part 3	3.1(h)	Industry has requested the reinstatement of the provision in UT3 that Aurizon Network is to be managed independently of the provision of above rail services.	Aurizon Network will amend this clause to clarify the purpose of Part 3.	Aurizon Network will amend clause 3.1(h) to include that the purpose of Part 3 includes regulating the provision of Access by Aurizon Network to ensure it is managed, and supplied, independently from other members of the Aurizon Group who compete in the upstream and downstream markets that depend on access to the declared service.	The QRC agrees that a change of this nature is necessary. However, the QRC considers that clause 3.1 needs to be wholly re-written. Section 3.1 of the QRC's Mark-Ups contains the QRC's proposed re-draft. Clause 3.1(g) of the QRC's re-draft captures this concept.
15	Non discrimination of services competing in market	3.2	<p>Feedback received is that the non-discrimination principles should :</p> <ul style="list-style-type: none"> • refer (not only to) related operators but also Aurizon Network itself and any other related party; • extend to ports in Qld and any railways in QLD (other than CQCN); • clarify that related entities includes one that represents a port or non-CQCN railway in which any part of the Aurizon Group holds a direct or indirect interest. 	<p>Aurizon Network acknowledges the comments made by customers and has agreed to extend Part 3 to cover the interests of the Aurizon Group in port investments.</p> <p>It should be noted that the non-discrimination provisions in the QCA Act (168A(c)), preventing or hindering access (s.100(2), 104 & 125) and unfair differentiation (s.168C) are in relation to parties who are seeking access to the declared service and are competing in a market with the access provider or related body corporate of the access provider.</p>	Aurizon Network will amend clause 3.2 to extend the non-discrimination prohibition to ports which are owned or operated by a member of the Aurizon Group, and where the relevant port is connected to the Rail Infrastructure.	Aurizon Network's proposal is unnecessarily narrow. Non-discrimination should apply to other rail infrastructure that may be connected to the CQCN. We refer also to our New Submission at the beginning of this document.

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16	Aurizon Group non-discrimination	3.2	<p>Similar to the issues raised in relation to Part 2 of the 2013 DAU, comments have been made in relation to the amendments to the non-discrimination principles. They are seen to have been reduced in scope to apply only to Aurizon Network, with the removal of wording requiring Aurizon Network to procure that its related parties do not engage in discrimination (similarly to the changes to Part 2 of the 2013 DAU).</p> <p>Examples are provided of non-discriminatory conduct that could occur, for example: fast tracking capacity investment to the benefit of the related party operator; less frequent or inferior maintenance of third party operator dominated spurs; and providing more favourable access prices for a mine that also secured its haulage services with a related operator.</p>	<p>Aurizon Network would have committed a serious breach of the undertaking and the QCA Act if it engaged in the type of conduct referred to here - it does not have the ability or intent to engage in such conduct.</p> <p>The inclusion of the general non-discriminatory provisions in Part 3 of the undertaking (rather than as previously in part 2.2 and 3.2) ensures that, as per the ultimate holding company deed, the Aurizon Group must not act in a way that will constitute a breach of Aurizon Network's obligations in relation to the non-discrimination. It is therefore incorrect to say that only Aurizon Network is bound by these provisions.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. The QRC supports the inclusion of certain prohibited behaviour types being listed in UT4. Clause 3.2(e) of the QRC's re-draft of Part 3 contains the QRC's suggested list.
17	Provision of ultimate holding company deed	3.3 and Sch D	The 2010 AU provided for Aurizon Network to procure a deed from the ultimate holding company. Feedback received	Recital C in the ultimate holding company deed of the 2013 DAU states that Aurizon Network will request, and that	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013	The QRC does not agree with Aurizon Network's position. The QRC considers that clause 3.3 of UT4 needs to be wholly

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			is that it is insufficient for the 2013 DAU to only provide for Aurizon Network to request the provision of the deed.	<p>Aurizon Holdings has agreed to provide, the ultimate holding company deed as a result of the QCA's decision to approve the Access Undertaking.</p> <p>Aurizon Network (a subsidiary company) cannot legally compel the management or Boards of related bodies corporate to do or not do anything, hence the removal of the term 'procure'. However the intent and consequence is the same, that is, if Aurizon Holdings Limited does not execute the deed in favour of the QCA, and if Protected Information is provided to Aurizon Holdings, Aurizon Network will be in breach of the undertaking. This is equivalent to the position in the 2010 DAU.</p>	DAU.	re-written. Section 3.1 of the QRC's Mark-Ups contains the QRC's proposed re-draft. The QRC also considers that the ultimate holding company support deed should be substantially amended. Section 3.2 of the QRC's Mark-Ups contains the QRC's proposed amendments.
18	General obligation of Aurizon Parties	3.1	The 2010 AU provided for a deed which had a general obligation upon the ultimate holding company to ensure that all Aurizon Parties would take such actions as are necessary to enable Aurizon Network to comply with its obligations under the undertaking where it	Whilst Aurizon Holdings Limited is not regulated, it is recognised that this is a significant issue for customers.	Aurizon Network will include a new provision (clause 3.1(c)) in the ultimate holding company deed which provides for a general obligation for Aurizon Holdings to not take any action that would cause Aurizon Network to be in breach of its obligations under the Access	The QRC agrees that a change of this nature is necessary. However, the QRC also considers further (more substantial) amendments to the ultimate holding company support deed are required. Section 3.2 of the QRC's Mark-Ups contains the QRC's

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			is relevant for an Aurizon Party to do so. It has been highlighted that there is no such general obligation in the deed provided in the 2013 DAU.		Undertaking.	proposed amendments.
19	Failure to comply with the ultimate holding company deed	3.3	Comments have been made that the consequences of the failure to provide, or comply with, the terms of the deed by the ultimate holding company are very weak and do not provide a serious incentive on Aurizon Network or its ultimate holding company to comply with these terms.	<p>The requirement that Protected Information will not be disclosed to any person outside of Aurizon Network, if the ultimate holding company deed is not provided or complied with, is the same as the provisions in the 2010 AU.</p> <p>The maintenance of the voluntary ultimate holding company deed reflects Aurizon Holdings' commitment to a robust access regime. The consequence for not providing the deed is equivalent to the provisions in the 2010 AU.</p>	No change is proposed based on the further information provided by Aurizon Network to assist the review of the 2013 DAU.	The QRC agrees that the consequences of non-compliance in UT4 are sufficient. However, as discussed at Item 177, the QRC supports the inclusion of an obligation on Aurizon Network to list the number of breaches of the deed in its compliance reporting. We do not understand why Aurizon Network would object to this.
20	Aurizon Network primary functions	3.4	It is suggested that the definition of 'core access related functions' should be broadened to cover the 'primary functions' identified in the 2013 DAU.	The core access related functions are intended to reflect the functional separation model in UT3. Aurizon Network is aligned with industry in ensuring (at a minimum) there are no fewer functions included	Aurizon Network agrees to amend clause 3.4(b) to make the core access-related functions consistent with clause 3.4(a), namely, the provision and management of Rail Infrastructure in a manner	The QRC agrees that a change of this nature is necessary. However, the QRC considers that clause 3.4 of UT4 needs to be wholly re-written. Section 3.1 of the QRC's Mark-Ups contains the QRC's proposed

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				in UT4 than was the case in UT3.	<p>consistent with its role as a Rail Infrastructure Manager under the Rail Safety Act, and to provide and manage Access to the Rail Infrastructure.</p> <p>For the avoidance of doubt, it is also proposed to amend clause 3.4(b) to include the administration of the process for network development, planning, studies and expansion contained in Part 8.</p>	re-draft. Clause 3.4 of the QRC's re-draft captures this concept.
21	Transfer of Rail Infrastructure	n/a	Comments have been made questioning the removal of clause 3.8.2 from the 2010 AU, which provided an obligation on Aurizon Network to take over rail infrastructure owned by other Aurizon parties if it is proven to form part of the declared service.	In the event another Aurizon Party owns Rail Infrastructure, the QCA may require that party (not Aurizon Network) to provide an undertaking in relation to that declared service if necessary. This is because the terms of s 250 of the QCA Act would apply to automatically declare that asset. The QCA has no power to require the divestment of assets from one entity to another, nor is it considered appropriate for the QCA to be able to compel this.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 AU.	The QRC does not agree with Aurizon Network's position. The QRC considers that this provision of the UT3 should be incorporated in UT4. Clause 3.7 of the QRC's re-draft captures this concept.
22	Rail Transport	3.4(a)	Key comments made in relation	In the 2013 AU line diagrams	No change is proposed based	The QRC does not agree with

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	Infrastructure Definition		<p>to this clause include:</p> <ul style="list-style-type: none"> given the ambiguities around the definition of 'rail transport infrastructure', the 2013 DAU should retain an assurance that line diagrams 'red track' reflects all transport infrastructure; the QCA should retain independent oversight of changes to the line diagrams. The 2013 DAU should provide an opportunity to seek conversion of incorrectly allocated 'blue track' to 'red track'. 	<p>are still required to be provided and are included in the preliminary information that is publicly available on Aurizon Network's website (clause 4.2 and Sch A). The line diagrams identify rail transport infrastructure that is managed by Aurizon Network, consistent with both the <i>Transport Infrastructure Act 1994</i> and the QCA Act, and other rail infrastructure.</p> <p>To the extent a party considers that parts of the rail network identified as 'other rail infrastructure' should be 'red track', a complaint can be made through the complaints handling process for non-compliance with the undertaking. Alternatively, a determination can be sought under the QCA Act to have the infrastructure included as part of the declared service. These mechanisms ensure there is QCA oversight of the line diagrams.</p>	<p>on the further information provided by Aurizon Network to assist in the review of the 2013 AU.</p>	<p>Aurizon Network's position. The QRC proposes that a new clause regulating Line Diagrams be included in Part 3 of UT4. Clause 3.6 of the QRC's re-draft contains the QRC's proposed drafting. The QRC has provided further comment on this issue in Section 2.6 of its Main Submission.</p>
23	Access-related Functions	3.4(b)	It has been suggested that "Core Access-related Functions" should be termed	Aurizon Network is indifferent to the name of the term.	Aurizon Network will amend 'Core Access-related Functions' to 'Access-related	The QRC agrees with Aurizon Network's proposed change. However, the QRC notes that it

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			“Access- related Functions”.		Functions’.	supports a broader definition of “Access-related Functions” than Aurizon Network’s “Core Access-related Functions”. Clause 3.4(b) of the QRC’s re-draft contains the QRC’s proposed drafting .The QRC has provided further comment on this issue in Sections 2.2 and 3.2 of its Main Submission.
24	Functions performed by Aurizon Network	3.4(b)	It has been suggested that other parts of Aurizon Holdings, including any part of it that has a direct commercial interest in restricting competition in the above rail market, could undertake Core Access-related Functions.	It is not Aurizon Network’s intention for the Core-Access-related Functions to be performed by any other party other than Aurizon Network (see clause 3.5(a)). It is acknowledged that this could be clarified by minor amendments to clause 3.4(b).	In addition to the amendments in item 20 above, Aurizon Network will amend 3.4(b) to clarify that it is only Aurizon Network that will perform the Core Access-related Functions identified.	The QRC agrees that a change of this nature is necessary. However, the QRC considers that clauses 3.4 and 3.5 of UT4 need to be wholly re-written. Section 3.1 of the QRC’s Mark-Ups contains the QRC’s proposed re-draft. Clauses 3.4 and 3.5 of the QRC’s re-draft capture this concept.
25	Unregulated services	3.6(b)(v) and 3.7	Comments have been made regarding the provision of unregulated services, including: <ul style="list-style-type: none"> if other services are going to be referred to in the 2013 DAU and/ or Aurizon Network no longer has as its primary function the management of the 	Examples of unregulated services in competitive markets include: <ul style="list-style-type: none"> construction of mine specific rail infrastructure or private rail infrastructure maintenance of rail infrastructure that is not Rail 	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	Aurizon Network’s summary of industry’s response is unclear. In broad terms, the QRC considers there to be a number of non-access related services (or “Associated Services”) that can only be practicably provided by Aurizon Network. As set out at Item 6 above, in

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			<p>provision of below rail services, then much more detail is needed in respect of those unregulated services;</p> <ul style="list-style-type: none"> Aurizon Network is seeking to conduct other activities that are not regulated. Any unregulated activities should be scrutinised by the QCA; <p>to aid in the prevention of discrimination, Aurizon Network staff should be prevented from undertaking non core access activities.</p>	<p>Infrastructure.</p> <p>This is further discussed in Part 1 in relation to Associated Services .</p> <p>It is reiterated that it is the declared service that is provided by Aurizon Network that is regulated, not Aurizon Network. The accounting separation requirements specify how these services 'interface' with the declared service. The QCA has no power to regulate unregulated services.</p>		<p>the QRC's view, the provision of "Associated Services" should be covered in UT4 to ensure access seekers and access holders have efficient access to those services. However, this is a scoping issue more than an issue in relation to ringfencing.</p>
26	Provision of operation or marketing of Train Services in respect of Core Access- related Functions	3.5(b)	It is questioned how the operation or marketing of Train Services could be required in respect of a Core Access related function.	<p>This clause does not operate to allow Aurizon Network to compete in the above rail services market it is only intended to facilitate:</p> <ul style="list-style-type: none"> the operation of work trains in relation to the maintenance of the Rail Infrastructure; the operation or marketing of maintenance services (for example plant or work trains) on private infrastructure. 	AN will include: "nothing in this clause 3.5(b) allows Aurizon Network to compete with above rail operators in the market for Above Rail Services on the Rail Infrastructure."	The QRC agrees with Aurizon Network's proposed change. However, the QRC considers that the change should be incorporated into the re-draft of Part 3 provided by the QRC rather than in the existing version of UT4.

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27	Staffing of Aurizon Network	3.6	<p>This clause includes the term 'primarily' in the context of duties undertaken by employees.</p> <p>It has been questioned what "primarily" means. Further, it is suggested that the implications of the reference to employees whose duties "primarily" involve the performance of Core Access-related Functions, means that:</p> <ul style="list-style-type: none"> there is no obligation on Aurizon Network in relation to employees who perform core access-related functions as part of their role, but they do not do so primarily; such employees could work for an Aurizon Party and could take direction from Aurizon Network's related operator at the same time. 	<p>The use of the term 'primarily' is intended to indicate that there are some circumstances where Aurizon Network employees may undertake activities that are not core access-related functions. These employees remain subject to the prohibition on taking directions from a related operator.</p> <p>The structure of this clause comes from Telstra's Structural Separation Undertaking, which has been approved by the ACCC. In that clause, the term 'principally' is used in place of 'primarily'. Aurizon Network is indifferent between these two terms.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. The QRC agrees however that the restriction should not be so broad as to prevent the individual doing any work other than core access related functions. The QRC considers it appropriate for UT4 to impose additional restrictions on the functions Aurizon Network's staff can undertake. The QRC considers that clause 3.6 needs to be wholly re-written. Clause 3.8 of the QRC's re-draft of Part 3 contains the QRC's proposed clause.
28	Secondment of Aurizon Network employees	3.6(b)(ii) and (iii)	<p>Feedback provided was that much stricter criteria should be included in clause 3.6(b)(ii) and (iii) in relation to secondments of employees.</p> <p>For example, clause 3.4.3(c) of</p>	<p>Secondments in a large corporate group such as Aurizon Holdings Limited are commonplace and necessary from time to time. However, in acknowledgement of the feedback received, Aurizon</p>	Aurizon Network will amend these provisions to prohibit the short term secondments of employees from high competition risk areas of Aurizon Network, including	The QRC does not agree with Aurizon Network's position, and considers the proposal to be poor practice (and symptomatic of the issues which industry consider should be addressed). Other than for

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			<p>the 2010 AU stated that if activities affect or could affect the access of third party access holders or seekers, then Aurizon Network must ensure no Aurizon Network employees were transferred to Aurizon Network's related operator or a working group whose members include employees of a related operator. It was proposed that as a minimum, these provisions should be reinstated and should also apply in the reverse situation where employees of an Aurizon Network related operator are transferred to Aurizon Network.</p> <p>It was also submitted that secondments between Aurizon Network and related parties should be prohibited (unless approved by the QCA), even where such a secondment would be in the course of an employee's duties.</p>	<p>Network agrees to introduce provisions to prevent the short term secondment of employees from 'high risk' areas of Aurizon Network.</p> <p>Aurizon Network emphasises that the 2013 DAU is significantly stricter on employee separation than was the case under the 2010 AU. For example, the vague concept of "working groups" has been replaced with an express prohibition on Aurizon Network employees taking directions from a related operator.</p>	Aurizon Network management.	<p>limited exceptions, the QRC considers it appropriate for all secondments between Aurizon Network and related parties to be prohibited, even where such a secondment would be in the course of an employee's duties (subject to specific QCA approved secondments). Clause 3.8 of the QRC's re-draft of Part 3 contains this prohibition.</p>
29	Accounting Separation	3.7	While there is support for the proposed framework in the 2013 DAU, it has been suggested that consequential amendments to the QCA approved Costing Manual will	A Costing Manual for Aurizon Network was approved by the QCA on 24 October 2013. It is also noted that the QCA has a power under the QCA Act to prepare a Costing Manual	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees that no change is necessary.

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			be required given Aurizon's increasingly varied interests in up and downstream markets, as well as the recent changes in Aurizon's structure.	where Aurizon Network fails to do so to the QCA's satisfaction (s159).		
30	Management of Protected Information	3.11(j)	An issue that has been raised is that an operator would need assurance that an end user would only be provided information related to that particular end user's access rights in an operator's Train Operations Agreement.	The inclusion of the term "relevant" end user is intended to ensure that the terms of the Train Operations Agreement would be provided to the end user to whom they relate.	Aurizon Network acknowledges this feedback and will review the drafting to align with this intent.	The QRC has no comment on this issue. The QRC will assess Aurizon Network's proposal when further detail is provided.
31	Definition of Protected Information	3.11	It has been proposed that Protected Information should be a subset of Confidential Information, which should include a broader range of information (being communications, documents and information held, obtained or created by Aurizon Network regarding any access-related function).	The term 'Protected Information' should be retained for the reasons given in the Aurizon Network explanatory material accompanying the UT4 proposal. In particular, it is considered necessary to distinguish information which is protected by the undertaking as distinct from information that is confidential for another reason (which is important for compliance purposes). Aurizon Network is agreeable to amending the definition of Protected Information to	Aurizon Network will amend the definition of Protected Information to include a broader range of information such as, communications, documents and information held, obtained or created by Aurizon Network regarding any [Core] Access-related Function.	The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided. However, as set out in the QRC's Main Submission and clause 3.14 of the QRC's re-draft of Part 3, the QRC does not agree with the narrowing of the categories of confidential information protected by the ringfencing regime in UT4.

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				broaden it, as requested.		
32	Confidentiality Deed.	n/a	It has been requested that the standard form Confidentiality Deed be retained in 2013 DAU.	<p>Aurizon Network is mindful of the number of standard agreements that form part of the undertaking (amounting to some 1,600 pages). It is also noted that operators and customers regularly negotiate confidentiality arrangements (on non-standard terms) with Aurizon Network without issue, including in relation to non-access related matters.</p> <p>It is therefore proposed to provide a standard form Confidentiality Deed as part of the preliminary information. To the extent that agreement cannot be reached as to the terms of the Confidentiality Deed, the dispute resolution provisions in the undertaking would apply.</p>	Aurizon Network will include an obligation to publish a standard form Confidentiality Deed as part of preliminary information.	The QRC agrees with Aurizon Network's proposed change. Please see the place holder in clause 3.15 of the QRC's re-draft of Part 3 for the QRC's preferred drafting and Section 3.3 of the QRC's Mark-Ups for the QRC's suggested template confidentiality deed.
33	Aggregation of protected information	Section D - Protected information, clause 3.15 - 3.18	Feedback received regarding the disclosure of aggregated information is that this should only be disclosed with permission from the providers of the information.	Aggregated information is provided as a means of balancing the need for publicly available information with the need to keep commercially sensitive information	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC recognises that Aurizon Network may need to publish aggregated information during the term of UT4. Clause 3.14(a)(5) of the QRC's re-draft of Part 3 provides that

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				confidential. The purpose of aggregation is to de-identify information so that it cannot be attributed to an individual third party access seeker, holder or operator.		“ <i>Protected Information</i> ” will not include information that is aggregated with other information in a way that de-identifies the information as the discloser’s information and where the disclosure of the aggregated information occurs in the ordinary course of business or so as to allow for compliance with legal, listing rule, business or other reporting requirements of the Aurizon Group and would no longer reasonable be expected to affect the commercial affairs of the owner of the information. The QRC considers this approach to aggregated information to be reasonable.
34	Audit of Protected Information Register	3.19	It has been suggested that clause 3.19(d) should include a process where the QCA audits the Protected Information Register as part of its annual audit process to ensure Aurizon Network has complied with its obligations in relation to the handling of Protected Information.	There is considerable flexibility in the audit provisions in the 2013 DAU. The QCA is able to include the Protected Information Register in the scope of the Audit under clause 10.7 if it chooses to do so.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC’s position in relation to audit rights is set out under Part 10 below (and in conjunction with Part 10 of the QRC’s Main Submission).

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35	Details to be included in Protected Information Register	3.19	It has been suggested that this register must contain details of all disclosures and dates for access to be reviewed.	The date of review and expiry for authorisation to access Protected Information is included in the Protected Information Register (clause 3.17(f)).	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. The QRC considers that Aurizon Network should be obliged to keep a more comprehensive confidential information register. The QRC considers that clause 3.19 needs to be wholly re-written. Clause 3.20 of the QRC's re-draft of Part 3 contains the QRC's proposed clause.
36	Mandatory Protected Information Training and Exit Certificates	3.20	Feedback received is that exit certificates and debriefing sessions should also be undertaken for all employees ceasing employment with Aurizon Network (not just those going to work for another business unit in the Aurizon Group).	Aurizon Network recognises the importance of ensuring that its employees remain aware of their obligations in relation to Protected Information.	Aurizon Network will expand the requirement for exit certificates and debriefing sessions to be undertaken for all Aurizon Network employees that have access to Protected Information ceasing employment with Aurizon Network.	The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided. Please see clause 3.21 of the QRC's re-draft of Part 3 for the QRC's preferred drafting.
37	Mandatory training	3.20	It has been commented that the mandatory minimum training requirements in the 2013 DAU are too narrow and should apply to all staff, with more detailed training for staff in [Core] access-related functions or who have access	Aurizon is prepared to expand the training program. However, it is not necessary to train all employees in the Group (totalling around 8,000 people), noting the majority are operational employees, and many are not in coal or	Aurizon Network will expand the minimum training requirements to not only include people who have access to Protected Information but to people in 'high risk' areas, such as employees in the Marketing Division (excluding non-coal),	The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided. Please see clause 3.22 of the QRC's re-draft of Part 3 for the QRC's preferred drafting.

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			to confidential information.	Queensland business units.	Legal, Risk and Audit and Policy.	
38	Infringement penalty regime	3.22	Feedback received is that there are no meaningful consequences should Aurizon Network breach the undertaking. This means that there is no meaningful incentive on Aurizon Network to comply and there will be no genuine compliance culture within the business.	<p>It is not accepted that there are no meaningful penalties for non-compliance. Under the QCA Act, a court can order the payment of compensation (s. 153 and s 158A). These amounts could be substantial.</p> <p>The QCA Act does not provide for the ability to impose an infringement penalty regime. In any case, it is noted that the decision to issue an infringement notice is not a decision to impose a penalty, as it is not a determination of substantive rights. Recourse to judicial power would still be necessary, as per the current QCA Act.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC has no comment on this issue.
39	Breach of ultimate holding company deed complaint	3.22	It has been suggested that the complaints regime should be expanded to allow access seekers/holders and operators the ability to lodge a complaint regarding a breach of the ultimate holding company deed.	Aurizon Network considers the consequences of the ultimate holding company failing to comply with the ultimate holding company support deed are significant as “the Undertaking will cease to authorise the disclosure of	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network’s position.</p> <p>In the QRC’s view, the consequences of a breach of the ultimate holding company support deed are not relevant to the issue of complaint handling. The QRC considers</p>

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				<p>Protected Information to any person or entity outside Aurizon Network.” (clause 3.3(b)) This would therefore include not only employees of the ultimate holding company providing support or governance services to Aurizon Network but also external consultants and contractors.</p> <p>To the extent that a party considers the ultimate holding company has breached its obligations, that party can make a complaint under clause 3.22 in relation to whether Aurizon Network has complied with the requirement to not disclose the Protected Information as per clause 3.3(b).</p> <p>Enforcement options are also available under the QCA Act (Div 8, Part 5) in relation to a failure by Aurizon Network to comply with clause 3.3(b).</p> <p>In addition, there is nothing to prevent the party from notifying the QCA of concerns in relation to Aurizon Network’s compliance with clause 3.3(b) and for the QCA to consider the need for, and where</p>		<p>that the complaints regime should be expanded to ensure stakeholders have a non-litigious avenue for recourse where there is a breach of the ultimate holding company support deed or a confidentiality agreement.</p> <p>Consistent with the QRC’s position in relation to Part 3 of UT4 (as reflected in the Main Submission and the Mark-Ups of Part 3 and Part 11), the QRC considers stronger accountability on Aurizon Network to be central to a meaningful protection against conflicts regime.</p>

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appropriate request, a compliance audit under clause 10.7.

