



**Decision on QR's 2001 Draft Access
Undertaking**

December 2001

Conflict of Interest

In its Draft Decision of 20 December 2000, the QCA notified that the Chairman of the QCA, Mr R M Wylie, had disclosed a conflict of interest in respect of the QR 1999 draft access undertaking and, in particular, as to reference tariffs affecting the rail freight costs for the North Goonyella Mine. The conflict arose from the fact that Mr Wylie was the non-Executive Chairman of Thiess Pty Ltd and Deputy Chairman of its holding company Leighton Holdings Limited. Thiess Pty Ltd and another company had in late 2000 purchased the North Goonyella Coal Mine, with Thiess Pty Ltd having an initial minority interest of 40% in the mine. In addition, Mr Wylie holds shares in Leighton Holdings Limited. Those shares do not constitute a material proportion of his investment portfolio.

The notification contained in the Draft Decision also outlined the basis upon which it was proposed the QCA would manage the conflict of interest. The notice invited interested parties to make any submissions in relation to the matter.

On 20 April 2001, the Rail Tram and Bus Union advised that it formally objected to Mr Wylie having any further role in the Authority's consideration of QR's 1999 draft access undertaking. The QCA took advice in respect of the position of Mr Wylie. That advice was to the effect there was no legal need for Mr Wylie to stand aside. QR advised the QCA that it wished him to remain involved.

Nevertheless, Mr Wylie decided to stand aside from any further participation in the matter and did so. Mr Wylie reached that decision so as to avoid any potential distraction that his continued involvement may attract. His decision to stand aside, in circumstances where he believed he is not required to, involved balancing the importance of satisfactory completion of the processes relevant to the 1999 draft access undertaking, the extent of the potential to disrupt completion of the process by his premature withdrawal and the desirability of avoiding, where reasonably possible, continuation of an issue of controversy.

Mr Wylie is no longer on the board of Leighton Holdings and ceased to be a member of the board of Thiess on 26 October 2001. Despite this, Mr Wylie has decided to remove himself from the decision-making process associated with the Authority's assessment of QR's 2001 draft access undertaking.

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1.1 Introduction

On 2 October 2001, QR submitted a draft access undertaking ('the 2001 draft access undertaking') to the Authority in response to the QCA's initial undertaking notice of 5 July 2001. QR also provided a submission accompanying its 2001 draft access undertaking that outlined QR's response to each of the Authority's proposed amendments to its 1999 draft access undertaking and the approach QR has taken in its drafting.

Under the provisions s134 of the QCA Act, the Authority has to approve, or refuse to approve, the 2001 draft access undertaking within 60 days, or such longer period as is notified by the Authority. The Authority notified QR on 21 November 2001 that it would extend the 60-day period within which it must make its decision on the 2001 draft access undertaking to 17 December 2001. The Authority notified QR on 14 December 2001 of a further extension to 21 December 2001.

The Authority identified a number of significant matters in the 2001 draft access undertaking that either stakeholders had not previously had the opportunity to comment on and/or the Authority considered it would be able to make a more informed assessment of the matters with the benefit of stakeholder input. The Authority released a 'Consultation Paper on QR's 2001 Draft Access Undertaking' in October 2001, which also invited comments from stakeholders on any other issues raised by the 2001 draft access undertaking. The Authority requested that submissions be lodged with the Authority by 2 November 2001.

The Authority received 9 submissions in response to the consultation paper. In reaching its decision on the 2001 draft access undertaking, the Authority has taken account of all submissions received.

1.2 Summary of Authority's decision on 2001 draft access undertaking

The Authority refuses to approve the 2001 draft access undertaking provided by QR. The Authority has identified the amendments it requires in order to approve the 2001 draft access undertaking in the annotated version of that document in section 1.3. In reaching its decision, the Authority kept in close contact with QR so that QR would be fully aware of the Authority's required amendments, with a view to having an approved undertaking in place before the end of this year. Accordingly, QR should be able to submit a revised draft access undertaking at short notice which the Authority would be able to approve.

In presenting its decision, the Authority has chosen not to repeat the extensive analysis of its Draft and Final Decisions (of December 2000 and July 2001 respectively) regarding QR's 1999 draft access undertaking. However, where the Authority has required an amendment to the 2001 draft access undertaking that differs markedly from its analysis, or a position taken, in the Final Decision, the Authority has explained the reason for the departure.

The Authority requires a large number of amendments of varying degrees of significance to be made to the 2001 draft access undertaking. These are summarised below.¹

Part 2 – Scope and Administration of the Undertaking

The Authority requires amendments primarily to clarify the scope of the Undertaking.

¹ Capitalised terms in the Authority's decision are defined terms in QR's 2001 draft access undertaking (Part 10: Definitions & Interpretations).

Scope of Undertaking

The Authority requires a number of amendments to clarify that the Undertaking applies to Rail Infrastructure which is assigned to Network Access in the Rail Access Line Diagrams (Schedule A) and to other Below Rail Services essential to the use of the Rail Infrastructure, such as signalling, Train Control Services and associated communications (cl: 2.1). The Authority also requires that QR delete any reference to an Access Seeker's Operating Plan in Part 2 as it is not appropriate to refer to this in the context of the scope of the Undertaking.

Review of scope of Undertaking

The Authority requires amendments to ensure that Declared Rail Services currently not assigned to Network Access, and so outside the scope of the Undertaking, may be reassigned to Network Access after a review process (cl: 2.2). The Authority also requires a number of drafting changes to the review process in the 2001 draft access undertaking to ensure the principles for assessing whether to reassign Declared Rail Services to Network Access are consistent with the Final Decision.

Authority's information request right

In its Final Decision, the Authority proposed that QR include a right for the Authority to request information from QR for the purpose of performing its functions under the QCA Act or the Undertaking. QR failed to include such a right in its 2001 draft access undertaking. The Authority requires the inclusion of a provision giving the Authority the right to request that QR provide it with information that it reasonably requires for the purpose of meeting its obligations and/or performing its functions in accordance with the Undertaking or an Access Agreement developed pursuant to the Undertaking.

Part 3 – Ringfencing Arrangements

The Authority requires substantive amendment to the provisions regarding management of Access Seekers'/Access Holders' Confidential Information because the 2001 draft access undertaking did not establish a framework that would satisfactorily manage the flow of Confidential Information from Network Access to other parts of QR. The Authority also requires an amendment to the provisions regarding QR's assignment of Yard Control Services to its Operational Business Groups.

QR's proposed approach to the management of Confidential Information is substantially different to that proposed by the Authority in its Final Decision. QR's approach effectively allows Confidential Information to flow between all areas of QR (except QR Operational Business Groups) without the consent of the owner of the Confidential Information. The Authority's approach, proposed in the Final Decision, was that Confidential Information should not flow outside Network Access except to certain specified persons and/or groups within QR, without the consent of the information owner. The Authority requires that this position be reflected in the Undertaking (cl: 3.3).

The Authority has agreed with QR that the Undertaking include a list of individuals/groups within QR (but outside of Network Access) who should be allowed to receive an Access Seeker's Confidential Information without its consent. The list has been confined to those individuals/groups with whom Network Access will need to consult in processing an Access Application. However, the Authority requires that an Access Seeker should have the right to refuse to accept any or all of the individuals/groups on the list.

If the Access Seeker exercises this right, QR is required to make reasonable efforts to suggest an alternate mechanism whereby QR could obtain the information it requires to respond to the

Access Application. The Access Seeker cannot unreasonably withhold its agreement to the alternate mechanism. All relevant timeframes applicable to QR with respect to the Undertaking will commence once QR receives, from the alternate mechanism, the information that it requires to respond to the Access Application. If the parties are unable to agree on an alternative mechanism, either party may refer the matter to the Dispute Resolution process.

The Authority accepts that certain areas of QR will potentially have access to Confidential Information from time to time in performing their duties and that obtaining the consent of the owner of the Confidential Information in these circumstances may not be appropriate. Persons/segments of QR in this category include the Ringfencing Compliance Officer, QR employees in Internal Audit, Chief Management Accounting Division, Signal and Operational Systems Division and Information Services Division (sub-cl: 3.3.2).

The Authority requires an amendment to the effect that Network Access will not, where reasonably practicable, disclose Confidential Information to a QR employee where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. In this situation, Network Access must obtain the consent of the owner of the Confidential Information prior to disclosure (sub-cl: 3.3.1). Where QR has not been able to reasonably avoid appointing an external adviser/consultant with such a conflict, its contract with the external party must require that individuals within the external party are not, and will not, for as long as the Access Seeker's/Holder's Confidential Information retains its status, be working for a QR Operational Business Group and Network Access on the same or a related matter.

The Authority accepts that amendments are required to clarify that, during the Negotiation Period, QR may cease negotiations where consent to disclose has been withheld. They are also required to allow timeframes that apply in the negotiation process to be adjusted to take account of the time taken to obtain consent. During the term of an Access Agreement, consent to disclose an Access Holder's Confidential Information shall be deemed to have been given if the owner fails to respond to QR's request for consent within thirty days.

QR accepted that operational responsibility for the scheduling and train control function be assigned to Network Access. However, the 2001 draft access undertaking provided that Yard Control Services, covering the movement of trains within marshalling yards, be provided by QR's Operational Business Groups on behalf of Network Access through a service agreement.

The Authority is concerned that the provision of Yard Control Services by QR's Operational Business Groups is inappropriate given the potential for a conflict of interest to occur. A number of stakeholders share this concern. The Authority acknowledges that this is primarily an issue for certain marshalling yards in the Central Queensland Coal System, such as Callemondah and Jillalen. Accordingly, the Authority requires an amendment to provide for Yard Control Services at these two yards to be reviewed within the next nine months. QR will take, after first obtaining the approval of the Authority, whatever reasonable steps are required to implement the findings of the review (cl: 3.1). QR and the Authority may jointly review Yard Control Services at other major yards during the term of the Undertaking.

With respect to the auditing of QR's Below Rail financial statements, the Authority requires amendments to clarify that the auditor has a duty of care to the Authority and, in the event of a conflict between the auditor's obligations to QR and its duty of care to the Authority, the auditor's duty of care to the Authority will take precedence. The Authority also requires an amendment regarding its approval of QR's auditor. These required amendments will also apply to audits of QR's compliance with its ringfencing obligations (sub-cl: 3.4.2).

Part 4 – Negotiation Framework

The Authority requires amendments to the provisions regarding the conditions to negotiation and the provision of information by QR and Access Seekers to each other during the negotiation process.

Conditions to negotiation

The Authority considers that QR's 2001 draft access undertaking provided for excessively onerous conditions to negotiation and, as such, the Authority requires redrafting to achieve an acceptable balance of the interests of Access Seekers and QR (cl: 4.6). The Authority requires amendments to allow QR to cease negotiations in the following circumstances:

- where an Access Seeker does not comply with its relevant obligations and processes in the Undertaking and QR considers that such non-compliance is material;
- where QR is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;
- where QR is of the reasonable opinion the Access Seeker has no genuine intention of gaining Access, or has no reasonable likelihood of utilising Access at the level sought;
- where an Access Seeker refuses to provide consent to the disclosure of its Confidential Information in accordance with the relevant ring-fencing provisions in Part 3; and
- where an Access Seeker fails to comply with the decision of an expert or the Authority as part of the Dispute resolution process in clause 4.7.

Exchange of information during negotiation process

The Authority requires a number of minor amendments to clarify the respective rights and obligations of QR and Access Seekers as part of the negotiation framework.

This includes clarifying that an Access Seeker may not be in a position to provide all of the information set out in Schedule C at the time of making an Access Application. In these circumstances, QR will prepare an Indicative Access Proposal based on assumptions about the detailed information not provided by the Access Seeker (cl: 4.2). The required amendments will also allow an Access Seeker to review and revise the information it provides in its Access Application, provided the revision does not substantially alter the nature of the Access Rights being sought (cl: 4.5).

The Authority requires an amendment that QR provide specified information to Access Seekers with respect to Rail Infrastructure on private land as part of Schedule D Preliminary Information. This information should be provided within fourteen days of being requested by the Access Seeker if it has been previously compiled, or otherwise within thirty days of the request.

Dispute resolution

The Authority requires that, if a Dispute is referred to the Authority for a determination in accordance with subclause 4.7.4, the Authority shall seek the advice of the Safety Regulator on any aspect of the dispute that either party to the Dispute or the Authority considers to be a safety matter. The Authority shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator on the safety matter.

Part 5 – Access Agreements

The Authority requires amendments to clarify the process for developing Internal Access Agreements and a Standard Access Agreement, including the relationship between Schedule E and a Standard Access Agreement for a Train Service once developed.

Development of Access Agreements

The Authority requires an amendment that an Access Agreement must, unless otherwise agreed between QR and the Access Seeker, be consistent with:

- a Standard Access Agreement approved by the Authority; or
- where such a standard Access Agreement has not been developed, the Schedule E principles.

Standard Access Agreement

The Authority requires that QR include in the Undertaking a process for the development and approval by the Authority of a Standard Access Agreement for coal-carrying Train Services (cl: 5.2). The process will be the same as that used by the Authority under ss. 139-140 of the QCA Act to assess the 2001 draft access undertaking. While a Standard Access Agreement will be developed for coal-carrying services first, the Authority can envisage Standard Access Agreements being developed for other Train Services, such as minerals and freight forwarding. The Authority considers that much of the content of a Standard Access Agreement for coal-carrying Train Services would be applicable across other Train Services. Consequently, the Authority requires an amendment that allows a Standard Access Agreement for any other specified type of Train Service to be developed under the same process as for coal-carrying Train Services.

The Authority also requires an amendment that, once approved by the Authority, a Standard Access Agreement will form part of the Undertaking.

Internal Access Agreements

The Authority requires amendments to clarify that Internal Access Agreements for new or renewed Train Services will be subject to the Undertaking, provided that QR does not prevent or hinder Access in any way contrary to s.104 or s.125 of the QCA Act. Further, Internal Access Agreements for new or renewed QR Train Services must be developed prior to the commencement of the service (cl: 5.3).

Disclosure of coal Access Agreements

The Authority requires an amendment such that QR must permit the public disclosure of the Below Rail aspects of all Access Agreements for new or renewed coal-carrying Train Services, without requiring the consent of the relevant customer/s (cl: 5.4).

In terms of the 2001 draft access undertaking's exemptions from such disclosure, the Authority's view was that any exemptions should be limited to Confidential Information and/or intellectual property. As such, the Authority requires that exemptions from disclosure should only apply to:

- insurance provisions;
- the Interface Risk Management Plan;

- contact details included in the Interface Coordination Plan; and
- the Environmental Investigation and Risk Management Report.

To provide additional protection to QR and Access Holders, the Authority requires an amendment that will allow a party to an Access Agreement to request non-disclosure of specified parts of that Agreement. The Authority will agree to such a request where it is satisfied that disclosure would damage the party's commercial interests and not be in the public interest.

Part 6 – Pricing Principles

Revenue adequacy

The Authority requires a simpler statement of QR's revenue adequacy objective. QR will be entitled to earn Access revenues sufficient to achieve full recovery of its efficient costs (recognising any transitional arrangements agreed with the QCA), including an adequate rate of return on the value of its assets reasonably required (sub-cl 6.1.1).

Limits on price differentiation

The Authority requires an amendment to the limits on price differentiation, replacing QR's proposed conduct test based on s46 of the *Trade Practices Act 1974* with a simpler test that QR will not differentiate Access Charges for the purpose of adversely affecting competition within a relevant market, including preventing or hindering Access (sub-cl: 6.1.2). QR also agreed to insert a provision that it will not establish Access Charges for QR Train Services for the purpose of preventing or hindering a Third Party Access Seeker from competing with a QR Operational Business Group in a relevant market (sub-cl: 6.1.4).

Rail Infrastructure Utilisation

The Authority requires an amendment to clarify that the limits on price differentiation will apply when QR sets Access Charges where Available Capacity is limited (sub-cl: 6.1.3). The Authority refused to accept a similar proposal by QR in the Final Decision because of a concern that QR's 'single till' would allow it to quote a high Access Charge that only its Operational Business Groups would be able to afford. QR as a whole would be no worse off because Network Access would earn equivalently higher revenue. The Authority is satisfied that the required amendment will address QR's concern.

Establishment of Reference Tariffs

The Authority requires that the distinction between Published and Authorised Reference Tariffs in the 2001 draft access undertaking be removed. For the purposes of the Undertaking, the Authority will approve Reference Tariffs. The Authority also requires an amendment such that it may give QR a notice requiring a Reference Tariff to be developed for a nominated Reference Train Service if the QCA has a reasonable expectation that there is a sufficient level of interest from Access Seekers (sub-cl: 6.3.2).

For the coal-carrying services, QR proposed a multi-level test for determining whether a new mine or loading facility should be added to an existing Reference Train Service for which a Reference Tariff applies (sub-cl: 6.3.3). The Authority requires a simplified eligibility test, such that the mine must:

- meet the geographic requirement of the relevant Reference Train Service; and

- at the existing Reference Tariff, make a contribution to the Common Costs that is no less than the average contribution of existing coal-carrying Train Services operating in the relevant Individual Coal System or, failing this, make a contribution which is agreed between QR and the Access Seeker, with the Authority to determine the contribution if the parties are unable to agree.

This latter condition represents a revision to the position taken in the Final Decision. The Authority now considers that, for equity reasons, new mines should make some contribution to the Common Costs of the Reference Train Service which it seeks to join. This principle of contributing to Common Costs will also apply to new coal-carrying services that fall outside an existing Reference Train Service. Other coal mines will be the beneficiaries of these changes as the contribution to Common Costs will form part of QR's maximum revenue requirement.

Reference Tariff reporting

The Authority requires that QR report to the Authority, on an annual basis, the actual operating and maintenance costs incurred and capital investments made in relation to the Reference Train Services in Schedule F. This cost and investment data is to be prepared on a consistent basis to that used developing Reference Tariffs for those Reference Train Services (sub-cl: 6.3.1).

Part 7 – Capacity Management

The capacity resumption, relinquishment and secondary trading arrangements generated a large number of stakeholder comments. In particular, concerns were expressed about the measures QR had built into the 2001 draft access undertaking to ensure that it was not financially disadvantaged as a result of capacity trading.

Capacity resumption

The Final Decision proposed that QR should demonstrate that it has an alternative demand for Access Rights that it proposes to resume. The 2001 draft access undertaking provided for an alternative demand test except in relation to Access Rights for coal-carrying Train Services in the Central Queensland Coal Region. The Authority had decided that the capacity resumption test for all traffics should be that there is either a reasonable expectation of sustained alternative demand or a reasonable expectation of a commercial benefit for the provision of Below Rail Services sufficiently material to justify the resumption of the Access Rights. The Authority considers that the new test is appropriate when considered in conjunction with the relatively generous two year relinquishment right QR has provided to Access Holders.

Capacity relinquishment

The Authority requires amendments to the provisions that allow Access Holders to relinquish capacity (sub-cl: 7.4.3) to provide that:

- the period from the Access Holder providing a notice of intention to relinquish until the date of the payment of the Relinquishment Fee shall not exceed six months. During this period, QR will be relieved of its obligation to provide Access in accordance with the terms of the relevant Access Agreement; and
- where QR identifies an opportunity to enter into an Access Agreement with an Access Seeker that would result in a reduction in another Access Holder's Relinquishment Fee, QR will not unreasonably delay the process for negotiating and executing the Access Agreement with that Access Seeker.

Capacity transfer

A number of stakeholders expressed concern that the proposed capacity transfer provisions of the 2001 draft access undertaking would unduly restrict secondary trading of Access Rights (sub-cl: 7.4.4). The Authority shares this concern and requires a number of amendments to clarify the extent of secondary trading possible under the Undertaking and the associated financial protection for QR.

In broad terms, the intent of the Authority's required amendments is to allow part or all of an Access Holder's Access Rights to be traded with other Access Holders or Access Seekers in a secondary market, provided QR is not financially disadvantaged as a result of such trading. The Authority requires a number of amendments to clarify that a secondary trade of Access Rights for the same and/or different origin to destinations, including on the Central Queensland Coal Region, can take place and the method QR will use to calculate Transfer Fees for such trades.

Capacity registers

The Authority accepts QR maintaining both a Committed Capacity Register (referred to as the 'register of interested parties' in the 1999 draft access undertaking) and a Capacity Resumption Register (cl: 7.5). The Final Decision did not propose that a separate register be created for the purpose of capacity resumption. However, the Authority accepts QR's argument that the Capacity Resumption Register be limited to Access Seekers that are seeking Access Rights that can only be provided if capacity is resumed from an existing Access Holder.

Train scheduling

With respect to service specification and train scheduling, the Authority requires that QR insert a reasonable endeavours obligation to consult with relevant infrastructure service providers (such as ports) likely to be directly affected by the scheduling of the train plans (cl: 7.2).

Capacity auctions

To ensure consistency with the Final Decision, the Authority requires QR to insert a provision such that, should it decide to conduct an auction or other formal tendering process for the purpose of allocating Available Capacity, the rules of the auction or formal tendering process must be approved by the Authority (cl: 7.4).

Part 8 – Interface Considerations

The Queensland Government's submission supported the Authority's approach to safety matters in the Final Decision, with the exception of the Authority arbitrating safety disputes. The Government did not support QR retaining the right to determine the appropriateness of all safety-related matters regarding a third party operator's actual or proposed Train Services. In addition, the Government indicated that it was proposing to amend the *Transport Infrastructure Act 1994* to, amongst other things, clarify the role and responsibilities of the Authority, railway managers, third party operators and Queensland Transport in relation to rail safety.

In requiring amendments to the safety provisions of the 2001 draft access undertaking, the Authority is cognisant of the policy objectives of the Government's proposed legislative amendments and has aimed to ensure consistency with those objectives.

Interface Risk Management Plans

The Authority requires that, for any Disputes regarding the Interface Risk Management Plan (IRMP), either party may refer the matter to an expert for resolution in accordance with

subclause 4.7.3. However, if either party to such a Dispute is not satisfied with the expert's determination it may, within 21 days of the determination, refer the Dispute to the Safety Regulator or the Authority. A determination by the Safety Regulator or the Authority shall be final and binding upon the parties. As discussed in Part 4, the Authority will refer any safety-related aspects of a Dispute to the Safety Regulator and will not make a determination inconsistent with that advice.

The Authority also requires that the Undertaking should provide that any determination affecting the content of an IRMP shall comply with any guiding principles for Dispute resolution developed by the Safety Regulator.