40	Waiver by the QCA	3.23	It has been stated that as long as Aurizon Network remains vertically integrated, ringfencing obligations should apply at all times for Aurizon Network. There should be no ability for Aurizon Network to have its ring fencing obligations waived.	Waiver provisions are part of many ringfencing regimes, notably, those administered by the Australian Energy Regulator. In the past, the QCA also administered a Ringfencing Guideline that included waiver provisions (and considered applications made by Distribution Network Service Providers under its jurisdiction). It is important to note that waiver is only granted by the QCA.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. In the QRC's view, Aurizon Network should not be allowed to seek a waiver of its conflict protections. Applying the concept of waiver to the conflict protections significantly reduces their importance in UT4 and suggest that there are instances where non-compliance is acceptable.
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Negotiation Framework [Part 4]

41	Process overview	4.1	It is suggested that this clause is unnecessary.	<p>Providing a clear access application and negotiation process is considered one of the key roles of the undertaking.</p> <p>The clause has been included to provide an overview of key aspects the negotiation process. It was included to</p>	Aurizon Network to amend Part 4 to include flow charts.	The QRC supports Aurizon Network's proposal to include flow charts.
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>assist the reader's high level understanding of the process under Part 4 before plunging into the detailed provisions.</p> <p>Aurizon Network also intends to include flow chart diagrams in Part 4 of the 2013 DAU to illustrate the process for applying for and negotiating access.</p>		
42	Confidentiality of capacity information	4.2(c)	<p>This clause states that prospective access seekers may lodge a request for capacity information with Aurizon Network and that Aurizon Network will respond within 10 business days. It has been expressed that as there are currently only two above rail coal haulage operators on the network, either rail operator could deduce the access rights the other operator holds. It is therefore necessary to consider whether the provision of capacity information may raise confidentiality issues.</p>	<p>Aurizon Network will review the drafting of clause 3 of Schedule A to provide that capacity information will not be provided if the access rights of an operator could be deduced and it would give rise to a breach of confidentiality or ringfencing obligations.</p>	<p>Similar to item 163, Aurizon Network will revise the drafting to clarify that capacity information will only be provided to access seekers to the extent it will not be a breach of either Aurizon Network's ringfencing obligations in the undertaking or the confidentiality provisions in an access agreement.</p>	<p>The QRC agrees with Aurizon Network's proposed change.</p>
43	Access application	4.3(b)	<p>It has been proposed that clause 4.3(b) should be</p>	<p>The objective of this provision is to clarify that by lodging an</p>	<p>Aurizon Network agrees to delete "without prejudice to any</p>	<p>The QRC appreciates Aurizon Network's willingness to amend</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>amended. This clause allows Aurizon Network to cease negotiations for access if an access seeker has materially failed to comply with the provisions of the undertaking.</p> <p>However, clause 4.3(b) also expressly states that any cessation of negotiations would be “<i>without prejudice to any other rights [Aurizon Network] may have</i>”. That reservation of rights is not dealt with in clause 4.11 which is limited to circumstances in which negotiations can be terminated.</p>	<p>access application, the access seeker agrees to be bound by the provisions of the undertaking that apply to access seekers. Provided that objective is still met by the provision, Aurizon Network will amend the clause to address the matter.</p>	<p>other rights [Aurizon Network] may have” from clause 4.3(b).</p>	<p>this clause. However, Aurizon Network has not responded to the QRC’s proposal to delete the last sentence of clause 4.3(b). That sentence is unnecessary as Aurizon Network’s ability to provide a negotiation cessation notice in such circumstances is already provided for under clause 4.11.</p>
44	Incomplete access application	4.3(c)	<p>It has been proposed that Aurizon Network should be obligated to notify an access seeker if their access application is incomplete, and specify what further information is required to make the application complete and compliant. This must be notified within 10 business days after receipt of the access application.</p>	<p>Aurizon Network accepts that a mandatory obligation to notify access seekers of any deficiencies in an access application is reasonable.</p>	<p>Aurizon Network agrees to amend this provision to include an obligation to notify an access seeker if its access application is incomplete, and specify what information is required to make it complete and compliant.</p>	<p>The QRC agrees with Aurizon Network’s proposed change.</p>
45	Limited information	4.3(c)	<p>It has been proposed that the</p>	<p>Aurizon Network understands</p>	<p>Aurizon Network will add an</p>	<p>The QRC appreciates Aurizon</p>

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	request		<p>additional evidence or information that Aurizon Network can seek about an access application be limited, including information about the access seeker's ability to fully utilise the requested access rights.</p> <p>It has been suggested that this right be limited by restricting Aurizon Network's right to seek information so that it applies <u>only</u> to information about the matters in clause 4.11(c).</p>	<p>customers would like greater certainty on the information that Aurizon Network may request in respect of an access application.</p> <p>Given the case by case nature of access applications Aurizon Network does not consider it appropriate to limit the information to be requested only to the matters listed.</p> <p>To address this matter, Aurizon Network will clarify that the additional information requested by Aurizon Network must be required for the purpose of preparing an indicative access proposal.</p>	<p>additional restriction similar to the 2010 DAU, such that the information must be reasonably required to prepare and issue an indicative access proposal.</p>	<p>Network's willingness to amend this clause to restrict requests for further information to information reasonably required to prepare and issue an indicative access proposal. However, the QRC also considers that any information requests in relation to an access seeker's ability to fully utilise requested access rights should be limited to the factors set out in clause 4.11(c). The QRC considers that this change does not unnecessarily restrict Aurizon Network's ability to obtain information regarding an access seeker's ability to utilise access rights. Rather, the amendment merely provides additional certainty in relation to the type of information that may be requested from access seekers. If Aurizon Network considers that the factors set out in clause 4.11(c) do not accurately capture the information that may be required from access seekers, those factors should be further refined.</p>

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46	Provision of reasons for suspending negotiations	4.4(c)	It has been proposed that Aurizon Network should be required to give reasons for suspending access negotiations where access rights cannot be provided in the absence of an expansion or customer specific branch line.	Aurizon Network agrees to include the reason for a suspension when notifying an access seeker of that suspension under clause 4.4(c).	Amend clause 4.4(c) to provide that Aurizon Network will provide reasons for suspending access negotiations where access rights cannot be provided in the absence of an expansion or customer specific branch line.	The QRC agrees with Aurizon Network's proposed change.
47	Non-discrimination on funding	4.4(c)	It has been proposed that an obligation be included preventing Aurizon Network from discriminating between a proposed user funded project and an expansion proposed to be funded by Aurizon Network.	The general non-discrimination provisions in Part 3 apply across all aspects of the undertaking. While it is arguable that the existing provisions cover the circumstances referred to here in relation to funding, Aurizon Network agrees to amend the undertaking to clarify that there can be no discrimination between a user funded project and an Aurizon Network funded project.	Aurizon Network will amend Part 3 to introduce a prohibition on discriminating on the basis of the source of funding of an expansion (i.e. user funding versus Aurizon Network funding).	The QRC agrees with Aurizon Network's proposed change.
48	Lodgement date of access request	4.4(b)	It has been proposed that the acknowledgement notice will be issued when the access request is deemed to have been received, where Aurizon Network believes sufficient information has been provided. It has been proposed that the	The intention of this provision is to encourage access seekers to only lodge an application when it is complete. This will allow Aurizon Network to improve the quality and timeliness of the indicative access proposals it develops	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees that no change is necessary.

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			drafting reverts to the treatment in the 2010 AU, which is that the lodgement date of an access request is deemed to be the date of receipt of that access request.	and establish a stronger and more workable basis for commencing formal negotiations. With the removal of the queuing framework, the incentive for access seekers to submit an access application as early as possible in order to secure a position in the queue has been removed.		
49	Six month confirmation	4.4(c), (f) & (g)	The obligation on an access seeker to reconfirm its access requirements every six months following the suspension of negotiations is seen as problematic. Particularly, given Aurizon Network's ability to issue a negotiation cessation notice if this doesn't occur.	If a negotiation has been suspended, the requirement for an access seeker to re-confirm its capacity requirements every six months is important as it provides Aurizon Network with timely and accurate information to assess whether sufficient demand exists for an expansion. Aurizon Network considers that as access seekers have an incentive to maintain the currency of their request that this obligation would not be an unreasonable burden.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	The QRC agrees that the obligation on an access seeker to re-confirm its access requirements every six months following the suspension of negotiations should be maintained. However, the QRC considers that minor drafting changes should be made as reflected in the QRC's Mark-Up of Part 4.
50	Time period for lodgement of access applications	4.4(e)	Industry participants have requested an extension to the time period for access	Aurizon Network understands that there are long lead times in mine development and that one	Aurizon Network proposes to amend the clause to allow access applications that meet	The QRC supports the proposed change by Aurizon Network, however, the QRC is

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			applications from three years to five years prior to the access rights commencing. This accommodates long lead times in mine assessment and development.	<p>of the criteria for a company to approve a new mine is likely to be whether they can secure rail access.</p> <p>Aurizon Network also recognises that the replacement of the queue with capacity allocation criteria, reduces the incentive to lodge access applications on a more 'speculative' basis. Subject to certain criteria, Aurizon Network will provide for the ability to make an access application up to five years prior to when the access rights are expected to be used.</p>	certain criteria to be made up to five years prior to the access rights commencing. The relevant criteria could include matters such as whether the access application is for access rights required for the development of a new mine or new terminal developments.	unable to comment on the substance of the change until Aurizon Network provide the criteria foreshadowed in relation to accessing whether an access application can be made up to 5 years in advance.
51	Renewal of access information	4.4(f)(iii)	An item identified in submissions is the requirement to demonstrate the ability to utilise access rights, suggesting that the evidence should be based on a reasonable likelihood of being able to use the access rights at the proposed commencement date.		Aurizon Network will amend this clause to reflect that the evidence needs to be based on the reasonable likelihood of being able to use the access rights at the proposed commencement date.	The QRC agrees with Aurizon Network's proposed change.
52	Acknowledgement of access application	4.4(g)	It has been requested that an amendment be made to clarify		Aurizon Network will review clause 4.11 to create a closer	Whilst the QRC agrees in principle with Aurizon

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			that Aurizon Network will act reasonably where it determines that a negotiation cessation notice should be issued to a customer.		linkage with clause 4.4(g) including applying relevant reasonableness requirements along similar lines to those in clause 4.11.	Network's proposal, it cannot undertake a proper assessment until the further drafting foreshadowed by Aurizon Network is provided.
53	Revision of access application	4.5	It has been proposed the provisions in the 2010 AU, which allowed an access seeker to vary or revise an application between the issue of the acknowledgement notice and the indicative access proposal, be reinstated. Provided that the revision to the application does not seek an increase in capacity or a shorter term of access and does not otherwise substantially alter the nature of the access rights sought.	While Aurizon Network agrees with the inclusion of such a right in principle, it is important that it be clear in what circumstances a revision would be permitted. For example, a revision should not result in a material alteration to the requested access rights.	Aurizon Network to reinstate an ability for access seekers to revise an access application prior to the issuance of an indicative access proposal in specified circumstances.	<p>Aurizon Network has proposed to reinstate the ability to revise an access application in "<i>specified circumstances</i>". Whilst the QRC agrees in principle with Aurizon Network's proposal, the QRC is not able to comment on this proposed change unless and until such "<i>specified circumstances</i>" are defined by Aurizon Network.</p> <p>As provided in its Main Submission, the QRC considers that the right for an access seeker to revise an access application prior to the issuance of an indicative access proposal should be allowed in all circumstances except where a revision seeks an increase in capacity, a shorter term of access or substantially alters the nature of access rights sought. Clause 4.5, clause 4.7(d) and clause 4.10.2(e) of the QRC's Mark-</p>

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						Up of Part 4 contain proposed amendments to this effect.
54	Waiver of capacity assessment	4.5(b)(iii)	It has been proposed that Aurizon Network's ability to waive its requirement to complete an initial capacity assessment under the circumstances set out in this clause should be removed.	The position in clause 4.5(b)(iii) of the 2013 DAU is the same as clause 4.3(c)(iii) of the 2010 AU.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC considers that a capacity assessment is an important requirement for access seekers and Aurizon Network should not be given the discretion to waive this requirement. The fact that the position in clause 4.5(b)(iii) is unchanged from the UT3 is not a sufficient explanation for Aurizon Network to discount industry concerns.</p>
55	Notification of timeframe for expansions	4.5(b)	It has been proposed to include a new obligation to include in an indicative access proposal an estimated timeframe for capacity to be made available where an expansion is required, as well as information on the process.	<p>The estimated timeframe within which capacity is anticipated to be created where an expansion is required is dependent on a number of factors. Part 8 provides some context to this - for example, in relation to the sequential nature of expansions.</p> <p>On this basis Aurizon Network will include in an indicative access proposal information in relation to a relevant expansion</p>	Aurizon Network agrees to amend this clause to provide information about a required expansion where such information is reasonably available in the circumstances	<p>Whilst the QRC agrees in principle with Aurizon Network's proposal, it cannot undertake a proper assessment until the further drafting foreshadowed by Aurizon Network is provided. The QRC considers that estimated timing and other information concerning expansion planning should be provided in an indicative access proposal in all</p>

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				that is reasonably available		circumstances where access is contingent on an expansion. The QRC's Mark-Up of Part 4 contains a proposed amendment to this effect in clause 4.6(vii) of that Mark-Up.
56	Access charge estimate	4.5(b)(v)	It has been proposed that this provision be amended to require Aurizon Network to provide details in the indicative access proposal of the relevant factors that have been taken into account when advising of the initial estimate of the access charge.	Aurizon Network agrees in principle to providing information in the indicative access proposal of the matters considered in developing the initial estimate of the access charge. Aurizon Network will give consideration to the appropriate matters that must be advised.	Aurizon Network, having regard to industry submissions, will include amendments referring to the specific information that Aurizon Network will provide when advising of the initial estimate of the access charge as part of an indicative access proposal.	The QRC agrees in principles with Aurizon Network's proposal but the QRC cannot undertake a proper assessment until Aurizon Network provides further clarity regarding the specific information it will provide when advising on the initial estimate of the access charge as part of an indicative access proposal.
57	Alignment of timeframe with 2010 AU	4.5(d)	It has been proposed to seek to re-align the timeframe before notification of an extension to the period within which an indicative access proposal must be given with the timeframe in the 2010 AU.	The 2013 DAU proposes a period of 20 business days. The proposed amendment is to reduce this to 15 business days. This would align with the current 20 (calendar) days in the 2010 AU.	Aurizon Network agrees to make this amendment.	The QRC agrees with Aurizon Network's proposed change.
58	Extending life of indicative access proposal by agreement	4.5(e)	It has been suggested that the indicative access proposal expiry date be amended so that it is 60 Business Days after	Aurizon Network agrees that the amendment to extend the validity of the indicative access proposal on agreement would	Aurizon Network agrees to amend this clause to make it clear that the indicative access proposal expiry date could be	The QRC agrees in principle with Aurizon Network's proposal. The QRC is unable to make a proper assessment

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			provision of the indicative access proposal, <i>“unless otherwise agreed”</i> .	reflect current practice. It also considers that the introduction of criteria to agree to a longer period would minimise the likelihood of dispute.	altered by agreement. It will propose criteria for agreeing a longer period.	of the proposed amendment until Aurizon Network communicates the criteria for agreeing a longer period in relation to the expiry of an indicative access proposal.
59	Criteria for revising an indicative access proposal	4.5(g)	It has been proposed to strengthen Aurizon Network’s obligation to review and issue a revised indicative access proposal where the access seeker raises concerns about whether the indicative access proposal has been developed in accordance with the undertaking.	Industry have indicated a preference to remove Aurizon Network’s discretion with regard to the requirement for additional time to review and revise an indicative access proposal.	Aurizon Network agrees to strengthen the obligation.	Whilst the QRC agrees in principle with Aurizon Network’s proposal, it cannot undertake a proper assessment until Aurizon Network describes how it intends to strengthen this obligation.
60	Access Seeker’s right to suspend negotiations	4.4(c)	It has been proposed that access seekers should have a corresponding right to suspend negotiation for access rights where an expansion or customer specific branch line is required. Aurizon Network has that right under clause 4.4(c).	Aurizon Network agrees to provide a mutual ability of Aurizon Network and access seekers to suspend negotiations where an expansion or customer specific branch line is required.	Aurizon Network will include a right for access seekers to suspend negotiations where an expansion or customer specific branch line is required and will review the need for any qualifications or criteria to give effect to the amendment.	The QRC agrees in principle with Aurizon Network’s proposed change but is unable to provide meaningful comment until further information is provided. In particular, the QRC is unable to comment on Aurizon Network’s proposal to qualify or provide criteria to give effect to the amendment until those criteria are determined.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
61	Nomination of operator as “agent” for negotiations	4.7(a)(i)	It has been proposed that where there are multiple access applications and one is from the end user, that end user should be able to nominate an operator to be involved in the negotiations.	It is not Aurizon Network’s intention to limit the ability of the end user to nominate an operator as its agent for negotiating access or to assist the end user in negotiations.	Aurizon Network will amend this clause to clarify that an end user can nominate an operator to negotiate access on its behalf or to otherwise assist it in negotiations.	The QRC agrees with Aurizon Network’s proposed change.
62	Nomination of operator to proceed to negotiations in multiple applications for the same access	4.7(a)(ii)	The 2013 DAU proposes to ensure that Aurizon Network is not required to negotiate with more than one operator for the same access rights. Customers have questioned why the access application is not just processed as usual and an indicative access proposal issued to both (or all) rail operators. Aurizon Network’s proposed drafting is seen as limiting above rail competition if the access request is submitted before the above rail tender is complete.	This provision relates to proceeding with the negotiation of an access agreement with the preferred operator after the issue of an indicative access proposal. It is intended that the negotiation for access rights with the preferred operator(s), would follow the above rail tender process.	Aurizon Network will clarify in the drafting that clause 4.7(a)(ii) does not alter Aurizon Network’s obligations to prepare indicative access proposals in respect of each operator’s access application unless the customer has nominated one of the operators. If the customer nominates an operator prior to Aurizon Network providing indicative access proposals, then Aurizon Network will only issue an indicative access proposal to the operator nominated by the customer.	Aurizon Network’s proposed change is to clarify that it is still obliged to issue an indicative access proposal to multiple parties where there are multiple applications for the same access and the customer has not nominated a particular operator. However, Aurizon Network has not responded to the QRC’s proposal to remove the ability of Aurizon Network to suspend negotiations after the issue of an indicative access proposal, unless and until an operator is nominated by the customer. As outlined in its Main Submission, the QRC considers that Aurizon Network should facilitate the ability for operators to undergo a competitive tender with an end customer by continuing to negotiate with all operators (even after the issue of an indicative access proposal).

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						Only negotiating with one operator following the issue of an indicative access proposal fails to support competitive tenders. For this reason, the QRC recommends that clause 4.7(b) be deleted as shown in the QRC's Mark-Up of Part 4 and as described in Section 2.6 of Part 4 of the QRC's Main Submission.
63	Agreement to extend time for negotiation	4.9.1(c)(iv) (B)	It has been proposed that a new provision be included to clarify that when a dispute arises, the negotiation period can be extended where the parties agree or as determined during the dispute resolution process.	Aurizon Network agrees it is appropriate for the negotiation period to take into consideration any adjustments to the negotiation period resulting from the resolution of a dispute.	Aurizon Network will amend this clause to allow for an extension of the negotiation period where a dispute arises where the parties agree or as determined during the dispute resolution process.	The QRC agrees with Aurizon Network's proposed change.
64	Negotiation process where available capacity is reduced	4.9.1(c)(v)	Where Aurizon Network proposes to discuss with the access seeker alternative means to provide the access rights sought, in the event of a reduction in available capacity is seen as too vague. It has therefore been suggested that this be replaced with a more prescriptive process.	The appropriate solution to address a reduction in available capacity in the context of an access negotiation will vary from case to case. Accordingly, it is considered that the situation is typically and best resolved as part of the negotiations between Aurizon	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	The QRC does not agree with Aurizon Network's position. The QRC appreciates Aurizon Network's further explanation. Despite that information, the QRC considers it is important that a more objective and transparent process be provided for. Although the solution to address a reduction

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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Network and the access seeker as proposed. It is possible that those negotiations may relate to the need for an expansion. If so, the 2013 DAU has provisions that relate specifically to expansions.

in available capacity may vary from case to case, there should be some protection of the rights of an access seeker. Simply providing that Aurizon Network and the access seeker should discuss the matter in an attempt to agree alternative means of providing access rights is too vague and fails to protect the rights of an access seeker. Where remaining available capacity can satisfy part of the access rights sought, or the infrastructure enhancements can be altered, Aurizon Network should be required to prepare a revised indicative access proposal. This is a reasonable requirement which affords some protection to the rights of an access seeker and aligns with Aurizon Network's previous obligations under UT3. Reinstating the process provided for under UT3 better protects the rights of an access seeker whilst still allowing for an appropriate level of flexibility to allow Aurizon Network to vary the relevant solution based on the circumstances of the particular case. The QRC's proposed amendments in this

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						regard can be found at clause 4.10.1(d) of the QRC's Mark-Up of Part 4.
65	Other terms to be addressed during negotiation	4.9.2(a)(viii)	It is proposed the inclusion of a right to provide details of "other terms and conditions comprising of the access agreement" during the negotiation process be replaced with a clause that provides that, unless otherwise agreed, the terms and conditions comprising the access agreement are to be those in the standard access agreement.	<p>This provision does not affect the role of the standard access agreement as "the safety net" in negotiations. Aurizon Network cannot impose any new or alternative terms and conditions without agreement by the access seeker. As per clause 5.1(d), if agreement cannot be reached, the standard access agreement remains the fallback.</p> <p>Aurizon Network's intention in including this provision was to clarify that where other terms and conditions are considered appropriate for the requested access rights, they are to be provided by Aurizon Network.</p> <p>It also addresses any circumstance where the access agreement is to be completed based on a standard access agreement and some aspect of that standard access agreement is to be completed by Aurizon Network but is not specifically listed in clause</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	<p>The QRC does not agree with Aurizon Network's position.</p> <p>Clause 5.1(d) only provides for the standard access agreement to apply where the parties initiate the dispute resolution mechanism. The QRC considers that the standard access agreement should be the starting point to all negotiations rather than merely the fall back in the case of a dispute. To ensure open access, any alternative terms and conditions to those contained in the standard access agreement should be agreed by both parties. Aurizon Network should not be given the power to impose alternative terms and conditions on an access seeker. The amendment proposed by the QRC still allows Aurizon Network to propose and agree alternative terms and conditions with an access seeker but merely provides that the standard access</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				4.9.2(a). An ability to propose alternative terms and conditions is consistent with the QCA Act.		agreement is the starting point for all negotiations.
66	"Non-Standard" modes of operation	4.9.2(c)	Clarity has been sought as to what mode of train operation will be considered "non-standard" and trigger an interface risk assessment. It has been suggested that this be done by reference to differences in the scope and standard of existing rail operations on the network.		Aurizon Network will amend the provision to include differences in the scope and standard of existing rail operations on the network as "non-standard".	Whilst the QRC agrees with Aurizon Network's proposed change, the QRC cannot fully assess the substance of this change until more clarity is provided in relation to what differences in the scope and standard of existing rail operations in the network are " <i>non-standard</i> ".
67	Further evidence and information regarding utilisation of requested access rights	4.9.2(d)	It has been suggested Aurizon Network's ability to seek additional evidence or information about an access seeker's ability to utilise the requested access rights, should be limited.	It is considered reasonable to limit the additional information that Aurizon Network can request to what is reasonably required to finalise access agreements taking into consideration the matters in clauses 4.9.2 and 4.11(c).	Aurizon Network will amend this clause to reflect that the additional information is reasonably required in relation to the matters to be addressed during negotiation (clause 4.9.2);	The QRC appreciates Aurizon Network's willingness to amend this clause to restrict requests for further information to information reasonably required. However, the QRC also considers that any information requests in relation to an access seeker's ability to fully utilise the requested access rights should be limited to the factors set out in clause 4.11(c). The QRC does not consider this change unnecessarily restricts Aurizon

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						Network from requesting information regarding an access seeker's ability to utilise access rights. Rather, the amendment merely provides additional certainty in relation to the type of information that may be requested from access seekers. If Aurizon Network considers that the factors set out in clause 4.11(c) do not accurately capture the evidence that may be required from access seekers, those factors should be further refined.
68	Revision of access application	4.9.2(e)	It has been proposed that amendments are made to allow an access seeker to review and revise their access application "on a good faith basis and for bona fide reasons", provided that the access seeker cannot request an increase in capacity, a shorter term access agreement or substantially alter the nature of the access rights sought. It is also proposed to be clear on what will be considered reasonable and not a substantial alteration.	Aurizon Network considers it appropriate to provide transparency on the matters that will be considered a substantial alteration of the nature of the access rights.	Aurizon Network to consider appropriate amendments to clause 4.9.2(e) to clarify the circumstances under which an access seeker could (or could not) review and revise its access application during the negotiation period.	Whilst the QRC agrees with Aurizon Network's proposal to allow circumstances in which an access seeker can review and revise its access application, the QRC cannot fully assess the substance of this change until more detail is provided by Aurizon Network. The QRC is willing to discuss this issue further with Aurizon Network.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
69	Right to levy a charge	4.9.2(f)	It has been expressed that Aurizon Network's proposal to include a right to levy an appropriate charge for the provision for further information to cover the cost of preparing and supplying that information as part of a negotiation process, should be removed. It is argued that these costs are already reflected in the access charge.	This clause reflects a similar provision in the 2010 DAU and is designed to cover additional or incremental costs that are not already included in the cost allocations to access charges.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	The QRC appreciates Aurizon Network's further explanation regarding its ability to charge additional costs associated with the supply of information. Despite that explanation, the QRC considers that the costs of negotiating access are already adequately covered in access charges. The QRC considers that Aurizon Network should not be afforded the right to charge an additional levy in addition to those access charges. Please see however the QRC's response to 4.11(e) (at Item 74).
70	Further information to be developed during negotiations	4.9.2(g) (iii)	This clause contained some examples of what the parties may agree to include in a list of matters to be further developed during the negotiation phase. It has been proposed that the reference to the mechanisms in an access agreement or train operations agreement to address any subsequent cost or operating impacts arising in connection with the specified matters be deleted.	This provision is on terms consistent with the 2010 AU. The 2001 Access Undertaking and 2006 Access Undertaking also included related provisions. Aurizon Network considers that this clause provides transparency in relation to the rights of access seekers and Aurizon Network to finalise certain matters after the execution of the access agreement and the matters that must be considered to give that	Aurizon Network will amend clause 4.9.2(g)(iii) to clarify that for matters that are to be finalised after the execution of the access agreement, the parties may agree to include mechanisms to address any subsequent cost or operating impacts that have not been considered as part of the reference train service or the original proposal.	The QRC is agreeable to reinstating clause 4.9.2(g)(iii) (which is 4.10.2(g)(iii) in the QRC's Mark-Up) provided that the reference to clause 4.10.2(b) is deleted. It is not reasonable to seek a mechanism for cost/operating impacts for the matters set out in clause 4.10.2(b) – which it should be noted was not provided for in UT3.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>effect.</p> <p>It is only intended that the access charge would be varied in the circumstances to compensate for any increased cost or risk to Aurizon Network or any increased utilisation of capacity as compared to a reference train service. The deletion of the clause may result in all matters that could potentially have cost or operating impacts needing to be addressed prior to execution of an access agreement.</p>		
71	Right of end user to participate in negotiations	4.10(a)(ii)	It has been proposed that an end user should have the right to require Aurizon Network to permit the end user's train operator to participate in (and not just to be present at) all negotiations between Aurizon Network and the end user for access rights proposed to be utilised by that train operator.		Aurizon Network will amend the drafting so that an end user can require a train operator to participate in all negotiations with Aurizon Network in relation to the access rights to be utilised by that train operator.	The QRC agrees with Aurizon Network's proposed change.
72	Grounds for cessation of negotiations	4.11(a)	It has been proposed that Aurizon Network's assessment that might lead to the cessation of an access negotiation should	The onus is on Aurizon Network to demonstrate that it has reasonable grounds. This is effectively an objective test.	Aurizon Network will review the wording of this clause as to whether a more objective test is required.	The QRC supports Aurizon Network's proposal to reconsider the wording of the test for determining grounds for

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			be based on a more objective test.			the cessation of negotiations. The QRC considers that an objective test would be better reflected by removing the references to Aurizon Network's "reasonable opinion". The QRC's recommended amendments are set out at clause 4.12 of the QRC's Mark-Up of Part 4.
73	Timeframe to issue a negotiation cessation notice	4.11	A concern has been raised regarding the timeframe in which Aurizon Network can issue a negotiation cessation notice.	Timeframes for negotiation and consequently for cessation of negotiation are subject to the "Negotiation Period" (nominally 9 months unless the parties agree to extend the period or negotiations are ceased for reasons set out in this clause 4.11).	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	The QRC agrees that no change is necessary.
74	Deletion of right to charge reasonable costs when negotiations cease	4.11(e)	It has been proposed that Aurizon Network's right to charge reasonable costs incurred in negotiations where it ceases negotiations (as permitted by clause 4.11) be deleted. This clause also acknowledges that the costs could include Aurizon Network's payments to third parties engaged in assessing	Clause 4.11(e) of the 2013 DAU reflects the provision in the 2010 AU and seeks to provide a disincentive for parties making non-genuine access applications, the costs of which would otherwise be borne by all access holders. To the extent the access seeker does not consider the costs reasonable the matter can be	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU	The QRC accepts Aurizon Network's position.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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the relevant access application and scoping and preparing for the provision of the requested Access.

referred to dispute resolution.

Access Agreement [Part 5]

75	Standard Access Agreement as safety net	5.1(d)	It has been requested that, where a dispute arises in relation to the negotiation of terms and conditions that vary from the Standard Access Agreement, the QCA, or an expert, should resolve the dispute (instead of it being resolved under the terms of the Standard Access Agreement).	<p>Consistent with the provisions of the QCA Act, Aurizon Network's approach has always been that Aurizon Network and an access seeker should be able to negotiate an access agreement. If the parties do not agree different terms, then the Standard Access Agreement is the safe harbour for both the access seeker and Aurizon Network</p> <p>Industry's suggestion, however, would result in an expert or the QCA determining the provisions of non-standard access agreements, thereby effectively removing the safe harbour of the Standard Access Agreement if either party thought they may be able to do better through a third party dispute resolution process.</p>	Aurizon Network will amend the drafting to clarify that Aurizon Network will act in good faith in the relevant negotiations and will review the drafting to identify the circumstances where it is appropriate to act reasonably.	While the QRC agrees in principle with Aurizon Network's proposal, it cannot undertake a proper assessment until the further drafting foreshadowed by Aurizon Network is provided.
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>Aurizon Network suggests that the most appropriate way to address this issue is to:</p> <p>confirm in the undertaking Aurizon Network's obligation to act in good faith in negotiating access agreements, including non-standard access agreements; and</p> <p>allow access seekers an express right to challenge Aurizon Network's conduct directly with the QCA under Part 11 of 2013 DAU, if Aurizon Network has failed to meet the 'good faith' standard in seeking to negotiate access agreements</p>		
76	Access Seeker's assurance that negotiations will not result in terms less favourable	5.1(d)	It has been suggested that where during negotiations, Aurizon Network and the access seeker cannot agree terms that are in variation to the Standard Access Agreement, the QCA or an expert should have regard to the terms Aurizon Network is offering to other access seekers and those terms should not be more favourable than those offered in the	<p>The non-discrimination obligations in the undertaking and the QCA Act limit the ability of Aurizon Network and an access seeker to negotiate as flexibly as they might otherwise do in an unregulated environment.</p> <p>The QCA has audit / reporting powers to monitor Aurizon Network's compliance with its non-discrimination obligations to ensure that it is not offering</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change to clause 5.1(d) is necessary. The QRC's position in relation to Aurizon Network's non-discrimination and auditing/reporting obligations are set out elsewhere in this table.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			disputed agreement.	<p>terms to access seekers that unfairly differentiate between access seekers. To facilitate this, access agreements will be provided to the QCA under clause 10.3.1 of 2013 DAU.</p> <p>In addition, the QCA has the ability to require the provision of these agreements in any case.</p>		
77	Intention of 5.2(a) and (b)	5.2, 5.2 (b)	Industry has questioned the rationale for the inclusion of clause 5.2(a) and 5.2(b).	<p>Clause 5.2(a) is intended to be a clarification provision to ensure that:</p> <p>there is a link between train service entitlement in the undertaking (and non-UT4 access agreements) and train services described in the 2013 DAU; and</p> <p>access agreements under the 2013 DAU are consistent with the common approach of including in a single access agreement a range of different "train service types" (i.e. trains with different origin/destinations or other characteristics).</p> <p>Clause 5.2(b) refers to access charges for train services and clarifies that access charges</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change to clause 5.2 is necessary.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>may be calculated by reference to each type of train service.</p> <p>The definitions of train service entitlement and train service in the 2013 DAU are consistent with the provisions in the 2010 AU. The concept of train service type (which appears in agreements) was not introduced into the text of the undertaking as Aurizon Network considered this was unnecessary.</p>		
78	Impact of introduction of train service type	5.2	<p>Feedback raised regarding the introduction of the train service type is that it:</p> <ul style="list-style-type: none"> will diminish the flexibility of access rights for an access holder; allows Aurizon Network to control train operations; and will impose additional cost on operators (e.g. variations to an interface risk management plan with each train service type). 	<p>The introduction of train service types does not change the way access rights are contracted. Access rights have always been granted for an origin-destination haul with a specified train service description, such as loading and unloading times, distance, dwell times etc. The use of "Train Service Types" does not include additional information to that previously required under a train service description.</p> <p>Pre-2013 DAU standard access agreements have been drafted on the assumption that</p>	The train service type concept is discussed in more detail in section 4.13 of the main submission.	Not applicable (Aurizon Network explanatory note only).

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				only one train service from a single origin-destination haul would be included, and that new access agreements would be entered into each time an access holder wanted a new origin-destination haul. That assumption is not consistent with many access agreements actually entered into. The definition of train service type is intended to correct this situation going forward so as to be consistent with actual practice and to avoid contractual uncertainty.		
79	Negotiations with Related Operator	n/a	Issues have been raised with the removal of clause 5.3 from the 2010 AU. It is requested that it be reinstated to ensure Aurizon Network cannot negotiate more favourable terms with its related operator.	Aurizon Network has extensive non-discrimination obligations both under the QCA Act and Part 3 of the 2013 DAU. Hence, clause 5.3 of the 2010 AU is considered superfluous, as it simply duplicates what appeared in Part 3.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC supports the reinstatement of clause 5.3 of the 2010 AU. As discussed in the QRC's Main Submission and this table in relation to Part 3, the QRC does not support Aurizon Network's proposed relaxation of the confliction protections in UT4.
80	Publication of Access Agreements	n/a	Issues have been raised with the proposed removal of clause 5.4 of the 2010 AU. It is requested that it be reinstated to ensure that Aurizon Network	The access agreements are still confidentially provided to the QCA under clause 10.3.1 of the 2013 DAU.	Further matters identified in relation to the publication of access agreements are discussed at item 185.	The QRC's position in relation to the publication of Access Agreements is discussed at Item 185.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			cannot negotiate more favourable terms with its related operator.			
81	Differences between 2010 AU and 2013 DAU alternate form of access	n/a	Clarification is required about how the alternate form of access in the 2010 AU interacts with the provisions in the 2013 DAU.	As with other standard agreements, the approved alternate form of access for the relevant current undertaking is the standard agreement that access seekers should consider during access negotiations. The alternate form of access agreements executed under the 2010 AU are binding until their expiry or termination.	Aurizon Network has provided in Annexure B a comparison of changes in the alternate form of access between the 2010 AU and the 2013 DAU.	Not applicable (Aurizon Network explanatory note only).
82	Removal of IRMP and EMP provisions from the 2013 DAU	n/a	Issues have been raised regarding the removal of the principles relating to the development and management of the Interface Risk Management Plan and Environmental Investigation and Risk Management Report. This is seen to increase the risk of inconsistent application and discrimination.	The standard access agreements set out the principles relating to the development and management of the Interface Risk Management Plan, which is proposed to cover both interface and environmental risks. These provisions assume that the Interface Risk Management Plan will be completed after execution of the access agreement. It is open to Aurizon Network	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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and an access seeker to agree something that departs from the provisions in the standard access agreements in respect of Interface Risk Management Plans. However, Aurizon Network's ability to do so is limited by its non-discrimination obligations, and obligations to adhere to legislative and accreditation requirements.

New clauses 4.9.2(b)-(c) have been included in the 2013 DAU in recognition of the fact that some access seekers may wish/need to commence the interface risk assessment process prior to the execution of an access agreement. This provides flexibility for access seekers who need to resolve these matters as part of the negotiation process prior to execution of an access agreement and reflects practically what occurs under the 2010 AU.

Pricing Principles [Part 6]

83	Limits on price	6.2	Concerns have been	The 2013 DAU seeks to recast	No change is proposed based	The QRC does not agree with
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	differentiation		expressed regarding the removal of restrictions on price discrimination, including for aggrieved access holders and related operators (clause 6.1.2 and 6.1.3 of the 2010AU).	<p>Aurizon Network's rights and obligations in relation to price differentiation in more positive language than that used in the 2010 AU. However, the intent of the drafting has not changed.</p> <p>In respect of clause 6.1.2 in the 2010 AU, this is a matter between Aurizon Network and an access holder and should be addressed in the relevant access agreement. The standard access agreements include a 'most favoured nation' clause which addresses this issue.</p> <p>In respect of clause 6.1.3 in the 2010 AU, the QCA Act sets out Aurizon Network's obligations in relation to preventing or hindering access to the service.</p>	on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	Aurizon Network's position. The QRC considers limits on price differentiation to be an important protection for access holders.
84	Capacity multiplier	6.2.2(d)	Some submissions support a multiplier based on train performance, but did not agree to its "blanket application". Aurizon Network's calculations of the relevant multipliers and the basis for the line sections selected should be justified.	<p>In the 2013 DAU, Aurizon Network has proposed to introduce an additional 'performance multiplier' to supplement the capacity multiplier.</p> <p>The capacity multiplier will continue to be determined based on the expected</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>difference between the reference train section run times and the scheduled section run times. It is not calculated with respect to actual train performance.</p> <p>The performance multiplier is levied only under the strict circumstance where an actual train service has failed to meet critical operational performance levels that would have the effect of reducing system capacity. The performance multiplier is a predetermined value based on relevant system capacity assumptions.</p>		
85	Price differentiation	6.2.3(b)	It has been proposed that a 'Change in Market Circumstances' should be removed as a basis for price discrimination for new reference tariffs.	<p>It is not clear why a change in market circumstances is not an appropriate basis for price discrimination (as it could lead to a change in risk profile) and Aurizon Network would welcome further feedback on this matter.</p> <p>The intent of the drafting in the 2013 DAU is unchanged from the 2010 AU, which is to ensure Aurizon Network is able to price discriminate if the existing reference tariff would</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC considers the concept of "<i>Change in Market Circumstances</i>" is too vague and should be removed.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				have a material effect on an access holder's ability to pay access charges.		
86	QCA approval of reference tariff for every expansion	6.2.4(a)(i) to (iii)	It is proposed that Aurizon Network must seek QCA approval of a new reference tariff for every expansion.	<p>Combined with proposed pricing objectives (refer below), the effect of this proposal is to require a new reference tariff to either 'average up or average down' based on the costs of the expansion. Application of the existing reference tariff to an expansion would have to be considered on a case by case basis.</p> <p>This matter has been discussed with the QRC and it has been agreed that a specific submission to the QCA should not be required for averaging down. Accordingly, the use of "may" in the 2013 DAU is appropriate.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position that no change is required. However, the QRC is willing to continue to work with Aurizon Network on this issue.</p> <p>As outlined in its Main Submission, the QRC considers that the application of principles to specific expansion projects will require certain judgements to be made and it may not be possible to draft UT4 to a level of precision which deals with all possible cases. Accordingly, a process of QCA review of the application of principles is proposed whenever a new reference tariff is being established.</p>
87	Vote of industry participants to approve costing methodology	6.2.4(a)(iv) (also Sch E clause 2.1)	Concerns have been expressed regarding Aurizon Network's proposal to allow the cost allocation methodology for an expansion to be put to a	The purpose of the proposal is to provide industry with the earliest opportunity to provide input into the pricing methodology for an expansion.	Aurizon Network will review these provisions following discussions with the QRC. '	The QRC will continue to work with Aurizon Network on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			customer vote. Some customers do not support the concept. Others do, but consider that this should occur via a different process. It has also been suggested that interested participants should include train operators.	Recognising the concerns expressed in the submissions, Aurizon Network remains of the view that some sort of pre-approval option is needed to provide certainty for existing and new users as to the pricing methodology. For example, this could alternatively be sought via the QCA.		
88	Reference tariff for customer specific branch lines and private connections	6.2.5	Concerns have been raised regarding consistency of the application of the pricing rules for owners of private infrastructure.	<p>The purpose of the new provisions is to provide an alternative pricing methodology that is consistent between branch lines and private connections (strict interpretation of the 2010 AU results in an inequitable outcome for owners of private infrastructure).</p> <p>Aurizon Network would be willing to discuss specific concerns regarding application of this clause with customers and the QCA.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC appreciates Aurizon Network's willingness to discuss concerns regarding this clause further. The QRC will continue to work with Aurizon Network on this issue.
89	Minimum revenue contribution (MRC) and distance discount	6.2.4, 6.2.5, Part 12: Definitions	Feedback received is that the drafting of this section is unclear and should be amended.	Aurizon Network acknowledges the concerns regarding the drafting and improvements will be made for clarity. In addition,	Aurizon Network will review these provisions following discussions with the QRC.	The QRC will continue to work with Aurizon Network on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			A number of matters are raised concerning the application of clause 6.2.4 and 6.2.5 and the definitions of minimum revenue contribution and the distance discount.	reference is made to the example calculations for mines of varying distances in section 9.7 of Volume 2 of the UT4 proposal.		
90	Reference tariff reference point	6.2.5	Clarification has been requested to ensure that the 'existing' reference tariff is the highest reference tariff for an equivalent train service.	This proposal is based on the 'averaging up' principle proposed by the QRC. Aurizon Network has been reviewing the practical application of clause 6.2.4 and 6.2.5 with the QRC and the final drafting will reflect the outcome of these discussions.	Aurizon Network will review these provisions following discussions with the QRC.	The QRC will continue to work with Aurizon Network on this issue.
91	QCA consideration of costing methodology (Pricing objectives)	6.2.6(b)	It is proposed to include a set of "key propositions" with respect to the QCA's acceptance of a new Reference Tariff. These propositions would: not allow increases in Reference Tariffs for existing users ('averaging up'); cover temporary impacts (such as ramp-up volumes) and special risks (such as greenfield development risks);	Aurizon Network considers that a more prescriptive set of principles to those provided in clause 6.2.6(b) should not be necessary. Rather, a case-by-case approach to expansion pricing, including averaging up, is appropriate subject to a vote of Interested Participants on, or QCA approval of, the cost allocation methodology based on prudence requirements. However, Aurizon Network is prepared to work with industry	Aurizon Network will review these provisions following discussions with the QRC.	The QRC will continue to work with Aurizon Network on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>allocate costs associated with the benefits accruing to existing users.</p> <p>It has also been suggested that this should be subject to:</p> <p>the acceptance of immaterial increases in reference tariffs, with the QCA to determine the threshold; and</p> <p>that the methodology for allocating costs between expansion users and existing users be fully disclosed to the relevant industry participants.</p>	<p>to develop a set of principles which:</p> <p>protect users from being materially worse off;</p> <p>align long run access prices for similar services;</p> <p>allocate costs associated with benefits accruing to existing users; and</p> <p>does not limit the QCA's ability to assess any application in accordance with the QCA Act.</p>		
92	Development of Reference Tariffs	6.2.6 (also Sch F - clause 5.1)	It is suggested that the removal of the obligation for Aurizon Network to submit a Reference Tariff variation if requested by the QCA, is problematic.	<p>The drafting in the 2010 AU reflected the circumstances of the 'old' Queensland Rail network, which included non-coal sections not subject to a reference tariff. This drafting has been removed reflecting the constriction of the 2013 AU to coal sections.</p> <p>Reference tariffs are not necessary for non-coal traffic on coal sections on the basis that:</p> <p>it would not be in the public interest as revenues are</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees with Aurizon Network that no change is required provided that it is clear that the QCA must apply the pricing objectives.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>immaterial; and</p> <p>Aurizon Network must still negotiate access charges in accordance with Part 6. The QCA would continue to have oversight.</p>		
93	Pricing limits for individual train services	6.3.3(e)	An objection has been made to the use of Depreciated Optimised Replacement Cost (DORC) as the basis for a price ceiling for any coal carrying train service.	<p>Under the 2013 DAU the RAB value will continue to form the basis of calculating the Maximum Allowable Revenue (MAR) for an individual coal system. The provisions do not allow for revaluation of the RAB and Aurizon Network's total allowable revenue will not exceed the amount applicable to the aggregate CQCR RAB value.</p> <p>It is noted that any new reference tariff must be still be approved by the QCA having regard to the matters in the QCA Act. The objective of this proposal is to provide the QCA broader discretion in approving a variation to a tariff which requires a MAR that is higher than an individual coal system's RAB value, if this is necessary to meet the objects of the QCA Act.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees that no change is required.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
94	Rail infrastructure utilisation	6.4.1	The requirement in clause 6.3.1(b) of the 2010 AU for Aurizon Network to conduct an assessment of network utilisation before applying the Maximum Access Charge should be reinstated.	Aurizon Network confirms that there is no change to the intent of the drafting between the 2010 AU and the 2013 DAU. It would still assess whether available capacity is sufficient to meet an access request.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	Restoring the relevant provisions would clarify that the intent of the drafting in the 2013 DAU has not changed from the 2010AU.
95	Negotiations of non-standard arrangements (Commercial Terms)	6.9	Concerns have been expressed regarding the inclusion of an explicit provision allowing Aurizon Network to negotiate 'Commercial Terms' in relation to access rights that require an expansion or a customer specific branch line. Issues have also been identified with the lack of prescription and transparency.	<p>Aurizon Network and access seekers are permitted to negotiate non-standard arrangements and this is included in the revenue Aurizon Network is entitled to earn for the purpose of the revenue cap.</p> <p>Aurizon Network is prevented from treating access seekers inconsistently due to the price discrimination provisions in Part 6. Aurizon Network also has obligations prohibiting unfair discrimination. Relevant non-standard arrangements would be subject to negotiation and agreement with the relevant customer.</p> <p>Aurizon Network would also be permitted to allocate capacity to an access seeker based on the willingness of that access seeker to agree to standard or</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC's position with regard to this clause is set out at Item 66 below.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>non-standard terms.</p> <p>On the issue of transparency, this could serve as a disincentive for customers to seek non-standard terms and conditions where those arrangements are then made known to other users. Full transparency would, however, be afforded to the QCA.</p>		
96	Negotiations of non-standard arrangements (Commercial Terms)	6.9(b)	<p>Further to Item 65 above, while some support is also provided for the concept, it was proposed that amendments be made to prevent Aurizon Network from agreeing Commercial Terms:</p> <p>where an Expansion is funded by Aurizon Network;</p> <p>it involves Aurizon Network funding a Pre- Feasibility or Feasibility Study; or</p> <p>it requires that a Related Party receives a haulage or port agreement.</p>	<p>The 2013 DAU does not include an obligation to fund expansions. This is a matter that remains subject to negotiation with customers. This is similarly the case in relation to the second point regarding the funding of a pre-feasibility or feasibility study. This is an important part of the expansion process, which is also currently being developed with customers. The final drafting of the 2013 DAU will be aligned with the outcomes of the discussions on these two matters. Aurizon Network agrees with the third point in principle.</p>	<p>Aurizon Network will review these provisions pending the outcomes of current discussions with customers.</p>	<p>The QRC's position with regards to expansion funding is set out in its Main Submission, New Submission and Mark-Up. As has been noted in those submissions the process for negotiating 'Commercial Terms' is of great concern to industry.</p> <p>The QRC is willing to work with Aurizon Network to develop these provisions in line with the outcome of discussions in relation to the expansion framework under UT4.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
Regulatory Asset Base [Schedule E]						
97	RAB adjustment - acceptance by QCA	1.1(b)	Questions have been raised regarding the inclusion of a provision which requires that the QCA is bound to accept the amount which Aurizon Network proposes to deduct from the RAB based on the net proceeds of a disposal.	<p>It is not Aurizon Network's intention to limit the QCA's approval of deductions from the RAB.</p> <p>Aurizon Network has reviewed clause 1.1(b) and is satisfied that the drafting does not affect the QCA's ability to accept (or reject) the values determined so long as it is done so in accordance with clause 1.1(a).</p>	Not change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal to make no change.</p> <p>The QRC's position is set out in its Main Submission and Mark-Up of Schedule E.</p>
98	RAB adjustment – write-downs of assets (demand and bypass)	1.2(c) and (d)	Aurizon Network has re-drafted the provisions that limit the QCA's optimisation of the RAB to certain circumstances. It removed the circumstances where demand has deteriorated to such an extent that pricing on an un-optimised asset would result in a further decline in demand, and where there is a possibility of actual by-pass. There has been opposition to the removal of these circumstances.	<p>The intent of the drafting in the 2013 DAU has not changed from the 2010 AU. The QCA must still approve variations in Reference Tariffs via the annual reset process in Schedule F. Relevant parties can comment on these matters including the extent to which access charges should be amended.</p> <p>As reference tariffs are approved for the term of the access undertaking any reduction in the RAB value would occur in the approval of the undertaking and not during</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal to make no change.</p> <p>The QRC considers that restoring the relevant UT3 provisions would clarify that the intent of the drafting.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				its term. The provisions also did not describe what would happen to the assets once removed, when they could be reinstated and at what value.		
99	RAB adjustment - write-downs of assets (Condition Based Assessments)		Aurizon Network has not included the obligations from the 2010 AU relating to the Condition Based Assessments in the 2013 DAU. Some customers have requested that this be reinstated.	<p>Aurizon Network has made a commitment to industry to enhance the transparency on performance. As such, Aurizon Network will periodically provide a report on the condition of the asset, providing it is not linked to the RAB value, and the costs of the report are included in the reference tariff.</p> <p>Aurizon Network considers transparency on the condition and performance of the asset is part of a wider discussion in relation to the Draft Incentive Mechanism and provisions in the contracts in relation to contracted service levels.</p>	Aurizon Network will provide transparency on the asset condition provided it is not linked to the RAB value (or has any other financial impact on the business).	The QRC seeks to ensure that Aurizon Network is incentivised to adequately maintain the network, and cannot earn excess returns by underspending the maintenance budget reflected in tariffs. The Condition Based Assessment with a link to RAB value was one means of achieving this. The QRC is willing to discuss alternative mechanisms with Aurizon Network.
100	Capital expenditure report - timing	1.3	It is considered that the proposed timeframe for submission of the capital expenditure report (within four months from the end of the	To allow for audit of the capex report and approval by the QCA Board, the QCA have suggested that a six month timeframe may be more	Aurizon Network will amend the timeframe for lodgement of the capital expenditure report to be within six months of the relevant year.	The QRC agrees with the proposed time frame of six months. However, the QRC considers that the capital expenditure report should be