The Queensland Government's submission proposed that all IRMPs should be publicly disclosed to assist the ongoing enhancement of safety on the rail network. The Authority considers that the merits of such disclosure may be better addressed through the Government's proposed amendments to the *Transport Infrastructure Act 1994*, where a wider range of views could be canvassed.

Rollingstock authorisation

The Authority accepts that QR will authorise Rollingstock and Rollingstock Configurations (sub-cl: 8.1.6). However, the Authority does not accept that QR should have the final say on authorisation, subject only to a test that QR will not act in a way that prevents or hinders access, as proposed in the 2001 draft access undertaking. The Authority agrees with the Queensland Government that such a test would have the effect of making QR a safety regulator and would be inconsistent with Queensland's rail safety regulatory framework.

Nevertheless, the Authority recognises QR's concerns about discharging its common law and workplace health and safety responsibilities in providing third party access to its network. As a result, the Authority requires an amendment to provide that, if QR is not satisfied, based on the certification documentation, that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, the adequacy of the documentation and purported non-compliance may be referred to an expert.

This amendment differs from the Final Decision, which had proposed that QR should have a right to provide input to the Safety Regulator regarding the Safety Regulator's authorisation of an Access Seeker's Rollingstock. Nevertheless, the Authority considers that its required amendment provides a reasonable balance between the interests of QR and Access Seekers.

Audit rights

The Authority accepts that QR and Access Holders should have reciprocal audit rights with respect to the IRMP, which can be exercised on reasonable grounds of non-compliance (sub-cl: 8.1.7). The Authority recognises this position represents a departure from the Final Decision, which proposed that QR's auditing responsibilities should be confined to commercial matters and the Safety Regulator should audit the safety aspects of the IRMP.

Nevertheless, recognising the sensitivity of railway operators to track manager's audit rights, the Authority requires an amendment that QR or the Access Holder must state the grounds for audit prior to the audit being conducted. If it is subsequently demonstrated that the stated grounds for audit did not exist, the party requesting the audit will bear the reasonable costs of conducting the audit.

The Authority also requires a new Schedule E principle such that QR and Access Holders will be liable for damages (including damages for consequential loss or damages) arising from the conduct of an audit of the other party if no reasonable person could have formed the view that

the stated grounds for the audit existed. The party requiring the audit shall bear the burden of proof.

The Authority considers that allowing a broader audit right than envisaged in the Final Decision but removing limitation of liability with respect to that right provides a reasonable balance between QR's and Access Seekers' interests.

Inspection rights

The Authority requires that QR's proposed inspection right be removed (sub-cl: 8.1.7). The Authority is concerned that the proposed inspection right too broadly drafted and so provided insufficient protection to Access Holders. However, the Authority agrees with QR that inspection rights should be resolved as part of the development of a Standard Access Agreement.

The Authority envisages that the same reasonable grounds and consequential loss provisions as apply to QR's exercise of its audit rights would apply with respect to its inspection rights.

Environmental risk management

The Authority requires a series of minor amendments to the environmental provisions of the 2001 draft access undertaking regarding the disclosure of relevant information on environmental matters by QR and Access Seekers/Access Holders to each other (sub-cl 8.2.1) and regarding environmental audits (sub-cl 8.2.3). The Authority also requires the removal of the requirement that an Access Seeker's/Access Holder's Environmental Management System (EMS) should be consistent with the relevant parts of QR's existing EMS for the Rail Infrastructure (sub-cl 8.2.2). This is because the focus of the environmental risk management process should be the Access Seeker's/Access Holder's Environmental Investigation and Risk Management Report (EIRMR) not its EMS. The Access Seeker/Access Holder has an obligation to develop an EMS that contains procedures for implementing the risk management procedures identified in its EIRMR.

Adjoining infrastructure

The Authority requires the removal of the 2001 draft access undertaking's 'to prevent or hinder access test' with respect to the payment of QR's reasonable costs by an Access Seeker/Access Holder where QR exercises its right to, amongst other things, design and construct Connecting Infrastructure. The Authority considers such a test would provide a poor incentive for QR to manage the development of Connecting Infrastructure in a way that protects Access Seekers/Access Holders' interests. In its place, the Authority requires an amendment that places an obligation on QR to pay the reasonable costs incurred by Access Seekers/Access Holders where QR unreasonably delays the development of Connecting Infrastructure.

Part 9 – Public Reporting

Quarterly reporting

With respect to QR's quarterly reporting on its key performance indicators, the Authority accepts that QR will not be able to report certain indicators proposed in the Final Decision until its new information system, IMPACT, is in place in 2003.

The Authority also accepts a number of QR's proposed minor amendments to the performance regime. In particular, indicators of:

- the number and percentage of unhealthy Train Services that exit the network on-time; and

- the number and percentage of total Train Services that are operated in a healthy manner;

will not be reported (cl: 9.1). The Authority considers that these indicators would not provide a good measure of QR's performance as a track manager.

In addition, the majority of the key performance indicators will be reported quarterly for the term of the Undertaking, rather than quarterly until the implementation of IMPACT and monthly subsequently, as proposed in the Final Decision. The Authority is satisfied that this frequency would allow the performance of QR to be effectively monitored against its obligations under the Undertaking.

Annual reporting

The most significant amendment the Authority requires with respect QR's annual reporting is the requirement to remove the distinction between Procedural and Substantive Breaches of the Undertaking. The QCA Act does not distinguish between procedural and substantive obligations and making such a distinction would not affect QR's obligation to comply with the Undertaking (cl: 9.2).

The Authority accepts a number of minor changes QR made to the annual indicators in the 2001 draft access undertaking compared to those proposed in the Final Decision. The Authority accepts QR's argument that the indicator relating to the number of additional days taken when QR fails to meet the specified timeframes for the provision of Preliminary Information for each inquiry should be reported as an average to ensure consistency with the other indicators reported. The Authority also requires a number of minor changes to the indicators relating to the length of the Negotiation Period, including that the indicators should be reported as the average length of the Negotiation Period for the year in which negotiations commenced in accordance with the Undertaking.

Schedule A – Rail Access Line Diagrams

The Authority accepts the assignment of management responsibility for QR's Rail Transport Infrastructure reflected in Schedule A of the 2001 draft access undertaking.

Schedule B – Confidentiality Deed

Stakeholders generally supported the inclusion of a confidentiality deed in the approved Undertaking. The majority of the amendments that the Authority requires in Schedule B are to reflect the amendments required to Part 3 of the 2001 draft access undertaking.

The Authority also requires an amendment to the liquidated damages provisions to ensure that the owner of Confidential Information does not have to demonstrate it has suffered loss or damage to receive the liquidated damages sum (sub-cl: 4.1). The Authority considers that, in order to receive the \$10,000 liquidated damages, it is sufficient that the owner of the Confidential Information establishes that a QR Operational Business Group is in possession of its Confidential Information.

Schedule D – Preliminary and Additional Information

In addition to the required amendment to Preliminary Information regarding Rail Infrastructure on privately owned land (discussed in Part 4), the Authority requires an amendment to Additional Information in Schedule D relating to capacity information. Specifically, QR must provide access to Train Control diagrams, indicating actual running of Train Services against the relevant Daily Train Plan.

Schedule E – Principles for inclusion in a standard access agreement

The Authority requires a number of amendments with respect to QR having a right to make changes to System-wide Requirements and to exercise its safety and environmental suspension rights.

System-wide Requirements

The Authority requires that QR remove from the 2001 draft access undertaking the ‘to prevent or hinder access’ test with respect to QR making changes to System-wide Requirements. This is to ensure consistency with the Authority’s required amendments in Part 8 relating to safety disputes. The relevant principle would then read that QR may vary System-wide Requirements, acting reasonably, at any time following consultation with, and after reasonable notice to, the Access Holder.

Suspension rights

The Authority accepts that QR should be able to suspend an Access Holder’s Rollingstock and/or Trains for actual non-compliance or, acting reasonably, anticipated non-compliance with applicable laws, the Rollingstock specification and the Rollingstock Interface Standards, where such non-compliance creates a risk to the safety of any person or a material risk to property. Similarly, the Authority accepts QR having a suspension right in the event of a breach or, acting reasonably, an anticipated breach, of any laws relating to rail safety, QR Train Control directions, Safeworking Procedures or Safety Standards.

The Final Decision did not propose that QR should have a right to suspend for anticipated non-compliance or anticipated breaches but rather only for demonstrated non-compliance or demonstrated breaches. However, the Authority accepts QR’s argument that the demonstrated non-compliance test may potentially prevent QR from suspending Rollingstock or Trains before a safety incident occurs.

Nevertheless, the Authority recognises the concerns of third party rail operators about the potential for QR to inappropriately use such a right and the damage this could cause to their business interests. As a result, the Authority requires that, where QR suspends an Access Holder’s Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for the suspension prior to, or immediately following, the suspension.

Furthermore, where QR suspends an Access Holder’s Rollingstock, Trains and/or Train Services, it will be liable for damages (including damages for consequential loss or damages) arising from the suspension if no reasonable person could have formed the view that the stated grounds for the suspension existed. The Authority requires that QR shall bear the burden of establishing that these circumstances have not occurred. At the same time, the Authority accepts that the damaged party should be under an obligation to take whatever action it can to minimise its loss or damage arising from the suspension.

The Authority requires a similar amendment be made to the principles regarding QR’s right to suspend on environmental grounds.

Schedule F – Reference Tariff Schedules

QR’s 2001 draft access undertaking provides for the development of Reference Tariffs for Reference Train Services. The purpose of a Reference Tariff is to provide Access Seekers with information on the likely Access Charge to be included in the Access Agreement. The 2001 draft access undertaking includes general provisions regarding the development of Reference

Tariffs for all services covered by the undertaking (Part 6), as well as Reference Tariffs for coal carrying services in the Central Queensland Coal Region.

Part A of Schedule F contains provisions that apply to all coal-carrying Reference Train Services, such as Take-or-Pay arrangements. Part B identifies individual Reference Train Service characteristics, including the level of the Reference Tariff and its constituent components for each Reference Train Service.

Part A

Generally, the Authority accepts QR's proposed Reference Train Service characteristics and conditions of Access (cl: 2.3, 2.4). However, to enhance the transparency of the Reference Tariff structure, the Authority requires QR to unbundle its electrical overhead charge into an electric traction access charge and an electric energy charge (cl: 3.1). However, both components will be subject to the same incentive regulation framework proposed for the rail access tariff components.

The Authority requires the following amendments to QR's Take-or-Pay arrangements:

- the inclusion of an adjustment mechanism to reduce variable Take-or-Pay (VTP) charges where unavailability of contracted train paths can be shown to be a contributing factor to under-railings;
- the adoption of a billing threshold for the annual take-or-pay charge (ATP). The ATP is a mechanism to discourage mines from overstating volume forecasts in an attempt to lower Access Charges and, as such, is designed as an annual test. However, QR proposed that, to reduce the risk of a mine defaulting on its ATP in the event of dramatic under-railings, the test should be applied monthly and mines invoiced accordingly. The Authority believes that this arrangement would essentially replicate the VTP. Accordingly, the Authority requires an amendment such that QR will be required to invoice any outstanding ATP charges only where a mine's year-to-date net aggregate ATP charge exceeds 25% of the Access Charges expected if the contractual entitlement had been attained; and
- the addition of a 'clawback' provision such that, for the ATP, charges paid on the basis of under-railings in earlier billing periods can be netted off against instances of over-railings in subsequent periods (cl: 3.2).

The Final Decision proposed that volume triggers for a mid-term review of Reference Tariffs should relate to the forecast net tonnes for the respective clusters. In contrast, the 2001 draft access undertaking provided that these triggers would relate to the total forecast gross tonne kilometres (GTK) recorded on the associated infrastructure. Given the extent of common infrastructure among clusters in some systems, such as Goonyella, this approach would necessitate a greater than 10% increase in volume from mines within a particular cluster to activate the review trigger. The Authority requires an amendment such that review triggers will be based on the GTK associated with the relevant cluster and, once triggered, Reference Tariffs for the whole of the relevant system will be reviewed (cl: 4.2).

In simplifying the test for incorporating new mines into existing or new clusters, discussed in Part 6, the Authority requires QR to remove clause 5 regarding additional loading facilities.

Part B

The Reference Tariffs proposed by QR are generally different from those proposed by the Authority in the Final Decision. These variances can be attributed to cost-based and structural factors.

Since the Final Decision, the Authority has adjusted the cost base used in determining Reference Tariffs to reflect:

- the inclusion of Kwik Drop Door infrastructure in the asset base;
- additional capital expenditure advised by QR;
- the movement to a four-year cost model to overcome complexities referred to in the Final Decision associated with the correction, in later regulatory periods, of over- or under-recovery of costs in the current regulatory period; and
- the correction of an error in the calculation of QR's future tax liability in the Final Decision. Specifically, an incorrect estimate of QR's forecast capital expenditure for the Central Queensland Coal System had been used.

Nonetheless, the Reference Tariffs proposed in QR's 2001 draft access undertaking were based on a cost base which was approximately \$12 million per annum greater than the QCA's adjusted measure. This may be attributed to:

- a different treatment of the depreciation of track assets;
- a higher pre-tax WACC than is appropriate (QR's model is based on pre-tax, real cash flows while the Authority uses a post-tax, nominal approach);
- failure to employ a condition-based valuation of Goonyella ballast assets as proposed by the Authority;
- failure to allow for capacity-charge-related revenue due to the operation of non-coal traffic on the Blackwater system; and
- minor differences in the distribution of forecast tonnages among the four Individual Coal Systems.

The Authority requires QR to accept the cost base determined by the Authority.

The Authority has revised its approach to the calculation of Reference Tariffs for the Goonyella clusters, principally in order to maintain consistency across systems. In the Final Decision, Reference Tariffs for the Goonyella clusters were identical except for the incremental capacity charge which was higher for the South Goonyella cluster.

The approach now required by the Authority involves the calculation of cluster-specific Reference Tariffs that are more reflective of the infrastructure utilised by mines in each cluster. Consequently, the Reference Tariff for the West Goonyella cluster (that is, for the Blair Athol mine) has increased, whereas mines in the North Goonyella cluster face lower Reference Tariffs.

The Authority's proposal with respect to cross-system traffics has also changed from that proposed in the Final Decision.

In keeping with the above-mentioned change to cluster-specific tariffs in the Goonyella system, the Authority agrees that mines such as Ensham, Kestral and Gregory should not be subject to the South Goonyella reference tariff but should form a Gregory via Goonyella cluster and have a separate Reference Tariff. Initially, the Reference Tariff for this cluster will be based on Incremental Costs. If additional tonnes are hauled north from this cluster, Reference Tariffs will be reviewed and these mines could be subsumed into the South Goonyella cluster when it is appropriate to do so.

Assets will not be transferred out of the Blackwater System into the Goonyella system as proposed in the Final Decision. However, QR will be permitted to negotiate lower Access Charges throughout the Blackwater clusters in order to encourage mines to continue railing to the Gladstone ports. Hence, the Reference Tariffs applicable for the Blackwater clusters will be ceilings. QR's scope for negotiating lower Access Charges for these mines will be subject to the constraint that it not price discriminate between its Operational Business Groups and Third Party Access Seekers.

Since the Final Decision, the Authority reassessed incremental capacity charges for the Blackwater and Goonyella systems and also determined charges for the Moura and Newlands systems. The Authority accepts QRs proposed incremental capacity charges.

The Reference Tariffs required by the Authority, exclusive of GST, to apply from the date of approval of the Undertaking, are outlined below in Table One.

Table One: Reference tariffs

Price Component	Units	Moura	Newlands	Central Blackwater	North Blackwater	Stanwell
Incremental maintenance charge	\$/'000 gtk	1.03	1.07	0.55	0.55	0.55
Incremental capacity charge	\$/train path	370	165	1,030	1,030	1,030
Allocated Component 1	\$/'000 ntk	7.96	6.02	3.53	n/a	3.21
Allocated Component 2	\$/net tonne	1.27	0.90	1.08	2.17	0.59
Electric traction access charge	\$/'000 gtk	n/a	n/a	1.03	1.03	1.03
Electric traction energy charge	\$/'000 gtk	n/a	n/a	\$0.81	\$0.81	\$0.81

Price Component	Units	North Goonyella	West Goonyella	South Goonyella	Gregory via Goonyella
Incremental maintenance charge	\$/'000 gtk	0.38	0.38	0.38	0.38
Incremental capacity charge	\$/train path	660	660	750	750
Allocated Component 1	\$/'000 ntk	2.49	2.61	2.55	3.31
Allocated Component 2	\$/net tonne	0.45	0.73	0.64	0.87
Electric traction access charge	\$/'000 gtk	0.82	0.82	0.82	0.82
Electric traction energy charge	\$/'000 gtk	0.81	0.81	0.81	0.81

Table Two illustrates the Access Charges applicable for each mine, assuming operation of the Reference Train Service and the Authority's net tonne estimates for 2001-02.

Table Two: Reference Tariffs by Loading Point

Loading Point	Unloading Point	Route Kilometres	Rail Access \$/net tonne
Moura Cluster			
Boundary Hill	Gladstone P'station	115.5	2.55
Boundary Hill	QAL	123.4	2.63
Dunn Creek	Gladstone P'station	150.4	2.89
Moura	Gladstone	177.9	3.15
Newlands Cluster			
McNaughton	Abbot Point	103.0	1.77
Newlands	Abbot Point	170.8	2.30
Central Blackwater Cluster			
Boonal	Gladstone	282.0	2.62
Curragh	Gladstone	304.7	2.73
Koorilgah	Gladstone	307.0	2.72
Laleham	Gladstone	307.6	2.77
Kinrolla	Gladstone	314.9	2.73
Stanwell Cluster			
Curragh	Stanwell P'station	180.4	1.63
Koorilgah	Stanwell P'station	182.8	1.62
Boorgoon	Stanwell P'station	184.2	1.64
North Blackwater Cluster			
Ensham	Gladstone	339.1	2.77
Kestral	Gladstone	367.0	2.79
Gregory	Gladstone	369.6	2.79
Oaky Creek	Gladstone	385.0	2.81
Gregory via Goonyella Cluster			
Gregory	Hay Point	312.8	2.25
Kestral	Dalrymple Bay	327.6	
Yongala	Dalrymple Bay	350.0	
Ensham	Dalrymple Bay	353.0	
North Goonyella Cluster			
South Walker Creek	Hay Point	137.1	1.01
Macarthur/Coppabella	Dalrymple Bay	143.7	1.03
Burton	Dalrymple Bay	169.3	1.11
Moranbah North	Dalrymple Bay	194.6	1.19
Goonyella	Hay Point	197.7	1.20
Riverside	Hay Point	202.8	1.21
North Goonyella	Dalrymple Bay	214.7	1.25
South Goonyella Cluster			
Peak Downs	Hay Point	191.0	1.40
Saraji	Hay Point	211.7	1.46
Norwich Park	Hay Point	255.7	1.60
German Creek	Dalrymple Bay	277.0	1.67
Oaky Creek	Hay Point	295.0	1.73
West Goonyella Cluster			
Blair Athol	Dalrymple Bay	279.6	1.77

As part of the incentive regulation framework, the Final Decision proposed an X-factor of 1.5% per annum to apply across the Central Queensland Coal System over the regulatory term, to reflect the potential for maintenance efficiency improvements. However, in its 2001 draft access undertaking, QR applied:

- a different X-factor for each Individual Coal System to reflect differing potential for efficiency improvements; and
- a separate X-factor for electrical overhead infrastructure.

The Authority accepts QR's system-based approach, but did not consider that the proposed X-factors were appropriate because of discrepancies in the application of the maintenance efficiency adjustments across systems. Accordingly, the Authority requires QR to adopt the following X-factors.

Table Three: X-Factors (%) by System

Element	Moura	Newlands	Central Blackwater	North Blackwater	Stanwell
Allocated Component 1	0.17	0.25	0.24	0.24	0.24
Allocated Component 2	0.17	0.25	0.24	0.24	0.24
Electrical Traction	n/a	n/a	0.13	0.13	0.13

Element	Gregory via Goonyella	North Goonyella	South Goonyella	West Goonyella
Allocated Component 1	0.37	0.37	0.37	0.37
Allocated Component 2	0.37	0.37	0.37	0.37
Electrical Traction	0.15	0.15	0.15	0.15

Other reference tariff matters

The Authority reassessed its demand forecasts for the Central Queensland Coal System to take account of changes that have taken place since the Final Decision. The Authority has concluded that the forecasts should be increased, on average, by approximately 2.5 million tonnes per annum, with the increased tonnage to commence from 2002-03. However, the Authority does not support QR's proposal to reallocate some of the forecast tonnes from the Goonyella system to Blackwater clusters. The forecast freight tasks used in the determination of Reference Tariffs are identified below.

Table Four: Net Tonnes ('000) by Cluster/System

	2001/02	2002/03	2003/04	2004/05
Central Blackwater	19,620	20,420	20,620	20,920
North Blackwater	13,950	14,450	14,750	14,750
Stanwell	3,200	3,350	3,350	3,350
South Goonyella	30,400	32,100	33,000	34,100
West Goonyella	11,500	11,900	11,900	11,900
North Goonyella	29,300	30,300	31,600	31,000
Gregory via Goonyella	2,000	2,000	2,000	2,000
Moura	9,450	9,700	9,700	9,700
Newlands	11,200	11,200	11,200	9,800
Total	130,620	135,420	138,120	137,520

As part of its Final Decision, the Authority identified a number of unresolved issues in respect of quantifying incremental capacity consumption and committed to publishing a paper to clarify its approach in respect of these matters. The paper is at Appendix One to this decision.

In summary, the Authority proposes a method in which capacity consumption is related to an individual rail operator's choice of train-type but not to the scheduling conflicts arising when various train-types operate on the network. The Authority considers that these conflict-costs should be regarded as a cost of competition in the above-rail market that should not be borne solely by new entrants. These conflict-costs should be offset by benefits from above-rail competition that accrue to all mines.

The number of units of capacity, or notional paths, that a particular rail operator is deemed to consume would be determined by the operational potential of relative trains. This is given by the ratio of the maximum number of benchmark Train Services and the maximum number of Train Services that the operator under consideration can achieve in a given period. This ratio is then applied to the number of Train Services actually run by an operator to calculate the number of paths to which the incremental capacity charge is applied.

The Authority seeks comments on its proposed approach to the quantification of capacity consumption by 31 March 2002. The Authority will finalise its position on this issue after considering any comments received and advise QR and stakeholders accordingly.