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			relevant year) is too short. This was not raised in the customer submissions but in a QCA working group session held following the lodgement of the UT4 proposal.	appropriate then the current four months.		submitted as soon “as reasonable practicable and no later than 6 months” from the end of the relevant year.
101	Capital Expenditure - definitions	1.3	It has been suggested that the terms of reference for the review of the annual capex report would be streamlined if the undertaking included definitions of capex and asset renewal. This was not raised in the customer submissions but in a QCA working group session held following the lodgement of the UT4 proposal.		Aurizon Network will include a definition of capital expenditure in the 2013 DAU.	The QRC will provide further comment once Aurizon Network provides a draft of its proposed definition.
102	RAB reporting	1.3(a)	It has been suggested that the capital expenditure report distinguishes between user funded and Aurizon Network funded expenditure.		Aurizon Network will amend this provision to distinguish between capital expenditure funded by Aurizon Network and capital expenditure funded by users.	The QRC agrees with Aurizon Network’s proposed change in principle but is unable to provide further comment until Aurizon Network provides a draft of its proposed amendments.
103	RAB adjustment - equity	1.2(b) and	There is some support in	Aurizon Network is willing to	Aurizon Network will amend	Whilst the QRC agrees in

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	raising costs	1.5	principle for Aurizon Network's proposed recovery of equity raising costs in the RAB, subject to a review of prudence by the QCA. It has also been proposed that a clear allocation should be made between <i>"each Reference Tariff, each User Funded Project and for any relevant group of Access Holder paying a premium..."</i> .	explore the specific concerns raised here with customers and/or the QCA and review the drafting accordingly.	this provision to make it clear that the QCA must review and approve the proposed costs. Further amendments to reflect any specific concerns will be further investigated.	principle with Aurizon Network's proposal, it cannot undertake a proper assessment until the further drafting foreshadowed by Aurizon Network is provided.
104	RAB roll forward report	1.4(a)	It has been proposed that: the timeframe required for submission of the RAB roll forward report should be removed; and the report should not only be for each Coal System, but for <i>"each Reference Tariff, each User Funded Project and for any relevant group of Access Holder paying a premium"</i> .	While the removal of the time period for providing the roll-forward report to the QCA may create some uncertainty about timing, this is acceptable to Aurizon Network. Some further granularity of reporting can be provided, as in certain circumstances duplicate RABs will be required. These changes can be effected through the RAB roll-forward report without further amendments to the 2013 DAU.	Aurizon Network will amend this clause to remove the time period for providing the roll-forward report to the QCA.	The QRC agrees with Aurizon Network's proposed change, however, also considers that UT4 should expressly provide that the RAB roll forward report should be for <i>"each Reference Tariff, each User Funded Project and for any relevant group of Access Holder paying a premium"</i> .
105	Maintenance Standards		Aurizon Network has not retained clause 1.5, Schedule A of the 2010 AU in the 2013 DAU, which required it to	Aurizon Network has removed this clause from the 2010 AU as it is included in the standard access agreements. Aurizon	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013	The QRC does not agree with Aurizon Network's proposal to make no change. The QRC considers that this

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			<p><i>“maintain the Rail Infrastructure in a condition which is fit for the purpose of provision of contracted Train Service Entitlements to Access Holders.”</i> Some customers have requested the re-instatement of this clause in the 2013 DAU.</p>	<p>Network believes that the appropriate place for this obligation is those agreements, as remedies are available to access holders in the event of a breach.</p>	<p>DAU.</p>	<p>clause should be included in UT4 as well as the access agreements. Aurizon Network owes this obligation to individual access holders (as properly reflected under an access agreement). However, this maintenance obligation also operates more broadly to affect Aurizon Network’s pricing work. In that regard, the provision should be expressly incorporated in the undertaking.</p>
106	Prudency tests - vote on standard of works	2.1(c) and (d)	<p>It has been suggested that it is not appropriate to extend the scope of the customer vote to the standard of works.</p>	<p>Whilst Aurizon Network believes that it would be more appropriate for industry to have a say on such matters, to the extent this is not supported by industry, Aurizon Network will amend the 2013 DAU accordingly.</p>	<p>Aurizon Network will amend this clause to remove the standard of works from the scope of the customer vote.</p>	<p>The QRC agrees with Aurizon Network’s proposed change.</p>
107	Prudency tests - QCA acceptance	2.1(c), 3.2(b), 4.2(a) and 5.3(e)	<p>It has been proposed that Aurizon Network <u>must</u> seek QCA approval of prudency of scope, standard and cost.</p>	<p>The reason for the requested change is unclear.</p> <p>This clause does not alter the treatment between the 2010 AU and the 2013 DAU, in that Aurizon Network may seek the QCA’s approval.</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.</p>	<p>The purpose of the QRC’s proposal to substitute “<i>may</i>” for “<i>must</i>” is to make it clear that the QCA’s approval must be sought even if a user vote is undertaken. As was the case under UT3, UT4 should require Aurizon Network to obtain the</p>

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						QCA's approval following completion of a user vote. The QRC's position in relation to this issue is further explained at Section 8.6 of Part 8 of the QRC's Main Submission.
108	Acceptance of expenditure on Studies	2.2(b)(i)(B)	It is proposed to qualify the drafting of this clause so that the QCA will accept expenditure on a concept, pre-feasibility or feasibility study if it is prudent.	It would be reasonable to expect that any expenditure would be prudently incurred. Aurizon Network is therefore willing to review the drafting to reflect this intent.	Aurizon Network will amend this clause to include a requirement for this expenditure to be prudent.	The QRC agrees with Aurizon Network's proposed change.
109	Acceptance of capital expenditure	2.2(f) and 2.3(a)(i)(C)	It is proposed to include an additional provision in this clause providing that nothing should prevent the QCA from holding a public consultation process on any decision, and the QCA should consider the information obtained during such a process.	It would be reasonable to expect that the QCA would consult on any significant issues and take reasonable comments into account. However, where the matter before the QCA is a matter that has been the subject of successful vote by interested participants, it is not considered reasonable for further consultation with a view to re-opening those matters.	Aurizon Network will amend the drafting to provide that nothing in this clause should prevent the QCA from holding a public consultation process on any decision, unless it has been the subject of a successful vote by interested participants. If consultation is undertaken the QCA should consider the information obtained during such a process.	The QRC agrees with Aurizon Network's proposed change.
110	Acceptance of capital expenditure	2.2(i)	This provision addresses circumstances under which the QCA's acceptance of a change	While Aurizon Network considers that a change in scope or standard is already	Aurizon Network will amend this clause to make clear that material change includes a	The QRC agrees with Aurizon Network's proposed change.

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			is sought in relation to expenditure that has already been accepted by the QCA or customers (via a customer vote). It is proposed to amend 'material change' to make it clear that this includes a change in scope or standards.	accommodated under this provision, it will make this clarification.	change in scope or standard.	
111	Assessing prudence of capital expenditure	Sch E clause 2.3(a)(i)(B)	It is proposed that the words "as soon as reasonably practicable" be removed from the requirement for the QCA to provide advice from independent experts prior to any decision on prudence.	It is not considered in line with the principles of natural justice for industry to require that the QCA withhold expert advice from Aurizon Network until after it has made its determination,	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees with Aurizon Network's proposed change.
112	Assessing prudence of capital expenditure	2.3(b), 2.3(d), 2.4(e)(iii) and 6.1(f)(i) and (iii)	The 2013 DAU includes specified time limits for the QCA to respond to various requests by Aurizon Network. It has also proposed that acceptance of a proposal by Aurizon Network is deemed to have occurred if a response is not provided within a certain timeframe. There has been some opposition to the inclusion of these timeframes.	Aurizon Network's rationale for including these timeframes was provided in the UT4 proposal. Delays in the decision making process may result in delays in infrastructure investment or the ability to achieve a return on that investment. Aurizon Network will discuss with the QCA a reasonable application of timeframes.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's proposal to make no change. The QRC considers it is inappropriate to impose the proposed timeframes on the QCA, which if not complied with will result in a deemed approval. Providing for deemed approval circumvents the true role of the QCA.
113	Prudence tests - Asset	2, 3 and 4	The 2013 DAU provides that	The purpose of this drafting is	No change is proposed based	The QRC does not agree with

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	Management Plan		the QCA must accept the scope, cost and standard of asset replacement expenditure as prudent if consistent with an approved asset management plan. It has been proposed that this should be deleted.	<p>to replace a general set of criteria in the 2010 AU which can be consolidated within the asset management plan.</p> <p>As the QCA continues to approve both the asset management plan itself - subject to a decision by Aurizon Network to lodge an asset management plan - and that the expenditure is consistent with the asset management plan, the intent of the drafting in the 2013 DAU should be consistent with the 2010 AU.</p>	on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>Aurizon Network's proposal to make no change.</p> <p>As outlined in its Main Submission, the QRC considers that an asset management plan should be only one of the factors taken into account in determining prudence. An asset management plan is a high level document which, by itself, does not contain sufficient detail to determine the prudence of a capital expenditure.</p>
114	Asset Management Plan	2.4	<p>A number of amendments have been proposed to the provisions in the 2013 DAU addressing the asset management plan, including:</p> <p>Aurizon Network must submit an asset management plan;</p> <p>Aurizon Network must update the plan annually and have the update approved by the QCA;</p> <p>nothing limits the QCA from holding a public consultation on the asset management plan.</p>	<p>The asset management plan is designed to improve the process for the QCA's acceptance of asset renewal expenditure. It is a voluntary obligation, as is the case in the 2010 AU. Aurizon Network is incentivised to have an asset management plan approved as it reduces investment risks. However, it does not accept that this should be a mandatory obligation.</p> <p>Aurizon Network will discuss the development of an asset</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal to make no change.</p> <p>As acknowledged by Aurizon Network, the development of an asset management plan improves the process for the QCA as well as benefiting Aurizon Network. Accordingly, the QRC does not understand Aurizon Network's resistance to being subject to a mandatory obligation in this regard.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				management plan framework with the QCA.		
115	General process for acceptance of works - Safety Management System	4.2(c)(v)	As currently drafted this clause provides that the QCA must have regard to whether Aurizon Network's design standards are contained within the Safety Management System in determining whether the standard of works is prudent. It has been proposed that this should be amended to state that the Safety Management System must have been accepted by the Safety Regulator.	Under the <i>Transport (Rail Safety) Act 2010 (Qld)</i> it is not clear that a Safety Management System is "accepted", or indeed that any amendments from time to time to that Safety Management System are "accepted" by the Safety Regulator. Accordingly, the proposed amendment could result in Aurizon Network's Safety Management System not being a relevant factor to be considered by the QCA, notwithstanding that the Safety Management System is closely linked to Aurizon Network's accreditation. It is therefore not considered appropriate to make this amendment.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees that no change is required.
116	General process for acceptance of prudence of costs - procurement strategy	5.2(b)	This clause lists the factors that would require the QCA to accept costs as prudent where there is an accepted procurement strategy, if certified as such by the auditor. It is proposed to include an	Aurizon Network's concern with this proposal is that even a trivial or minor non-compliance, or a non-compliance that is rectified or that does not result in any additional capital expenditure by Aurizon	Aurizon Network will give further consideration to the proposed drafting in relation to compliance with contract provisions, in the context of assessments of prudence of costs where there is an	The QRC appreciates Aurizon Network's willingness to consider the QRC's proposal further. However, the QRC does not consider its proposed drafting to produce " <i>too harsh an outcome</i> ". The QRC notes

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			additional requirement that the auditor certifies that Aurizon Network has complied with the relevant provisions of the contract.	<p>Network, may cause Aurizon Network to fail to comply with this requirement. This seems too harsh an outcome and may create enough uncertainty to render a procurement strategy approach to capital expenditure unworkable.</p> <p>However, Aurizon Network will consider drafting which addresses the intent of the proposal but is consistent with the other tests in clause 5.2(b).</p>	approved procurement strategy.	<p>that a similar provision exists in the DBCT Access Undertaking.</p> <p>The QRC considers Aurizon Network's compliance with a particular contract is a relevant factor in determining the prudence of amounts incurred under that contract. In particular, the QRC does not consider it prudent to include costs that result from a breach of contract.</p> <p>The QRC is unable to provide substantive comment on Aurizon Network's proposal until it communicates how it intends to ensure the drafting of clause 5.2(b) reflects the QRC's proposal to ensure that contractual compliance is a relevant consideration to prudence.</p>
117	Procurement strategy	6.1(b)(i)	<p>Amendments have been proposed to the requirements that if satisfied, would require the QCA to accept a procurement strategy proposed by Aurizon Network. These are:</p> <p>Aurizon Network's procurement strategy be approved by the</p>	<p>The requirement for a strategy to be 'comprehensive' was not required in the 2010 AU. It is not clear what "comprehensive" means in respect of a procurement strategy.</p> <p>In relation to the second point, Aurizon Network undertakes an audit as part of its annual</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC agrees no change is required.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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QCA if “comprehensive”.
the QCA appoints an auditor to assess compliance.

capital expenditure claim submitted to the QCA. Aurizon Network notes that the QCA also approves its own auditor to review this claim.

Reference Tariffs [Schedule F]

118	Reference Trains – capital costs	1.3(b)(vii)	Feedback received is that there is a lack of clarity around the treatment of capital costs in the operational characteristics of reference services.	The drafting in the 2013 DAU addresses an error in the 2010 AU with respect to the inclusion of capital costs associated with new expenditure. There is no change in the intent or the practical application of the principles contained in the 2010 AU. However, Aurizon Network will amend the drafting if it is seen as unclear.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network’s position. The QRC’s concerns remain. Capital costs incurred in respect of the train service may not be reflected in the relevant reference tariff for a range of reasons. This should not necessarily mean (as it appears from the drafting) that the relevant service is not a “Reference Train Service”.
119	Electric Charge (EC)	2.2 (and removal of Endorsed Variation Event)	Concerns have been expressed around the lack of transparency regarding the setting of EC.	The proposed EC rate will be based on Aurizon Network recovering all relevant costs associated with on-selling of electricity as per its exemption under s.20Q of the <i>Electricity Act 1994</i> . The QCA continues to have	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC notes and thanks Aurizon Network for its explanation. The QRC considers that the definition of “EC” should be amended to reflect the explanation which has been given by Aurizon Network. As currently defined in clause 2.2, there is little

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>oversight through the audit processes to ensure:</p> <p>Aurizon Network is recovering only those costs associated with procurement and on-selling of electricity;</p> <p>Aurizon Network has not breached its non-discrimination obligations to charge the same EC rate to related and non-related operators under the same circumstances; and</p> <p>the environmental competitive neutrality amounts included in AT2-4 reflect those costs passed on by an electricity retailer.</p>		<p>guidance as to how “EC” is to be determined after the “Commencement Date”.</p>
120	Reference tariffs - components	2.1 and 2.2	Concerns have been raised regarding a lack of alignment between the 2013 AU and the standard access agreement regarding the application of reference tariff parameters (gtk, rtp, ntk, egtk).	<p>The drafting in the 2013 DAU is unchanged from the 2010 AU and is not as prescriptive as the standard access agreement with respect to gtk, egtk and nts where a trade certified weighbridge is not available (such that nominal weights are required).</p> <p>Additional drafting can be included to address this situation.</p>	Aurizon Network will revise the drafting to clarify the distinction between actual and nominal weights, as per the standard access agreement.	The QRC will assess Aurizon Network’s proposed amendments when the drafting foreshadowed by Aurizon Network is provided.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
121	Cross System Traffic	2.3	<p>Aurizon Network has revised the drafting for the pricing of cross-system traffics. It has been requested that Aurizon Network clarifies:</p> <p>that it does not result in cross subsidies; and</p> <p>how the proportion of distance the cross system service travels on a system is taken into account.</p>	<p>The intent of this clause has not changed since UT3. Neither of the methodologies in the 2010 AU or 2013 DAU result in cross-subsidies between systems.</p> <p>As per the 2010 AU, the distance is by reference from the origin to the system boundary, and from the system boundary to the destination. Proportions are not required as information is available from the billing system to apply the actual distance travelled.</p> <p>Aurizon Network would be willing to discuss these issues with the QCA and customers if requested.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal to make no change.</p> <p>The QRC's position in relation to this issue is set out to its Main Submission and its Mark-Up of Schedule F.</p>
122	Cross-system traffic - AT5	2.3(a)(v)	Aurizon Network has proposed to change the allocation of AT5 from being based on the egtk's in each system to the destination system.	The impact of this change is not material. Aurizon Network is therefore willing to revert to the treatment in the 2010 AU.	Aurizon Network will amend this clause so that the allocation of AT5 for a cross-system service will be based on the egtk's attributable to the origin and destination system.	The QRC agrees with Aurizon Network's proposed change. An example of appropriate drafting amendments are set out in the QRC's Mark-Up of Schedule F.
123	Capital expenditure carryover account adjustment	3	This clause is a provisional clause to allow for an adjustment to be made for finalisation of the capital	Aurizon Network agrees that any provisions that are not required should be removed.	Aurizon Network will remove clause 3 if the capital expenditure carryover account balance can be finalised prior	The QRC agrees with Aurizon Network's proposed change.

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			expenditure carryover account balance for the period ending 30 June 2013. It is requested that this clause be deleted if the adjustment is finalised prior to the approval date for UT4.		to the UT4 approval date.	
124	Annual Review of Reference Tariffs	4, Sch E - clause 7	It is proposed to change the smoothed approach to the derivation of reference tariffs. Specifically, that there is an annual reset of not only volumes but also capital and maintenance allowances.	<p>The drafting of the 2013 DAU is consistent with the 2010 AU, other than for the short run marginal cost (SRMC) adjustment.</p> <p>Aurizon Network does not support an annual reference tariff variation process which includes matters other than volumes (which includes SRMC). The annual review needs to be able to occur in a timely manner.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC's position in relation to this issue is set out in its Main Submission and Mark-Up of Schedule E and Schedule F.</p>
125	Short Run Marginal Cost (SRMC) adjustment	4.1 (b)(iii) and (viii) and 4.3(b)(viii)	<p>There is opposition to the SRMC adjustment as the existing treatment (loosely) provides a volume incentive, as well as an incentive to reduce costs.</p> <p>It has also been queried as to whether the adjustment is the wrong way around in the</p>	This proposal more closely aligns to changes in Aurizon Network's maintenance costs for changes in network utilisation. As AT1 is explicitly linked to the maintenance allowance, Aurizon Network does not consider the arrangements promote efficiency as forecast AT1	Aurizon Network will amend this clause to make it clear that SAR will be increased if the revised system forecast is above the approved forecast and vice versa.	<p>4.3(b)(iii) does not relate to the SRMC adjustment. The QRC objects to 4.3(b)(iii) for the reasons set out in its Main Submission, including that the adjustment assumes that Aurizon Network has no costs which vary with volumes in the short term.</p> <p>In regard to the SRMC</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			drafting of clause 4.1(b)(iii).	<p>revenue changes may be reflected in maintenance planning.</p> <p>The intent of the drafting is for SAR to be increased if the revised system forecast is above the approved forecast (reflecting the increase in maintenance costs for the higher volumes based on the SRMC rate) and vice versa.</p>		adjustment, the QRC supports development of a mechanism for updating maintenance allowances on an annual basis, but does not consider that the mechanistic approach proposed is optimal.
126	System Allowable Revenue - Cross System Traffics	4.2(b)	Questions have been raised regarding alignment between cross-system pricing rules and determination of SAR.	<p>Aurizon Network has reviewed the consistency between SAR and TAR associated with cross-system traffics.</p> <p>It agrees that the drafting of clause 4.2(b)(i)(A) is inconsistent in that it reflects the minimum contribution to common costs (as per the 2010 AU) rather than the minimum revenue contribution.</p>	Aurizon Network will revise the drafting to reflect the minimum revenue contribution relevant to the destination system.	The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided.
127	SAR adjustments - environmental compliance charges	4.3(b)(iii)	Aurizon Network has proposed an annual adjustment to SAR for the recovery of charges incurred by Aurizon Network from electricity retailers in relation to compliance with	The recovery of charges for environmental compliance through AT1-4 (previously recovered via EC) reflects that they are a general overhead cost. They are not directly related to EC consumption. It is	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal that no change is required.</p> <p>These charges are not a general overhead cost, rather, they are directly related to</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>environmental initiatives.</p> <p>Instead, feedback provided is that these costs should be included within EC.</p>	<p>therefore not considered appropriate to recover these costs via EC.</p>		<p>electricity consumption. The quantum of such charges varies directly with the volume of electricity consumed.</p> <p>In the event that energy retailers are, in the future, required to collect general taxes on behalf of any level of government and levy these charges in a way which is not linked to the electricity consumed by the customer, the QRC would accept that this is a general overhead and that UT4 should be amended.</p>
128	SAR adjustments - audit costs	4.3(b)(v)	<p>Some customers have opposed Aurizon Network's inclusion of an adjustment to SAR for the difference between actual and forecast audit costs. It was also suggested that these costs be borne by the QCA.</p>	<p>Aurizon Network is unable to reasonably control total audit costs. The nature and extent of the scope is related to the audit scope approved by the QCA, and in some cases requested by the QCA.</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.</p>	<p>The QRC has no comment on this issue.</p>
129	Calculation of total actual revenue (TAR)	4.3(c)	<p>It has been proposed that TAR is determined as per the relevant standard access agreement to ensure tonnages reflect billing arrangements.</p>	<p>TAR (i.e. billings) is in accordance with the relevant standard access agreement unless where specified in the revenue cap submission. Whilst, the intent of the drafting</p>	<p>Aurizon Network will revise the drafting to clarify the distinction between actual and nominal weights as per the standard access agreement.</p>	<p>The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				has not changed from the 2010 AU, Aurizon Network will amend the drafting to clarify this.		
130	Calculation of TAR	4.3(c)	Feedback received has requested the inclusion of (1) overload charges, and (2) ancillary revenues, within TAR.	<p>While Aurizon Network does manage safety risks in relation to overloads, for practical reasons, Aurizon Network does not currently apply overload charges in the CQCN (even though it retains the ability to do so). In future, any overload charges are expected to be immaterial.</p> <p>Ancillary revenues relating to the maintenance connections to private infrastructure have traditionally been immaterial. The associated maintenance costs have been excluded from the UT4 maintenance forecast.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal that no change is required.</p> <p>It is not clear to the QRC that costs relating to these services are excluded from the UT4 maintenance and opex forecasts. The QRC remains concerned that a number of costs incurred by Aurizon Network are recoverable outside of reference tariffs, and that exclusion of such costs from the opex and maintenance forecasts is problematic.</p>
131	Approval of revenue adjustment amounts	4.3(g)	It is proposed that TAR should be reconciled to Aurizon Network's actual revenue.	<p>The QCA can request reconciliations of billing and actual revenues via its review of the billing models supporting TAR.</p> <p>It should be noted that any reconciliation via the revenue cap submission (which is made</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC has no comment on this issue.

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				public) would potentially include matters not subject to regulation and which accordingly cannot be disclosed.		
132	Approval of revenue adjustment amounts	4.3(k)(ii)	Concerns have been expressed with the proposal to limit consultation on revenue adjustment amounts and increments to access holders and access seekers.	<p>The intent of the drafting between the 2010 AU and the 2013 DAU has not changed.</p> <p>The intent is that the consultation is focussed upon those parties affected by the Reference Tariff variation. This should include current and potential customers of access holders and access seekers. Aurizon Network will restore the drafting from the 2010 AU to confirm this.</p>	Aurizon Network will amend the drafting to allow the QCA to invite and consider comments from relevant industry participants regarding the revenue adjustment amounts and increments.	The QRC agrees with Aurizon Network's proposed change, subject to reviewing the proposed drafting.
133	Performance incentives/draft incentive mechanism	4.4	<p>There is consistent support for some form of incentive mechanism. A range of comments were including:</p> <ul style="list-style-type: none"> • should exclude SRMC/ AT1 adjustment in the revenue cap; • rejection of the increment and supply chain performance incentive as 	<p>The May 2012 submission made by Aurizon Network proposed three mechanisms:</p> <p>a symmetrical service quality regime with up to 1% of allowable revenue 'at risk'; and</p> <p>two positive incentives to improve supply chain performance.</p> <p>Aurizon Network has only</p>	No further change has been proposed at this stage, pending further discussions with industry regarding transparency and the QCA's decision on the May 2012 submission.	<p>The QRC does not agree that no change is required.</p> <p>The QRC views in relation to this issue are as set out in its Main Submission. The QRC is willing to discuss this issue further with Aurizon Network.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>per Aurizon Network's May 2012 submission;</p> <ul style="list-style-type: none"> • support for a transparent incentive-based mechanism similar to the electricity transmission and distribution industries; • support for a symmetrical incentive framework to align Aurizon Network with industry's performance metrics; • support for a symmetrical mechanism linked to performance, contract entitlements and regulatory outcomes. 	<p>proposed the two positive increments. The first was withdrawn subject to the QCA's decision on this submission.</p> <p>Breach and negligence provisions continue to apply to Aurizon Network's revenue cap.</p>		
134	Recovery of revenue adjustment amounts	4.5	It has been proposed to accelerate the recovery of revenue adjustment amounts via an adjustment charge, providing for an immediate adjustment instead of the current two year lag.	Aurizon Network recognises the benefits for both customers and Aurizon Network and is prepared to implement a more immediate adjustment.	Following further discussions with the QRC, Aurizon Network will propose revised drafting to allow for the more immediate recovery of revenue adjustment amounts.	The QRC agrees with Aurizon Network's proposal and looks forward to further discussions on this change.
135	Review event - requirement to submit application	5.1(b)	It is proposed that the QCA should be able to direct Aurizon Network to submit a review event application, in addition to	Aurizon Network considers that for most of the matters covered by a review event, it is incentivised to submit its own	Following further discussions with the QRC, Aurizon Network will propose revised drafting to allow the QCA to direct Aurizon	The QRC welcomes this revision and looks forward to reviewing Aurizon Network's revised drafting.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			an endorsed variation event.	application (unlike Endorsed Variation Events). Notwithstanding, Aurizon Network will amend the 2013 DAU to implement this proposal.	Network to submit a review event application, in addition to an endorsed variation event.	
136	Review event - maintenance costs	5.3(b) and (c)	Two review events that were included in the 2013 DAU related to adjustments for changes to maintenance costs (subject to a 2.5% threshold), arising from: <ul style="list-style-type: none"> a change in maintenance practices reasonably requested by an access holder or customer; the engagement by competitive tender of a third party, or an Aurizon party on arms length terms, and the costs will exceed the approved allowance. It is proposed that these be deleted. Questions have also been raised as to how the 2.5% is applied. 	The 2.5% threshold applies to the maintenance cost impact where the base cost for non-electric is net of AT1 for the relevant system. Electric does not require an equivalent deduction as such the threshold is 2.5% of the base cost for electric. The drafting can be reviewed to confirm these principles. Clauses 5.1(a) to (c) may cover the same events, Aurizon Network will consider revised drafting which combines them.	Aurizon Network will revise the drafting of this clause to combine the maintenance cost review events (no change to threshold) and to clarify application.	The QRC supports Aurizon Network's proposal to revise the drafting of these clauses. The QRC considers that following the proposed revision, the redundancy of clauses 5.3(b) and (c) will be clear. That is, the events which can trigger a review under these clauses are simply examples of the events covered under clause 5.3(a). On this basis, the QRC does not understand the need to add these review events.
137	Review event force	5.3(e)	Submissions have highlighted	Aurizon Network agrees that the use of incremental costs	Aurizon Network will review the drafting of the review event	The QRC appreciates Aurizon Network's willingness to review

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	majeure		<p>issues with regard to:</p> <ul style="list-style-type: none"> the definition of Incremental Costs (the bring forward of costs from future years); “act of God” (it has been suggested that paragraph (e) of the definition of Force Majeure be deleted); and insurance. 	<p>(as defined) may not be appropriate for the relevant review event. Aurizon Network is prepared to consider revised drafting to confirm that the costs allowed cannot otherwise be included in an approved reference tariff.</p> <p>For review events associated with a force majeure event, the definition should be aligned with the standard access agreement. “Act of God” is a general catch-all provision and is not unusual to be included in an agreement alongside related, defined events.</p> <p>Aurizon Network will discuss with customers an alternative application of review events that are wholly or partly covered by insurance, and whether insurance arrangements can be changed.</p>	provisions relating to force majeure following further discussions with customers.	this issue further and looks forward to discussing appropriate amendments with Aurizon Network.
138	Approval process for proposed reference tariff variation	5.5(c)	It is suggested that this clause should be amended to make it clear that the list of matters to be considered by the QCA in approving a proposed reference tariff variation should not be exhaustive.	The intent of the drafting in the 2013 DAU is unchanged from the 2010 AU. The matters under this section, including the QCA’s consideration under the QCA Act, are not exhaustive. Aurizon Network is willing to	Aurizon Network will amend this clause to make it clear that the list of matters to be considered by the QCA in approving a proposed reference tariff variation is not exhaustive.	The QRC will assess Aurizon Network’s proposed amendments when the drafting foreshadowed by Aurizon Network is provided.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				amend this provision to make this clear.		
139	Adjustment Charges	6.1(a)(ii) and 6.3(c)(i)	It is suggested that amendments are required to clarify QCA approval of a reference tariff which has a past application date.	<p>The intent of the drafting in the 2013 DAU is unchanged from the 2010 AU.</p> <p>Aurizon Network is willing to amend the drafting to clarify the QCA approval of a reference tariff which has a past application date in the context of adjustment charges.</p>	Aurizon Network will amend the 2013 DAU to make it clear that an adjustment charge could be applied where the QCA approves a variation of a reference tariff in accordance with clause 5 and that variation applies or takes effect on a date prior to the date on which the QCA approves the variation.	The QRC generally agrees with Aurizon Network's proposal, however, is unable to undertake a substantive review until the proposed drafting foreshadowed by Aurizon Network is provided.
140	Reference trains - electric	7 and 8	Industry has suggested that it is inappropriate for the specification of the reference train in Blackwater and Goonyella to be only electric, rather than either diesel or electric.	<p>Aurizon Network's proposal is consistent with:</p> <ul style="list-style-type: none"> tariff modelling; and section run times associated with the reference train, in place for the 2010 AU. <p>Notwithstanding, specification of a diesel or electric consist is not necessary for pricing purposes (for tariff modelling a predominant consist is still required). Accordingly, the drafting from the 2010 AU can</p>	Aurizon Network will amend the reference train characteristics for the Blackwater and Goonyella systems to be either diesel or electric.	The QRC welcomes Aurizon Network's proposed change.

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				be restored.		
141	Reference tariffs - Newlands BRTT	10.1(c)	Concerns have been raised regarding the increase in the below rail transit time in Newlands from 124% to 160%.	The drafting reflects the DAAU for GAPE approved by the QCA in September 2013.	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's proposal that no change is required. The QRC's position remains as set out in its Mark-Up of Schedule F.
142	AT2	7, 8, 9 and 10	<p>The following matters have been raised regarding the proposed changes to AT2:</p> <ul style="list-style-type: none"> the size of the relative impact for Stanwell; the "rebalancing", concern around the impact of the increase in AT2 on take or pay; the size of the increase. 	<p>Aurizon Network has proposed an increase in AT2 associated with higher expansion costs, offset by a decrease as follows:</p> <ul style="list-style-type: none"> for Newlands, AT4; and for all other systems, 50% allocated between AT3 and AT4. <p>There is no impact on the revenue that Aurizon Network is entitled to earn from each system (only an impact on relativity between mines due to the distance taper).</p> <p>Stanwell continues to receive a significant discount to the Blackwater reference tariff in UT4. Aurizon Network would be willing to consider a higher discount subject to acceptance</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. The QRC's position in relation to this issue is set out in its Main Submission and Mark-Up of Schedule F.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>by other access holders in Blackwater and approval by the QCA.</p> <p>With respect to take or pay, Aurizon Network recognises that an unintended consequence of the AT2 proposal is that, relative to UT3, an access holder's exposure to UT1 take or pay will reduce relative to other access holders. However, any effect is currently insignificant, and in future negligible, as most of the remaining UT1 access agreements will expire during the UT4 period.</p>		
143	Nominal payloads	7, 8 and 10	It has been requested that Aurizon Network provides clarity as to how the nominal payloads are prescribed.	<p>Aurizon Network proposes nominal payloads (in tonnes) for each system.</p> <p>Tonnages are based on the reference train configuration for each system inclusive of a 98% loading efficiency. These tonnages are aligned with the assumptions supporting the tariff modelling.</p>	No change is proposed based on the further information provided by Aurizon Network to assist in the review of the 2013 DAU.	The QRC appreciates the further information provided by Aurizon Network, however, the QRC requires further information in relation to how the nominal payloads are prescribed. The QRC is willing to discuss this issue further with Aurizon Network.

Available Capacity Allocation and Management [Part 7]

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
144	Provision of mechanism for short term transfers	n/a	Customers want more flexibility to manage contracted capacity through a mechanism for short term transfers that allow for some transfers to be approved within 48 hours. The mechanism should allow an access holder to schedule train paths in excess of contract where traded capacity is available.	Aurizon Network is proposing to introduce a short term swapping mechanism to provide access holders with more flexibility in managing their short term capacity requirements.	<p>Aurizon Network will amend the drafting to include a shortterm swapping mechanism that includes features such as:</p> <ul style="list-style-type: none"> • transfer requests of up to 12 months which can be submitted in conjunction with train orders for an intermediate train plan; • a requirement that no other access holder or Aurizon Network is made worse off; • a requirement for confirmation from relevant service providers in the supply chain that the transfer can be accommodated; and • no requirement for Aurizon Network to perform a capacity analysis. 	There are too many caveats to Aurizon Network's proposal. In particular, the caveats that Aurizon Network is not worse off and that there is no need for a capacity analysis. It is uncertain as to what is meant by no worse off – for example, if there is a transfer of capacity from BHPB to a junior mining company, is Aurizon Network worse off?
145	Demonstration of the utilisation of access rights	7.1(a)(i)	It is suggested that the 2013 DAU include an obligation for Aurizon Network to act reasonably when deciding to refuse access rights where they cannot be fully utilised.	The intention of clause 7.1(a) is to list up front, the matters and the associated clauses dealt with in Part 7. The substance of the matters is included in those clauses.	Aurizon Network will amend the drafting of clause 7.1(a)(i) to reflect the obligation in clause 7.2.	The QRC appreciates Aurizon Network's willingness to amend this provision and considers this issue can be easily resolved by the parties.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
146	Allocation of capacity must be independent of funding arrangements	7.1(a)(v)	It has requested that clarification be provided to confirm that priority in allocating capacity is independent of how an expansion will be funded.	Industry has raised similar concerns in relation to Part 4 and Part 8.	<p>Aurizon Network will include a general obligation in the 2013 DAU that it will not have regard to whether any relevant expansion is, or may be, user funded or funded by Aurizon Network when:</p> <ul style="list-style-type: none"> • negotiating or entering into an access agreement; • allocating available capacity under Part 7; or • granting a provisional capacity allocation under clause 8.6(o). 	The QRC agrees with Aurizon Network's proposed change.
147	Subjective nature of matters to be assessed to demonstrate full utilisation of access rights	7.2	Feedback received is that the principles around Aurizon Network's ability to refuse access rights if certain conditions (such as supply chain rights, a contract for rail haulage, and sufficient facilities) are not met are subjective and potentially allows for discrimination.	Clause 7.2 is an objective test. Aurizon Network must act reasonably in deciding whether it is satisfied the access seeker can fully utilise the relevant access rights. Whether the access seeker can fully utilise the relevant access rights will largely be a question of fact and can ultimately be disputed if necessary.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no specific change is required in relation to this matter but the QRC considers clause 7.2 should be amended in the manner shown in the QRC's Mark-Up of Part 7. This includes the amendments discussed at Items 118, 119, 120 and the inclusion of an obligation of good faith on Aurizon Network in deciding whether to refuse to allocate capacity.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
148	Inclusive versus determinative list of matters covering whether an access seeker can fully utilise access.	7.2	It has been suggested that the inclusive list of factors which Aurizon Network could take into account when deciding whether an access seeker can fully utilise requested access rights, should be a determinative and exhaustive list.	Aurizon Network agrees in principle with the proposed amendment.	Aurizon Network will amend the drafting of clause 7.2 to make it a determinative and exhaustive list, subject to a review of the matters included.	Whilst the QRC agrees with Aurizon Network's proposed change, the QRC is unable to comment on the substance of this change until Aurizon Network provides further detail of the matters that it requires to be included to make the list determinative and exhaustive.
149	Requirement to demonstrate 'reasonable likelihood' in demonstrating ability to use requested access.	7.2	It has been requested that an amendment be made to acknowledge that at the time of allocating available capacity, an access seeker must demonstrate a reasonable likelihood of satisfying the requirements listed in clause 7.2 by the time the access rights are to commence.	The 2013 DAU includes a "reasonable likelihood" criteria for supply chain rights and a rail haulage provider in Schedule B. Aurizon Network agrees that the consideration of the matters in 7.2 should be in relation to the reasonable likelihood of the access seeker satisfying the matters listed, at the time the access rights are expected to be used.	Aurizon Network will amend the drafting to confirm that the consideration of matters in clause 7.2 will be based on the reasonable likelihood of utilisation at the time the access rights are expected to be used.	The QRC agrees with Aurizon Network's proposed change.
150	Matters duplicated in definition of supply chain rights	7.2	It has been submitted that the criterion in clause 7.2(a) regarding the ability to load and unload train services and the criterion regarding sufficient facilities (clause 7.2(d)) are encompassed within the	It is not explicit that the definition of supply chain rights contemplates the existence of the right to load and unload train services and the availability of rollingstock and other facilities necessary to run	Aurizon Network will review clause 7.2 and the definition of supply chain rights to remove any duplication.	The QRC agrees with Aurizon Network's proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			definition of supply chain rights and are therefore unnecessary.	trains. Aurizon Network agrees to amend the definition of supply chain rights to ensure these matters are expressly included.		
151	Reinstate the replacement mine concept	7.3(a)	It has been requested that the replacement mine concept from the 2010 AU be reinstated for renewals.	Aurizon Network agrees to reinstate the 2010 AU drafting in relation to replacement mine. However the definition of replacement mine needs to be refined to reflect the intention that a replacement mine is a new mine that utilises the same capacity as the existing mine.	Aurizon Network will reinstate the 2010 AU replacement mine concept but will refine the definition to reflect the intention that it must be a new mine utilising the same capacity as the existing mine (that is, branch line and main line path).	The QRC agrees with Aurizon Network's proposed change.
152	Requirement that Aurizon Network negotiate renewals promptly	7.3(c) and (d)	It has been requested that Aurizon Network be required to promptly negotiate with a renewing access seeker given the renewal needs to be finalised by a fixed date.	Aurizon Network considers it cannot, without failing to comply with the undertaking or the QCA Act, maliciously or recklessly delay negotiations in respect of a renewal, with the result that an access agreement for a renewal is not executed at least 12 months prior to the expiry of the access rights being renewed. Aurizon Network will amend the drafting to clarify this in relation to access applications for	Aurizon Network will amend the drafting to expressly reinforce its negotiation obligations in respect of access applications for renewals.	The QRC agrees with Aurizon Network's proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				renewals.		
153	Priority for renewing access seekers	7.3(e)	A new clause has been requested which seeks to give renewing access seekers priority by expressly stating that they have a right to receive access “without re-submitting an Access Application or joining a queue”.	<p>Clause 7.3 provides a renewing access seeker an express priority in relation to their proposed renewal.</p> <p>The access application is the mechanism that gives rise to the provisions of the negotiation framework under Part 4 of the undertaking. This existing process ensures that sufficient information is provided to Aurizon Network to negotiate an access agreement for a renewal.</p> <p>The obligations under 7.3 and the negotiation framework balance Aurizon Network’s requirement for current information to assess a renewing access application, whilst providing greater certainty that access rights will be available for the life of mine.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>Whilst the QRC appreciates Aurizon Network’s further explanation, it disagrees that the current drafting of clause 7.3 is sufficient to ensure renewing access holders maintain priority. Clause 7.3 provides that an access holder only has priority to renew an access agreement if a new agreement is executed at least 12 months prior to the expiry of the access holder’s existing access rights. The QRC considers that a renewing access holder should not be at risk of losing its priority due to a failure to execute an access agreement at least 12 months prior to the expiry of the access rights, where that failure is caused by an act, omission or delay by Aurizon Network.</p> <p>The QRC also disagrees that a fresh access application should be required for renewing access holders. The QRC is unable to see any benefit in requiring a renewing access seeker to provide an access application, except where</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						<p>renewal is for capacity below the level currently contracted. The negotiation framework set out in Part 4 of UT4 may still be triggered in relation to the negotiation of a new access agreement by virtue of an access holder issuing a renewal notice (please refer to clause 7.3(g) of the QRC's Mark-Up of Part 7). Requiring a fresh access application will result in unnecessary costs and will delay the renewal process.</p> <p>The QRC considers that a renewal notice is sufficient to ensure Aurizon Network is able to obtain current and sufficient information prior to a renewal. Aurizon Network also has the ability to request further information from a renewing access holder in accordance with the negotiation framework.</p>
154	Sunset clause on priority of renewals	7.3(f)	It has been suggested that the requirement for a renewal application to be at least 12 months prior to the expiry of the relevant Access Rights be removed.	Aurizon Network must balance the needs of existing access holders (ability to renew) with that of new access holders (request for new access rights). The removal of the deadline for renewal applications could	No proposed change. Aurizon Network considers the obligations under clause 7.3 achieve an appropriate balance in respect of the relevant competing interests.	The QRC does not consider it is necessary to require a renewal application in relation to existing access rights to be issued at least 12 months prior to the expiry of those existing access rights. The interests of

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>affect the ability of other access seekers to contract for the access rights.</p> <p>In addition, if capacity is uncontracted when it is available either Aurizon Network will not earn a return or, where the revenue cap applies, existing access holders may be faced with increases in access charges.</p> <p>The 12 month period is a reasonable compromise in relation to all of the relevant competing interests.</p>		<p>new access seekers are adequately protected by clause 7.3(c) which provides that a renewing access seeker loses its priority in relation to relevant access rights if it fails to enter into a new access agreement with Aurizon Network at least 12 months prior to the expiry. If an access agreement has not been entered into by Aurizon Network and the renewing access seeker at least 12 months prior to the expiry of the existing access rights, Aurizon Network may enter into an access agreement in relation to the relevant capacity with another person (refer to clause 7.3(c) of the QRC's Mark-Up of Part 7 of UT4). Accordingly, it is unnecessary to require all renewing access applications to be made at least 12 months prior to the expiry of existing access rights in order to balance the interests of new access seekers.</p>
155	Expedited transfer arrangements	n/a	Feedback received is that there is a need to include an obligation for Aurizon Network to expeditiously complete the	Aurizon Network currently provides responses well within the regulatory timeframes. It is willing to make an amendment	Aurizon Network will include an obligation in the compliance report in Part 10 to report on the average negotiation period	The QRC supports Aurizon Network's proposed change. In addition to that change, the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			negotiation process for transfers, and in particular to use an abbreviated Part 4 process for short term transfers.	to report its performance in this area.	for transfers.	<p>QRC considers Part 7 should include an obligation on Aurizon Network to promptly negotiate transfers and comply with an abbreviated Part 4 negotiation process for short term transfers. Merely reporting on Aurizon Network's performance is not sufficient. Aurizon Network's willingness to expeditiously negotiate transfers should be reflected in the transfer process set out in Part 7.</p> <p>The QRC considers that the timeframes which apply under Part 4 in respect of a new application for access rights are not an appropriate reflection of the timing reasonably required for the negotiation of transferred access rights. Aurizon Network should be obliged to comply with shorter timeframes rather than merely reporting on its ability to do so, particularly in the case of short term transfers.</p>
156	Other works required for access rights	7.5.2(b)(iii)	It is suggested that the wording of this clause, in relation to which mutually exclusive	The 2013 DAU drafting intended that access negotiations would proceed	Aurizon Network will amend the clause to include other works or activities required to	The QRC supports Aurizon Network's proposal to identify other activities that may impact

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			access applications Aurizon Network will enter into negotiations with, is too broad. It is suggested that the exclusion of access applications that are subject to <i>"other works or expenditure by Aurizon Network relating to the Rail Infrastructure"</i> , is removed.	except in the case were the access rights would be subject to activities such as expansions and Customer Specific Branch Lines, as well as other activities that will impact on capacity. An example of this is, operational changes that do not require capital expenditure.	enhance capacity.	on capacity, however, it is unable to undertake a proper assessment of this change until further detail is provided.
157	Consideration of Aurizon Network's legitimate business interests	7.5.2(d)	<p>It is requested that the criteria for determining how to allocate capacity be changed by removing the reference to Aurizon Network's legitimate business interest, revenue adequacy and the ability to allocate capacity to the highest marginal value.</p> <p>In addition, it is sought to restrict Aurizon Network to specified criteria in clause 7.5.2(d) by making it an exhaustive, rather than an inclusive list.</p>	<p>The pricing principles in s 168A of the QCA Act include a requirement for revenue adequacy, which is reflected in the pricing principles in Part 6 of the 2013 DAU. As revenue adequacy is a fundamental element of the regulatory regime, Aurizon Network does not agree to its removal.</p> <p>Aurizon Network agrees to remove the reference to legitimate business interests, which results in the matters to be considered becoming an exhaustive list.</p>	<p>Aurizon Network will amend this clause to remove the reference to legitimate business interests and will consider whether any more matters are required to be listed for an exhaustive list.</p> <p>Aurizon also agrees to remove the reference to the highest marginal value.</p>	<p>The QRC agrees with Aurizon Network's proposal to remove <i>"legitimate business interests"</i> and <i>"highest marginal value"</i> from, but keep <i>"revenue adequacy"</i> in, the criteria for determining how to allocate capacity.</p> <p>The QRC supports Aurizon Network's willingness to make the criteria listed in clause 7.5.2(d) exhaustive but is unable to undertake a proper assessment of that criteria as a whole until Aurizon Network communicates any additional matters it requires to be included.</p>
158	Mandatory priority of coal train services	7.5.2(d)	It has been requested that a mandatory obligation be	Clause 7.5.2(d)(ii) in effect acknowledges the price	No change is proposed based on the further information	The QRC maintains that clause 7.5.2(d)(ii) should be amended,

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			imposed on Aurizon Network to treat a proposed access agreement for coal carrying train services as having a higher priority than for non-coal carrying train services.	<p>differential between coal and non-coal services, and allows Aurizon Network to use a simple test, that is whether the service is a coal or non-coal service, to streamline capacity allocation process where appropriate.</p> <p>Aurizon Network considers it appropriate to be able to distinguish between coal and non-coal services but not to mandate one type of service over the other.</p>	provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>however, the QRC is unable to comment fully on this issue until it receives Aurizon Network's proposed mark-up in relation to Item 157 above, as Items 157 and 158 are intrinsically linked.</p> <p>Further, given Aurizon Network's acknowledgement in Item 157 that it will remove the reference to "<i>legitimate business interest</i>", some change will be necessary to 7.5.2(d) to make the drafting work.</p>
159	Capacity allocation - date of acknowledgement	7.5.2(f)(iv)	It has been requested that the 3 year criterion for determining date priority for access applications be removed.	In determining the date priority, Aurizon Network agrees to amendments to require it to act reasonably in forming its opinion as to whether or not it is practical to determine the priority between two or more competing applications. In doing so, Aurizon Network considers the date priority should reflect the provisions in Part 4 in relation to its obligation to negotiate access agreements.	Aurizon Network will make amendments to require it to act reasonably.	<p>The QRC agrees with Aurizon Network's proposal to make amendments to require it to act reasonably, however, the QRC considers that the 3 year criterion for determining date priority should also be removed.</p> <p>Aurizon Network has agreed to allow an access application to be made up to 5 years before the relevant access rights are to commence in certain circumstances (refer to Item 44(g)). On the basis of this change, it seems inconsistent</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						to include a 3 year criterion for determining date priority for access applications. In all cases, priority should be determined on the basis of the date an acknowledgement notice was issued. If Aurizon Network considers an access application is made too far in advance of the commencement date of the relevant access rights, Aurizon Network can choose not to negotiate with that access seeker in accordance with Part 4.
160	Agreements to be executed	7.5.2.(f)(ii)	It has been suggested that the removal of the reference to a user funding agreement be removed, as, the execution of an access agreement in this circumstance is covered in Part 8.	The reference to a user funding agreement was included to provide an example of the types of agreements that the parties must be willing to execute in order to be allocated capacity under the date order test.	Aurizon Network will remove reference to a user funding agreement.	The QRC agrees with Aurizon Network's proposed change.
161	Removal of queue	7.5.2	It has been suggested that the capacity queue should be reinstated on the basis that removal of the queue reduces the objectivity around capacity management, and may lead to discrimination. Reinstatement	The queue was removed on the basis that it did not promote the optimal allocation of scarce capacity. Practically, if capacity becomes available, the framework allowed the queue to be re-ordered and provided	Aurizon Network will prepare process diagrams for inclusion in the undertaking to aid understanding of the process for allocating capacity.	The QRC agrees with the removal of the queuing mechanism and welcomes Aurizon Network's proposal to provide process diagrams to aid understanding of the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			of queuing provisions as per section 7.3.3 and 7.3.4 of the 2010 AU is requested.	to the party ready to execute an agreement. The revised process now provides 'yes'/'no' tests and is considered a more efficient allocation of resources. Access Seekers have the ability to utilise the dispute mechanism if they disagree with the application of the criteria. Aurizon Network proposes to include diagrams in the undertaking to make this process clear.		capacity allocation process.
162	Compliance with network management principles	7.6.1(a)	It is considered that the undertaking should impose an obligation on Aurizon Network to comply with the network management principles and that the QCA should ensure such compliance.	The obligation to comply with the network management principles is included in the access agreement. The QCA does not have the power under the QCA Act to interpret and enforce common law contracts.. However, the facts giving rise to the dispute in question may offend a provision in either the QCA Act or the undertaking over which the QCA does have power - thus, triggering a separate dispute process. For example, if there is a breach of the NMP that involves	No change is proposed. Aurizon Network considers the obligation to comply with the NMP rightly sits in the Access Agreement. However, Aurizon Network will review the drafting of the undertaking to ensure that access holders are able to access the complaints handling (clause 3.22) and audit process (clause 10.7 and 10.8) in relation to Aurizon Network's obligations under Part 3, for example the protected information obligations of the undertaking.	The QRC is willing to review the amendments foreshadowed by Aurizon Network in relation to Part 3, however, it is unable to undertake a proper assessment until further drafting is provided. Regardless, the QRC considers that Aurizon Network's obligation to comply with the network management principles should be incorporated into UT4 rather than only under an access agreement. As identified by Aurizon Network, this will

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				disclosure of protected information to the marketing division, then Aurizon Network offends against multiple obligations (the contract, the undertaking and the QCA Act), each with their own enforcement requirements.		<p>ensure the QCA has the ability to enforce the network management principles (which is not otherwise the case if the obligation merely arises under a private contract with an access holder).</p> <p>For this reason, the QRC also considers a dispute between an access holder and Aurizon Network should be capable of being dealt with in accordance with the dispute resolution process set out in UT4, as well as that set out in the relevant access agreement.</p>
163	Initial System Rules	7.6.3	It is been requested that mandatory System Rules be developed for every system.	Aurizon Network agrees with industry views and has submitted draft System Rules to the QCA for Northern Bowen Basin (GAPE, Newlands and Goonyella) and Capricornia (Moura and Blackwater).	Aurizon Network will amend the drafting to require each system to have System Rules.	The QRC agrees with Aurizon Network's proposed change.
164	Annual review of System Rules	7.6.4	Feedback received is that Aurizon Network should be obliged to review the System Rules at least annually or in certain circumstances such as where:	Aurizon Network has committed in the Capricornia and Northern Bowen Basin System Rules to an annual review of the System Rules and will amend the 2013 DAU	Aurizon Network will include a commitment to conduct a review of the System Rules at least annually and in the event of a greater than 30% change in GTKs.	The QRC agrees with Aurizon Network's proposal to include a commitment to conduct a review of the system rules at least annually and in the event of a greater than 30% change