Schedule G – Network Management Principles

The Authority requires amendments to the Network Management Principles to protect Access Holders' interests with respect to QR's right to make changes to the Master and Daily Train Plans, or conduct Major Periodic Maintenance, outside of Access Holder's Capacity Entitlements.

The Authority requires that the proposed principle that provides a mechanism to amend the Master Train Plan if QR or Access Holders are not meeting their contractual obligations should

be removed and the issue of non-performance should be addressed through individual contracts (Part A: para 2(b)(ix)). This should remove any confusion about how non-performance regarding the train plans is to be managed.

The Authority requires that, subject to reasonable terms and conditions, QR should provide access to Train Control diagrams that indicate actual running of an Access Holder's Train Services against the relevant Daily Train Plan (Part B: para (f)).

Schedule H – Interface Risk Assessment

The Authority accepts Schedule H of the 2001 draft access undertaking.

Schedule I – Interface Risk Management Plan Table of Contents and Template Documents

The Authority accepts Schedule I of the 2001 draft access undertaking.

Schedule J – Issues for Environmental Risk Management Report

The Authority accepts Schedule J of the 2001 draft access undertaking.

Schedule K – Operating Plan

The Authority accepts Schedule K of the 2001 draft access undertaking.

1.3 Annotated 2001 draft access undertaking

The structure of QR's 2001 draft access undertaking is as follows:

- Part 1 Preamble
- Part 2 Scope and Administration of Undertaking
- Part 3 Ring-fencing Arrangements
- Part 5 Access Agreements
- Part 6 Pricing Principles
- Part 7 Capacity Management
- Part 8 Interface Considerations
- Part 9 Public Reporting
- Part 10 Definitions and Interpretations

SCHEDULES

- A – Rail Access Line Diagrams
- B – Confidentiality Deed
- C – Summary of Information requirements as part of Access Applications
- D – Preliminary and Additional Information

E – Principles for inclusion in Standard Access Agreement

F – Reference Tariff Schedules

G – Network Management Principles

H – Interface Risk Assessment

I – Interface Risk Management Plan Table of Contents and Template Documents

J – Issues for Environmental Risk Management Report

K – Operating Plan

The annotated version of QR's 2001 draft access undertaking follows below.

1. PREAMBLE

- (a) Queensland Rail (“QR”) has developed this Undertaking to provide a framework to manage negotiations with Access Seekers for Access to Rail Infrastructure for the purpose of operating Train Services.
- (b) This Undertaking has been prepared in accordance with the Queensland Competition Authority Act 1997. The intent of the Undertaking is to:
 - (i) ensure that Access is negotiated in a competitively neutral environment;
 - (ii) ensure that Access negotiations are conducted expeditiously on a commercial basis between QR and Access Seekers;
 - (iii) provide a mechanism for the exchange of information between QR and Access Seekers necessary to facilitate the negotiation process;
 - (iv) establish pricing principles to be employed by QR in negotiating Access and which provide guidance in the resolution of a pricing dispute;
 - (v) outline the manner in which QR will manage the utilisation of Capacity;
 - (vi) outline the interface considerations to be addressed for Access Seekers and Access Holders to obtain and maintain Access;
 - (vii) outline the principles to be incorporated in an Access Agreement; and
 - (viii) provide for a binding dispute resolution process to apply during negotiations for Access.
- (c) This Undertaking will be consistently applied to Access Applications where those applications are within the scope of this Undertaking as set out in Part 2.
- (d) For further information on the negotiation of Access in accordance with the provisions of this Undertaking, contact:

General Manager Business Development
Network Access
QR
21st Floor, 127 Creek Street
Brisbane Qld 4000
Phone: (07) 3235 3144
Fax: (07) 3235 3930

Email: networkaccess@qr.com.au

2. SCOPE AND ADMINISTRATION OF UNDERTAKING

2.1 SCOPE

- (a) This Undertaking provides for the negotiation of Access required for the operation of Train Services by Access Seekers.
- (b) For the purposes of Paragraph 2.1(a), activities that an Access Seeker may seek to undertake on the Rail Infrastructure as part of the operation of a Train Service include:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'For the purpose of paragraph 2.1(a)' from paragraph 2.1 (b).

- (i) mainline running of a Train from its origin to its destination, including:
- the use of passing loops to facilitate mainline running of the Train; and
 - Train queuing and staging required to facilitate the running of a Train Service from its origin to its destination, including before and after loading and unloading of a Train;
- (ii) loading and unloading of a Train at facilities other than Other Rail Infrastructure, to the extent specified in the Operating Plan for the Train Service;
- (iii) Train marshalling and shunting to the extent specified in the Operating Plan for a Train Service at the following times:
- in preparation for running of the Train Service;
 - before or after loading or unloading of the Train; and
 - before or after maintenance and provisioning of the Train; and
- (iv) Train stowage in the following circumstances:
- as required for crew changes, meal breaks and on Track maintenance and provisioning of the Train, to the extent specified in the Operating Plan for a Train Service; and
 - where an Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown or other temporary outage of the Access Holder, the loading facility or the unloading facility, and/or the unavailability of the Rail Infrastructure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'to the extent specified in the Operating Plan for the Train Service' from paragraph 2.1(b)(ii),(iii) and (iv).

- (c) Details of the Operating Plan for the specified Train Services and the sections of Rail Infrastructure for which the Access Seeker requires Access will be defined during the Access negotiations.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 2.1(c).

- (d) Access will include, in addition to the use of the Track, the benefit of other Below Rail Services essential to the use of the Track such as signaling, Train Control Services and associated communications and (subject to Paragraph 2.1(h)) if the Train Services require electric energy for traction, the provision of such electric energy.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace the word 'Track' with 'Rail Infrastructure' in paragraph 2.1(d) and replace '(subject to Paragraph 2.1(h))' with '(subject to Paragraph 2.1(g)).'

- (e) This Undertaking does not cover the provision of Above Rail Services. Access Holders shall be responsible for the provision of any such Above Rail Services required for the operation of their Train Services.
- (f) This Undertaking is not applicable to the negotiation of Access to Rail Infrastructure for the purpose of operating Train Services that are used for transportation between Queensland and another state and that utilise Standard Gauge Track and Standard Gauge Rollingstock ("Interstate Train Services"). Access Seekers may negotiate Access for the operation of Interstate Train Services in accordance with the relevant access regime.
- (g) Where the land upon which the Rail Infrastructure is situated is not owned by QR or is not subleased by QR from Queensland Transport and QR does not, through its arrangements with the owners of the land or pursuant to the Transport Infrastructure Act 1994, have the authority to authorise Third Party Access Seekers to access that land, it is the responsibility of the Third Party Access Seeker to obtain the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated. In such circumstances, the Indicative Access Proposal provided by QR to the Third Party Access Seeker will provide information to assist the Third Party Access Seeker in obtaining such approval as specified in Subparagraph 4.3(a)(iv).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace the last sentence of paragraph 2.1(g) with the following:

- (g) **'In such circumstances, the Preliminary Information provided by QR to the Third Party Access Seeker will provide information to assist the Third Party Access Seeker in obtaining such approval as specified in Part A of Schedule D.'**

- (h) Despite any other provision of this Undertaking, QR will not be obliged to sell or supply electricity to an Access Holder, or to agree to sell or supply electricity to an Access Seeker, unless and until QR obtains an exemption from sections 88A and 89 of the Electricity Act 1994 which entitles QR to lawfully do so. QR shall use all reasonable endeavors to obtain such exemption.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace paragraph 2.1(h) with the following paragraph:

- (h) **'Despite any other provision of this Undertaking, QR will not be obliged to sell or supply electricity to an Access Holder, or to agree to sell or supply electricity to an Access Seeker, unless and until QR becomes lawfully entitled to sell or supply electricity to the relevant Access Holder or Access Seeker under the *Electricity Act 1994* by some means, and on such terms, as may be satisfactory to QR (acting reasonably). QR shall use all reasonable endeavours to obtain such entitlement.'**

2.2 REVIEW OF RAIL INFRASTRUCTURE

- (a) If an Access Seeker believes that access to additional Track, owned by QR but not Rail Infrastructure for the purpose of this Undertaking, is required for the purpose of undertaking the activities described in Paragraph 2.1(b), then the Access Seeker may make a request in writing that QR revise Schedule A to include the additional track.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 2.2(a):

- (a) **'If an Access Seeker believes that access to Rail Transport Infrastructure, owned by QR but not Rail Infrastructure for the purpose of this Undertaking, is required for the purpose of obtaining access to a Declared Service, then the Access Seeker may make a request in writing that QR assign responsibility for the relevant Rail Transport Infrastructure to Network Access and revise Schedule A accordingly.'**

- (b) QR must consider the request in the manner set out in Paragraph 2.2(c) and, within thirty (30) days of its receipt of the Access Seeker's request, advise the Access Seeker in writing of whether it intends to submit a Draft Amending Undertaking to the QCA incorporating the requested revision to Schedule A. If QR advises the Access Seeker that QR intends to submit a Draft Amending Undertaking, such Draft Amending Undertaking will be submitted to the QCA within thirty (30) days of such advice.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 2.2(b):

- (b) **'QR must consider the request in the manner set out in Paragraph 2.2(c) and, within thirty (30) days of its receipt of the Access Seeker's request, advise the Access Seeker in writing of whether it intends to assign responsibility for the relevant Rail Transport Infrastructure to Network Access and submit a Draft Amending Undertaking to the QCA incorporating the relevant revision to Schedule A. If QR advises the Access Seeker that QR intends to assign responsibility for the relevant Rail Transport Infrastructure to Network Access and submit a Draft Amending Undertaking, such Draft Amending Undertaking will be submitted to the**

QCA within thirty (30) days of such advice.’

- (c) In considering a request made in accordance with Paragraph 2.2(a), QR will agree to submit a Draft Amending Undertaking to the QCA incorporating the requested revision to Schedule A if, in QR’s reasonable opinion, the revision is required in order to meet the following principles:
- (i) subject to Subparagraphs 2.2(c)(iv) and 2.2(c)(v), Rail Infrastructure should be defined in a way that enables Network Access to operate as a stand alone provider of Access;
 - (ii) the existing market shares of QR Operational Business Groups should not be a factor in the definition of Rail Infrastructure;
 - (iii) subject to Subparagraphs 2.2(c)(iv) and 2.2(c)(v), Rail Infrastructure should be defined in a way that reasonably allows for Access Seekers to undertake the activities described in Paragraph 2.1(b);

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 2.2(c)(i), (ii) and (iii):

- (c) **‘In considering a request made in accordance with Paragraph 2.2(a), QR will agree to assign responsibility for the relevant Rail Transport Infrastructure to Network Access and submit a Draft Amending Undertaking to the QCA incorporating the relevant revision to Schedule A if, in QR’s reasonable opinion, this is required in order to meet the following principles:**
- (i) **subject to Subparagraphs 2.2(c)(iv) and 2.2(c)(v), Rail Transport Infrastructure should be assigned in a way that enables Network Access to operate as a stand alone provider of the Declared Services, except in relation to stations and platforms which are managed in the manner provided in Clause 3.1 (c)(iii);**
 - (ii) **the existing market shares of QR Operational Business Groups should not be a factor in the assignment of Rail Transport Infrastructure;**
 - (iii) **subject to Subparagraphs 2.2(c)(iv) and 2.2(c)(v), Rail Transport Infrastructure should be assigned in a way that reasonably allows for Access Seekers to undertake activities of the type identified in Paragraph 2.1(b);’**

- (iv) any Private Infrastructure should connect directly to Rail Infrastructure, except where the agreement between QR and the Private Infrastructure manager explicitly accepts that the Private Infrastructure connects to track managed by a QR business group other than Network Access; and
- (v) any facility that is not owned or leased by QR and is accessible from track managed by QR (referred to as a “Private Facility”) should be accessible from Rail Infrastructure, except where the agreement between QR and the Private Facility

manager explicitly accepts that the Private Facility is accessible from track managed by a QR business group other than Network Access.

- (d) If the Access Seeker disagrees with the results of QR's consideration of its request, it may refer the issue to the dispute resolution procedure set out in Clause 4.7. If the dispute is resolved in favour of the Access Seeker, then QR will submit a Draft Amending Undertaking to the QCA incorporating the required revision to Schedule A, within thirty (30) days of the resolution of the dispute.

2.3 DURATION OF UNDERTAKING

- (a) This Undertaking will take effect on the date that it is approved by the QCA in accordance with Section 149 of the Act (herein referred to as the "Commencing Date").
- (b) This Undertaking will apply until 30 June 2005 (herein referred to as the "Terminating Date") unless withdrawn as provided for in the Act.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement clause 2.3:

- (a) **'In accordance with s.149 of the Act, this Undertaking will come into operation on the date that it is approved by the QCA (referred to as the "Approval Date").**
- (b) **Apart from those obligations imposed upon QR in this Undertaking that are to be performed within a stated period of time after the Approval Date, notwithstanding Paragraph 2.3(a) the provisions of this Undertaking do not take effect, and are of no force or effect whatsoever, until 1 March 2002 (referred to as the "Commencing Date").**
- (c) **This Undertaking will apply until 30 June 2005 (referred to as the "Terminating Date") unless withdrawn as provided for in the Act.'**

2.4 REVIEW OF UNDERTAKING

QR and the QCA will meet approximately twelve (12) months after the Commencing Date to review the operation of the Undertaking. This review will identify those provisions (if any) of the Undertaking that are not operating to the satisfaction of either QR or the QCA. If as a result of this review, QR and the QCA agree that amendments are required to the Undertaking, QR will submit a Draft Amending Undertaking following this process.

2.5 CONTRACTUAL ARRANGEMENTS

This Undertaking applies only to the negotiation of new Access Agreements or the negotiation of Access Rights in addition to those already the subject of an Access Agreement. Nothing in this Undertaking can require a party to an existing Access Agreement to vary a term or provision of that agreement. In addition, nothing in this Undertaking can require a party to an existing rail haulage agreement to vary a term or provision of that agreement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraphs 2.6(a) and (b):

- (a) 'The QCA has the right, by written notice, to request that QR provide to the QCA information and/or a document that the QCA reasonably requires for the purpose of performing its obligations and/or functions in accordance with either this Undertaking or an Access Agreement developed pursuant to this Undertaking. The notice must include a description of the information or document required, the purpose for which it is required, and the day it is required provided that the day stated in the notice must be reasonable.**
- (b) QR will comply with any such request, by the day stated in the notice, unless there is a reasonable excuse for non-compliance.'**

3. RINGFENCING ARRANGEMENTS

3.1 Organisational Structure

- (a) QR has established its organisational structure to facilitate the separation of the management of Rail Infrastructure from the operation of Train Services. Network Access has been established as a business group of QR, separate from QR Operational Business Groups. In addition, within QR there are service and corporate groups whose purpose is to provide support activities for both Network Access and QR Operational Business Groups, and to provide core corporate functions.
- (b) The Group General Manager of Network Access reports directly to the Chief Executive. The primary function of Network Access is to manage the provision of Below Rail Services, with the exception of services associated with stations and platforms. In performing this function, the responsibilities of Network Access will include the:
 - (i) negotiation of Access Agreements with Access Seekers and management of Access Agreements with Access Holders. Where Access is required for Below Rail Services provided by a facility that is not managed by Network Access, Network Access will negotiate for Access to that facility by the Access Seeker as an agent for the business group that manages that facility;
 - (ii) development and management of agreements with Queensland Transport regarding the provision of Rail Infrastructure that is supported by Transport Service Payments;
 - (iii) provision and/or procurement of appropriate levels of maintenance and investment for the Rail Infrastructure to ensure that the Rail Infrastructure is provided at the standard required to meet QR’s obligations to Access Holders and Queensland Transport;
 - (iv) assessment, allocation and management of Capacity and Available Capacity;
 - (v) provision of Train Control Services and scheduling in all areas of the Rail Infrastructure, in accordance with the Network Management Principles; and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 3.1(b)(v):

- (v) **‘provision of scheduling and Train Control Services in all areas of the Rail Infrastructure, in accordance with the Network Management Principles (noting that certain Train Control Services as specified in Subparagraph 3.1(c)(iv) are performed by a QR Operational Business Group on behalf of Network Access);’**

- (vi) procurement of traction power on electrified sections of the Track, including the management of power supply from other parties.
- (c) The Group General Managers of QR Operational Business Groups report directly to the Chief Executive. The responsibilities of these groups include the:
 - (i) operation of Train Services;

- (ii) provision and/or procurement of appropriate levels of maintenance and investment for Above Rail Services;
 - (iii) management of stations and platforms, including the provision or procurement of appropriate levels of maintenance and investment for stations and platforms; and
 - (iv) performance of the following Below Rail Services on behalf of Network Access:
 - Field Incident Management and Yard Control services; and
 - scheduling and Train Control Services in the Metropolitan Region of QR’s network, in accordance with the Network Management Principles.
- (d) In the event that QR varies its organisational structure during the term of the Undertaking such that QR Operational Business Groups become responsible for the provision of functions, in addition to those specified in Paragraph 3.1(c), integral to the provision of Below Rail Services, QR will submit a Draft Amending Undertaking to the QCA prior to implementing the restructure.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 3.1(d) and insert new paragraphs 3.1(e) and (f) as follows:

- (d) **‘In the event that QR wishes to vary its organisational structure during the term of the Undertaking such that QR Operational Business Groups become responsible for the provision of functions, in addition to those specified in Paragraph 3.1(c), integral to the provision of Below Rail Services, QR will submit a Draft Amending Undertaking to the QCA. Upon approval of the Draft Amending Undertaking by the QCA, QR may implement the restructure.**
- (e) **By way of example, the following structural changes, if proposed, would require QR to submit a Draft Amending Undertaking to the QCA in accordance with Paragraph 3.1(d):**
 - (i) **QR wishes to abolish Network Access;**
 - (ii) **QR wishes to assign to a QR Operational Business Group any of Network Access’ existing functions, including the performance of scheduling and Train Control Services, other than to the extent already contemplated in Subparagraph 3.1(b)(v);**
 - (iii) **QR wishes to assign to a QR Operational Business Group any construction, maintenance or associated functions performed by Infrastructure Services Group for the purpose of providing Below Rail Services;**
 - (iv) **QR wishes to assign to a QR Operational Business Group any functions performed by Technical Services Group for the purpose of processing Access Applications; or**
 - (v) **QR wishes to assign to a QR Operational Business Group any functions performed by the safety and environment strategy unit for**

the purpose of providing Below Rail Services.

- (f) **QR, in consultation with the QCA, will conduct a review of the appropriateness of Yard Control Services at Jilalan and Callemondah yards continuing as a responsibility of a QR Operational Business Group, within nine (9) months of the Approval Date, or such longer period as may be agreed by the QCA. QR will, after first obtaining the approval of the QCA, take whatever reasonable steps are required to implement the findings of the review. Yard Control services at other major yards may be jointly reviewed by the QCA and QR during the Term.'**

3.2 Accounting Separation

3.2.1 Preparation of Financial Statements

- (a) QR will develop, on an annual basis, financial statements for Below Rail Services provided by Network Access, as identified in Paragraph 3.1(b) incorporating a statement of assets, a statement of earnings before interest and tax, and a statement of investments, and which separately identify the Central Queensland Coal Region from the rest of the network (the "Financial Statements"). The Financial Statements will be developed in accordance with the methodology and format set out in the Costing Manual.
- (b) The Financial Statements will be certified by QR's Chairman and Chief Executive and will be audited in accordance with Subclause 3.2.3 of this Undertaking.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.2.1(b) as follows:

- (b) **'The Financial Statements will be certified by QR's Chairman and Chief Executive as being in accordance with the Costing Manual and will be audited in accordance with Subclause 3.2.3.'**

3.2.2 Costing Manual

- (a) QR will, within the first three (3) months following the Commencing Date, prepare and submit to the QCA for its approval a Costing Manual, which will set out:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Commencing' and replace it with 'Approval' in sub-paragraph 3.2.2(a).

- (i) the process for identifying, from QR's audited general purpose financial statements, the cost base for Below Rail Services, separate from other services provided by QR;
- (ii) within the cost base for Below Rail Services, the process for identifying the costs of Below Rail Services provided by Network Access separate from the costs of Below Rail Services provided by QR Operational Business Groups (i.e. the management of stations and platforms);

- (iii) within the cost base for Below Rail Services, the process for identifying costs attributable to specified line sections (line section costs), costs not attributable to specified line sections but attributable to specified geographic regions (regional costs), and costs not attributable to specified line sections or any specified geographic region (network costs); and
 - (iv) the format of the Financial Statements.
- (b) If the QCA approves the Costing Manual prepared by QR it will not be necessary for the QCA to prepare and distribute a cost allocation manual in accordance with Division 9 of Part 5 of the Act.

3.2.3 Audit of Financial Statements

- (a) A qualified auditor will conduct the audit of the Financial Statements within six (6) months of the end of the Year in respect of which the Financial Statements apply. The auditor should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.2.3(a) must be amended as follows:

- (a) **'A qualified auditor will conduct the audit of the Financial Statements within six (6) months of the end of the Year in respect of which the Financial Statements apply, or such longer time as agreed by the QCA. The auditor should be, or have the assistance of, a person with expertise and experience in the area of costing of railway activities.'**

- (b) QR acknowledges that, in order to facilitate finalisation of the audit within the required timeframe, certain aspects of the audit may be undertaken by the auditor at different times throughout the relevant Year.
- (c) QR will appoint the auditor for the term of the Undertaking, subject to the approval of the QCA. The QCA will accept QR's external auditor as appropriate to conduct the audit, and unless the QCA raises a specific objection, their appointment will be deemed approved by the QCA.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 3.2.3(c) and a new paragraph 3.2.3(d):

- (c) **'QR will appoint the auditor and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Paragraph 3.2.3(d);**
- (d) **If, following completion of the audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR that its approval of that auditor in relation to the next audit of the Financial Statements is withdrawn, such advice to be provided in writing and**

within three (3) months of completion of the audit.'