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>there is an increase of least 30% of the GTKs in that system;</p> <p>a new coal basin is connected to the system;</p> <p>a new unloading terminal is developed;</p> <p>a change in the System Operating Assumptions occurs;</p> <p>or</p> <p>at least 60% of access holders in the system request it.</p>	<p>to reflect this.</p> <p>In addition, it is appropriate to review the System Rules in the event there is a greater than 30% change in GTKs over a relevant period.</p>		<p>in GTKs. The QRC also considers that Aurizon Network should be required to review and amend the system rules where it is formally requested to do so by at least 60% of the access holders in a coal system. The QRC considers this is a reasonable requirement which will assist in ensuring system rules are kept relevant and up to date.</p>

Network Management Principles [Schedule H]

165	Master train plan	3.1	<p>It has been requested that more transparency of information in the master train plan be provided. In addition, each train path in the master train plan must be practically achievable, taking into account headways. The maximum number of usable round trips must not exceed the practical utilisation ceiling of any track sections.</p>	<p>The intention is that the master train plan must demonstrate Aurizon Network's ability to meet contractual commitments, taking into account planned possessions, known outages and other network traffic. In practice, this is achieved through train diagrams of system paths (specific origin to port).</p>	<p>Aurizon Network will amend the network management principles to better describe the relationship between the master train plan, intermediate train plan and daily train plan.</p> <p>Aurizon Network will amend the provisions to clarify that the master train plan will include train service entitlements for up to 2 years.</p> <p>Aurizon Network will revise the drafting in clause 3.2 (b) of Schedule H to clarify that</p>	<p>The QRC agrees with Aurizon Network's proposed change.</p>
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
					Aurizon Network can only provide the master train plan to access holders to the extent it can do so while not breaching its ring fencing obligations.	
166	Infrastructure Service Providers	n/a	It is suggested that the network management principles require Aurizon Network to notify or consult with adjacent network providers in relation to amendments to the master train plan, intermediate train plan and daily train plan.	This is considered reasonable.	Aurizon Network will amend the drafting to include an obligation for notification and consultation with adjacent network providers where relevant.	The QRC agrees with Aurizon Network's proposed change.
167	Master train plan	3.3 (b) (iii) and 6.3	It is considered that Aurizon Network's ability to alter the master train plan without consultation should mean that existing access holders are able to obtain sufficient train service entitlements under their agreements. This provision should be subject to any changes not being allowed unilaterally where there is any possibility that another access holder is materially disadvantaged.	For cyclic traffic, the master train plan's starting point is train service entitlements contracted under access agreements. Consequently, an ability to alter the Master Train Plan to obtain sufficient train service entitlements is not considered necessary. The 2013 DAU restricts Aurizon Network's ability to alter the intermediate train plan for new or additional train service entitlements without consultation when train services have been scheduled.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position that no change should be made. The QRC considers that Aurizon Network's ability to alter the master train plan without consultation should be subject to other access holder being materially disadvantaged. Where an access holder would be materially disadvantaged, Aurizon Network should be required to undertake consultation.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
168	Daily train plan	Schedule H	Industry considers planning arrangements should include a lock down 48 hour plan that is scheduled at least one business day prior to the day of which the daily train plan relates. A default 48 hour lock down period should be the shortest possible timeframe, with provision for a longer period by agreement.	Aurizon Network acknowledges discussions with industry on this issue in relation to the System Rules. It will amend the network management principles to include a 'lock down period' as per the System Rules or in the absence of the System Rules, then 48 hours prior to day of operation.	<p>Aurizon Network will amend the network management principles to include a 'lock down period' as per the System Rules or in the absence of the System Rules, then 48 hours prior to day of operation. In addition, Aurizon Network will change the references to Business Days in scheduling to 'days'.</p> <p>Aurizon Network will also correct a drafting error in clauses 5.3 (b) (ii) and 5.4 (a) (i) of Schedule H to ensure that additional train service cannot result in and Access Holder's scheduled Train Services not being met.</p>	The QRC agrees with Aurizon Network's proposed change.
169	Incident management	7.4 (c)	Feedback received is that there should be a limit on Aurizon Network's ability to depart from the traffic management decision making matrix following an incident to situations where there is no other choice. There needs to be a maximum time period that departure from the schedule can occur.	The 2013 DAU drafting includes a 'reasonable endeavours' obligation to return to normal train control procedures as soon as reasonably practical. In practice it would be difficult to apply a maximum limit that would apply in all circumstances given that it will depend on the nature and effects of the incident or force	Aurizon Network will include an obligation to keep the relevant access holder informed of the progress to remove the incident or force majeure event and the return to normal train control procedures.	The QRC agrees with Aurizon Network's proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				majeure event.		
170	Contested Train Path - objective to maximise system throughput.	8.1 & 8.2	Feedback received is that another objective should be included for the Contested Train Path decision making process, namely to maximise the capacity and throughput of each coal system. In addition, the objectives should be ranked.	<p>The objectives of the contested train path decision making process are outlined in clause 8.1 of Schedule H. The contested train path decision making process is fundamentally about meeting contractual entitlements and providing a transparent process for differentiating between access holders in respect of the use of those entitlements.</p> <p>The NMP will indirectly assist in achieving the maximisation of system performance by establishing a process to meet contractual entitlements in a transparent, consistent and fair manner.</p>	No change is proposed The objective of maximising system performance in relation to the contested train path decision making process is indirectly met through the objective of meeting Aurizon Network's contractual obligations in a transparent, consistent and fair manner.	The QRC does not agree with Aurizon Network's position that no change should be made. The QRC considers maximising capacity and throughput of each coal system is a valid objective that should be incorporated into the contested train path decision making process. Given Aurizon Network considers this objective is indirectly met through the inclusion of the objective of meeting Aurizon Network's contractual obligations, the QRC sees no reason why it should not be expressly included as a relevant objective.
171	TSE reconciliation reporting	8.2	<p>Feedback received has included that:</p> <p>there is a need for more robust and transparent access services and operational performance data;</p> <p>there should be a requirement in Schedule H for Aurizon</p>	The drafting of Schedule H in the 2013 DAU includes an obligation to provide a TSE reconciliation report to access holders. There is a separate process for recording and communicating cancellation cause identification, which is made available to access	Aurizon Network will review the reports provided to access holders with a view to consolidating and making them available in the secure customer portal to increase transparency.	The QRC agrees with Aurizon Network's proposed change, however, is unable to comment on the substance of that change without further information of the specifics of that change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>Network to report on train service entitlement allocation and consumption, including Aurizon Network's non-performance; and</p> <p>the TSE Reconciliation Report should detail the cause for non-performance including aggregated and individual information.</p>	holders under their access agreement.		
172	Contracting for zero train services	8.2	It has been suggested that the contracting regime should allow for zero train service entitlements to allow for allocation to any origin.	<p>Current arrangements do not preclude ad hoc services from operating. However, these services have a lesser priority for path allocation. In the event of a contested path, contracted train service entitlements will be given preference over ad hoc services.</p> <p>Aurizon Network considers ad hoc services provide the flexibility sought by customers.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees no change is necessary.
173	Contested Train Path Process	8.3	Industry is seeking greater flexibility. This includes through allocation of contested paths on an access holder's portfolio of total access rights rather than origin/destination pairings and a wider ability to substitute	The contested train path decision process in the 2013 DAU is intended to provide increased flexibility for access holders taking into consideration contractual	Aurizon Network will review clauses 8.3(a)(vii) and (viii) to assess whether an appropriate test under the Contested Train Path process is who is the most behind on the basis of a	The QRC agrees with Aurizon Network's proposal to review clause 8.3 of Schedule H, however, the QRC is unable to comment on the substance of any proposed changes without Aurizon Network

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			train entitlements.	<p data-bbox="1059 437 1178 459">obligations.</p> <p data-bbox="1059 480 1391 916">Aurizon Network's view is that the priority should be contractual obligations in terms of an individual train path, followed by an ability to mitigate Aurizon Network Cause. This is followed by three rules designed to provide greater flexibility for access holders to manage their portfolio of access rights. The remaining rules are then intended to allow access holders to 'catch up' previous underutilisations of their access rights.</p> <p data-bbox="1059 936 1391 1235">It is Aurizon Network's understanding that concerns in respect of the limitations on flexible management of access rights relate to the clause 8.3(a)(vii) and (viii) (for which the equivalent provisions under the 2010 AU were not entirely clear). This is now clarified as relating to individual train paths for an origin-destination-D pair.</p> <p data-bbox="1059 1256 1391 1394">Whilst Aurizon Network is prepared to consider widening this to a portfolio of train paths (i.e. going beyond an origin-destination pair) it should be</p>	portfolio of train paths.	communicating the results of any such review and the details of any changes which result from it.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				made clear that access holders will retain contractual obligations in relation to underutilisation of train paths and take or pay.		
174	Clarification of Pooling of entitlements	8.2 (c) (iii) and 8.3 (iv)	It has been requested that further clarification be provided on what pooling of entitlements entails.	<p>Aurizon Network considers the pooling of entitlements, occurs based on the following principles:</p> <p>a pool consists of contracted access rights of an access holder;</p> <p>there is a separate pool relating to each relevant system;</p> <p>the pool relates to the access rights for mainline paths in the relevant system;</p>	Aurizon Network will review the drafting to clarify that the Pooled Entitlement concept is the portfolio or aggregate of total access rights.	The QRC agrees with Aurizon Network's proposed change.
175	Calculation of train service entitlement	2	It has been suggested that Schedule H include how train service entitlements are calculated, taking into account the expected availability and capacity of the network for planned and unplanned maintenance, outages, variability and speed restrictions	<p>Aurizon Network recognises that industry is seeking greater information in relation as to how train service entitlements are calculated and how capacity is impacted by planned and unplanned maintenance.</p> <p>The train service entitlement calculation is currently included in the draft Northern Bowen</p>	Aurizon Network will amend the preliminary information to include an information sheet or manual on the calculation of train service entitlements and capacity generally and remove information from System Rules.	The QRC supports Aurizon Network's proposal to provide an information sheet or manual on the calculation of train service entitlements and capacity generally, however, the QRC will need to review the detail.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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Basin and Capricornia System Rules. Rather than including this information in the network management principles, it may be appropriate for an information sheet to be publicly available on the website as part of preliminary information.

176	Reference Train Service		Some industry participants want the definition of a reference train to reflect monthly railings not weekly.	The intention in the 2013 DAU is for the reference train service to be based on 'even railings' over the year.	Aurizon Network will delete reference to a weekly period in the reference train service definition.	The QRC agrees with Aurizon Network's proposed change.
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Coal Supply Chain Coordination, Network Development Plan and Voting Process [Part 8]

177	Objective in relation to supply chains	8.8.1	It has been requested that a provision be included requiring Aurizon Network to use reasonable endeavours to maximise throughput in each supply chain.	<p>Clause 2.2(e)(iv) of the 2013 DAU refers to the intent of UT4 being, amongst other things, to achieve an appropriate balance between various specified matters. One of those matters is: "cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains".</p> <p>Aurizon Network considers that the provisions in the 2013 DAU</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC disagrees with Aurizon Network's proposal not to make any change. The QRC's proposal to require Aurizon Network to use reasonable endeavours to maximise throughput in each supply chain is consistent with the intent of UT4 as set out in clause 2.2(e)(iv).
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				are consistent with the intent set out in clause 2.2.		
178	Principles in relation to coal supply chains	2.2	<p>Aurizon Network has removed a specific requirement present in the 2010 AU to establish principles and processes to guide cooperation of all elements of coal supply chains on an annualised basis.</p> <p>Given that take or pay commitments are assessed annually, feedback received is that it is considered appropriate for the requirement to establish principles and processes to guide cooperation of the coal supply chain be on an annualised basis.</p>	<p>The intent of this part of the 2013 DAU is to set the objectives of the undertaking. The remainder of the undertaking relates to the operative provisions.</p> <p>Aurizon Network considers the timeframes in relation to the participation in the coal supply chain is appropriately dealt with in Part 8.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The discussion provided by Aurizon Network at this Item appears to have been mistakenly repeated from Item 4.
179	Aurizon Network as central co-ordinator	8.8	Issues have been raised with Aurizon Network having a central co-ordinating role in the coal supply chain.	<p>Aurizon Network does not intend that the 2013 DAU provide it with a central coordinating role in the supply chain.</p> <p>Aurizon Network has an appropriate role in relation to (including the network management principles and System Rules, the contractual obligations in the access</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>agreements, obligations in the capacity negotiation process set out in Part 4 of UT4, and in obligations around the capacity allocation processes in Part 7. It is not reasonable or practical to suggest that Aurizon Network not have a key role in each of these areas. The basis of industry's concern is also not articulated.</p>		
180	Alignment of supply chain obligations with objectives of the QCA Act	8.8.1	<p>Comments have been made regarding Aurizon Network's interpretation of the object of Part 5 of the QCA Act. It has been submitted that the "economically efficient operation of, use of and investment" in the CQCN cannot be isolated from the efficiency of the wider coal chain.</p> <p>It is also stated that Aurizon Network must be prevented from using its position to prevent industry participants from developing arrangements that deliver greater flexibility and efficiency across the supply chain. Clause 8.8.1 of the 2013 DAU is not seen as promoting economically</p>	<p>Clause 8.8.1 outlines Aurizon Network's commitment to participate in supply chain coordination in the context of meeting the object of Part 5 of the QCA Act in promoting the efficient use of, and investment in, significant infrastructure with the effect of promoting effective competition in related markets.</p> <p>Fundamentally, the access framework is directed at improving the efficient use of the below rail asset by ensuring that dependent markets (particularly the above rail market) are contestable. The 2013 DAU does not (and cannot) aim to provide a framework for control of the</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agree that no change is required.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			efficient operation of, use or investment in, Aurizon Network's network.	entire supply chain.		
181	No obligation to make binding commitment as a result of participation in supply chain group	8.8.1(b)-	This clause clarifies that Aurizon Network is not obliged to make any binding commitment or take any action as a result of participation in a supply chain group. It is requested that this be removed.	<p>Consistent with Aurizon Network's responsibility as a network/infrastructure manager to make its own decisions, Aurizon Network cannot accept any binding obligation in the 2013 DAU to take any action based on the decisions of a Supply chain group or other participants in the supply chain.</p> <p>However, nothing prevents Aurizon Network from agreeing to a particular action which may be developed in consultation with supply chain participants.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agree with Aurizon Network.
182	Parties who can make submissions on system operating assumptions	8.8.2 (a)(i)&(ii)	In reviewing the system operating assumptions for a coal system, it has been suggested that Aurizon Network should be required to notify (in addition to the applicable supply chain group) the QCA and relevant access holders. It must consider submissions from access holders (in addition to the	<p>The terms in the 2013 DAU are similar to the 2010 AU. However, Aurizon Network is willing to notify access holders of a review of the system operating assumptions and consider submissions from them.</p> <p>Likewise in item 174 Aurizon Network has agreed to notify private infrastructure owners</p>	Aurizon Network will amend this clause to provide that, in addition to notifying the Supply Chain Group, Access Holders are also notified of a review of the System Operating Assumptions. Aurizon Network will consider submissions of the Supply Chain Group and Access Holders when reviewing the System	The QRC agrees with Aurizon Network's proposal to notify access holders in addition to notifying the supply chain group in relation to a review of the system operating assumptions. Aurizon Network has not responded to the QRC's proposal to also notify the QCA. As discussed at Item 154, the QRC consider the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			applicable supply chain group).	that connect to the rail infrastructure.	Operating Assumptions.	QCA should be notified in relation to any review of the system operating assumptions.
183	Objective of system operating assumptions	8.8.2(a) & (b)	It has been commented that the provisions in clause 8.8.2 effectively result in the system operating assumptions for a coal system are being effectively determined by Aurizon Network. While there is input from other parties there is no obligation on Aurizon Network to incorporate the views of these other parties.	Aurizon Network will develop system operating assumptions for each coal system in consultation with relevant supply chain groups. This is consistent with Aurizon Network's responsibility as a network/infrastructure manager to make its own decisions regarding system operating assumptions for its network. While the views of industry participants will be taken into account, there is no (and should be no) obligation on Aurizon Network to vary the system operating assumptions based on the submissions received.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change is required in relation to this issue.
184	QCA approval of changes to system operating assumptions	8.8.2	It is suggested that a new provision be included in this clause providing that any amendment or change to system operating assumptions must be approved by the QCA. It has also been suggested that independent oversight is	In the 2013 DAU the system operating assumptions are not approved by the QCA. This is consistent with the position in the 2010 AU. However, Aurizon Network does consider it appropriate	Aurizon Network will include an obligation for the system operating assumptions to reflect good engineering practices.	The QRC disagrees with Aurizon Network's proposal not to make any amendment to, or review of, the system operating assumptions subject to QCA approval. The system operating assumptions will have an impact on capacity

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			required for system operating assumptions.	that system operating assumptions be required to reflect good engineering practices.		and any amendment to those assumptions should be subject to the prior approval of the QCA. The QCA as an independent regulatory body is best equipped to review any proposed changes to the system operating assumptions.
185	Annual capacity reviews	8.8.3 (a)	The 2013 DAU provides Aurizon Network with discretion as to when it undertakes a capacity review. Feedback received is that capacity reviews should be undertaken no less than annually.	Aurizon Network acknowledges that capacity reviews completed at least annually will provide greater the certainty to sought by industry.	Aurizon Network will amend this provision to require it to undertake a capacity review at no more than 12 monthly intervals.	The QRC agrees with Aurizon Network's proposed change.
186	Consultation on capacity reviews	8.8.3	It has been suggested that Aurizon Network should be obligated to consult on capacity reviews for the system, including with access holders, and involve an independent expert.	The 2013 DAU proposes that capacity reviews will be undertaken when necessary. No provision for consultation with access holders, or the use of an independent expert, has been included. However, Aurizon Network acknowledges the concerns raised by industry participants in not having the opportunity to have input into such a review, and is therefore willing to amend this clause to allow for	Aurizon Network will amend this clause to include an obligation that it must use reasonable endeavours to consult with access holders in undertaking a capacity review.	The QRC agrees with Aurizon Network's proposed change, however, the QRC considers Aurizon Network's obligation to consult should be an absolute obligation (not a reasonable endeavours obligation). Placing a strict obligation to consult on Aurizon Network will allow for a better understanding of coal chain impacts. It is unclear why it is necessary for an obligation to consult to be a reasonable endeavours obligation only.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				consultation.		
187	Consideration of certain factors in undertaking a capacity review	8.8.3	It is suggested that in undertaking a capacity review, Aurizon Network must have regard to good engineering practices, the goal of achieving reasonable maximum capacity, access agreements and interfaces with other facilities.	Aurizon Network is willing to consider whether amendments can be made to include factors that Aurizon Network must have regard to in undertaking a capacity review. Aurizon Network does not consider the matters proposed by industry participants are entirely relevant to a capacity review and so will consult further with industry participants on this matter.	Aurizon Network will consider appropriate amendments regarding relevant factors that it must have regard to in undertaking a capacity review after further consultation with industry participants.	The QRC appreciates Aurizon Network's preparedness to engage on this issue and is willing to discuss this issue with Aurizon Network. The QRC is committed to developing appropriate factors for Aurizon Network to consider in undertaking a capacity review.
188	Independent expert review of Capacity Review	8.8.3	It has been submitted that Aurizon Network must be required to provide its capacity review, and reasonable reasons for its capacity review (supported by the opinion of an independent expert) to the QCA, all relevant access holders and their customers and access seekers. It has also been suggested that Aurizon Network should be obliged to engage an independent expert to assess capacity and provide a copy of	Aurizon Network may engage an independent expert to peer review the capacity review as a part of the process. However, Aurizon Network does not consider it necessary to prescribe an independent expert review process in the 2013 DAU. However, Aurizon Network is willing to make an amendment to make the outcomes of the capacity review available to relevant parties.	Aurizon Network will amend this clause to provide it to make the outcome of a capacity review available to access holders, access seekers and customers.	The QRC agrees with Aurizon Network's proposal to make available the outcome of a capacity review. However, the QRC does not agree with Aurizon Network's decision not to prescribe an independent expert review process. The QRC considers that Aurizon Network should be required to engage an independent expert to assess capacity. Capacity modelling is highly technical and requires a high degree of impartiality.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			that expert's report to access holders and access seekers.			Merely allowing, but not requiring, Aurizon Network to engage an independent expert to peer review a capacity review will not ensure that all capacity reviews are undertaken impartially by Aurizon Network.
189	Greater prescription of content and form for network development plan	8.9	While there has been support from industry participants of the concept of the network development plan, it has been commented that the network development plan should be more prescribed in both content and form. In addition a number of suggestions were made with regard to what the network development plan should include.	Aurizon Network is willing to continue to discuss the requirements of customers further with them.	Aurizon Network will continue discussions with industry participants and give further consideration to amendments to the 2013 DAU regarding the form and content of the network development plan.	The QRC appreciates Aurizon Network's preparedness to engage on this issue and is willing to discuss this issue further with Aurizon Network.
190	Frequency and public availability of network	8.9	It is noted that Aurizon Network need only use "reasonable endeavours" to keep its most recent version of the Network Development Plan available. It is commented that a stronger obligation is needed.	Aurizon Network acknowledges the importance of keeping customers and other relevant industry participants informed of the current outlook for capacity in each system. It is therefore willing to remove the reference to 'reasonable endeavours' in committing to make the most current Network	Aurizon Network will amend clause 8.9(a) by deleting the reference to 'reasonable endeavours' in respect of keeping the most current Network Development Plan available on its website.	The QRC agrees with Aurizon Network's proposed change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				Development Plan available on its website.		
191	Expanding the scope of user voting	8.10.1(a)	<p>Comments on the scope of the voting process have been mixed. On one hand, it has been suggested that it should be restricted only to assessing the scope of a project.</p> <p>On the other hand, it has been suggested that a vote must relate to <u>all</u> of scope, standard and cost allocation - it is not appropriate for Aurizon Network to be able to 'cherry pick'. Including the additional matters would require another level of detail to be considered by users, resulting in further complexity in the voting process.</p>	<p>Reference is made to Volume 2 of the UT4 proposal for an explanation of Aurizon Network's objectives in relation to the voting process and how it intends it to operate.</p> <p>As outlined in the comments on Part 6, Aurizon Network is reviewing the provision in relation to the proposal to put the cost allocation methodology for an expansion to a vote.</p> <p>Reference is also made to Aurizon Network's comments on the role of the vote in prudence tests under Schedule E.</p>	Refer to item 57 for Aurizon Network's response on the voting process for a cost allocation methodology.	The QRC appreciates Aurizon Network's preparedness to engage on this issue and is willing to discuss this issue further with Aurizon Network.
192	QCA Involvement in voting process	8.10.3	<p>Some industry participants have expressed concerns with the removal of the QCA's involvement in deciding whether a user is entitled to vote in the case of a disagreement.</p> <p>In particular, issues have been raised with the proposal in the</p>	<p>Clause 8.10.7 of 2013 DAU is a detailed compliance provision that, amongst other things:</p> <p>allows Interested Participants or persons entitled to be an Interested Participant to notify Aurizon Network of concerns regarding compliance with</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC disagrees with Aurizon Network's proposal. Whilst the QRC appreciates the further information provided by Aurizon Network, it does not consider that information to justify Aurizon Network's decision not to make any change.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>2013 DAU to provide that a party that has been excluded from participating in a vote on a capital expansion and believes it is entitled to participate, may request participation from Aurizon Network, which will use 'reasonable endeavours' to accommodate that party. It has been submitted that this allows Aurizon Network an unchecked ability to exclude certain persons from the voting process and that this is unreasonable and could provide Aurizon Network with the ability to manipulate user voting.</p>	<p>clause 8.10;</p> <p>Aurizon Network may take whatever action is reasonably required to address any concerns to achieve substantial compliance;</p> <p>Aurizon Network must procure an audit of its compliance with clause 8.10 in respect of the vote;</p> <p>if the auditor identifies flaws in the calculation of Access Train Paths, Aurizon Network may recalculate the Access Train Paths consistent with the auditor's findings and recount the vote;</p> <p>the auditor must prepare an audit certificate;</p> <p>Aurizon Network must, where it is relying on a vote under clause 8.10 for prudence of scope or standard, provide to the QCA in the relevant capital expenditure report under clause 1.3, Schedule E of the 2013 DAU an audit certificate that indicates that the conduct of the vote was in all material respects compliant with clause 8.10.</p> <p>Aurizon Network believes its</p>		<p>The audit process is not a sufficient safeguard of the rights of interested participants in relation to the voting process for the following reasons:</p> <ul style="list-style-type: none"> • Aurizon Network is only required to take "<i>whatever action is reasonably required</i>", according to its own standards, in response to any concerns raised by interested participants. • Where an auditor identifies flaws in the calculation of the access train paths, clause 8.10.7(e) provides Aurizon Network "<i>may</i>", but is not obliged to, recalculate the access train paths and recount the votes consistent with the auditor's findings. • Whilst an audit may identify flaws in a voting process, even where such flaws would be expected to change the outcome of the vote, there is no obligation on Aurizon Network to redo the voting process. Rather clause 8.10.7 provides that in such circumstances "Aurizon Network may, but