- (d) In addition to their obligations to QR, the auditor will have a duty of care to the QCA in the provision of the audit and must have no engagements or arrangements that would create or could be seen to create a conflict of interest with their duty to the QCA.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it replace subparagraph 3.2.3(d) with the following paragraph:

- (d) **'The auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence.'**

- (e) The auditor will examine whether the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, and will prepare an audit certificate that specifies:
- (i) the scope of the audit;
 - (ii) the level of access that the auditor was provided to QR's financial information, including the relevant information systems;
 - (iii) whether or not the Financial Statements have been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual; and
 - (iv) in the event that the auditor identifies that the Financial Statements have not been developed in all material respects in accordance with the processes outlined in the Costing Manual and consistent with the format specified in the Costing Manual, information regarding the relevant non-compliance or inconsistency.
- (f) Prior to commencing the audit the auditor must agree an audit plan with QR, document that audit plan and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.
- (g) QR will provide the auditor with access to QR's financial records and information systems necessary for the purpose of conducting the audit, as well as providing any relevant information the auditor reasonably requires for the purpose of conducting the audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR.
- (h) The auditor will be required to enter into a confidentiality deed in relation to any information provided by QR, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the audit and completing the audit certificate.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new paragraph as follows:

- (i) **'Upon completion of the audit, the auditor must provide a copy of the audit certificate, and any accompanying letter to management explaining the audit findings in greater detail, to both QR and the QCA.'**

3.3 Management of Confidential Information

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraph:

- (a) **'For the purpose of Clause 3.3:**
 - (i) **"Confidential Information", in addition to the meaning as defined, includes information or data collected by Network Access or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement; and**
 - (ii) **that other party shall be deemed to be the owner of such Confidential Information.'**

- (a) The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information provided by Access Seekers or Access Holders to Network Access, and Confidential Information provided by Network Access to Access Seekers or Access Holders, both as part of negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of an Access Agreement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 3.3(b):

- (b) **'The provisions in this Clause 3.3 apply in relation to the handling of Confidential Information:**
 - (i) **disclosed by Third Party Access Seekers or Third Party Access Holders to Network Access or disclosed by Network Access to Third Party Access Seekers or Third Party Access Holders, both as part of negotiations for Access and, unless otherwise agreed, as provided under, in accordance with or for the purpose of, an Access Agreement; or**
 - (ii) **collected by an Access Holder or Network Access in the performance of an Access Agreement.'**

- (b) At any time during the negotiation process, including prior to the submission of an Access Application by a Third Party Access Seeker in accordance with Clause 4.1, a Third Party Access Seeker may require QR to enter into a confidentiality deed with the Third Party Access Seeker. The confidentiality deed will be in the form specified in Schedule B, unless otherwise agreed between QR and the Third Party Access Seeker.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following words after the first sentence in paragraph 3.3(b):

'Similarly, at any time during the negotiation process, QR may require a Third Party Access Seeker to enter into a confidentiality deed with QR.'

- (c) QR, Access Seekers, and Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party, and to use Confidential Information of the other party only for the purpose for which it is provided, unless:
- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or
 - (ii) disclosure and/or use is:
 - required or compelled by any law;
 - required or compelled by any order of a court;
 - required or compelled by notice validly issued by any Authority;
 - necessary for the conduct of any legal proceedings;
 - required under any stock exchange listing requirement or rule;
 - to the recipient's solicitors, barristers, or accountants under a duty of confidentiality;
 - to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information; or
 - requested by QR's shareholding ministers.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace paragraph 3.3(c) with the following paragraph:

- (c) **'QR, Third Party Access Seekers, and Third Party Access Holders undertake at all times to keep confidential and not disclose any Confidential Information of the other party or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by a party) except in accordance with this Undertaking or a confidentiality deed entered into between the parties, and to use**

Confidential Information of the other party only for the purpose for which it is disclosed or collected, unless:'

- (i) the owner of the Confidential Information provides its prior written approval, with such approval not to be unreasonably withheld; or**
- (ii) disclosure and/or use is:**
 - required or compelled by any law;**
 - required or compelled by any order of a court;**
 - required or compelled by notice validly issued by any Authority;**
 - necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or Act;**
 - required under any stock exchange listing requirement or rule;**
 - to the Safety Regulator;**
 - to the recipient’s solicitors, barristers, or accountants under a duty of confidentiality;**
 - to the recipient’s banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the owner of the Confidential Information; or**
 - requested by QR’s shareholding ministers.’**

3.3.1 External Flows of Confidential Information

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following sub-paragraph 3.3.1(a):

- (a) ‘Network Access will not, where reasonably practicable, appoint an external consultant or independent advisor to provide advice in relation to Confidential Information, where that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter.’**

- (a) In the context of Subparagraph 3.3(c)(i), it would be unreasonable for QR to refuse to approve the disclosure of its Confidential Information by an Access Seeker or Access Holder to that Access Seeker’s or Access Holder’s external consultant/s, independent adviser/s or Customer/s where the Access Seeker or Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:
 - (i) specifying the individual/s employed by the recipient who may have access to any QR Confidential Information provided under the contract;

- (ii) specifying that those individual/s must not disclose any QR Confidential Information provided under the contract to any other person unless otherwise agreed by QR; and
- (iii) if required by QR, requiring the recipient to execute a confidentiality deed in favour of QR on terms and conditions reasonably satisfactory to QR.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.1(a) with the following paragraph:

- (a) **'In the context of Subparagraph 3.3(d)(i), it would be unreasonable for QR to refuse to approve the disclosure of its Confidential Information by a Third Party Access Seeker or Third Party Access Holder to that Third Party Access Seeker's or Third Party Access Holder's external consultant/s, independent adviser/s or Customer/s where the Third Party Access Seeker or Third Party Access Holder enters into a contract with the recipient of the Confidential Information on the following terms:**
 - (i) **specifying the individual/s employed by the recipient who may have access to any QR Confidential Information provided under the contract;**
 - (ii) **specifying that those individual/s must not disclose any QR Confidential Information provided under the contract to any other person unless otherwise agreed by QR; and**
 - (iii) **if required by QR, requiring the recipient to execute a confidentiality deed in favour of QR on terms and conditions reasonably satisfactory to QR.'**

- (b) Also in the context of Subparagraph 3.3(c)(i), it would be unreasonable for a Third Party Access Seeker or Third Party Access Holder to refuse to approve the disclosure of its Confidential Information by QR to QR's external consultant/s or independent adviser/s where QR enters into a contract with the recipient of the Confidential Information on the following terms:
 - (i) advising the recipient that the duty of confidentiality under the contract is owed not just to QR but to Network Access within QR, and that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;
 - (ii) specifying the individual/s employed by the recipient who may have access to any Third Party Access Seeker's or Third Party Access Holder's Confidential Information provided under the contract, after receiving the recipient's assurance that those individuals are not, and will not at the time of the contract with Network Access, be working for a QR Operational Business Group on the same or a related matter;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.1(b)(ii) with the following paragraph:

(ii) ‘specifying the individual/s employed by the recipient who may have access to any Third Party Access Seeker’s or Third Party Access Holder’s Confidential Information provided under the contract and, where QR has not been able to reasonably avoid appointing an external consultant or independent advisor to review and provide advice in relation to such Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter in accordance with Paragraph 3.3.1(a), after receiving the recipient’s assurance that those individuals are not, and will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter;’

(iii) specifying that those individual/s must not disclose any Third Party Access Seeker’s or Third Party Access Holder’s Confidential Information provided under the contract to:

- any person outside of QR; or
- any QR staff other than those within Network Access, except where such disclosure is necessary for the purpose of the contract. In such circumstances, the recipient will advise the Network Access project officer responsible for the contract and the project officer will ensure that any such disclosure occurs in accordance with QR’s obligations relating to the management of Confidential Information as set out in this Clause 3.3; and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace the 2nd dot point in sub-paragraph 3.3.1(b)(iii) with the following:

- **‘any QR staff other than those within Network Access.’**

(iv) if required by the Third Party Access Seeker or Third Party Access Holder in question, requiring the recipient to execute a confidentiality deed in favour of the Third Party Access Seeker or Third Party Access Holder on terms and conditions reasonably satisfactory to that Third Party Access Seeker or Third Party Access Holder.

(c) For the purposes of Paragraph 3.3(c), this Subclause 3.3.1 and Subclause 3.3.2, a person who has been a consultant or contractor to either QR or a Third Party Access Seeker or Third Party Access Holder for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace sub-paragraph 3.3.1(c) with the following paragraph:

(c) ‘For the purposes of this Undertaking, a person who has been a consultant or contractor to either QR or a Third Party Access Seeker or Third Party Access

Holder for a continuous period of at least three (3) months, who works at least an average of thirty (30) hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.'

3.3.2 Internal Flows of Confidential Information

- (a) QR will not disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Operational Business Group unless:
- (i) the Third Party Access Seeker or Third Party Access Holder approves such disclosure;
 - (ii) such disclosure is required for the purpose of responding to an Access Application or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
 - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
 - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region of QR's network, provided that any disclosure is limited to the extent required for this purpose.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete subparagraph 3.3.2(a) and insert the following paragraphs:

- (a) **'QR may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to:**
- (i) **individuals within Network access; and**
 - (ii) **the QR Chief Executive, QR Board and their respective Support Staff.**
- (b) **Subject to Paragraph 3.3.2(c), QR may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to those groups within QR specified in this Paragraph 3.3.2(b), provided that disclosure to each recipient is limited to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement:**
- (i) **Civil Engineering Division within Technical Services Group in relation to Rail Infrastructure issues;**
 - (ii) **Rollingstock Engineering Division within Technical Services Group in relation to Rollingstock or Rollingstock interface issues;**
 - (iii) **Electrical Engineering Division within Technical Services Group in relation to Rail Infrastructure electrification or electric energy issues;**

- (iv) **Telecommunications Division within Technical Services group in relation to communications issues;**
- (v) **Signal and Operational Systems Division within Technical Services Group in relation to signalling and operational systems issues;**
- (vi) **Property Division within Corporate Services group in relation to real property issues; and**
- (vii) **Infrastructure Services Group employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.**
- (c) **A Third Party Access Seeker may, in an Access Application, give notice to QR that it does not wish QR to disclose its Confidential Information to any one or more of the groups listed in paragraph 3.3.2(b). If a Third Party Access Seeker gives such a notice to QR, then:**
- (i) **upon receipt of such notice QR may not disclose Confidential Information to the groups so noted;**
- (ii) **QR will make reasonable efforts to suggest a reasonable alternate mechanism, whereby QR can obtain the information it requires to respond to the Access Application and the Third Party Access Seeker will not unreasonably withhold its agreement to this alternative mechanism. If the parties fail to agree on an alternate mechanism either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7.**
- (iii) **all reasonable costs incurred by QR in obtaining information by means of an alternative mechanism agreed in accordance with Subparagraph 3.3.2(c)(ii) may be recovered by QR from the Third Party Access Seeker as a debt due and owing. All relevant timeframes applicable to QR under this Undertaking will be extended by the same number of days as equals the number of days from QR's receipt of the Access Application to QR's receipt of the information it requires to respond to the Access Application; and**
- (iv) **if:**
- **the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR can obtain the information it requires to respond to the Access Application; or**
 - **the parties fail to agree on an alternative mechanism but do not seek resolution by the Dispute resolution process;**
- QR may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(a).**
- (d) **QR may disclose a Third Party Access Seeker's or Third Party Access Holder's Confidential Information to a QR Operational Business Group where:**
- (i) **the Third Party Access Seeker or Third Party Access Holder approves**

- such disclosure;
- (ii) such disclosure is required for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
 - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
 - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- (e) If, for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement, QR wishes to disclose a Third Party Access Seeker’s or Third Party Access Holder’s Confidential Information to a QR group not specified in Paragraphs 3.3.2(a), (b) or (d), or to a group specified in Paragraph 3.3.2(b) on an issue not specified in that Paragraph, Network Access must:
- (i) obtain the consent of the owner of the Confidential Information prior to making the disclosure; and
 - (ii) only disclose the Confidential Information to that QR group to the extent necessary for the purpose of responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.’

- (b) Network Access will not, where reasonably practicable, disclose a Third Party Access Seeker’s or Third Party Access Holder’s Confidential Information to a QR employee where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, Network Access will advise the Third Party Access Seeker or Third Party Access Holder before providing the Confidential Information to the QR employee.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace sub-paragraph 3.3.2(b) with the following paragraph:

- (f) ‘Network Access will not, where reasonably practicable, disclose a Third Party Access Seeker’s or Third Party Access Holder’s Confidential Information to a QR employee where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Paragraph 3.3.2(b), Network Access must obtain the consent of the owner of the Confidential Information prior to making the disclosure.’

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraphs:

- (g) **'If, during the process of responding to an Access Application or negotiating an Access Agreement, Network Access seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 3.3.2(e) or (f) and:**
- (i) **where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR's request for consent within thirty (30) days of its receipt of QR's written request, then QR may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(a); or**
 - (ii) **where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR's request for consent within five (5) days of its receipt of QR's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.**

This Paragraph does not apply where Network Access has requested consent to disclose the information to a QR Operational Business Group.'

- (h) **'If, during the process of administering an Access Agreement, Network Access seeks the consent of an Access Holder for the disclosure of Confidential Information pursuant to Paragraph 3.3.2(e) or (f), such consent shall not be unreasonably withheld. If the owner of the Confidential Information fails to respond to QR's request for consent within thirty (30) days of its receipt of QR's written request, consent shall be deemed to have been given. This Paragraph does not apply where Network access has requested consent to disclose the information to a QR Operational Business Group.'**
- (i) **'The Ringfencing Compliance Officer, and QR employees in Internal Audit, Chief Management Accounting Division, Signal and Operational Systems Division and Information Services Division will from time to time, in the course of performing their duties, have access to a Third Party Access Seeker's or Third Party Access Holder's Confidential Information. QR is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Third Party Access Seeker or Third Party Access Holder.'**

- (c) QR will establish a ring fencing register ('the register'), to be maintained by Network Access, for the purpose of recording the names of those persons, within QR but outside of Network Access to whom Network Access discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to their Confidential Information. For the purposes of QR's reporting obligations, under Part 9 and Subclause 3.4.1, a breach by QR of its obligation under this Paragraph 3.3.2(c) is a Procedural Breach.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.2(c) with the following paragraph:

- (j) **'QR will establish a ringfencing register, to be maintained by Network Access, for the purpose of recording the names of those persons, within QR but outside of Network Access (excluding those persons gaining access to Confidential Information in accordance with Paragraph 3.3.2(i)) to whom Network Access discloses Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder. This register will record the acknowledgement of receipt of the Confidential Information by the recipient. Such acknowledgement will be by way of facsimile, hard copy of an electronic message, or the original signature of the recipient. A Third Party Access Seeker or Third Party Access Holder may, upon request, view the register relating to its Confidential Information.'**

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraph:

- (k) **'QR will establish separate registers, to be maintained by each group within QR specified in Paragraph 3.3.2(b), for the purpose of recording the positions of those persons within that group (excluding those persons gaining access to Confidential Information in accordance with paragraph (i)) to whom Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder is disclosed. A Third Party Access Seeker or Third Party Access Holder may, upon request, view these registers relating to its Confidential Information.'**

- (d) QR will ensure that QR employees receiving a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ring fencing training and awareness session. For the purposes of QR's reporting obligations, under Part 9 and Subclause 3.4.1, a breach by QR of its obligation under this Paragraph 3.3.2(d) is a Procedural Breach.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.2(d) with the following paragraph:

- (l) **'QR will ensure that all QR employees receiving, or having access to in the course of performing their duties, a Third Party Access Seeker's or Third Party Access Holder's Confidential Information, are aware of QR's obligations relating to the management of Confidential Information as set out in this Clause 3.3, and have undergone a ringfencing training and awareness session.'**

- (e) Where a QR employee is leaving Network Access to work in a QR Operational Business Group, they will undergo a debriefing process to remind them of QR's obligations

relating to the management of Confidential Information as set out in this Clause 3.3. For the purposes of QR’s reporting obligations, under Part 9 and Subclause 3.4.1, a breach by QR of its obligation under this Paragraph 3.3.2(e) is a Procedural Breach.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.2(e) with the following paragraph:

- (m) **‘Where QR employees leave Network Access to work elsewhere in QR, they will undergo a debriefing process to remind them of QR’s obligations relating to the management of Confidential Information as set out in this Clause 3.3 and will be asked to sign an acknowledgement of having undergone such a debriefing process.’**

- (f) Where Network Access employees in management levels 2, 3 and 4, leave Network Access to work in a QR Operational Business Group, they will not, for a period of three (3) months, work on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in Network Access. For the purposes of QR’s reporting obligations, under Part 9 and Subclause 3.4.1, a breach by QR of its obligation under this Paragraph 3.3.2(f) is a Procedural Breach.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace subparagraph 3.3.2(f) with the following paragraph:

- (n) **‘Where Network Access employees in management levels 2, 3 and 4, leave Network Access to work:**
- (i) **in a QR Operational Business Group, they will not, for a period of three (3) months, work on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third party Access Holder in their position in Network Access; or**
 - (ii) **elsewhere in QR, they will not, for a period of three (3) months, work for a QR Operational Business Group on a matter in respect of which they have had access to Confidential Information belonging to a Third Party Access Seeker or Third Party Access Holder in their position in Network Access.’**

3.4 COMPLIANCE AND ENFORCEMENT

The following compliance and enforcement obligations apply to QR’s conduct in meeting its obligations relating to the management of Confidential Information as set out in Clause 3.3.

3.4.1 Complaint Handling

- (a) If a Third Party Access Seeker or Third Party Access Holder considers that QR has breached its obligations under Clause 3.3, they may lodge a written complaint with QR.

- (b) QR will advise the QCA on a timely basis of any complaints it receives from Third Party Access Seekers and Third Party Access Holders that it has breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3. In notifying the QCA, QR will identify the alleged breach as either a Substantive Breach or a Procedural Breach.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'on a timely basis' from subclause 3.4.1(b) and replace them with 'within thirty (30) days'. The final sentence must also be deleted.

- (c) QR will conduct an internal investigation of those complaints referred to in Paragraph (a) of this Subclause, and advise the complainant in writing of the outcome of the investigation and QR's proposed response, if any. QR will use reasonable endeavours to complete its internal investigation and advise the complainant of the results of its investigation within 28 days of receiving the complaint in question.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'Paragraph (a) of this Subclause' in the first sentence of sub-paragraph 3.4.1(c) and replace it with 'Paragraph 3.4.1(a)'. It must also insert 'twenty-eight' before '(28)' in the last sentence.

- (d) If QR's investigation reveals that QR has breached its obligations relating to the management of Confidential Information as set out in Clause 3.3, QR will advise the QCA of the breach, including whether it is a Substantive Breach or a Procedural Breach, and QR's proposed response.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'including whether it is a Substantive Breach or a Procedural Breach' from sub-paragraph 3.4.1(d).

3.4.2 Audits

- (a) QR's compliance with its obligations under Clause 3.3 and Subclause 3.4.1 will be audited annually.
- (b) In considering QR's compliance with the above obligations, the auditor may take into account QR's compliance with any relevant internal procedures.
- (c) The QCA may require the annual audit, referred to in Paragraph 3.4.2(a), to be conducted by an external party, and if it does, the following process will apply:
- (i) QR will appoint an auditor, subject to the approval of the QCA;
 - (ii) in addition to their obligations to QR, the auditor will have a duty of care to the QCA in the provision of the independent assessment and must have no engagements or arrangements that would create or could be seen to create a conflict of interest with their duty to the QCA; and

- (iii) prior to commencing the audit the auditor must agree an audit plan with QR, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.4.2(c):

- (c) **'The QCA may require the annual audit, referred to in Paragraph 3.4.2(a), to be conducted by an external party, and if it does, the following process will apply:**
- (i) **QR will appoint the auditor, and may from time to time appoint a replacement auditor, subject to the QCA approving the auditor (or replacement auditor). The QCA's approval of an auditor (or replacement auditor) in accordance with this Paragraph will continue unless and until withdrawn in accordance with Subparagraph 3.4.2(c)(ii);**
- (ii) **If, following completion of an audit, the QCA is of the reasonable belief that the audit was not conducted to a satisfactory standard, the QCA may advise QR that its approval of that auditor in relation to the next external audit of QR's compliance with its obligations under Clause 3.3 and Subclause 3.4.1 is withdrawn, such advice to be provided in writing and within three (3) months of completion of the audit;**
- (iii) **the auditor will have a duty of care to the QCA in the provision of the audit and, in the event of a conflict between the auditor's obligations to QR and its duty of care to the QCA, the auditor's duty of care to the QCA will take precedence;**
- (iv) **prior to commencing the audit the auditor must agree an audit plan with QR, document that audit plan, and obtain the QCA's approval of the audit plan. The audit plan will consist of a proposed work program, including audit costs (which shall be payable by QR), for the execution of the audit. It will also provide for the establishment of an audit liaison group, comprising the auditor, QR and the QCA, during the course of the audit, to provide a forum for the resolution of any audit issues that arise.'**

- (d) QR will provide any relevant information the auditor reasonably requires for the purpose of conducting the annual audit, within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR.
- (e) The auditor will be required to enter into a confidentiality deed with QR in relation to any information provided by QR, to the effect that it must keep the information confidential and only use that information for the purpose of conducting the annual audit and completing the audit report detailed below.

- (f) The auditor will compile an audit report identifying:
 - (i) whether QR has complied in all material respects with its obligations under Clause 3.3 and Subclause 3.4.1;
 - (ii) in the event that the auditor identifies that QR has not complied in all material respects with the obligations specified above, details on the relevant non-compliance; and
 - (iii) the process adopted for the conduct of the audit.
- (g) The auditor will provide a copy of the annual audit report to QR and the QCA.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.4.2(g):

- (g) **'The auditor will provide a copy of the annual audit report to QR and the QCA upon completion of the audit.'**

- (h) The QCA may publish the annual audit report referred to in Paragraph 3.4.2(f).

4. NEGOTIATION FRAMEWORK

4.1 Access Application

- (a) Requests for Access are to be submitted to QR in the form of an Access Application.
- (b) In order for QR to assess requests for Access, certain information will be required to be provided by the Access Seeker as part of the Access Application. Details of the required information are set out in Schedule C. Prior to submitting the Access Application, the Access Seeker may seek initial meetings with QR to discuss the Access Application and to seek clarification of the process as outlined in this Undertaking and in particular the information requirements set out in Schedule C.
- (c) Upon request by the Access Seeker at any time (including prior to the lodging of an Access Application), QR will provide to the Access Seeker, Preliminary Information relative to the corridor of interest.
- (d) QR will use reasonable efforts to make the Preliminary Information available to the Access Seeker within fourteen (14) days of QR receiving the Access Seeker's request if the information contained in the Preliminary Information has been previously compiled, otherwise within thirty (30) days of QR receiving the request. QR will advise the Access Seeker if the Preliminary Information is expected to take longer than fourteen (14) days to provide and, if so, will advise the Access Seeker of its estimate of the time required to deliver the Preliminary Information and the reasons for the additional time required.
- (e) QR will use reasonable efforts to ensure that any information provided under Paragraph 4.1(c) will reflect the most current information available to QR. QR will identify the currency of the information provided.
- (f) For the provision of information under this Clause, QR will be entitled to levy the charge specified in Schedule D for the relevant information.

4.2 ACKNOWLEDGMENT OF ACCESS APPLICATION

- (a) Upon receiving an Access Application from an Access Seeker, QR must acknowledge the Access Application in writing to the Access Seeker within seven (7) days of its receipt or such longer period as specified in accordance with Paragraph 4.2(b). Subject to Paragraph 4.2(c), QR will use reasonable efforts to provide the Indicative Access Proposal to the Access Seeker within thirty (30) days of such acknowledgment.
- (b) Prior to acknowledging the Access Application, QR may seek:
 - (i) additional information where QR can reasonably demonstrate the need for such information for the purpose of preparing an Indicative Access Proposal; or
 - (ii) clarification of the information that has been provided in the Access Application.

In such circumstances, QR will advise the Access Seeker of the additional information or the clarification required within seven (7) days of receipt of the Access Application. Upon receiving the required information or clarification from the Access Seeker, QR must provide written acknowledgment of the receipt of the completed Access Application within seven (7) days.

- (c) In assessing an Access Application, QR may consider that, due to the complexity of the Access Application or due to other extenuating circumstances, it is not reasonable to provide an Indicative Access Proposal within thirty (30) days of acknowledgment of the

Access Application. In these circumstances, QR will advise of such in its acknowledgment and within a further seven (7) days will advise the Access Seeker of its estimate of the time required to deliver the Indicative Access Proposal. Where the Access Seeker is of the view that the time estimated for preparation of the Indicative Access Proposal pursuant to this Paragraph is excessive, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR will use reasonable efforts to provide the Indicative Access Proposal within the estimated time period provided by QR or as otherwise determined by the QCA pursuant to this Paragraph.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraph 4.2(d):

- (d) 'QR recognises that there may be circumstances where an Access Seeker is able to provide a reasonable description of its proposed Train Service taking into account the information requirements set out in Schedule C or requested by QR in accordance with Paragraph 4.2(b), but is not able to provide all of the detailed information requirements set out in Schedule C or requested by QR in accordance with Paragraph 4.2(b). In such circumstances, QR will acknowledge the Access Application and prepare an Indicative Access Proposal, conditional upon assumptions made by QR relating to the detailed information not provided by the Access Seeker.'**

4.3 INDICATIVE ACCESS PROPOSAL

- (a) The Indicative Access Proposal will set out:
- (i) the Rollingstock and Rollingstock Configurations to which the Indicative Access Proposal applies;
 - (ii) a summary of the applicable operating characteristics (e.g. frequency, transit time, commodity carried);
 - (iii) an indicative assessment of whether there is sufficient Available Capacity to accommodate the requested Access Rights and, if not, either an outline of the works and an indicative estimate of the cost of such works, required to provide the additional Capacity necessary to accommodate the requested Access Rights, or an outline of the requirements for an investigation into the provision of sufficient Capacity for the requested Access Rights;
 - (iv) advice as to whether QR does not have authority to authorise Third Party Access Seekers to access land upon which Rail Infrastructure required for the provision of the requested Access Rights is situated and, if so, the following information:
 - identification of the relevant party (including that party's name, address and contact details) that the Third Party Access Seeker would need to obtain approval from to gain access to that land, where QR can reasonably ascertain that information;
 - where relevant to the Access sought, advice of the nature and extent of the rights, if any, that QR holds in relation to the relevant land; and

- a notice that may be provided to that party identifying that QR has no objection to the Third Party Access Seeker negotiating for access to that land.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 4.3(a)(iv).

- (v) advice in respect of the existence of other Access Seekers who have submitted an Access Application (except an Access Application in respect of which the time period specified in Paragraph 4.4(a) has expired without a notification of intent having been received by QR) in respect of Access which, if it were to be provided, would limit the ability of QR to provide Access in accordance with the Indicative Access Proposal;
 - (vi) an initial estimate of the Access Charge for the requested Access Rights, based on the pricing principles set out in Part 6;
 - (vii) details of the additional information required for QR to progress the proposal and develop the Access Charge and terms and conditions for acceptance. Typical information requirements to be addressed are outlined in Paragraph 4.5.2(a); and
 - (viii) the expiry date of the Indicative Access Proposal, which will be ninety (90) days following the date the Access Seeker receives the Indicative Access Proposal.
- (b) The Indicative Access Proposal will, unless it contains specific provisions to the contrary, contain indicative arrangements only and does not oblige QR to provide Access in accordance with the specific terms and conditions, including Access Charge, contained within it.
- (c) If, after thirty (30) days following QR's acknowledgment of the Access Application, or if applicable after expiration of the time estimated by QR or determined by the QCA in accordance with Paragraph 4.2(c), the Access Seeker believes that QR is not making reasonable progress in the preparation of the proposal, then the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'proposal' from the second last line of paragraph 4.3(c) and replace it with 'Indicative Access Proposal'.

4.4 NOTIFICATION OF INTENT

- (a) If the Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in the Indicative Access Proposal, the Access Seeker must notify QR of its intention in writing, prior to the expiry date of the Indicative Access Proposal. In the event that a notification is given after the expiry date of the Indicative Access Proposal, QR will review the Indicative Access Proposal and, if considered necessary by QR, prepare a revised Indicative Access Proposal in accordance with Clause 4.3, and the negotiation process outlined in this Part 4 will recommence from that point.
- (b) Should the Access Seeker be of the view that the Indicative Access Proposal has not been prepared in accordance with this Undertaking and would therefore not be an appropriate

basis for continuing with the negotiation process under this Undertaking, then the Access Seeker shall notify QR of its concerns in writing within sixty (60) days of the date of receipt of the Indicative Access Proposal, or such other timeframe as QR and the Access Seeker agree at their discretion.

- (c) QR will use reasonable efforts to respond to these concerns including, where appropriate, the making of revisions to the Indicative Access Proposal, within thirty (30) days of the notification of the concerns, subject to Paragraph 4.4(d).
- (d) In assessing the required response in accordance with Paragraph 4.4(c), QR may consider that, due to the complexity of the concerns or due to other extenuating circumstances, it is not reasonable to provide a response within thirty (30) days of notification of those concerns. In these circumstances, QR will advise the Access Seeker within seven (7) days of the Access Seeker's notification to QR, of QR's estimate of the time required to deliver the response. Where the Access Seeker is of the view that the time estimated for preparation of the response pursuant to this Paragraph is excessive, the Access Seeker may refer the matter to the QCA for a determination in accordance with Subclause 4.7.4. QR will use reasonable efforts to provide the response within the estimated time period provided by QR or as otherwise determined by the QCA pursuant to this Paragraph.
- (e) If the Access Seeker is satisfied with the response received from QR in accordance with Paragraph (c) of this Clause, including any revision to the Indicative Access Proposal, it must notify QR of its intention to proceed with negotiations within sixty (60) days, or such other timeframe as QR and the Access Seeker agree at their discretion, of receiving QR's response. In the event that the Access Seeker is not satisfied with the response from QR, including any revision to the Indicative Access Proposal, the Access Seeker may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7. The Access Seeker must commence this Dispute resolution process within sixty (60) days of receiving QR's response, or such other timeframe as QR and the Access Seeker agree.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement 1st sentence of paragraph 4.4(e):

'If the Access Seeker is satisfied with the response received from QR in accordance with Paragraph 4.4(c), including any revision to the Indicative Access Proposal, it must notify QR of its intention to proceed with negotiations within sixty (60) days of receiving QR's response, or such other timeframe as QR and the Access Seeker agree at their discretion.'

- (f) Where a Dispute is referred for resolution in accordance with Paragraph 4.4(e), then the Access Seeker must notify QR of its intentions in writing within fourteen (14) days of resolution of the Dispute, or such other timeframe that QR and the Access Seeker agree at their discretion, if the Access Seeker wishes to proceed further with its Access Application, on the basis of the arrangements outlined in the Indicative Access Proposal including any amendments made as a result of the resolution of the Dispute.

4.5 NEGOTIATION PROCESS

4.5.1 Negotiation Period

- (a) If the Access Seeker indicates its willingness to progress negotiations pursuant to Clause 4.4, then both parties shall commence negotiations as soon as reasonably possible to progress towards an Access Agreement.
- (b) The Negotiation Period shall commence upon the Access Seeker providing a notification of intent pursuant to Clause 4.4.
- (c) The Negotiation Period will cease upon any of the following events:
 - (i) execution of an Access Agreement in respect of the Access sought by the Access Seeker;
 - (ii) written notification by the Access Seeker that it no longer wishes to proceed with its Access Application;
 - (iii) QR issuing a Negotiation Cessation Notice to the Access Seeker pursuant to Clause 4.6;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Clause' in sub-paragraph 4.5.1(c)(iii) and replace it with 'Paragraph 4.6(a)'.

- (iv) the expiration of nine (9) months from the commencement of the Negotiation Period, or if both parties agree to extend the Negotiation Period, the expiration of the agreed extended period, provided that agreement to extend the Negotiation Period is not unreasonably withheld by either party; or
- (v) a reduction in Available Capacity from another Access Seeker finalising an Access Agreement, where that reduction in Available Capacity adversely impacts upon QR's ability to offer Access to the Access Seeker under the terms of the Indicative Access Proposal.
- (d) In the event that the Negotiation Period ceases for the reason specified in Subparagraph 4.5.1(c)(v), QR will review the Indicative Access Proposal and prepare a revised Indicative Access Proposal in accordance with Clause 4.3, and the negotiation process outlined in this Part 4 will recommence from that point.
- (e) If at any time during the Negotiation Period, a Dispute arises between the parties that, after reasonable negotiation, the parties are unable to resolve to their mutual satisfaction, then either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7.

4.5.2 Issues to be addressed during Negotiation

- (a) During the Negotiation Period, QR and the Access Seeker will negotiate and agree on the elements comprising the Access Agreement. In order to facilitate this process:
 - (i) QR will provide Additional Information relative to the corridor of interest to the Access Seeker, to the extent required either by the Access Seeker or as part of the Access Agreement, which may include any information outlined in Part A of

Schedule D not provided as part of the Preliminary Information and the information outlined in Part B of Schedule D;

- (ii) an Operating Plan is to be prepared by the Access Seeker in accordance with Subclause 8.1.4;
- (iii) an Interface Risk Assessment is to be undertaken by the Access Seeker, jointly with QR, in accordance with Subclause 8.1.2 and an Interface Risk Management Plan is to be developed and agreed in accordance with Subclause 8.1.3;
- (iv) an Environmental Investigation and Risk Management Report must be undertaken and prepared by the Access Seeker in accordance with Subclause 8.2.1;
- (v) an Access Charge, determined in accordance with the pricing principles set out in Part 6, is to be provided by QR;
- (vi) a Capacity Analysis and an investigation of operational impacts are to be undertaken by QR and any necessary Capacity enhancements to accommodate Access by the Access Seeker are to be advised by QR;
- (vii) the definition of the relevant Train Service Entitlement and, where applicable, advice of the initial timetable is to be provided by QR, consistent with Part 7;
- (viii) the Access Seeker is to demonstrate that the Rollingstock and Rollingstock Configurations for which the Access Rights are applicable are consistent with the Rollingstock Interface Standards incorporated in the IRMP in accordance with Subclause 8.1.6; and
- (ix) other terms and conditions comprising the Access Agreement are to be provided by QR consistent with Part 5.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following sub-paragraph 4.5.2(b):

- (b) 'During the Negotiation Period, the Access Seeker may review and revise the information provided to QR in the Access Application, provided that such revision does not substantially alter the nature of the Access Rights sought by the Access Seeker. If QR is reasonably of the view that an Access Seeker's revision of information provided to QR in the Access Application has substantially altered the nature of the Access Rights sought by the Access Seeker, QR will treat the revised information as a new Access Application, and the process set out in this Part 4 will recommence from that point.'**

- (b) Where Additional Information is required to be provided in accordance with Subparagraph 4.5.2(a)(i), QR will use reasonable endeavours to supply the relevant Additional Information to the Access Seeker within a reasonable timeframe, given the Access Seeker's requirements for that information. QR will use reasonable endeavours to ensure that any information provided will reflect the most current information available to QR. QR will identify the currency of the information provided.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'given the Access Seeker's requirements for that information' from the first sentence of sub-paragraph 4.5.2(b).

- (c) QR will be entitled to levy an appropriate charge for the provision of Additional Information commensurate with the cost of preparation and supply of the information.
- (d) In respect of the details required to be developed by the parties in accordance with Paragraph 4.5.2(a), the parties may agree to finalise certain aspects after the execution of the Access Agreement. In such circumstances the parties may choose to address the issue in question in a preliminary manner only during the Negotiation Period and then provide a mechanism to address any subsequently identified cost or operating impact after execution of the Access Agreement.
- (e) QR will be responsible for the investigation and design of any necessary enhancements for the Rail Infrastructure. However, if prior to entering into an Access Agreement, the Access Seeker requires detailed scoping of the enhancements that are required directly to facilitate the Access Rights under negotiation, QR will be entitled to require that the Access Seeker pay for QR's reasonable costs for such investigation and design.
- (f) In the event that, at any time prior to the execution of an Access Agreement with the Access Seeker, another Access Seeker (other than an Access Seeker that was the subject of advice provided in the Indicative Access Proposal pursuant to Subparagraph 4.3(a)(v)) submits an Access Application where that Access would limit the ability of QR to provide Access in accordance with the Access Rights being negotiated, QR will notify the Access Seeker of the existence of the Access Application prior to the provision of an Indicative Access Proposal to the other Access Seeker.

4.6 CONDITIONS TO NEGOTIATION

- (a) At any time during the negotiation process, QR may give notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker (referred to as a "Negotiation Cessation Notice") if QR is of the reasonable opinion that:
 - (i) there is an unacceptable risk that the Access Seeker will not comply with the terms and conditions of an Access Agreement in a material way;
 - (ii) the Access Seeker is not negotiating in good faith; or
 - (iii) the Access Seeker's request for Access is frivolous or vexatious in nature.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 4.6(a):

- (a) **At any time during the negotiation process, QR may give notice to an Access Seeker that it does not intend to enter into an Access Agreement with the Access Seeker (referred to as a "Negotiation Cessation Notice") if:**
 - (i) **an Access Seeker does not comply with the relevant obligations and processes contained in this Undertaking, and QR considers that such**

non-compliance is material;

- (ii) QR is of the reasonable opinion that there is no reasonable likelihood that the Access Seeker will comply with the terms and conditions of an Access Agreement in a material way;**
- (iii) QR is of the reasonable opinion that the Access Seeker has no genuine intention of gaining Access, or has no reasonable likelihood of utilising Access at the level sought;**
- (iv) the circumstances specified in Subparagraph 3.3.2(c)(iv) or (g)(i) occur;**
- (v) except in the circumstances outlined in Paragraph 4.7.3(i), an Access Seeker does not comply with a decision of an expert pursuant to Subclause 4.7.3; or**
- (vi) an Access Seeker does not comply with a decision of the QCA pursuant to Subclause 4.7.4.'**

- (b) A Negotiation Cessation Notice will identify the reasons for QR's decision not to enter into an Access Agreement with the Access Seeker, and will be provided to the Access Seeker within fourteen (14) days of QR making such decision.
- (c) Without limitation, it will be reasonable for QR to form the view that the circumstances in Subparagraph 4.6(a)(i) apply, if:
 - (i) the Access Seeker is Insolvent; or
 - (ii) the Access Seeker, or a Related Party of the Access Seeker, is currently, or has in the previous two (2) years been, in Material Default of any Access Agreement or any other agreement and where its performance under that agreement is relevant to its likely performance under an Access Agreement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the number '4.6(a)(i)' from the introductory sentence of paragraph 4.6(c) and replace it with '4.6(a)(ii)'.

- (d) Without limitation, it will be reasonable for QR to form the view that the circumstances in Subparagraph 4.6(a)(ii) apply if:
 - (i) an Access Seeker does not materially comply with the relevant obligations and applicable processes set out in this Undertaking;
 - (ii) except in the circumstances outlined in Paragraph 4.7.3(h), an Access Seeker does not comply with a decision of an expert pursuant to Subclause 4.7.3;
 - (iii) an Access Seeker does not comply with a decision of the QCA pursuant to Subclause 4.7.4; or
 - (iv) QR has requested the Access Seeker to confirm in writing to QR that the Access Seeker agrees to be bound by the obligations and applicable processes set out in

this Undertaking, and the Access Seeker has refused or failed to provide such confirmation.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 4.6(d).

- (e) Without limitation, it will be reasonable for QR to form the view that the circumstances in Subparagraph 4.6(a)(iii) apply if the Access sought is for the purpose of providing services to a specific Customer, and the Access Seeker cannot demonstrate a reasonable likelihood of securing a contract with that Customer for the provision of those services.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 4.6(e).

- (f) If the Access Seeker considers that QR has unreasonably given it a Negotiation Cessation Notice, then the Access Seeker may refer the matter to Dispute in accordance with Clause 4.7. In such circumstances, for the purposes of Paragraph 4.5.1(c), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR's favour.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace paragraph 4.6(f) with the following paragraph:

- (f) **'If the Access Seeker considers that QR has improperly given it a Negotiation Cessation Notice, then the Access Seeker may refer the matter to Dispute resolution in accordance with Clause 4.7. In such circumstances, for the purposes of Paragraph 4.5.1(c), the Negotiation Cessation Notice will be deemed to have been issued only if and when the Dispute is resolved in QR's favour. If the resolution of the Dispute identifies that QR has improperly given the Access Seeker a Negotiation Cessation Notice, QR will recommence negotiations with that Access Seeker immediately.'**

- (g) QR reserves the right to recover its costs incurred in negotiations with the Access Seeker where the Access Seeker's request for Access is frivolous or vexatious in nature. QR may seek acknowledgment of the Access Seeker's liability for costs as part of the negotiation for Access.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace 4.6(g) with the following paragraph:

- (g) **'QR reserves the right to recover its costs incurred in negotiations with the Access Seeker where it ceases negotiations in accordance with Paragraph 4.6(a)(iii). QR may seek acknowledgment of the Access Seeker's liability for costs as part of the negotiation for Access.'**

4.7 DISPUTE RESOLUTION

4.7.1 Disputes

- (a) If any Dispute or question (“Dispute”) arises under this Undertaking or in relation to the negotiation of Access between a Third Party Access Seeker and QR then, unless otherwise expressly agreed by both parties, such Dispute shall be resolved in accordance with this Clause 4.7 and either party may give to the other party to the Dispute notice in writing (“Dispute Notice”) specifying the Dispute and requiring that it be dealt with in the manner set out in this Clause 4.7.
- (b) Unless otherwise agreed by the parties, Disputes in relation to an Access Agreement once executed shall be dealt with in accordance with the provisions of that Access Agreement and are not dealt with under this Undertaking.

4.7.2 Chief Executive Resolution

- (a) Unless otherwise agreed by both parties or provided for in this Undertaking, any Dispute shall be referred in the first instance and in any event within seven (7) days of the Dispute Notice to the Chief Executive of QR (or his or her nominee) and the Chief Executive of the Third Party Access Seeker (or his or her nominee) for resolution.
- (b) In the event that:
 - (i) resolution is not reached within fourteen (14) days; or
 - (ii) the Chief Executive of QR appoints a nominee in accordance with Paragraph 4.7.2(a) and the Third Party Access Seeker reasonably considers that referral of the Dispute to the nominee would be inconsistent with QR’s obligations relating to the management of Confidential Information as set out in Clause 3.3;

the relevant Dispute may, by agreement between QR and the Third Party Access Seeker, be referred for resolution by an expert in accordance with Subclause 4.7.3. Failing such agreement, either party may refer the Dispute to the QCA in accordance with Subclause 4.7.4.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement subparagraph 4.7.2 (b)(ii):

- (ii) **‘either Chief Executive appoints a nominee in accordance with Paragraph 4.7.2(a) that is unacceptable to the other party.’**

4.7.3 Expert Determination

Where a matter is referred to an expert in accordance with this Clause 4.7 or as otherwise specified in accordance with this Undertaking then the following shall apply:

- (a) An expert shall be appointed by the parties, or where agreement cannot be reached by the parties within fourteen (14) days, in the case of financial matters, by the President for the time being of the Australian Society of Certified Practising Accountants and, in the case of non-financial matters, the President for the time being of the Institution of Engineers, Australia.

- (b) In any event the expert shall:
- (i) have appropriate qualifications and practical experience having regard to the nature of the Dispute;
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as expert, he or she being required to fully disclose any such interest or duty before his or her appointment; and
 - (iii) not be an employee of the Access Seeker or QR or of a Related Party of either of them.
- (c) The expert appointed pursuant to this Subclause 4.7.3 shall not act until the expert has given written notice of the acceptance of his or her appointment to both parties

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following sub-paragraph 4.7.3(d):

- (d) **'The parties shall upon request by the expert, provide or make available to the expert:**
- (i) **all information in their possession or control; and**
 - (ii) **all assistance;**

that the expert may reasonably require. Any such information or assistance must be provided as soon as reasonably practicable.'

- (d) Any determination made by an expert in relation to a Dispute must be consistent with the provisions of this Undertaking.
- (e) The expert will provide both parties with a copy of the determination in relation to the Dispute within a reasonable time after his or her appointment.
- (f) The expert appointed pursuant to this Subclause 4.7.3 shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of this appointment and performance of his or her duties.
- (g) Any person nominated as an expert hereunder shall be deemed to be and shall act as an expert and not an arbitrator and the law relating to arbitration including without limitation, the *Commercial Arbitration Act 1990 (Qld)*, as amended, shall not apply to the expert or to the determination or to the procedures by which the expert may reach that determination.
- (h) In the absence of manifest error, the decision of the expert shall be final and binding upon the parties. If a party believes that there has been a manifest error it may refer the matter to the QCA for a determination. If the QCA determines that there has been a manifest error, then the parties may agree to refer the Dispute to another expert in accordance with this Subclause 4.7.3, or failing such agreement, either party may refer the Dispute to the QCA for resolution in accordance with Subclause 4.7.4.
- (i) The costs of the expert and any advisers shall be borne by the parties in such proportions as determined by the expert.