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>proposed compliance regime is sound. It does not allow Aurizon Network an unchecked ability to exclude persons from voting or to manipulate voting.</p> <p>Comments made in the context of Part 10 include that the auditor must be 'independent'. Any changes made to the audit requirements in this Part in relation to the independence of the auditor will be mirrored here.</p>		<p>is not obliged to, redo the voting process".</p> <p>The QRC therefore disagrees with Aurizon Network's submission that its proposed compliance regime is sound. Rather, the QRC considers that the QCA's ability to decide whether a user is entitled to vote in the case of a disagreement should be reinstated. The QCA is an independent body that is well suited to determine any such disagreements between Aurizon Network and a user.</p>
193	QCA Involvement in voting process	8.10.3	<p>It has been suggested that the requirement for QCA pre-approval following a successful user vote should be reinstated. Although the audit (clause 8.10.7) is stated to be 'independent', Aurizon Network has a significant involvement. For example, where a user has a concern regarding the voting process, this concern must be reported to Aurizon Network who is then required to communicate that concern to the auditor.</p>	<p>Reference is made to Volume 2 of the UT4 proposal for more information regarding the rationale and operation of this process. In particular, the proposed new audit obligation is seen as reducing the need for QCA involvement in the voting process, which should allow the process to be completed more efficiently and in a shorter timeframe (which is important in the context of a project development path).</p> <p>Aurizon Network is obliged</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.</p>	<p>The QRC disagrees with Aurizon Network's proposal. Whilst the QRC appreciates the additional information provided by Aurizon Network, it does not consider that information to justify Aurizon Network's proposal to make no change.</p> <p>The QRC disagrees that the efficiency of an audit process justifies the removal of the QCA's involvement in the voting process. The involvement of the QCA</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			It has also been suggested that the 2010 AU provision in relation to the exclusion of votes should be reinstated (which only allowed a vote to be excluded following QCA approval). On this basis that this provides a more reasonable safeguard.	<p>under clause 8.10.7(d)(i) to provide to the auditor copies of all concerns notified to Aurizon Network under clause 8.10.7(c). Aurizon Network will be obliged to provide directly to the auditor a copy of the actual notice, letter or other document provided by the relevant person under clause 8.10.7(a).</p> <p>It therefore cannot somehow dilute or vet the contents of a concern.</p>		<p>provides a much more effective safeguard of user rights. The need to protect user rights greatly outweighs any time or efficiency benefits that may be achieved by substituting the QCA's approval for an audit process. As stated in Section 8.6 of Part 8 of the QRC's Main Submission, and for the reasons provided above at Item 162, the QRC is not convinced that the auditing process is truly transparent or independent. Rather, the QRC considers the requirement for QCA approval should be reinstated to provide a more effective safeguard of the user voting process.</p> <p>Aurizon Network raised the industry's concern in relation to the exclusion of votes in this Item 163, however, did not respond to this concern. Accordingly, this issue will be dealt with under Item 165.</p>
194	Operator involvement in voting provisions	8.10.3	It has been requested that operators are included as "Interested Participants" on the basis that they too are impacted by capital	Aurizon Network acknowledges these concerns and is willing to amend this clause to allow for the participation of operators in	Aurizon Network will amend the provisions to provide for circumstances where operators can be involved in the voting	The QRC will review Aurizon Network's amendments to this provision once detail is provided as to the circumstances in which

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			expenditure projects. Although operators may not be funding a capital expenditure project, their operations and business model may be impacted by the capital expenditure. In such instances the operator should have at least a right to put their views forward to the voters.	the voting process.	process.	operators can be involved in the voting process.
195	Treatment of "No" votes	8.10.5	<p>There has been some support for the proposed requirement for a user to provide reasons as to why a project is not supported - as this will equip Aurizon Network with information allowing it to address user concerns in relation to a specific project. However, it is not considered that the requirement to provide reasons supporting a 'no' vote should impact the validity of that vote.</p> <p>Other concerns have been expressed regarding the discretion that Aurizon Network has in the ability to exclude a 'no' vote. There must be no limitation on the reasons for a 'no' vote and no discretion for Aurizon Network to determine</p>	<p>While Aurizon Network has acknowledged the need to provide sufficient information and detail to users for the purposes of the user vote process, Aurizon Network considers there is also an opportunity for users to improve the quality and detail of information they provide, particularly in the event of a 'no' vote. Specifically, if a user votes no they should be required to provide information on their reasons for not supporting the project. If a vote from an interested participant is not received, Aurizon Network's intent in deeming it a 'yes vote' is to encourage the lodgement of a vote either way.</p> <p>As outlined above, the audit process is intended to provide</p>	Aurizon Network will review this clause to provide greater clarity as to the circumstances under which it will exclude a vote from the process	<p>The QRC agrees that a user which votes 'no' should be required to provide reasons for that vote. For the reasons discussed in Section 8.4 of Part 8 of the QRC's Main Submission, the QRC does not agree that a 'no' vote should be capable of being deemed invalid because of the corresponding reasons for that vote. The QRC welcomes Aurizon Network's proposal to review this clause further, however, is unable to comment on the substance of its proposed changes until Aurizon Network provide a better indication of the circumstances under which it will exclude a vote from the voting process.</p> <p>As stated in Section 8.4 of Part</p>

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			<p>which votes are counted.</p> <p>Issues have also been raised with the position that the abstinence of a vote is deemed to be a 'yes' vote, particularly in circumstances where there is insufficient information, as a user may be reluctant to actually vote no.</p> <p>It is also suggested that any failure to vote should be treated as an abstention (neither 'yes' or 'no'), and any uncertainty should be deemed to be a 'no' vote. This is considered justified given that Aurizon Network retains the right to seek QCA approval irrespective of the outcome.</p>	<p>a protection mechanism for customers as to the integrity of the voting process and Aurizon Network's compliance with its obligations as set out in this Part.</p> <p>Interested participants are protected by this provision, but are not subject to the constraints of the undertaking or to the audit. Consequently, Aurizon Network must ensure that interested participants cannot block approval through lack of consideration of the issues or through intentionally or unintentionally seeking to restrict growth of competing coal developments.</p> <p>However, Aurizon Network is willing to review the drafting of this clause, with a view to providing further clarity on the reasons for exclusion.</p>		<p>8 of the QRC's Main Submission, the QRC supports the reinstatement of the UT3 provision in relation to the exclusion of votes, which only allowed a vote to be excluded following QCA approval. As currently drafted, UT4 affords Aurizon Network too much discretion regarding the exclusion of 'no' votes and for the reasons set out at Item 162 above, the QRC does not consider the audit process to be a sufficient safeguard of user rights.</p>
196	Improving the level of information provided to users	8.10.6	It has been submitted that customers should be provided with the ability to request additional information from Aurizon Network during the voting process. This will allow users to obtain all necessary	The intention as set out in clause 8.10.6 is for Aurizon Network to provide a range of ways for interested participants to obtain information about the relevant capital expenditure, including via peer review of	Aurizon Network will amend this clause to include an ability for interested participants to request further information from Aurizon Network that is relevant to the vote. It will also include an ability for Aurizon	The QRC agrees with Aurizon Network's proposed change.

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information to facilitate informed decision making.

It has also been suggested that if a majority of interested participants wish to have the vote postponed to allow them to take further advice on the project, they should be able to do so.

Aurizon Network’s capacity planning inputs and processes and capacity models (subject to appropriate confidentiality constraints). Aurizon Network has also committed to develop working papers to inform a customer vote.

Network to extend the voting period if a majority of interested participants (by number) request such an extension.

197 Compliance with voting process 8.10.7

This provision refers to the term ‘substantial compliance’ in determining whether Aurizon Network may need to re-do a voting process where issues have been identified in the audit. The use of the term “substantial compliance” has been questioned. It is unclear who decides whether ‘substantial compliance’ has been achieved or whether remedying a flaw would be expected to change the outcome of the vote.

Aurizon Network acknowledges the concerns that have been raised regarding the use of the term ‘substantial compliance’. It is therefore proposed to make an amendment to clarify this.

Aurizon Network will amend this clause to clarify what is meant by “substantial compliance”.

The QRC supports Aurizon Network’s proposal to clarify what is meant by “*substantial compliance*”. The QRC cannot fully assess the substance of this change until Aurizon Network identifies what will constitute “*substantial compliance*”.

Connecting Infrastructure [Part 9]

198 Parties who can connect 9.1

Part 9 only permits a private infrastructure owner to connect

Part 9 only addresses the situation where an access

Aurizon Network will amend this clause so that the term

In principle, the QRC agrees with Aurizon Network. The

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	private infrastructure		<p>private infrastructure to the Rail Infrastructure where the private infrastructure owner is an access seeker.</p> <p>Concerns have been expressed that this is an unnecessary restriction and that any party that meets certain requirements and is willing to comply with the standard rail connection agreement, should be permitted to connect.</p>	<p>seeker proposes to construct and own private infrastructure which will connect to the Rail Infrastructure, in order to allow the access seeker's train services to exit and enter the Rail Infrastructure.</p> <p>The equivalent provision under the 2010 AU applies to access seekers and also access holders. The reference to access holders was not included in the 2013 DAU as the connection arrangements should have been entered into contemporaneously with the relevant access agreement.</p> <p>However, Aurizon Network will amend the drafting to broaden the reference from access seeker to anyone that proposes to connect to the network in order to enable access to the declared service.</p>	<p>'Access Seeker' is replaced with: any party that owns, or proposes to develop and ultimately own, private infrastructure, and which is seeking to connect to the rail infrastructure so that the users of the private infrastructure obtaining access to the declared service.</p>	<p>QRC will need to review the drafting proposal.</p>
199	Obligation to enter Standard Rail Connection Agreement	9.1(a)	<p>It has been suggested that the reference to 'a consent to connection' be framed as an obligation on Aurizon Network to negotiate.</p> <p>It is noted that the form of Aurizon Network's consent in</p>	<p>Aurizon Network has adopted the approach from the 2010 AU which refers to "consent". That being said, Aurizon Network will amend this provision to clarify that it will "permit" a connection subject to the</p>	<p>Aurizon Network will amend the drafting to replace "consent" with "permit".</p>	<p>The QRC does not agree with Aurizon Network's position.</p> <p>In the QRC's view, Aurizon Network's proposed amendment fails to address the various issues raised in Section 3 of Part 9 of the</p>

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			respect of a connection is not specified and therefore is open to interpretation including the requirements for agreements (which is not defined). It is submitted that consent should be in the form of a standard rail connection agreement and a construction agreement.	agreed conditions. It is noted that clause 9.1(a)(viii) addresses the requirement for the negotiation of a rail connection agreement with the standard rail connection agreement acting as a safety net. An executed connection agreement is a right to connect and the form of consent for the connection. Inclusion of an additional form of consent is unwarranted and unnecessarily adds complexity to the undertaking.		QRC's Main Submission. The QRC does not consider the framing of Part 9 as an obligation on Aurizon Network to negotiate, to be unreasonable. It is important to the industry that the overarching ambiguity present in the current drafting (as conceded by Aurizon Network in the "Industry Response" column) is resolved. The QRC invites Aurizon Network to reconsider its position in relation to this issue by reference to both Part 9 of the QRC's Main Submission and the QRC's Mark-Up of Part 9.
200	Duplication of conditions to be met	9.1(a)	It has been highlighted that a number of conditions which can give rise to Aurizon Network refusing consent are matters already covered by the standard rail connection agreement. Accordingly, it is proposed that the list of these conditions can be substantially reduced.	The purpose of these provisions is to allow Aurizon Network to either not enter into, or cease, negotiations with a party (subject to dispute resolution) where the conditions are not met, regardless of whether that party wishes to contract on the standard terms or not.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. The duplication of conditions results from the precondition that the parties must first enter a Rail Connection Agreement (which itself contains a number of the conditions currently listed in Part 9). Further, and despite Aurizon Network's contention to the contrary, there is no reference in the existing drafting to

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						negotiation between the parties (or similar). As outlined at Item 169, the QRC supports the re-framing of Part 9 so to impose an obligation on Aurizon Network to negotiate. The QRC has provided further comment on this issue in Part 9 of the QRC's Main Submission.
201	Expert Determination of whether criteria has been met	9.1	<p>It is suggested that provisions should be included which oblige Aurizon Network to notify the QCA and the relevant access seeker the reasons as to why Aurizon Network believes it is not obliged to negotiate with an access seeker or a third party for rail connection in accordance with the requirements of clause 9.1(a).</p> <p>If the parties cannot reach agreement on a rail connection agreement and relevant construction agreement, either party may refer the matter to an expert for determination.</p>	Aurizon Network will agree to notify the relevant access seeker or third party as to the decision, and to provide that party with written reasons for the decision.	Aurizon Network will amend this clause to provide notice to an access seeker or third party that Aurizon Network does not believe that the conditions in clause 9.1(a) have been complied with.	The QRC acknowledges Aurizon Network's commitment to providing notice to an access seeker or third party as to its decision and to provide written reasons for that decision. The QRC considers that such a clause should be coupled with a right for the parties to refer the matter for dispute resolution if the parties cannot agree on the terms of a Rail Connection Agreement or construction agreement (as per the drafting proposed in the QRC's Mark-Up of Part 9 (see clauses 9(b) and 9(c)). The QRC cannot properly assess Aurizon Network's proposal until detailed drafting is provided.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
202	Delays entering a Connecting Infrastructure Agreement	9.1	It has been submitted that Aurizon Network should be responsible for any loss suffered by a party where Aurizon Network unreasonably delays entering into a rail connection agreement.	<p>It is necessary to differentiate between delays in entering a rail connection agreement and delays associated with Aurizon Network's obligations under an executed agreement.</p> <p>The 2010 AU incorporated a requirement that where connecting infrastructure is constructed by an access seeker or access holder, Aurizon Network must do all things necessary, and in a timely manner, to ensure that the connecting infrastructure is physically connected to the rail infrastructure and to facilitate movement of trains between the connecting infrastructure and the Rail Infrastructure (clause 8.3(b)(i)).</p> <p>It is appropriate that the access agreement addresses any delays once an agreement is executed.</p> <p>Aurizon Network considers that the delay issues sought to be addressed in the 2010 AU are mitigated as a result of the inclusion of a standard rail connection agreement. If access seekers consider Aurizon Network has</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The comments made by the QRC in its Main Submission were specifically in relation to delays by Aurizon Network in entering into a connection agreement only. Accordingly, for present purposes, the distinction drawn by Aurizon Network is not relevant.</p> <p>Aurizon Network has not explained the basis for excluding from UT4 the acknowledgement contained in UT3 that Aurizon Network is responsible for any loss suffered by a party where Aurizon Network unreasonably delays entering into a connection agreement. In the QRC's view, it is appropriate for this acknowledgment to be reinstated as it functions as an important mechanism to prevent Aurizon Network from delaying entry into connection agreements.</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				unreasonably hindered access, remedies are available through the undertaking or the QCA Act.		
203	Delays developing connecting infrastructure	9.1	Feedback received is that Aurizon Network should be responsible for any loss suffered by a party where Aurizon Network unreasonably delays the development of connecting infrastructure.	<p>The 2010 AU includes a provision that, subject to the terms and conditions of any agreement, where Aurizon Network constructs the connecting infrastructure, the access seeker or access holder must pay the reasonable costs incurred by Aurizon Network. This is providing that Aurizon Network would pay the reasonable costs (excluding consequential loss) incurred by the access seeker or access holder where Aurizon Network has unreasonably delayed the development of the connecting infrastructure. (clause 8.3(d)).</p> <p>The standard rail connection agreement that has now been approved by the QCA includes provisions similar to the obligations in the 2010 AU regarding Aurizon Network's liability for its delays once an agreement is executed.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
204	Consultation on changes to system operating parameters	SRCA and 8.8.2	It is suggested that Aurizon Network should be required to consult with a private infrastructure owner where Aurizon Network proposes to modify its rail infrastructure and/or operating rules in a way that may require changes to the private infrastructure.	Aurizon Network has agreed to similar notification requirements in connection negotiations with third parties. Given this is essentially a contractual matter, Aurizon Network does not consider that amending 8.8.2 is warranted. However, Aurizon Network agrees to amend the standard rail connection agreement to include a notice provision in relation to changes to the system operating parameters.	Aurizon Network will amend the drafting of the standard rail connection agreement to include a notice provision in relation to changes to the system operating parameters.	The QRC agrees with Aurizon Network's proposed change.

Reporting and Audit [Part 10]

205	Reduction in the time to publish details of material error	10.1.2(b) and 10.1.3(d)	Industry has requested a shortening of the time within which Aurizon Network must publish details of any material error in its annual compliance report and annual maintenance cost report. The change proposed is moving from "as soon as practicable, but in no case later than six months after becoming aware of the error", to simply one month after becoming aware of the error.	The inclusion in the 2013 DAU of the obligation to report material errors as soon as practical, but in no case later than six months after becoming aware of the error, aligns with the obligation in the 2010 AU with regard to the annual maintenance cost report. To account for the circumstances where the identification of a material error may require a further audit of the report, Aurizon Network will	Aurizon Network will amend clause 10.1.2(b) and 10.1.3(d) to require the publication on the website of material errors "as soon as practicable, but in no case later than three months after becoming aware of the error".	The QRC agrees with Aurizon Network's proposed change. This change should also be applied to clause 10.1.5(f).
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>require more than a month to publish the details of the material error.</p> <p>Aurizon Network therefore proposes to align the timeframe to publish details of material errors as soon as practical but in no case later than 3 months after becoming aware of the error.</p>		
206	Immediate notification to QCA of errors	10.1.2(b), 10.1.3(d) and 10.1.5(f)	It has been requested that an obligation be imposed on Aurizon Network to immediately notify the QCA of any errors in a number of the reports once it becomes aware of the error.	Aurizon Network accepts as reasonable the desire to reflect in the drafting a requirement to notify the QCA of any errors in a timely manner.	Aurizon Network will amend clause 10.1.2(b), 10.1.3(d) and 10.1.5(f) to include a requirement to notify the QCA “as soon as practicable after Aurizon Network becomes aware of the relevant error”.	Consistent with the approach taken by Aurizon Network in Item 175, the QRC would prefer a hard deadline back-stop for the notification of errors to the QCA. The QRC proposes that clauses 10.1.2(b), 10.1.3(d) and 10.1.5(f) be amended to include a requirement on Aurizon Network to notify the QCA “as soon as reasonably practicable, but in no case later than ten (10) Business Days after Aurizon Network becomes aware of the relevant error”.
207	Reporting number of breaches of ultimate holding company support	10.1.2(d)(xi) and (xii)	It is suggested that Aurizon Network’s the reporting obligations be altered so that	The proposed requirement to report breaches of the ultimate holding company support deed	No change is proposed based on the further information provided by Aurizon Network to	The QRC does not agree with Aurizon Network’s position. In the QRC’s view, the

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	deed		they include not just a report of the number of complaints regarding alleged breaches of one or more of the ringfencing obligations in Part 3, but also complaints where the holding company has breached the ultimate holding company deed.	<p>is beyond the scope of the QCA Act.</p> <p>Aurizon Network considers that the consequences of the ultimate holding company failing to comply with the ultimate holding company support deed are significant as “the Undertaking will cease to authorise the disclosure of Protected Information to any person or entity outside Aurizon Network.” (clause 3.3(b)) This would therefore include not only employees of the ultimate holding company providing support or governance services to Aurizon Network but also external consultants and contractors.</p> <p>To the extent that a party considers the ultimate holding company has breached its obligations, that party can make a complaint under clause 3.22 in relation to whether Aurizon Network has complied with the requirement to not disclose the protected information as per clause 3.3(b).</p> <p>On this basis enforcement options are also available</p>	assist with the review of the 2013 DAU.	<p>consequences of a breach of the ultimate holding company support deed are not relevant to the issue of compliance reporting on the number of breaches of the deed. For example, under Part 3 of UT4, the undertaking only ceases to authorise the disclosure of protected information until the ultimate holding company rectifies its non-compliance with the ultimate holding company support deed. Accordingly, a breach of the deed may be of little practical consequence where the ultimate holding company rectifies the breach expeditiously. This however does not make the breach any less serious and should not absolve Aurizon Network from reporting the breach.</p> <p>Consistent with the QRC’s position in relation to Part 3 of UT4 (as reflected in the QRC’s Main Submission and the QRC’s Mark-Ups of Part 3 and Part 10), the QRC considers transparency through stronger compliance reporting obligations to be central to a meaningful protection against</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				<p>under the QCA Act (Div 8, Part 5) in relation to a failure by Aurizon Network to comply with clause 3.3(b).</p> <p>In addition, there is nothing to prevent the party from notifying the QCA of concerns in relation to Aurizon Network's compliance with clause 3.3(b) and for the QCA to consider the need for, and where appropriate request, a compliance audit under clause 10.7.</p>		conflicts regime.
208	Reporting number of complaints - confidentiality agreements	10.1.2(d)(xi) and (xii)	It has been suggested that Aurizon Network be required to report the number of complaints with regard to a breach by Aurizon Network of a confidentiality obligation under a separate confidentiality agreement with a customer.	Aurizon Network considers that reporting of the number of complaints or breaches of a confidentiality agreement does not provide any information in relation to Aurizon Network's compliance with the 2013 DAU. Aurizon Network considers that it is appropriate for a breach of a confidentiality agreement to be addressed as between the parties to the relevant confidentiality agreement.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>Consistent with the QRC's position in relation to Part 3 of UT4 (as reflected in the QRC's Main Submission and the QRC's Mark-Ups of Part 3 and Part 10), the QRC considers transparency through stronger compliance reporting obligations to be central to a meaningful protection against conflicts regime.</p>
209	Average complaint	10.1.2(d)(xiii)	It has been stated that Aurizon Network should be required to	Aurizon Network does not consider that reporting on the	Aurizon Network will include an obligation in clause 3.22(d) to	The QRC does not agree with

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	handling time		report on the average complaint handling time recorded in days from when a complaint is lodged to when it is resolved.	average complaint handling time provides relevant information to assess Aurizon Network's timely resolution of matters. The time taken to resolve a complaint is dependent on the nature of the complaint and the level of forensic investigation required. However, it will include an obligation to investigate complaints in a timely manner.	investigate complaints in a timely manner.	Aurizon Network's position. The QRC considers that Part 3 of UT4 needs to be wholly re-written (as per the QRC's Mark-Up of Part 3). In the QRC's view, Aurizon Network should be obliged to promptly investigate all complaints and advise the complainant and the QCA of the outcome of that investigation within 20 business days of receiving the complaint, unless an extension has been granted by the QCA. Reporting of average complaint handling times is therefore important in assessing Aurizon Network's compliance with this process.
210	Reporting on errors in bills	10.1.2(d)(xv)	It has been requested that Aurizon Network be required to report "the number of instances in which Aurizon Network made errors in bills, including reasonable details of such errors".	The standard access agreement includes the obligations in relation to the resolution of billing errors. The reporting of errors in bills is not a matter that relates to the regulation of access to a declared service.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC does not agree with Aurizon Network's position. In the QRC's view, obliging Aurizon Network to report on the number of errors in bills is an important means of enabling Access Holders to gauge the administrative efficiency of Aurizon Network's operation of the declared service.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
211	Increased transparency of maintenance costs and impact	10.1.3(b) and 10.1.3(c)	Feedback received is that additional information is sought on the performance of the network, including in relation to maintenance. Including “comprehensive details of the actual scope of maintenance compared to the forecast scope accepted by the QCA for the purpose of determining Reference Tariffs” and a requirement for Aurizon Network to report on “the effect on the completion of planned maintenance work action taken to restore Rail Infrastructure after derailments”.	Aurizon Network has committed to the QRC working group to provide greater transparency and is currently reviewing a range of matters, including reporting formats and information that can be made available to access seekers on the secure customer portal.	Aurizon Network understands the need for and is committed to providing greater transparency in relation to maintenance and performance of the service.	The QRC acknowledges Aurizon Network’s commitment to providing increased transparency and is willing to discuss this issue further with Aurizon Network. The QRC will assess Aurizon Network’s proposal when further detail (including updated drafting) is provided.
212	Provision of operational data quarterly	10.1.5	It has been requested that the publication of annual operational data reports revert to quarterly reports as per the 2010 AU.	Industry’s concerns with regard to the change in the frequency of reporting of operational data from quarterly to annually, appear to reflect a desire for greater information regarding contractual performance. Aurizon Network is committed to increasing transparency in relation to performance and is reviewing a range of matters, including the information provided contractually and for each system, and the format of reports. (Refer provisions in	In addition to the publication of the annual operational data report, Aurizon Network will provide operational data on a more frequent basis, at least quarterly, to access holders via a secure portal. Aurizon Network will continue to work through the information required with customers.	The QRC acknowledges Aurizon Network’s commitment to providing increased transparency and is willing to discuss this issue further with Aurizon Network. The QRC will assess Aurizon Network’s proposal when further detail (including updated drafting) is provided.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				relation to incentive mechanism).		
213	ASX listing rules exception	10.1.5(a)	It has been submitted that the timing exception to the reporting requirement for the ultimate holding company based on ASX listing rules be removed.	<p>It is recognised in the ASX Listing Rules that the disclosure obligation needs to be balanced against information being provided prematurely or where it would be inappropriate to do so.</p> <p>Aurizon Network considers that both the publication of quarterly performance data and other information prior to publication to security holders may not be representative of actual performance for the entire financial year. Aurizon Network considers it inappropriate for the 2013 DAU to require the publication of information that may be misleading.</p> <p>As noted above, it is looking at improving the provision of operational information to customers on a quarterly basis, but this would be provided confidentially.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC's position in relation to balancing Aurizon Network's operational reporting obligations and the ASX listing rules is as set out in Section 2 of Part 10 of the QRC's Main Submission and in the QRC's Mark-Up of Part 10. The QRC considers that the combination of the ASX continuous disclosure and interim disclosure requirements on AHL, supports the argument that operational information can and should be publically disclosed on a quarterly basis.</p>
214	Annual operational data	10.1.5	It is suggested there is a need for an obligation to report on	Aurizon Network considers that	Aurizon Network will include in the annual operational data	The QRC agrees with Aurizon Network's proposal to include