4.7.4 Determination by the Queensland Competition Authority

- (a) If a Dispute is referred to the QCA in accordance with this Clause 4.7, or as otherwise specified in accordance with this Undertaking, then Division 5 of Part 5 of the Act shall apply subject to any determination by the QCA being consistent with the provisions of this Undertaking.
- (b) If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination acting as an expert in accordance with Subclause 4.7.3, subject to any determination by the QCA being consistent with the provisions of this Undertaking.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraphs 4.7.4 (b)(c) and (d):

- (b) **'If an issue is referred to the QCA for determination as specified in accordance with this Undertaking, but does not constitute a Dispute for the purposes of Division 5 of Part 5 of the Act, then the QCA will make a determination through any process that it considers appropriate, provided that:**
 - (i) **prior to considering the issue, the QCA advises both parties of the process that it will use to make the determination and both parties are given the opportunity to advise the QCA of any concerns with that process; and**
 - (ii) **any determination by the QCA is consistent with the provisions of this Undertaking.**
- (c) **If a Dispute is referred to the QCA in accordance with this Subclause 4.7.4, the QCA shall seek the advice of the Safety Regulator on any aspect of the Dispute that either party to the Dispute or the QCA considers to be a safety related matter. The QCA shall not make any decision that is inconsistent with any advice it receives from the Safety Regulator to the extent that the advice relates to any aspect of safety.' The QCA will provide the parties a copy of any advice it receives from the Safety Regulator.**
- (d) **Where the QCA calls upon the safety Regulator to provide advice to the QCA in relation to a Dispute, the costs of the Safety Regulator shall be borne by the parties to the Dispute in such proportion as the QCA determines.'**

5. ACCESS AGREEMENTS

5.1 DEVELOPMENT OF ACCESS AGREEMENTS

- (a) The granting of Access will be underpinned by an Access Agreement that will be developed and finalised as part of the negotiation process.
- (b) The parties to the Access Agreement will be QR and the Access Holder. The Access Holder need not be the Railway Operator for the relevant Train Services, but if the Access Holder is not the Railway Operator, it must ensure that the relevant Train Services are operated by a Railway Operator.
- (c) The Railway Operator of the Train Services need not have received Accreditation prior to execution of the Access Agreement. The Railway Operator must obtain such Accreditation prior to the commencement of Train Services and subsequently maintain its Accreditation for the duration of the Access Agreement.
- (d) The Access Agreement must, unless otherwise agreed between QR and the Access Seeker, be consistent with the principles outlined in the standard Access Agreement summary that is contained in Schedule E. Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 5.1(d):

- (d) **'The Access Agreement must, unless otherwise agreed between QR and the Access Seeker, be consistent with:**
 - (i) **where a Standard Access Agreement for a specified type of Train Service has been developed and approved by the QCA in accordance with Clause 5.2 then, for Train Services of that specified type, the terms of that Standard Access Agreement; and**
 - (ii) **for Train Services of a type for which a Standard Access Agreement has not been developed and approved by the QCA in accordance with Clause 5.2, the principles outlined in the Standard Access Agreement summary that is contained in Schedule E, recognising that Schedule E does not provide an exhaustive list of the issues that may be included in an Access Agreement. QR acknowledges that in these circumstances the terms of a Standard Access Agreement developed and approved by the QCA in accordance with Clause 5.2 will provide guidance as to how the principles outlined in Schedule E may be reflected in an Access Agreement.'**

- (e) Once the Access Seeker has notified QR that it is satisfied with the terms and conditions of the Access Agreement as drafted, QR will, as soon as reasonably practicable, provide a final Access Agreement (or, where appropriate, an amendment to an existing Access Agreement) to the Access Seeker for execution.
- (f) The parties will use reasonable efforts to duly execute the final Access Agreement as soon as practicable after its completion by QR.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following clause 5.2:

- (a) 'QR will prepare and submit to the QCA for its approval:**
 - (i) a draft Standard Access Agreement for coal carrying Train Services, within the first three (3) months following the Approval Date; and**
 - (ii) where QR and the QCA agree to develop a Standard Access Agreement for another specified type of Train Service, a draft Standard Access Agreement for that specified type of Train Service by a date agreed between QR and the QCA.**
- (b) The QCA must consider the draft Standard Access Agreement given to it in accordance with Paragraph 5.2(a) and either approve, or refuse to approve, the draft Standard Access Agreement within sixty (60) days, or such longer period as advised in writing to QR by the QCA.**
- (c) If the QCA refuses to approve the draft Standard Access Agreement in accordance with Paragraph 5.2(b), it must give QR a written notice stating the reasons for the refusal and asking QR to, within sixty (60) days, amend the draft Standard Access Agreement in the way the QCA considers appropriate and to submit this to the QCA.**
- (d) If QR amends the draft Standard Access Agreement and submits this to the QCA in accordance with the notice provided to it pursuant to Paragraph 5.2(c), the QCA will approve the draft Standard Access Agreement.**
- (e) If QR does not submit a draft Standard Access Agreement in accordance with Paragraph 5.2(a), or does not amend the draft Standard Access Agreement and submit this to the QCA in accordance with the notice provided to it pursuant to Paragraph 5.2(c), the QCA may prepare and approve a draft Standard Access Agreement for the specified type of Train Services.'**
- (f) Once a Standard Access Agreement has been developed and approved by the QCA in accordance with this Clause 5.2, it will be taken to form part of this Undertaking.**

5.2 ACCESS AGREEMENTS FOR QR SERVICES

5.2.1 Existing QR Train Services

- (a) Access Agreements with a QR Operational Business Group for existing QR Train Services (referred to as "Transitional Access Agreements"), being those operating at the Commencing Date, need not be in accordance with this Undertaking apart from as set out in this Subclause 5.2.1.**
- (b) The expiry date for Transitional Access Agreements will be as follows:**
 - (i) for those Train Services where QR has an agreement with another party in relation to the provision of the Train Services (e.g. a rail haulage agreement with a**

Customer or a transport service contract with Queensland Transport), the expiry date of such agreement with the other party; and

- (ii) for Train Services other than those referred to in Subparagraph 5.2.1(b)(i), 30 June 2003 or twelve (12) months following the Commencing Date, whichever occurs later.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'or twelve (12) months following the Commencing Date, whichever occurs later' from sub-paragraph 5.2.1(b)(ii).

- (c) Nothing in this Subclause 5.2.1 prevents QR from, prior to the expiry of a Transitional Access Agreement, negotiating an agreement with another party in relation to the provision of specified Train Services with a term that extends beyond the expiry date of the relevant Transitional Access Agreement. Where this occurs, the QR Train Services in question will be considered as new or renewed Train Services for the purposes of establishing Access Agreements between Network Access and QR Operational Business Groups (referred to as "Internal Access Agreements") in accordance with Subclause 5.2.2.

5.2.2 New or Renewed QR Train Services

- (a) The development of Internal Access Agreements for new or renewed QR Train Services will be subject to this Undertaking.
- (b) These Internal Access Agreements will be made available to the QCA for review if the QCA so requires.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace sub-clause 5.2.2 as follows:

- (a) **'The development of Internal Access Agreements for new or renewed QR Train Services will be subject to this Undertaking, provided that QR does not prevent or hinder Access in any way contrary to s.104 or s.125 of the Act.**
- (b) **Where there is a Reference Tariff and a Standard Access Agreement developed in accordance with Clause 5.2 for a type of Train Service, and an Internal Access Agreement for a new or renewed QR Train Service of that type is consistent with that Reference Tariff and Standard Access Agreement, then QR will be deemed to have complied with Paragraph 5.3.2(a).**
- (c) **Internal Access Agreements in respect of new QR Train Services will be developed prior to the commencement of operation of the relevant Train Service on the Rail Infrastructure.**
- (d) **These Internal Access Agreements will be made available to the QCA for review if the QCA so requires.**

5.3 DISCLOSURE OF COAL ACCESS AGREEMENTS

- (a) If the relevant Customer/s consents, QR will permit the public disclosure of the Below Rail aspects of Access Agreements for all coal carrying Train Services (including Internal Access Agreements) for new or renewed Train Services.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace paragraph 5.3(a) with the following replacement paragraph:

- (a) 'Except as provided for in Paragraph 5.4(c), QR will permit the public disclosure of the Below Rail aspects of Access Agreements for all coal carrying Train Services (including Internal Access Agreements) for new or renewed Train Services.'**

- (b) For the purposes of Paragraph 5.3(a), the Below Rail aspects of Access Agreements will not include:
- (i) details of authorised Rollingstock and Rollingstock Configurations;
 - (ii) special operating restrictions;
 - (iii) Access Holder performance levels;
 - (iv) insurance provisions;
 - (v) the Interface Coordination Plan ;
 - (vi) Interface Risk Management Plan;
 - (vii) Environmental Investigation and Risk Management Plan; and
 - (viii) cycle times (including aspects of cycle times such as dwell times and Access Holders' sectional running times).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace paragraph 5.3(b) with the following replacement paragraph and insert a new paragraph (c):

- (b) 'For the purposes of paragraph 5.4(a), the Below Rail aspects of Access Agreements will not include:**
- (i) insurance provisions;**
 - (ii) contact details included in the Interface Co-ordination Plan;**
 - (iii) Interface Risk Management Plan; and**
 - (iv) Environmental Investigation and Risk Management Report; and**
- (c) Where a party to an Access Agreement considers that specified parts of the Access Agreement should not be publicly disclosed, it may make a request to**

the QCA for non-disclosure of these specified parts. The QCA must agree to the request where it is satisfied that disclosure of the information would be likely to damage that party's commercial activities and that disclosure would not be in the public interest.

6. PRICING PRINCIPLES

6.1 PRICING OBJECTIVES

In developing Access Charges, QR's primary objective is, over time, to achieve revenue adequacy (as outlined in Subclause 6.1.1). In order to do this, QR will endeavour to maximise the commercially viable utilisation of the Rail Infrastructure through observing the processes identified in Subclause 6.1.3, however, within this context, QR has an overriding obligation to observe the constraints on price differentiation identified in Subclause 6.1.2.

6.1.1 Revenue Adequacy

- (a) QR will be entitled to earn revenue from the provision of Access, including both Access Charges and Transport Service Payments, that is sufficient to achieve full recovery of reasonable costs, including a commercial rate of return on the value of assets reasonably required, for the long term sustainable provision of Rail Infrastructure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 6.1.1(a):

- (a) **'QR will be entitled to earn revenue from the provision of Access, including both Access Charges and Transport Service Payments, that is sufficient to achieve full recovery of efficient costs (providing for any transitional arrangements agreed with the QCA), including an adequate rate of return on the value of assets reasonably required. In order to achieve this, Access Charges will be set within the pricing limits set out in Clause 6.2.'**

- (b) In order to achieve the objective identified in Paragraph 6.1.1(a), QR is entitled to target earning a revenue stream such that:
- (i) QR is able to recover all Efficient Costs incurred in the provision and management of the Rail Infrastructure (including operating and maintenance costs and business and corporate overheads); and
 - (ii) QR is able to, on average, earn a risk-adjusted commercial rate of return on the Depreciated Optimised Replacement Cost of all assets required for the provision of Access including the investment requirements for Rail Infrastructure replacement and enhancement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 6.1.1(b).

6.1.2 Limits on Price Differentiation

- (a) QR will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders for the purpose of distorting competition within a relevant Market. For the purposes of this Paragraph 6.1.2(a), distorting competition means engaging in conduct for the purpose of:
- (i) eliminating or substantially damaging a competitor of QR;

- (ii) preventing the entry of an Access Seeker into any market; or
- (iii) deterring or preventing a person from engaging in competitive conduct in any market.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.1.2(a):

- (a) **'QR will not differentiate Access Charges between Access Seekers or between Access Seekers and Access Holders for the purpose of adversely affecting competition within a relevant Market including for the purpose of preventing or hindering Access.'**

- (b) QR will be deemed to have complied with Paragraph 6.1.2(a) if:
 - (i) where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker only varies from the Reference Tariff to reflect either differences in cost or risk to QR of providing Access for that Train Service compared to the Reference Train Service as a result of, for example, the standard or type of Train Service, the Rollingstock used or the conditions of Access or, over time, in the absence of a rate review provision in the relevant Access Agreement pursuant to Paragraph 6.1.2(c), changes in the cost or risk to QR of providing Access, changes in Transport Service Payments or changes in market circumstances; or

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a replacement sub-paragraph 6.1.2(b)(i) as follows:

- (i) **'where a Reference Tariff is applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker only varies from the Reference Tariff either:**
 - **to reflect differences in cost or risk to QR of providing Access for that Train Service compared to the Reference Train Service; or**
 - **in accordance with Paragraph 6.3.3(d); or'**

- (ii) where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area only differs from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, to reflect either differences in the costs or risks to QR of providing Access for that Train Service compared to other Train Services of that type as a result of, for example, the standard or type of Train Service, the Rollingstock used or the conditions of Access or, over time, changes in the cost or risk to QR of providing Access, changes in Transport Service Payments or changes in market circumstances.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a replacement subparagraph 6.1.2(b)(ii) as follows:

- (ii) **'where there is no Reference Tariff applicable for the relevant Train Service type, the Access Charge provided to an Access Seeker seeking to transport a specified commodity in a specified geographic area only differs from the Access Charge for other Access Seekers seeking to transport the same commodity in the same geographical area, on a unit rate basis, to reflect either:**
- differences in the costs or risks to QR of providing Access for that Train Service compared to other Train Services of that type; or**
 - over time, changes in the cost or risk to QR of providing Access, changes in relevant Transport Service Payments or Changes in Market Circumstances.'**

(c) QR will give Access Seekers the opportunity to incorporate rate review provisions in Access Agreements as follows:

- (i) where a Reference Tariff is applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the applicable Reference Tariff over time;
- (ii) where there is no Reference Tariff applicable for the Train Service type, the Access Charge will be reviewed (whether upwards or downwards) to be consistent with changes in the Access Charges offered to other Access Seekers over time for that specified commodity in that specified geographic area;

provided that QR will be entitled to incorporate such rate review provisions in any Access Agreement which has a term in excess of five (5) years.

(d) In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Paragraph 6.1.2(c), if an Access Holder can demonstrate to QR's reasonable satisfaction that after entering into an Access Agreement with the Access Holder QR has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Subclause 6.1.2, and if QR is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Subclause 6.1.2, then QR will review the Access Charge for the aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.1.2(d):

- (d) **'In addition to any rate review provision that may be incorporated in its Access Agreement in accordance with Paragraph 6.1.2(c), if an Access Holder**

(referred to in this paragraph as the aggrieved Access Holder) can demonstrate to QR’s reasonable satisfaction that after entering into an Access Agreement with the Access Holder QR has subsequently entered into an Access Agreement with another Access Holder for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), and the subsequent Access Agreement contains an Access Charge that has been developed in contravention of the limits on price differentiation set out in this Subclause 6.1.2, and if QR is not able to alter the Access Charge contained in the subsequent Access Agreement to ensure that it is in accordance with the limits on price differentiation set out in this Subclause 6.1.2, then QR will alter the Access Charge for the aggrieved Access Holder in accordance with the pricing principles set out in this Part 6.’

6.1.3 Rail Infrastructure Utilisation

- (a) Access Holders serve a number of different Markets that have different abilities to support Access Charges that contribute in excess of the Incremental Cost and towards the Common Costs of providing the Rail Infrastructure. Accordingly, QR will be entitled to establish different Access Charges for Access Holders serving different Markets in order to maximise the commercially viable use of Capacity while meeting, in aggregate, the Common Costs of providing the Rail Infrastructure.
- (b) Where Available Capacity is limited, and expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not warranted in accordance with Paragraph 7.4.1(e), QR may establish an Access Charge based on the highest Access Charge it is likely to achieve from the current or likely Access Seekers, i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure. This Access Charge may then be quoted to all Access Seekers seeking Access in respect of that Available Capacity, irrespective of a particular Access Seeker’s ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.1.3(b):

- (b) **‘Where Available Capacity is limited, and expansion of the Capacity to meet the requirements of all current or likely Access Seekers is not warranted in accordance with Paragraph 7.4.1(e), QR may establish an Access Charge based on the highest Access Charge it is likely to achieve from the current or likely Access Seekers (provided that such highest Access Charge is developed in accordance with the pricing principles set out in this Part), i.e. the Access Charge which incorporates the highest contribution to the Common Costs of providing the Rail Infrastructure. This Access Charge may then be quoted to all Access Seekers seeking Access in respect of that Available Capacity, irrespective of a particular Access Seeker’s ability to contribute to the Common Costs of providing the Rail Infrastructure or the Access Charges payable in existing Access Agreements for similar Train Services.’**

- (c) In assessing Access Charges for the purposes of Paragraph 7.4.1(d), where Transport Service Payments are made conditional upon the benefit of those Transport Service Payments being available only for Train Services serving a specified Market, the Access

Charge assessable in respect of Train Services serving that Market will be identified by adding together the Access Charges actually paid in respect of those Train Services and that amount of the Transport Service Payments that is directly related to those Train Services.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new sub-clause 6.1.4 as follows:

'In developing Internal Access Agreements in accordance with Sub-clause 5.2.2, QR will not establish Access Charges for QR Train Services for the purpose of preventing or hindering Access by a Third Party Access Seeker into any market in competition with the QR Operational Business Groups providing those QR Train Services.'

6.2 PRICING LIMITS

6.2.1 Definition of Pricing Limits

Pricing limits will be applied in respect of the following elements:

- (a) upper and lower limits for Access Charges for individual Train Services, established at levels which ensure there is no Cross Subsidy between individual Train Services; and
- (b) upper and lower limits for Access Charges in respect of combinations of Train Services, established at levels which ensure that there is no Cross Subsidy between combinations of Train Services.

6.2.2 Price Limits for Individual Train Services

- (a) Price limits will apply in respect to Access Charges to be established for each individual Train Service (referred to as "Individual Train Service") such that, over the Evaluation Period, the relevant Access Charge for the Individual Train Service:
 - (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for the Individual Train Service; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for the Individual Train Service.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.2(a)(ii), a Revenue Limit will be established for the Individual Train Service. The Revenue Limit for an Individual Train Service will reflect the Stand Alone Cost of providing Access for the Individual Train Service over the Evaluation Period. The Revenue Limit will be determined in accordance with Subclause 6.2.4.

6.2.3 Price Limits on Train Service Combinations

- (a) In addition to Subclause 6.2.2, price limits will apply in respect of Access Charges to be established for Individual Train Services such that, over the Evaluation Period, the expected Access revenue (determined in accordance with Paragraph 6.2.3(c)) for any combination of Train Services incorporating the Individual Train Service:

- (i) will not fall below the level that will recover the expected Incremental Cost of providing Access for that combination of Train Services after giving consideration to the level of contribution provided by Transport Service Payments towards the relevant Rail Infrastructure; and
 - (ii) will not exceed the level that will recover the expected Stand Alone Cost of providing Access for that combination of Train Services.
- (b) Where it is necessary to assess whether Access Charges are consistent with the limit identified in Subparagraph 6.2.3(a)(ii), a Revenue Limit will be established for identified combinations of Train Services. The Revenue Limit for the combination of Train Services will reflect the Stand Alone Cost of providing Access for the combination of Train Services over the Evaluation Period. The Revenue Limit for the combination of Train Services will be determined in accordance with Subclause 6.2.4.
- (c) Expected Access revenue for a combination of Train Services will be determined as the aggregate of revenue reasonably expected from the application of Access Charges for all the Train Services comprising the combination of Train Services, where the Access Charges for different Train Service types will be identified as follows:
- (i) where a Reference Tariff is to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a consistent basis to the Reference Tariff proposed; and
 - (ii) where a Reference Tariff is not intended to be developed for a Train Service type, expected Access Charges will be developed for Train Services falling within that Train Service type on a consistent basis to current applicable Access Charges.
- (d) In the event that QR incorporates an Access Charge in the Access Agreement for an Access Holder that, at the time of development, is in contravention of either Subparagraph 6.2.2(a)(i) or Subparagraph 6.2.3(a)(i), then provided that QR observes the limits on price differentiation set out in Subclause 6.1.2 in subsequently developing an Access Charge for an Access Seeker for a like Train Service (where a like Train Service is one that transports the same specified commodity in the same specified geographic area), QR shall be deemed not to be in breach of Subclause 6.2.2 or Subclause 6.2.3.

6.2.4 Definition of Revenue Limit

- (a) The Revenue Limit will be determined as the maximum amount of expected Access revenue (determined consistent with Paragraph 6.2.3(c)) that may be earned from Access Charges over the Evaluation Period measured such that the net present value of the cashflows associated with providing Access for the Individual Train Service or the combination of Train Services (as appropriate) over the Evaluation Period is zero. This measurement can be expressed as:

$$0 = -AV_0 + \sum_{t=1}^n \frac{(RL_t - C_t - M_t - T_t)}{(1 + ROA)^t} + \frac{AV_n}{(1 + ROA)^n}$$

where:

AV_0 is the value of assets (assessed using Depreciated Optimised Replacement Cost methodology) reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) at the commencement of the Evaluation Period;

n is the number of years in the Evaluation Period;

t is each year within the Evaluation Period from 1 to n ;

RL_t is the Revenue Limit for the Train Service(s) expressed as revenue that may be earned in each year of the Evaluation Period;

C_t is the capital expenditure for assets reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

M_t is the Efficient Cost, including operating and maintenance costs and business and corporate overheads, reasonably expected to be incurred for the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period;

ROA is the maximum allowable rate of return expressed in nominal post tax terms (with the cost of debt expressed on a before tax basis), as agreed by QR and the QCA or, failing such agreement, as determined by the QCA;

T is the tax expense assessed through the application of the statutory tax rate to the taxable income reasonably expected to be earned through the Stand Alone provision of Access for the Train Service(s) in each year of the Evaluation Period, where such tax expense is reduced in each year by the application of the gamma factor, reflecting the market value of dividend imputation, as agreed by QR and the QCA or, failing such agreement, as determined by the QCA; and

AV_n is the value of assets (assessed using Depreciated Optimised Replacement Cost methodology) reasonably expected to be required for the Stand Alone provision of Access for the Train Service(s) at the end of the Evaluation Period.

- (b) In order to determine the amount of each of the variables set out in Paragraph (a) of this Subclause, it will be necessary to identify the assumed traffic task resulting from the Train Service(s) over the Evaluation Period. The assumed traffic task shall be the forecast reasonably determined for the traffic task resulting from the Train Service(s) over the Evaluation Period, except where changes in traffic task are the result of the commencement of major projects that individually impact significantly on the traffic task. In such circumstances, expected increases in traffic task shall be incorporated into the forecast following service commitment.

6.3 REFERENCE TARIFFS

6.3.1 Application of Reference Tariffs

- (a) It is recognised that, for Individual Train Services, there may be a large range between the price limits established in Clause 6.2 within which Access Charges may be determined. Therefore, to assist in the facilitation of an efficient Access negotiation process, QR may develop Reference Tariffs for certain types of Train Services. Reference Tariffs may be either Published Reference Tariffs or Authorised Reference Tariffs.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the final sentence from sub-paragraph 6.3.1(a).

- (b) Each Reference Tariff will be developed as an Access Charge for a Reference Train Service.
- (c) Reference Tariffs will not be required to be consistent with the actual Access Charges for the relevant type of Train Services applicable under existing Access Agreements. However, QR will give Access Holders the opportunity to incorporate rate review provisions in Access Agreements in accordance with Paragraph 6.1.2(c).
- (d) Authorised Reference Tariffs for nominated Reference Train Services, including the conditions associated with the application of those Reference Tariffs, are set out in Schedule F.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Authorised' from sub-paragraph 6.3.1(d).

- (e) Where the QCA has approved an Authorised Reference Tariff submitted to it by QR, that Authorised Reference Tariff will be an acceptable means by which QR provides Access Seekers with information about the matters listed in subsection 101(2)(a) to (c) of the Act, as provided for in accordance with subsection 101(4) of the Act.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Authorised' from sub-paragraph 6.3.1(e). Also, it must insert a new sub-paragraph 6.3.1(f) as follows:

- (f) **'QR will report to the QCA on an annual basis the actual operating and maintenance costs incurred and capital investments made in relation to the provision of Access for the Reference Train Services contained in Section 1 of Schedule F. These operating and maintenance costs and capital investments will be prepared on a consistent basis to the preparation of the forecast operating and maintenance costs and capital investments used in the development of Reference Tariffs for those Reference Train Services. This report will be provided to the QCA within six (6) months of the end of the relevant Year.'**

6.3.2 Establishment of Published Reference Tariffs

- (a) QR will develop and publish Published Reference Tariffs for nominated Reference Train Services for which Authorised Reference Tariffs are not applicable:
 - (i) within three (3) months of a notice being received from the QCA in accordance with Paragraph (b) of this Subclause; or
 - (ii) otherwise at QR's discretion.
- (b) The QCA may give QR a notice requiring it to develop and publish Published Reference Tariffs for a nominated Reference Train Service if, over the previous twelve (12) months, there have been two (2) or more Access Applications received by QR from Third Party Access Seekers for Access for that type of Train Service.

- (c) If requested by the QCA, QR will advise the QCA whether the conditions in Paragraph 6.3.2(b) have occurred in relation to any Train Service types.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-clause 6.3.2.

6.3.3 Establishment of Authorised Reference Tariffs

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must re-title sub-clause 6.3.3 'Establishment of Reference Tariffs'.

- (a) QR will submit a Draft Amending Undertaking incorporating Authorised Reference Tariffs for nominated Reference Train Services to the QCA:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Authorised' from sub-paragraph 6.3.3(a).

- (i) if required in accordance with Subclause 6.3.4;
- (ii) within three (3) months of a notice being received from the QCA in accordance with Paragraph 6.3.3(b); or
- (iii) otherwise at QR's discretion.
- (b) The QCA may give QR a notice requiring it to submit a Draft Amending Undertaking incorporating Authorised Reference Tariffs for a nominated Reference Train Service if QR has been found to have breached the pricing principles in this Part of the Undertaking in developing Published Reference Tariffs for that type of Train Service.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.3.3(b):

- (b) 'The QCA may give QR a notice requiring it to submit a Draft Amending Undertaking incorporating Reference Tariffs for a nominated Reference Train Service, if the QCA has a reasonable expectation that there is sufficient interest from Access Seekers to warrant the development of a Reference Tariff for that nominated Reference Train Service.'**

- (c) If requested by the QCA, QR will advise the QCA whether the conditions in Paragraph (b) have occurred in relation to any Train Service types.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-paragraph 6.3.3(c).

- (d) In considering whether to endorse an Authorised Reference Tariff, the QCA must be satisfied that the Authorised Reference Tariff is consistent with the pricing principles established in this Part 6.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace sub-paragraph 6.3.3(d) with the following paragraph:

- (d) **'The QCA will endorse a Reference Tariff if the QCA is satisfied that the Reference Tariff is consistent with the pricing principles established in this Part 6.'**

6.3.4 Authorised Reference Tariffs for Coal Carrying Services

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must re-title sub-clause 6.3.4 'Reference Tariffs for Coal Carrying Services'.

- (a) Where a new coal mine is developed, and Train Services will utilise Rail Infrastructure in the Central Queensland Coal Region, the Train Services travelling between the mine and its most common destination will be incorporated in a Reference Train Service in the following manner:
- (i) the Train Services will be incorporated into an existing Reference Train Service for which an Authorised Reference Tariff applies, if this is permitted by the conditions of that Reference Train Service as set out in Schedule F, however, notwithstanding such conditions, QR will not include an additional loading facility in a Reference Train Service if this will result in an increase in the applicable Authorised Reference Tariff; or

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.3.4 (a)(i):

- (i) **'the Train Services will be incorporated into an existing Reference Train Service for which a Reference Tariff applies, if this is permitted by the conditions of that Reference Train Service as set out in Section 1 of Schedule F; and**
- the Train Services make a contribution to QR's Common Costs that is no less than the average equivalent contribution by existing coal carrying Train Services operating in the relevant Individual Coal System (assessed on a proportional basis); or**
 - QR and/or the relevant Access Seeker request the QCA to determine that the Train Services be incorporated into the existing Reference Train Service and the QCA determines accordingly; or'**

- (ii) the Train Services will be incorporated into a new Reference Train Service and QR will develop and submit to the QCA a new Authorised Reference Tariff.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'authorised' must be deleted from sub-paragraph 6.3.3(a)(ii).

- (b) Where a new Reference Train Service is developed in accordance with Subparagraph 6.3.4(a)(ii), QR will develop an Authorised Reference Tariff for the new Reference Train Service such that, except in relation to the corridor between Burngrove and Coppabella, where two mines load from mine specific spur lines attached to the same corridor, all other things being equal in respect of the two Train Services, a lower Access Charge when expressed in \$/gross tonne terms would apply for Train Services carrying coal from a mine with a shorter haul distance than for Train Services carrying coal from a mine with a longer haul distance.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.3.4(b):

- (b) **'Where a new Reference Train Service is developed in accordance with Subparagraph 6.3.4(a)(ii), QR will develop a Reference Tariff for the new Reference Train Service such that:**
- (i) **the new Reference Train Service will make a contribution towards QR's Common Costs; and**
 - (ii) **except in relation to the corridor between Burngrove and Coppabella, where two mines load from mine specific spur lines attached to the same corridor, all other things being equal in respect of the two Train Services, a lower Access Charge when expressed in \$/net tonne terms would apply for Train Services carrying coal from a mine with a shorter haul distance than for Train Services carrying coal from a mine with a longer haul distance.'**

- (c) Where QR enters into an Access Agreement with an Access Seeker in relation to Train Services carrying coal from a new mine prior to the authorisation of the applicable Authorised Reference Tariff, the Access Charge for that Train Service will be reviewed following authorisation of the Authorised Reference Tariff to ensure that it is consistent with the Authorised Reference Tariff. In order to facilitate this process, QR may submit to the QCA for endorsement indicative Authorised Reference Tariffs to apply to potential new Reference Train Services.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'Authorised' from sub-paragraph 6.3.4(c).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraph:

- (d) **'Notwithstanding any other provision of this Undertaking, QR may negotiate an Access Charge for a new or renewed Train Service travelling from a mine**

on the corridor between Burngrove and Coppabella to the Port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) that is less than the applicable Reference Tariff provided that:

- (i) this is for the purpose of reducing QR’s asset stranding risk on the corridor between Burngrove and Gladstone; and**
- (ii) where Access Seekers are directly competing with each other for the purpose of operating such new or renewed Train Service, the Access Charge offered to these Access Seekers will only vary to reflect differences in cost or risk to QR of providing Access to those Access Seekers as a result of differences in the type of Train Services proposed by those Access Seekers.’**

6.3.5 Review of Reference Tariffs

- (a) The documentation for each Reference Tariff will specify the period for which the relevant Reference Tariff is effective.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.3.5(a):

- (a) ‘Schedule F will specify the period for which the relevant Reference Tariff is effective.’**

- (b) The documentation for each Reference Tariff will specify how the Reference Tariff may be reviewed within its effective life.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 6.3.5(b):

- (b) ‘Schedule F will specify how the Reference Tariff may be reviewed within its effective life.’**

6.4 STRUCTURE OF ACCESS CHARGES

- (a) Where a Reference Tariff is applicable for a Train Service type, the structure of Access Charges for that Train Service type will be in accordance with the documentation for that Reference Tariff. Where there is no Reference Tariff applicable for the Train Service type, the structure of Access Charges for that Train Service type will be negotiated with individual Access Seekers depending on their particular requirements and may include:
 - (i) an initial upfront component as a pre condition to being granted Access Rights;
 - (ii) an ongoing periodic fixed component independent of the level of usage of the Rail Infrastructure;

- (iii) one or more ongoing variable components based on usage of the Rail Infrastructure; or
 - (iv) any other structure or combination as agreed by QR and the Access Seeker.
- (b) Notwithstanding Paragraph 6.4(a), QR may require from an Access Seeker an upfront contribution as a pre condition to being granted Access Rights, where this is reasonably required in order to mitigate QR’s exposure to the financial risks associated with project specific Capacity enhancements required to facilitate Access for that Train Service. In this event, QR and the Access Seeker will negotiate for such contribution to be rebated to the Access Seeker over a term that shall be equal to the average life assigned to the asset(s) for the purposes of calculation of the relevant Access Charge or Reference Tariff as the case may be, or such other period as the parties agree.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following words following the first sentence of paragraph 6.4(b):

‘In this event, QR and the Access Seeker will negotiate an agreement (separate from the Access Agreement) for such contribution to be rebated to the Access Seeker over a term that shall be equal to the average life assigned to the asset(s) for the purposes of calculation of the relevant Access Charge or Reference Tariff as the case may be, or such other period as the parties agree, and amortised at a discount rate equivalent to the ROA that would be applied for the purpose of assessing a revenue limit for that Train Service in accordance with Sub-clause 6.2.4’.

7. CAPACITY MANAGEMENT

7.1 NETWORK MANAGEMENT PRINCIPLES

- (a) QR will perform scheduling, Train Control and associated services in accordance with the Network Management Principles.
- (b) QR will provide capacity related information to Access Holders in accordance with the Network Management Principles.

7.2 SERVICE SPECIFICATION AND TRAIN SCHEDULING

- (a) The Train Service Entitlement of an Access Holder will be defined in terms of a number of Train Services that can be operated in a given time period subject to constraints agreed between QR and the Access Holder. Timetabled Traffics are likely to be defined in terms of a Train Path between certain locations, on particular days, and at particular times. Cyclic Traffics are likely to be defined in terms of a number of Train Services within a particular period of time. The application of constraints is likely to vary significantly between different types of Train Services and may include, but will not necessarily be limited to, the following:
 - (i) specified days of operation and times at the origin and/or destination and where appropriate, specified arrival/departure times at intermediate locations, with an allowable variation around these specified time(s) for the scheduling of the Train Service;
 - (ii) maximum time period between Train Services;
 - (iii) minimum time period between Train Services;
 - (iv) average Below Rail Transit Time;
 - (v) the agreed threshold for on-time running of the Train Services;
 - (vi) regularity of timetable reviews and the applicable review process; and
 - (vii) allowable modifications of timetable, e.g. cancellation or deferral of services.
- (b) As outlined in Clause 4.5, as part of the negotiation process, QR will develop an initial specification of a Train Service Entitlement for an Access Seeker. QR and the Access Seeker will further refine this specification of the Train Service Entitlement during the negotiation process. The Train Service Entitlement will finally be incorporated into the relevant Access Agreement.
- (c) In respect of Timetabled Traffics, the Train Service Entitlement will be used to develop an initial timetable, which QR and the Access Holder will then be required to adhere to unless and/or until such time as the timetable is varied in accordance with the Network Management Principles.
- (d) QR will, subject to the Network Management Principles, be able to manage the scheduling of train plans, including the MTP, WTP and DTP, to optimise the use of the Rail Infrastructure as circumstances change from time to time.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the

following sentence at the end of paragraph 7.2(d):

‘In doing so, QR will use reasonable endeavours to consult with other relevant infrastructure providers directly affected by the scheduling of particular train plans.’

7.3 CAPACITY ANALYSIS

- (a) Where QR considers it necessary, it may undertake an Initial Capacity Assessment as part of the preparation of an Indicative Access Proposal. An Initial Capacity Assessment will determine if there is likely to be sufficient Available Capacity to meet the Access Seeker’s requirements and, if not, the extent to which Capacity enhancements are likely to be required.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the words ‘Where QR considers it necessary, it’ from the beginning of paragraph 7.3(a), and replace it with ‘QR’.

- (b) Where QR considers that there are major impediments to the provision of sufficient Capacity to meet the requirements of the Access Seeker, and that the Capacity enhancements that might be necessary would have a significant bearing on the economics of the proposed operation, then the Initial Capacity Assessment, if undertaken, may be conducted in more detail. This may add some time to the preparation of the Indicative Access Proposal and may be a reason for QR advising, in accordance with Paragraph 4.2(c), that an Indicative Access Proposal will not be available within thirty (30) days of QR’s acknowledgment of the Access Application.
- (c) The results of the Initial Capacity Assessment, if undertaken, will be indicative only and will be subject to confirmation by a Capacity Analysis undertaken as part of the negotiation process. As outlined in Clause 4.5, as part of the negotiation process QR will undertake a Capacity Analysis, including an investigation of operational impacts for the proposed Access Rights. The Capacity Analysis will be conducted in a more comprehensive manner than the Initial Capacity Assessment and will include an investigation of the operational impacts of the proposed Access Rights based on the further detail provided by the Access Seeker in its Operating Plan (see Subclause 8.1.4 for further detail). The Capacity Analysis will confirm whether there is sufficient Available Capacity to meet the Access Seeker’s requirements and, if not, detail the requirements for Capacity enhancements. The Capacity Analysis will enable the finalisation of the resultant Train Service Entitlement, initial timetable, applicable Access Charges and associated funding arrangements (subject to other variations identified in the negotiation process).

7.4 CAPACITY ALLOCATION

7.4.1 Allocation of Capacity

- (a) Subject to Paragraphs 7.4.1(b) – (e), Access Rights will be allocated to the first Access Seeker with whom QR can negotiate and execute an acceptable Access Agreement.
- (b) If, at any time, two or more Access Seekers are seeking Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised,

either in accordance with Subparagraph 4.3(a)(v) or Paragraph 4.5.2(f) that there is one or more other Access Seekers seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided that such failure was not wilful and QR has not acted in bad faith.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 7.4.1(b):

- (b) 'If, at any time, two or more Access Seekers are seeking Access with respect to mutually exclusive Access Rights, each of the Access Seekers who has received an Indicative Access Proposal with respect to those mutually exclusive Access Rights will be advised, either in accordance with Subparagraph 4.3(a)(iv) or Paragraph 4.5.2(g) that there is one or more other Access Seekers seeking to negotiate for mutually exclusive Access Rights. Failure to give such notification will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided that QR has acted in good faith.'**

- (c) Where the mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task), QR will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and acceptance by both parties of a standard Access Agreement consistent with the summary of the standard terms and conditions outlined in Schedule E to this Undertaking. An Access Agreement will be negotiated and executed with the Access Seeker who demonstrates to QR's reasonable satisfaction that it does, or will in the immediate future, hold the contractual right to provide the Train Service/s, for the Customer, for which the Access Rights are sought, and that the Customer is agreeable to the execution of the Access Agreement with that Access Seeker.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 7.4.1(c):

- (c) 'Where the mutually exclusive Access Rights are sought by two or more Access Seekers who are competing in order to provide Train Service/s under a rail haulage agreement with the same Customer for the same service (in other words, the Access Rights sought relate to the same traffic task), QR will commence negotiations with each of the Access Seekers and progress those negotiations to a stage where QR has provided each Access Seeker with an Access Charge for the Access Rights sought, based on the operational information provided by the Access Seeker and the assumption that both parties will accept a standard Access Agreement, which will be consistent with the summary of the standard terms and conditions outlined in Schedule E to this Undertaking.'**

- (d) Where the mutually exclusive Access Rights are sought by two or more Access Seekers and the Access Rights sought do not relate to the same traffic task in accordance with Paragraph 7.4.1(c), QR will finalise an Access Agreement for Access Rights with the Access Seeker with whom QR can agree to terms and conditions, including an Access Charge, which are considered by QR to be the most favourable in terms of the commercial performance of Below Rail Services.
- (e) QR will expand the Capacity of the Rail Infrastructure in order to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker where QR reasonably considers that, in respect of the Capacity expansion, the expected net additional Below Rail revenue, less any expected costs associated with the expansion, is sufficient to commercially justify the required expenditure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, a new subparagraph 7.4.1(f) must be added:

- (f) 'If QR decides to conduct an auction or other formal tendering process for the purpose of allocating Available Capacity, the rules for the auction or formal tendering process must be approved by the QCA prior to the commencement of the auction or formal tendering process.'**

7.4.2 Capacity Resumption

- (a) Where an Access Holder, for any reason other than the occurrence of a Force Majeure Event or the failure of QR to make the Access Holder's Access Rights available, does not operate:
- (i) a Train Service on a Scheduled Train Path seven (7) or more (not necessarily consecutive) times out of any twelve (12) consecutive occasions on which that particular Scheduled Train Path exists; or
- (ii) all of the Nominated Weekly Train Services for seven (7) or more (not necessarily consecutive) weeks out of any twelve (12) consecutive weeks;

the terms of the Access Agreement will provide that QR may, within sixty (60) days of the last day of the relevant twelve (12) occasions or weeks (whichever is relevant), by notice in writing, reduce from a nominated date (referred to as the "Date of Resumption") the Access Holder's Access Rights by:

- (iii) deleting the Scheduled Train Path referred to in Subparagraph 7.4.2(a)(i) from the Access Holder's Train Service Entitlement; or
- (iv) reducing the Access Holder's Nominated Weekly Train Services referred to in Subparagraph 7.4.2(a)(ii), provided that the number of remaining Nominated Weekly Train Services is no less than the Access Holder's average weekly usage during the relevant twelve (12) week period;

provided that the Access Holder cannot demonstrate, to QR's reasonable satisfaction, a sustained requirement for the Access Rights that have not been utilised, and, except in relation to Access Rights for coal carrying Train Services in the Central Queensland Coal Region, QR is satisfied that it can demonstrate that it has a reasonable expectation of an alternative demand for the Capacity used by the Access Rights in question.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, sub-paragraph 7.4.2(a) must be amended as follows:

'.....provided that the Access Holder cannot demonstrate, to QR's reasonable satisfaction, a sustained requirement for the Access Rights that have not been utilised, and QR is satisfied that it can demonstrate that it has:

- (v) a reasonable expectation of a sustained alternative demand for the Capacity used by the Access Rights in question; or**
- (vi) a reasonable expectation of a commercial benefit for the provision of Below Rail Services sufficiently material to justify the resumption of Capacity used by the Access Rights in question.'**

- (b) QR may withdraw the notice provided in accordance with Paragraph 7.4.2(a) at any time prior to the Date of Resumption or fourteen (14) days following the conclusion of a dispute resolution procedure pursuant to Paragraph 7.4.2(d), whichever is the later.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following sentence at the end of paragraph 7.4.2(b):

'However, if QR had originally provided the notice in response to a written request by an Access Seeker under Paragraph 7.4.2(e), then QR may (at its election) withdraw the notice only if:

- (i) the Access Seeker who requested the resumption consents to the withdrawal of the notice; or**
- (ii) the Access Rights that QR is able to resume are not sufficient to enable QR to provide to the Access Seeker the Access Rights sought by the Access Seeker, and the Access Seeker has not agreed to accept the lesser Access Rights that QR would be able to provide.'**

- (c) Where QR resumes an Access Holder's Access Rights in accordance with this Subclause 7.4.2, the Access Charge payable by the Access Holder will be varied in accordance with the terms of its Access Agreement.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following words at the end of sub-paragraph 7.4.2(c):

'and the Access Agreement will be varied accordingly.'

- (d) Where QR makes a decision to resume an Access Holder's Access Rights in accordance with Paragraph 7.4.2(a), and the Access Holder believes that QR's decision is not justified in the circumstances after having regard to the factors specified in Paragraph 7.4.2(a), the Access Holder may, within thirty (30) days of receiving notification from QR in accordance with Paragraph 7.4.2(a), refer to the dispute resolution procedure contained in its Access Agreement. In these circumstances, QR will not implement resumption until the Dispute resolution procedure has been concluded, and then may

implement the resumption only to the extent that such resumption is consistent with the outcomes of the dispute resolution procedure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the words 'thirty (30)' in sub-paragraph 7.4.2(d) must be replaced with 'twenty-one (21)'.