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	report - safety		safety incidents that have been reported to the Safety Regulator.	this is a reasonable request.	report the number of major reportable incidents in that year, as reported to the safety regulator.	reported safety incidents into reported operational data.
215	Requirement to publish 'below rail aspects' of access agreements unless confidentiality claim is approved by the QCA	10.3.1	The 2013 DAU allows Aurizon Network to withhold information contained in the access agreements before it is provided to the QCA. Issues have been raised with this, particularly given that the access agreements will not be published.	<p>The previous obligation for the publication of terms other than "confidential" below rail aspects of access agreements, provides limited benefit to customers in being able to determine whether there has been any discrimination between access seekers and access holders.</p> <p>It is the provision of all of the confidential information to the QCA, together with the audit and information gathering powers, which will provide the assurance to access seekers and access holders that the terms to related parties are not more favourable.</p>	Aurizon Network will amend 10.3.1 to provide the requested executed Access Agreement to the QCA.	The intended effect of Aurizon Network's proposed amendment to clause 10.3.1 is not clear to the QRC. As set out in Section 2 of Part 10 of the QRC's Main Submission, the QRC seeks the reinstatement of the disclosure regime contained in UT3 which enables the QCA to publish details of the " <i>Below Rail</i> " aspects of a signed access agreement, other than for parts nominated by a party (and accepted by the QCA) as containing confidential information. The QRC considers the public disclosure of access agreement details to be a significant mechanism for providing access seekers and access holders with confidence about non-discriminatory treatment by Aurizon Network.
216	Refusal to provide	10.3.2(b)	It has been commented that Aurizon Network may refuse to	Clause 10.3.2(b) is consistent with and intended to reflect a	No change is proposed based on the further information	The QRC has no comment on

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	information		provide information requested by the QCA if it has a reasonable excuse for non-compliance.	<p>position that is repeated several times under the QCA Act.</p> <p>For example, under s150AA, the QCA may, by written notice, require Aurizon Network to give the QCA (within a specified time) information about Aurizon Network's compliance with its approved access undertaking. Under s 150AA(3), Aurizon Network is required to comply with that requirement within the relevant time, unless Aurizon Network has a "reasonable excuse".</p>	provided by Aurizon Network to assist with the review of the 2013 DAU.	this issue.
217	Compliance Officer obligation	New clause 10.4(a)(iii)	Feedback received is that the obligations of the compliance officer should be expanded to take all steps to ensure Aurizon Network is able to meet any obligation or activity imposed on Aurizon Network by the 2013 DAU.	<p>Aurizon Network recognises the role of the compliance officer in providing confidence in the access regime.</p> <p>Aurizon Network agrees in principle with the inclusion of a provision that recognises that the compliance officer is the single point of contact with responsibility for implementing and maintaining appropriate systems and practices within Aurizon Network's governance framework and to ensure Aurizon Network's compliance</p>	<p>Aurizon Network will replace clause 10.4 with an obligation for Aurizon Network to nominate a compliance officer. This obligation will outline the matters relevant to the compliance officer's ability to ensure Aurizon Network is able to comply with its obligations in the 2013 DAU, including that:</p> <p>the compliance officer will be sufficiently resourced;</p> <p>the compliance officer will be responsible for the management of the</p>	<p>The QRC supports the inclusion of additional obligations on the Compliance Officer (including an obligation on the Compliance Officer to take all steps necessary to ensure Aurizon Network is able to meet the obligations imposed by UT4) and is willing to consider alternative drafting to clause 10.4.</p> <p>The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				with its obligations under the 2013 DAU.	<p>governance framework that will include systems and practices reasonably required to ensure Aurizon Network is able to meet its obligation;</p> <p>the governance framework will include the requirement to notify Aurizon Network's Executive Officer of breaches and the remedial action taken or to be taken.</p> <p>In addition Aurizon Network will include an obligation to notify the QCA of the person nominated as the compliance officer at the commencement of the 2013 DAU and during the term of the 2013 DAU if at any time that nomination changes.</p>	Network is provided.
218	Regulation of internal business practices	10.4	<p>It has been suggested that the following obligations be included:</p> <ul style="list-style-type: none"> a regular internal audit; a confidential reporting line (whistleblowers line) available to parties internal and external to the Aurizon group; an issues register that can be viewed by the auditors 	<p>The suggestions made by industry refers to examples of some of Aurizon Network's internal business practices for risk management and compliance, which is a natural part of a large business. Despite this, Aurizon Network does not consider sufficient grounds exist to warrant their being hardwired into the 2013 DAU. The fact that Aurizon</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.</p>	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>and the QCA;</p> <ul style="list-style-type: none"> internal compliance declaration from the CEO and all key senior managers across Aurizon. 	<p>Network has internal risk management and compliance practices is not of itself a basis for seeking to have those practices prescribed in the 2013 DAU.</p> <p>In addition, Aurizon Network considers that the requirement for additional internal business practices would be identified through the audit process. Should a systemic failure be identified, and if those measures were considered a necessary and proportionate response, it is reasonable to assume that they would be included in the audit recommendation.</p>		
219	Frequency of report auditing	10.6(a)	It has been requested that the audit of Aurizon Network's compliance with its reporting obligations be conducted annually, and as is otherwise required by the QCA.	Aurizon Network considers it appropriate to limit the number of audits of its reporting obligations to once per year. This is because the reporting obligations are more procedural in nature, with established processes and timeframes.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>As drafted, report auditing is only triggered under clause 10.6(a) of UT4 at the request of the QCA. In the QRC's view, the requirement for annual audits should be reinstated in UT4 (as reflected in the QRC's Mark-Up of Part 10). The QRC considers annual audits to be a critical means of providing</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
						increased transparency and preserving access holder confidence.
220	Compliance audit of matters prior to current term of undertaking	10.7(a)	The question has been raised that if a compliance audit is required to investigate a matter which occurred prior to the term of the 2013 DAU, would this provision give the power to request an audit.	The audit provision, as drafted, will not extend to the conduct and decisions under past undertakings (except in the limited circumstances where they are deemed to have occurred under the 2013 DAU). The 2013 DAU is, in this regard, consistent with the approach under past access undertakings and the QCA Act.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC has no comment on this issue.
221	Frequency of compliance Audits	10.7(a)	Comments have been made that the drafting of the 2013 DAU limits the QCA's ability to request an audit and therefore the requirement for an annual compliance audit should be reinstated.	The intention of the 2013 DAU is that the QCA may request a compliance audit at any time provided that the QCA has reasonable grounds to believe the audit is necessary, the QCA advises Aurizon Network of the grounds for the audit and the audit costs over and above what is included in the approved operating cost allowance are recovered through the annual revenue adjustments.	Aurizon Network will review and amend the drafting of the audit provisions to ensure the QCA is not limited in its ability to request an audit.	The QRC will assess Aurizon Network's proposed amendments when the drafting foreshadowed by Aurizon Network is provided. However, as set out in the QRC's Main Submission (and above at Item 189), it is the QRC's view that annual audits should be reinstated in UT4.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
222	Recovery of audit costs	10.7(d)	It has been requested that the QCA be required to approve the recovery of audit costs.	<p>A forecast of audit costs will be provided in setting the system allowable revenues. If the actual audit costs differ from the forecast audit costs, this will be reflected in the adjusted system allowable revenue calculated in clause 4.3, Schedule F. The QCA will have regulatory oversight of those revenue cap related adjustments.</p> <p>Given the audits are conducted by external parties, the cost will reflect the efficient costs of providing the service.</p> <p>The QCA will have oversight and significant control of the audit costs given they will approve both the auditor (see below) and the audit plan.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>The QRC considers that where Aurizon Network is seeking to recover its costs of completing compliance audits undertaken on the instruction of the QCA, such costs should be approved by the QCA. The QRC considers this necessary to ensure that Aurizon Network's cost recovery is reasonable in the circumstances.</p>
223	Consultation with above rail operators by auditor	10.8	<p>It is suggested that the prescriptive list of matters that must be audited annually be reinstated in the 2013 DAU to protect against conflicts of interest.</p> <p>In addition it is suggested that the auditor should be required to consult with all above rail operators in relation to the</p>	Aurizon Network considers that the flexibility of the QCA to require an audit supports the ability of third parties to engage with the QCA directly on the need for an audit and removes the need for a prescriptive list of matters that must be audited annually.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's position.</p> <p>As set out in Section 7 of Part 3 of the QRC's Main Submission, the QRC considers an annual audit of Aurizon Network's compliance with conflict protections to be appropriate. The QRC proposes the incorporation of</p>

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			scope of the audit.			the provisions of clause 3.7 of UT3 into a new clause 10.8 (as reflected in the QRC's Mark-Up of Part 10). In the QRC's view, it is difficult to see how parties outside the Aurizon Group would be sufficiently informed to be able to identify a complaint against Aurizon Network for non-compliance with UT4 conflict protections, without mandatory auditing.
224	Review of prior year audit recommendations	10.8	Suggestions have been made that each audit should assess whether the previous year's recommendations have been effectively implemented and require Aurizon Network to address any non-compliances identified.	Aurizon Network has an obligation to implement recommendations by the auditor as soon as reasonably practicable (clause 10.8(j)). The QCA has in the past, included in the scope of the audit the implementation status of the previous year audit recommendations. Aurizon Network anticipates that the QCA will continue to include in the audit plan, Aurizon Network's compliance with previous audit recommendations.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change is necessary.
225	QCA dissatisfaction with	10.8	It has been requested that a	In practice it is preferable for	No change is proposed based	The QRC agrees that no

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
	Audit		provision be included that allows the QCA to require the audit to be redone if it is not satisfied with the rigour of the audit.	<p>any issues regarding the 'rigour' of the audit to be addressed during the course of the audit. There are two mechanisms that should prevent the need for a second audit. Firstly, prior to commencing the audit, the auditor must agree an audit plan with Aurizon Network and obtain the QCA's approval of that plan. Secondly, every audit plan must provide for the establishment of an audit liaison group, which includes the QCA, to provide a forum for the resolution of any audit issues that arise.</p> <p>Regardless, nothing in clause 10.7 prevents the QCA from requiring another audit if the QCA has reasonable grounds to believe an audit is necessary.</p> <p>This is consistent with the approach taken under UT3.</p>	on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	change is necessary.
226	Removal of the ability of the QCA to approve auditor	10.8(a)	It is submitted that the 2013 DAU should retain the QCA approval of the auditor due to perceptions of conflict.	Aurizon Network and the QCA have discussed the issues regarding perceived conflicts of interest. Aurizon Network has agreed to reinstate the 2010	Aurizon Network will amend the 2013 DAU to provide that the appointment of an auditor by Aurizon Network is subject to QCA approval.	The QRC supports Aurizon Network's proposal to reinstate QCA involvement in the appointment of auditors. Clause 10.9 of the QRC's

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				AU provision to give the QCA ability to approve the auditor.		Mark-Up of Part 10 incorporates this concept.
227	Obligation to implement the audit recommendations	10.8(j)	It has been suggested that an appropriate remedy for discrimination is an absolute obligation for Aurizon Network to implement the recommendations of the auditor, including amending the undertaking where required.	<p>Under clause 10.8(j) Aurizon Network must use reasonable endeavours to implement any recommendations made by the auditor.</p> <p>To the extent the audit recommendations identify that the undertaking is not consistent with the QCA Act, the QCA has the ability to require an amending access undertaking under s.139 of the QCA Act. It would be outside the QCA's power to require that a provision be included in the 2013 DAU to allow the QCA to amend or require the amendments of an approved undertaking as suggested.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change is necessary.
228	Provide QCA with expanded powers in the undertaking.	Part 10	It has been recommended that an Infringement Penalty regime operated by the QCA be introduced, similar to that enforced by the ACCC. It is also suggested that the 2013 DAU should include a requirement to comply with a	Division 8 sets out various provisions for the enforcement of Part 5 of the QCA Act including compliance with approved access undertakings. The QCA has investigation powers and the ability to bring an enforcement proceeding.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC has no comment on this issue.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
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QCA order, including changes to the undertaking and/ or changes to Aurizon's compliance program

The QCA does not have powers to issue penalties or to make or enforce an order.

The QCA has very limited powers under the QCA Act to require amendments to an approved undertaking. The circumstances outlined in submissions would not constitute a circumstance where the QCA can require an amendment.

229	Information included in Auditor's letter	10.8(i)	It is requested that a summary of issues from the audit is made publicly available. Examples provided as precedent included ARTC's or Queensland Rail's recent audit letters.	Aurizon Network and the QCA have included in the scope of the 2012/13 audit the requirement for a summary audit report that can be made publicly available. The audit plan is considered the best mechanism to continue to ensure this as part of each audit.	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC supports the industry comment.
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Dispute Resolution and Decision Making [Part 11]

230	Narrowing of availability resolution of disputes	11.1.1(a)	It has been submitted that the 2013 DAU narrows the scope of the dispute resolution	Aurizon Network acknowledges the comments made in submissions and considers the	Aurizon Network will review the 2013 DAU including the drafting of clause 11.1.1 and	The QRC appreciates Aurizon Network's preparedness to engage on this issue and is
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Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
			<p>procedure. In particular, it is stated that there is no longer a 'umbrella' provision for dispute resolution to apply to any dispute or question in relation to the access undertaking's operation.</p>	<p>availability of an effective and timely dispute process in relation to obligations and decisions included in the undertaking is of significant importance to the operation of the undertaking.</p> <p>Aurizon Network's intention is that the dispute resolution mechanism will apply to any provision of the undertaking. The drafting of the clause is intended to ensure train operators have access to the dispute resolution process and to give effect to clauses in the undertaking that directly refer matters to expert determination. It is not intended to reduce the range of matters on which access disputes may be referred to the QCA under the QCA Act.</p> <p>The resolution of disputes is discussed further at section 4.5 in the main submission.</p>	<p>the related definitions (for example Access Seeker and Access Agreement) with the benefit of the submissions to clarify where necessary the application of the dispute resolution mechanism.</p>	<p>willing to discuss this further. The QRC's proposed amendments to overcome this issue can be found in the QRC's Mark-Up of Part 11 at clause 11.1.1(a).</p>
231	Parties to a dispute	11.1.1(a)	<p>Industry has sought to expand the list of parties that can dispute matters under the undertaking to Access Holders, and third parties.</p>	<p>The 'umbrella' provision in the dispute mechanism in the 2010 AU effectively provided that any party, regardless of whether they may be affected</p>	<p>Aurizon Network will review the 2013 DAU to clarify, where necessary, the application of the dispute resolution mechanism and the complaints</p>	<p>The QRC supports Aurizon Network's proposed change and will assess the substance of that change once further detail is provided by Aurizon</p>

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				<p>by a decision in the undertaking could raise a dispute.</p> <p>Aurizon Network acknowledges in certain circumstances it may be appropriate for a customer of an access seeker or access holder to also have certain rights under the undertaking. Aurizon Network has sought to acknowledge these rights within the applicable clauses. For example Part 6 and 8 explicitly refer to customers of access seekers and access holders.</p>	<p>handling process under the 2013 DAU to parties other than access seekers or train operators.</p>	<p>Network.</p>
232	Access Agreement disputes	11.1.1 (b)	<p>It is suggested that the dispute process outlined in the undertaking should take precedence over the dispute process in any access agreement or SUFA.</p>	<p>As with the 2010 AU, unless otherwise agreed by the parties, disputes in connection with an access agreement or other contract should be dealt with in accordance with the provisions of that agreement.</p> <p>Aurizon Network notes that the facts that give rise to a dispute under the access agreement may potentially give rise to a non-compliance with the undertaking (or the QCA Act), thus triggering a separate dispute or enforcement</p>	<p>No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.</p>	<p>The QRC agrees no change is required.</p>

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				<p>process. For example, if Aurizon Network breaches a confidentiality agreement, and that breach involves disclosure of protected information to the Marketing Division, then Aurizon Network may potentially have failed to comply with both the confidentiality agreement and the undertaking, each with their own dispute or enforcement requirements.</p>		
233	Written consent to participate in alternate form of access disputes	11.1.1(c)	It has been suggested that in relation to disputes regarding a Train Operations Agreement or End User Access Agreement, written consent should be given by the party submitting the dispute before details are shared with the corresponding party that is train operator or end user.	<p>It should be noted that where there is a dispute involving a Train Operations Agreement, the other party that is provided with an opportunity to participate does not include any other train operator using the access rights included in the same End User Access Agreement (clause 11.1.1 (c)(iii))</p> <p>In any other circumstance, and given the interdependent nature of End User Access Agreements and Train Operations Agreements, it is not expected that industry will support the withholding of information in respect of a</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees no change is required.

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				<p>dispute where either the end user or train operator may have an interest and could be adversely affected.</p> <p>Aurizon Network proposes to maintain the current position in the 2013 DAU as it aligns to that which the QCA recently approved for the alternate form of access agreement under the 2010 AU.</p>		
234	Process for mediation	11.1.3	It has been identified that the drafting of the undertaking states that parties “may agree” to mediation whereas the explanatory document states that “if both parties agree” they may go to mediation.	<p>The intention of the 2013 DAU is that mediation and expert review provisions are included in the dispute resolution process as a way to expedite dispute resolution.</p> <p>Under the 2013 DAU, a dispute that is not resolved by CEOs may be referred to mediation by either party to the dispute (unless the dispute is expressly required, or is agreed by the parties, to be referred to an expert). The referral to mediation was drafted this way to be as consistent as possible with the mediation process under the QCA Act.</p> <p>A dispute can only be referred to an expert where the 2013</p>	Aurizon Network will amend the 2013 DAU such that the referral of a dispute in relation to mediation can only occur by agreement of both parties.	The QRC agrees with Aurizon Network’s proposed change.

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				DAU requires it to be referred to, or the parties agree to refer it to an expert for determination.		
235	Process for mediation	11.1.3	It is commented that the provisions in relation to mediation seem to bypass the QCA Act and the ability of the QCA to resolve dispute by mediation.	<p>Aurizon Network's intent was to provide a clear dispute resolution process in that where the parties agree to mediation, this would be considered an attempt to resolve the dispute by mediation for the purposes of the QCA Act (clause 11.1.3).</p> <p>If the dispute is then referred to the QCA, then logically it seems unlikely that the QCA would need to seek a further mediation. It is not Aurizon Network's intent to limit the application of the legislation, nor the QCA's powers to resolve disputes.</p>	Aurizon Network will delete clause 11.1.3(a).	The QRC agrees with Aurizon Network's proposed change.
236	Timeframe to resolve dispute by mediation	11.1.3 -	It has been suggested that a provision be included that requires any dispute unresolved by mediation within 5 Business Days to be referred to the QCA for dispute resolution.	<p>Aurizon Network considers that the time limit proposed by Industry may be too short for a mediation depending on what is in dispute and inconsistent with the QCA Act.</p> <p>Aurizon Network considers that</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC does not agree with Aurizon Network's proposal to make no change to clause 11.1.3.</p> <p>The QRC has not proposed for a time limit of 5 business days to apply to the mediation of a</p>

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the proposal in the 2013 DAU is generally consistent with requirements under the QCA Act. In addition, the timely resolution of disputes is indirectly addressed by amendments discussed above where referral of a dispute to mediation must be agreed by both parties.

dispute. Rather, the QRC has proposed that a 5 business day period should apply for the parties to attempt to agree on expert determination prior to referring the dispute to the QCA for determination. This time period is to commence after mediation has concluded and prior to the dispute being escalated to the QCA. The purpose of this proposal is to encourage the parties to pay proper consideration to expert determination as a possible means of resolving the dispute. The QRC considers 5 Business Days an appropriate timeframe in this regard.

In relation to the escalation of a dispute from mediation, the QRC has proposed to supplement Aurizon Network's drafting. Clause 11.1.3(c) originally provided that a dispute could not be referred past the stage of mediation until the expiry of 4 months. The QRC considers that the requirement to spend 4 months attempting to mediate the dispute may cause inefficiencies and fail to promote a timely resolution of the dispute. In particular,

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						<p>preventing a party from escalating a dispute for 4 months may result in time wasting where it is obvious one party, or both parties, have no interest in achieving a mediated outcome. The QRC considers it more appropriate for a dispute to be escalated after referral to mediation on the earlier of any of the following occurring:</p> <ul style="list-style-type: none"> • the mediator considers the parties cannot achieve a mediated resolution; • the mediator considers that a party to the mediation fails to participate in good faith; or • the parties fail to resolve the dispute within 4 months of referral. <p>The QRC considers this proposal better promotes the timely resolution of disputes.</p> <p>The QRC's recommended drafting in relation to the above is shown in clause 11.1.3(c) of the QRC's Mark-Up of Part 11.</p>

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237	Administration of mediations	11.1.3	It is suggested that consideration be given to the administration of mediations by the Australian Commercial Dispute Centre (ACDC) in accordance with their current ACDC guidelines.	This proposal is acceptable to Aurizon Network.	Aurizon Network will amend the provisions such that a mediation will be administered by the ACDC in accordance with their current ACDC guidelines.	The QRC agrees with Aurizon Network's proposed change.
238	Confidentiality of communications in disputes	11.1.2 and 11.1.3(e) —	it is has been requested that provisions be included which make communications between the parties as part of an attempt to resolve a dispute, subject to an obligation of confidentiality. The amendments would also expressly state that such communications will be made on a "without prejudice" basis.	The proposed amendments are acceptable to Aurizon Network.	Aurizon Network will amend the dispute provisions to include obligations that communications attempting to resolve a dispute will be confidential and without prejudice.	The QRC agrees with Aurizon Network's proposed change.
239	Process for mediation	11.1.4	Clarification has been requested as to why the chief executive of the Institute of Arbitrators and Mediators (IAMA) will recommend an expert rather than the Institute of Engineers as per the 2010 AU.	Aurizon Network's advice is that the Institute of Engineers no longer makes these recommendations. Notwithstanding, Aurizon Network is pleased to consider other bodies. The IAMA has available a range of dispute resolution professionals, from a range of relevant professional backgrounds (law, engineering,	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change is required.

Item	Issue	Clause	Industry Response	Original Proposal and Discussion	Proposed Change	QRC Response
				etc).		
240	Priority of QCA resolution of disputes	11.1.5	It has been suggested that a QCA determination should have priority over expert determination and mediation	<p>Aurizon Network has clarified its intent that the referral to mediation is by the agreement of both parties. This effectively results in a dispute that is not resolved by CEOs being referred to a QCA determination if both parties do not agree to either a mediation or expert determination, the exception being when the undertaking prescribes that a matter be resolved by expert determination.</p> <p>The express requirement for resolution by expert determination is in relation to matters that are technical in nature and it is reasonable to rely on an expert determination. The direct referral will then reduce the timeframe to resolve the dispute.</p>	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	<p>The QRC agrees with Aurizon Network's explanation of the dispute resolution process. The QRC supports Aurizon Network's clarification that referral to mediation is by the agreement of both parties such that if no agreement is made the dispute will be referred to the QCA (unless expert determination is expressly required).</p> <p>However, the QRC does not agree that where UT4 expressly requires a dispute to be determined by expert determination, there is no need to first refer the matter to the chief executives. Rather, the QRC considers that all disputes should be referred in the first instance to the relevant chief executives for resolution. This should apply regardless of whether there is an express requirement for expert determination. As discussed in Section 2.2 of Part 11 of the QRC's Main Submission, the QRC considers initial referral to the respective chief executives</p>

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						is commercially sensible and encourages the parties to resolve the dispute prior to formal escalation.
241	Determination by QCA in accordance with Act	11.1.5	It has been submitted that a dispute referred to the QCA for determination should reflect the provisions of the 2010 AU, that is Division 5 of Part 5 of the QCA Act shall apply and to the extent of any discrepancy between Part 11 and the QCA Act, the provisions of the QCA Act will prevail.	Aurizon Network agrees to this amendment.	Aurizon Network will include a provision stating that any determination by the QCA will be done in accordance with its obligations under Division 5 of Part 5 of the QCA Act and to the extent of any inconsistency between Part 11 and the QCA Act, the provisions of the QCA Act will prevail.	The QRC agrees with Aurizon Network's proposed change.
242	Time and cost responsibility	11.1.7	It has been requested that a new clause be included which requires the parties to use their reasonable endeavours to resolve a dispute so as to not "impact" a mine project that is likely to be delayed as a result of a dispute.	Aurizon Network considers the obligation on the parties to use reasonable endeavours to resolve a dispute in a timely fashion is independent of whether the dispute will impact on a mine development project.	Aurizon Network will include an obligation on the parties to a dispute to use reasonable endeavours to resolve the dispute in a timely manner.	The QRC agrees with Aurizon Network's proposed change.
243	Rules applied to QCA decisions	11.2	It has been suggested that Aurizon Network delete the list of requirements that replicate provisions that apply in judicial review cases and which applies them to decisions of the QCA	The <i>Judicial Review Act 1991</i> will not apply to the Undertaking as decisions in relation to the Undertaking are not made "under an enactment". That is why the	No change is proposed based on the further information provided by Aurizon Network to assist with the review of the 2013 DAU.	The QRC agrees that no change is necessary.

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under the Undertaking. It is sought to replace the express requirements with a provision that any resolution of the dispute not be inconsistent with the QCA Act, the *Judicial Review Act 1991* or any common law rules and natural justice requirements “to the extent they apply”.

drafting in the 2013 DAU spelt out the “rules” that would normally apply under judicial review and expressly applied them to the undertaking.