- (e) Where an Access Seeker has been notified in accordance with Paragraph 7.5.2(d) that an Access Holder has triggered the criteria in Subparagraph 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker may, within twenty-one (21) days of such notification, submit a written request to QR for it to resume Access Rights from an Access Holder in accordance with Paragraph (a) of this Subclause. QR will provide notice to the Access Holder in accordance with Paragraph 7.4.2(a) provided that:
- (i) the Access Seeker has provided QR with a legally enforceable written undertaking (supported by security if required by QR) that it will reimburse QR for all of QR's costs associated with it seeking the resumption of the relevant Access Rights from the Access Holder, including the costs of QR participating in any dispute resolution process;
 - (ii) the Access Seeker has provided QR with a legally enforceable written undertaking that it intends to take up Access Rights equivalent to the relevant Access Rights should they be resumed from the Access Holder, and that QR's obligation to provide such equivalent Access Rights to the Access Seeker will commence at the same time that the relevant Access Rights are resumed from the Access Holder; and
 - (iii) the Access Seeker has provided QR with a legally enforceable written undertaking (supported by security if required by QR) that it will indemnify QR if QR incurs a net loss as a result of the resumption of the relevant Access Rights from the Access Holder and the taking up of the equivalent Access Rights by the Access Seeker, such loss to be measured over the remaining term of the Access Holder's existing Access Agreement;
 - (iv) QR will provide written advice to the Access Seeker of whether or not it will resume the Access Rights in question, and if so the Date of Resumption, within seven (7) days of the decision being reached on whether or not the Access Rights can be resumed in accordance with Paragraph 7.4.2(a).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 7.4.2(e):

- (e) **'Where an Access Seeker has been notified in accordance with Paragraph 7.5.2(d) that an Access Holder has triggered the criteria in Subparagraph 7.4.2(a)(i) or 7.4.2(a)(ii), the Access Seeker may, within thirty (30) days of such notification, submit a written request to QR for it to resume Access Rights from an Access Holder in accordance with Paragraph 7.4.2(a). QR will provide notice to the Access Holder in accordance with Paragraph 7.4.2(a) provided that:**
- (i) **the Access Seeker has provided QR with a legally enforceable written undertaking (supported by security if required by QR) that it will**

reimburse QR for all of QR's reasonable costs associated with it seeking the resumption of the relevant Access Rights from the Access Holder, including the costs of QR participating in any dispute resolution process;

- (ii) the Access Seeker has provided QR with a legally enforceable written undertaking that it will enter into an Access Agreement with QR upon terms and conditions agreed with QR in accordance with the negotiation process specified in this Undertaking, or, failing agreement, resolved in accordance with the dispute resolution process specified in this Undertaking, in respect of Access Rights equivalent to the relevant Access Rights should they be resumed from the Access Holder, and that QR's obligation to provide such equivalent Access Rights to the Access Seeker will commence at the same time that the relevant Access Rights are resumed from the Access Holder; and
- (iii) the Access Seeker has provided QR with a legally enforceable written undertaking (supported by security if required by QR) that it will indemnify QR if QR incurs a net loss as a result of the resumption of the relevant Access Rights from the Access Holder and the taking up of the equivalent Access Rights by the Access Seeker, such loss to be calculated and paid when the Access Seeker enters into an Access Agreement with QR in respect of the equivalent Access Rights, and shall be determined as the present value of any future reductions in contribution to QR's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure Assets) due to the net effect of the relevant resumption of Access Rights and the taking up of the equivalent Access Rights by the Access Seeker, considered over the remaining term of the Access Holder's existing Access Agreement on the assumption that the Access Holder does not utilise those Access Rights for such remaining term;

QR will provide written advice to the Access Seeker of whether or not it will resume the Access Rights in question, and if so the Date of Resumption, within seven (7) days of the decision being reached on whether or not the Access Rights can be resumed in accordance with Paragraph 7.4.2(a).'

- (f) If any dispute arises under Paragraph 7.4.2(d), the dispute will be resolved in accordance with the dispute resolution procedure in the relevant Access Agreement, which will include the following provisions:
 - (i) If the dispute is not able to be resolved by Chief Executives (or their nominees) of the parties to the dispute, if either party wishes to progress the dispute, it must be referred for determination by an expert; and
 - (ii) Where a dispute is referred to an expert pursuant to Subparagraph 7.4.2(f)(i), each party must submit all submissions and supporting documentation, information and data to the expert not later than fourteen (14) days after the appointment of the expert and the expert must make their determination not later than fourteen (14) days following the expiry of the period for submissions.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete subparagraph 7.4.2(f).

7.4.3 Capacity Relinquishment

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new sub-paragraph 7.4.3(a) as follows:

- (a) **'This Subclause 7.4.3 describes when an Access Holder may relinquish Access Rights upon payment of a Relinquishment Fee. This Subclause 7.4.3 also describes how this Relinquishment Fee may be reduced if QR enters into an Access Agreement with another Access Holder that has been identified by QR (provided that QR could not have entered into the Access Agreement in the absence of such relinquishment) in order to reflect the resultant variation in contribution to QR's Common Costs in relation to the section of corridor that is common between the relinquished Access Rights and new Access Rights.'**

- (a) Unless otherwise specified in the Access Holder's Access Agreement and provided the Access Holder has given QR reasonable notice of its intention to do so, an Access Holder may relinquish Access Rights upon payment of a Relinquishment Fee.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following new sub-paragraph 7.4.3(c):

- (c) **'The period from the provision of the notice of intention to relinquish, pursuant to Paragraph 7.4.3(b) until the date of payment of the Relinquishment Fee shall not exceed six (6) months. During such period, QR will be relieved of its obligation to provide Access to the Access Holder (in respect of the Access Rights being relinquished) in accordance with the terms of its Access Agreement.'**

- (b) QR will reduce the Relinquishment Fee in accordance with Paragraph 7.4.3(c) if:
- (i) a new Access Holder has entered into an Access Agreement with QR in respect of Access Rights that QR could not have provided without using the whole or part of the relinquished Access Rights;
 - (ii) following the provision of the notice of intention to relinquish, pursuant to Paragraph 7.4.3(a), but prior to the payment of the Relinquishment Fee, QR's obligation to provide the Access Rights under the new Access Agreement has commenced; and
 - (iii) no other Access Holder is seeking to transfer Access Rights in accordance with Subclause 7.4.4 or relinquish Access Rights in accordance with this Subclause 7.4.3 that more closely resemble the Access Rights sought by the new Access Holder.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following new sub-paragraph 7.4.3(e):

(e) **‘Where QR identifies an opportunity for it to enter into an Access Agreement with an Access Seeker that would result in a reduction to an Access Holder’s Relinquishment Fee pursuant to Paragraph 7.4.3(d), QR will not unreasonable delay the process for negotiating and executing an Access Agreement with such Access Seeker.’**

- (c) Subject to Paragraph 7.4.3(d), QR will reduce the Relinquishment Fee by subtracting from it the product of the Relinquishment Fee and the Reduction Factor. To the extent that the new Access Holder’s average contribution to Common Costs per train kilometre for its relevant Train Service is less than the existing Access Holder’s average contribution to Common Costs per train kilometre for its relevant Train Service, the Reduction Factor will be decreased in proportion to the relative contribution.
- (d) In no circumstances will the Relinquishment Fee be reduced to less than zero (0).

7.4.4 Capacity Transfer

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following new sub-paragraph 7.4.4(a):

- (a) **‘This Subclause 7.4.4 describes when and how an Access Holder may transfer all or part of its Access Rights to an Access Seeker, upon the payment of a transfer fee (if applicable) designed so that QR should not be financially disadvantaged as a result of such transfer. This Subclause 7.4.4 acknowledges that transfers may occur for Train Services with the same origin and destination, or for Train Services with a different origin and destination, and given that the financial consequences to QR as a result of a transfer will differ in these situations, this Subclause 7.4.4 provides different mechanisms for determining the transfer fee in such situations, which are broadly described as follows:**
- (i) **for the transfer of Access Rights with the same origin and destination, the transfer fee reflects any reduction in contribution to QR’s Common Costs over the remaining term of the existing Access Holder’s Access Agreement, as a result of the transfer; and**
 - (ii) **for the transfer of Access Rights with a different origin and destination, the transfer fee reflects the Relinquishment Fee that would have been paid if the existing Access Holder had relinquished its Access Rights, where such Relinquishment Fee is reduced in order to reflect the resultant variation in contribution to QR’s Common Costs in relation to:**
 - **for transfers of Access Rights within an Individual Coal System, provided that the new Access Rights are for a new traffic task (as described in Subparagraph 7.4.4(e)(ii)), the shorter of the haul distance of the relinquished Access Rights and the haul distance of the new Access Rights; and**
 - **for all other transfers, the section of corridor that is common between the relinquished Access Rights and new Access Rights.**

This Subclause 7.4.4 also describes the circumstances in which a Customer may

require an Access Holder to transfer its Access Rights to an Access Seeker.’

- (a) Subject to Paragraphs 7.4.4(b) - (e), an Access Holder may agree to transfer Access Rights to an Access Seeker, provided that the Access Seeker is seeking new or increased Access Rights, as provided for in Paragraph 7.4.4(b), and those Access Rights have the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic) as the Access Holder’s Access Rights.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace sub-paragraph 7.4.4(a) with the following replacement paragraph:

- (b) **‘Subject to Paragraphs 7.4.4(b)-(e), an Access Holder may agree to transfer Access Rights to an Access Seeker, provided that the Access Seeker is seeking Access Rights with the same type of Train Service Entitlement (ie. either Cyclic Traffic or Timetabled Traffic) as the Access Holder’s Access Rights.’**

- (b) Access Rights will be considered to be new or increased Access Rights for the purpose of Paragraph 7.4.4(a) where:
- (i) for coal carrying Train Services operating in the Central Queensland Coal Region, where the Access Rights are for the purposes of transporting net tonnes of coal that have not been included in the forecast traffic task for that period used in the determination of the relevant Reference Tariff; and
 - (ii) in all other circumstances, where the Access Rights reflect an increase in the Access Rights for the Access Seeker.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete sub-paragraph 7.4.4(b).

- (c) The transfer of Access Rights between an Access Holder and an Access Seeker will be affected as a reduction in the Access Rights of the Access Holder, conditional upon the corresponding Access Rights being included in a new or varied Access Agreement with the Access Seeker, and that QR’s obligation to provide Access under that new or varied Access Agreement commences at the same time as the incumbent Access Holder’s Access Agreement is varied or terminated (whichever is applicable).
- (d) The transfer of Access Rights with the same origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking; and
 - (ii) the Access Holder has paid to QR, where applicable, a transfer fee determined by QR as equivalent to the present value, considered over the life of the Access Holder’s Access Agreement, of any future expected reductions in contributions to QR’s Common Costs in providing the Rail Infrastructure, including a return on Rail Infrastructure assets, due to the net effect of the relevant relinquishment of

Access Rights and the take up of corresponding Access Rights by the Access Seeker, provided that in no circumstances will the transfer fee be less than zero (0).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 7.4.4(d)(ii) with the following replacement paragraph:

- (ii) **'the Access Holder has paid to QR, where applicable, a transfer fee determined by QR as equivalent to the present value, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR's Common Costs in providing the Rail Infrastructure, (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant relinquishment of Access Rights and the take up of corresponding Access Rights by the Access Seeker, on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0).'**

- (e) The transfer of Access Rights with a different origin and destination between an Access Holder and an Access Seeker will only occur if:
- (i) QR is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
- (ii) the Access Holder has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee that would be payable for relinquishment of the Access Rights, reduced in accordance with Paragraph 7.4.3(c); and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 7.4.4(e)(ii) with the following replacement paragraph:

- (ii) **'the Access Holder has paid to QR, where applicable, a transfer fee equivalent to the Relinquishment Fee, provided that:**
- **for Access Rights for coal carrying Train Services operating in the Central Queensland Coal Region, where the Access Rights are for the purpose of a new traffic task (that is, a traffic task being the transportation of specified net tonnes of coal between a specified origin and destination), that was not included in the forecast traffic task for that period used in the determination of the relevant Reference Tariff), or**
 - **for Access Rights for Train Services other than coal carrying Train Services operating in the Central Queensland Coal Region;**

the Relinquishment Fee will be reduced in accordance with Paragraph 7.4.3(f); and'.

- (iii) no other Access Holder is seeking to transfer Access Rights that more closely resemble the Access Rights sought by the Access Seeker.
- (f) Subject to Paragraph 7.4.4(g), where an Access Holder has a Customer, and that Customer provides written notification to QR that it intends to vary or terminate its rail haulage agreement with that Access Holder and use another Access Seeker for some or all of its rail haulage services, then QR will reduce the Access Rights of the Access Holder necessary for the Customer to affect the relevant rail haulage agreement termination or variation, provided that the equivalent Access Rights are included in a new or varied Access Agreement with the Access Seeker, and that the relevant new or varied Access Agreement commences at the same time as the Access Holder's Access Agreement is varied or terminated (whichever is applicable). For the purpose of this Paragraph, equivalent Access Rights will relate to Train Services with the same type of Train Service Entitlement (i.e. either Cyclic Traffic or Timetabled Traffic), the same origin and destination, and transporting the same net tonnage of product.
- (g) The transfer of Access Rights as initiated by an Access Holder's Customer in accordance with Paragraph 7.4.4(f) will only be permitted to proceed if:
 - (i) the Access Holder's rail haulage agreement with its Customer was signed after the Commencing Date;
 - (ii) QR is satisfied that the new or varied Access Agreement with the Access Seeker has been developed in accordance with the requirements of this Undertaking;
 - (iii) the Customer has provided QR with a legally enforceable written undertaking (including security if required by QR) that it will indemnify QR if QR incurs a net loss as a result of the transfer; and
 - (iv) the Customer has paid to QR, where applicable, a transfer fee determined by QR as equivalent to the present value, considered over the life of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR's Common Costs in providing the Rail Infrastructure, including a return on Rail Infrastructure assets, due to the net effect of the relevant relinquishment of Access Rights and the take up of the equivalent Access Rights by the Access Seeker.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace subparagraph 7.4.4(g)(iv) with the following replacement paragraph:

- (iv) **'the Customer has paid to QR, where applicable, a transfer fee determined by QR as equivalent to the present value, considered over the remaining term of the Access Holder's Access Agreement, of any future expected reductions in contributions to QR's Common Costs in providing the Rail Infrastructure (including the return earned on Rail Infrastructure assets), due to the net effect of the relevant relinquishment of Access Rights and the take up of the equivalent Access Rights by the Access Seeker, on the assumption that the Access Holder would have fully utilised the Access Rights for the remaining term of its Access Agreement, provided that in no circumstances will the transfer fee be less than zero (0).'**

- (h) Access Rights may only otherwise be transferred by an Access Holder assigning the whole of its respective rights and obligations under an Access Agreement in accordance with the assignment provisions of that Access Agreement.

7.5 CAPACITY REGISTERS

7.5.1 Committed Capacity Register

- (a) No Access Holder is to assume that it has Access Rights beyond the term of its Access Agreement. However, where an Access Seeker requests Access which will commence after the expiration of an existing Access Agreement and which will utilise Capacity that will only become available following the expiration of that Access Agreement, QR will, prior to providing an Indicative Access Proposal, use reasonable endeavours to notify the parties who are identified in the Committed Capacity Register established in accordance with Paragraph 7.5.1(b) as having an interest in the existing Access Rights of the existence of the Access Application. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided that such failure was not wilful and QR has not acted in bad faith.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend the final sentence in sub-paragraph 7.5.1(a) as follows:

'Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided that QR has acted in good faith.'

- (b) QR will maintain a Committed Capacity Register that will identify parties who have an interest in existing Access Rights. The Committed Capacity Register will identify:
- (i) the party who has an interest in the Access Rights;
 - (ii) the Access Rights in which they have an interest; and
 - (iii) the nature of that interest.

An Access Holder with Access Rights under an Access Agreement will be automatically placed on the register. If any other party has an interest in existing Access Rights and wishes to be included in the register it must notify QR in writing.

- (c) Nothing in this Subclause 7.5.1 derogates from the general principles for the allocation of Capacity outlined in Subclause 7.4.1.

7.5.2 Capacity Resumption Register

- (a) In the event that the Indicative Access Proposal for an Access Seeker identifies that QR does not have sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, and QR cannot justify the Capacity enhancement in accordance with Paragraph 7.4.1(e) in order to create sufficient Available Capacity for the operation of the Access Seeker's proposed Train Services, if requested by the Access Seeker, QR will place the Access Seeker on the Capacity Resumption Register.
- (b) The Capacity Resumption Register will identify:

- (i) the Access Seeker who has an interest in Access Rights; and
 - (ii) the Access Rights in which they have an interest.
- (c) An Access Seeker will remain on the Capacity Resumption Register until:
- (i) Capacity availability changes such that QR does not have sufficient Available Capacity for the operation of the Access Seeker’s proposed Train Services; or
 - (ii) six (6) months after its entry onto the Capacity Resumption Register, or as otherwise reasonably agreed between QR and the Access Seeker.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 7.5.2(c)(ii):

- (ii) ‘six (6) months after its initial entry onto the Capacity Resumption Register, except if, prior to its removal from the Capacity Resumption Register under this Clause 7.5.2, the Access Seeker has notified QR in writing that it remains interested in the relevant Access Rights, then six (6) months after the last such notification, or as otherwise reasonably agreed between QR and the Access Seeker.’**

- (d) If, in relation to Access Rights recorded in the Capacity Resumption Register, the relevant Access Holder triggers the criteria in Subparagraph 7.4.2(a)(i) or Subparagraph 7.4.2(a)(ii), the Access Seeker recorded as having an interest in those Access Rights will be notified by QR within twenty-one (21) days of the relevant trigger occurring. Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided that such failure was not wilful and QR has not acted in bad faith.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must amend the final sentence in sub-paragraph 7.5.2(d) as follows:

‘Failure to give notification in accordance with this Subclause will not constitute default under this Undertaking or invalidate or prejudice any Access Agreement that may have been entered into by QR provided QR has acted in good faith.’

- (e) Nothing in this Subclause 7.5.2 derogates from the general principles for the allocation of Capacity outlined in Subclause 7.4.1.

8. INTERFACE CONSIDERATIONS

8.1 INTERFACE RISK MANAGEMENT PROCESS

8.1.1 Overview

- (a) As Railway Manager, QR is responsible for ensuring that the Interface Risks associated with the operation of Train Services on the Rail Infrastructure are appropriately managed.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the words 'in accordance with this Part 8' at the end of sub-paragraph 8.1.1(a).

- (b) For the purpose of identifying the Interface Risks posed by the operation of a particular Train Service on the Rail Infrastructure, and agreeing a plan for managing those Interface Risks, QR and the Access Seeker or Access Holder will participate in the Interface Risk Management Process. This process will commence with an Interface Risk Assessment and culminate in an Interface Risk Management Plan ('IRMP').
- (c) In progressing the Interface Risk Management Process, QR and the Access Seeker or Access Holder are responsible for:
- (i) ensuring that their representatives involved in the process have the appropriate competence to ensure that the process is conducted in a diligent manner;
 - (ii) ensuring that all relevant information, that is reasonably available, is provided to the other party on a timely basis to facilitate the process; and
 - (iii) using reasonable endeavours to ensure that all information provided is accurate.
- (d) The Interface Risk Management Process outlined in this Clause 8.1 shall be conducted for all new Train Services and for any variation to Train Services including changes in the Operating Plan or Rollingstock specification and a new or varied IRMP, as the case may be, must be agreed with QR prior to the operation of such new or varied Train Services.

QCA's Position

In order for QR's 2001 draft access undertaking, it must insert the following replacement sub-paragraph 8.1.1(d):

- (d) **'The Interface Risk Management Process outlined in this Clause 8.1 shall be conducted for all new Train Services and for any variation to Train Services including changes in the Operating Plan or Rollingstock specification and a new or varied IRMP, as the case may be, must be agreed between the Access Seeker or the Access Holder and QR prior to the operation of such new or varied Train Services.'**

8.1.2 The Interface Risk Assessment

- (a) Schedule H contains a list of safety and Rollingstock issues that should, at a minimum, be considered by the parties during the Interface Risk Assessment.

- (b) Prior to undertaking the Interface Risk Assessment, the Access Seeker or Access Holder will provide an initial Operating Plan to QR.

QCA's Position

In order to approve QR's 2001 draft access undertaking, it must delete 'initial' and insert the words 'in accordance with subclause 8.1.4' at the end of sub-paragraph 8.1.2(b).

- (c) In addition, the Access Seeker or Access Holder will evaluate its planned operation and consider any unique issues that will need to be assessed, and prior to undertaking the Interface Risk Assessment, provide to QR a checklist of safety hazards, the risks of which are to be evaluated at the Interface Risk Assessment. The list of issues included in the safety checklist and Schedule H are not intended to be exhaustive of the issues considered in the Interface Risk Assessment.
- (d) The safety checklist, Schedule H and the Access Seeker's or Access Holder's initial Operating Plan will support the hazard identification and risk assessment process undertaken through the Interface Risk Assessment.
- (e) The parties involved in the Interface Risk Assessment will identify all reasonably foreseeable Interface Risks relating to the following interfaces:
- (i) between the Access Seeker's or Access Holder's proposed operation and the Rail Infrastructure;
 - (ii) between the Access Seeker's or Access Holder's proposed operation and existing operations on the Rail Infrastructure;
 - (iii) between the Access Seeker's or Access Holder's proposed operation and QR's staff or other Access Holders' staff; and
 - (iv) between the Access Seeker's or Access Holder's proposed operation and QR's interfaces with members of the public.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.2(e)(iv):

- (iv) 'between the Access Seeker's or Access Holder's proposed operation and QR's or other Access Holder's interfaces with members of the public.'**

- (f) The parties will then analyse and evaluate the possibility of the Interface Risks occurring and the safety and commercial consequences of such, before agreeing which of QR's Safeworking Procedures and Safety Standards are applicable to the proposed operation, and determining the additional control measures, including Rollingstock Interface Standards, required to manage the applicable Interface Risks.
- (g) QR may propose compliance with relevant QR Rollingstock Interface Standards, or equivalent standards, as control measures.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.2(g):

- (g) 'The parties must consider and agree controls appropriate to the Interface Risk in question. QR may propose compliance with relevant QR Rollingstock Interface Standards, or equivalent standards, as control measures.'**

- (h) If there is no existing control, such as a relevant QR Rollingstock Interface Standard, applicable to an Interface Risk, the parties must consider and agree controls appropriate to the Interface Risk in question.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete subparagraph 8.1.2(h).

- (i) Along with the Safety Standards, Safeworking Procedures, and Rollingstock Interface Standards, QR and the Access Seeker or Access Holder will agree the audit, inspection and review measures to be implemented to ensure that the relevant standards and procedures are complied with at all times and continue to be effective in managing the applicable Interface Risks. Subclause 8.1.7 specifies QR's minimum audit, inspection and review requirements.

8.1.3 *The Interface Risk Management Plan ('IRMP')*

- (a) Once the Interface Risk Assessment is complete, the Access Seeker or Access Holder and QR must jointly develop and agree the IRMP.
- (b) The IRMP must reflect the outcome of the Interface Risk Assessment. In particular, the IRMP will detail the controls agreed between QR and the Access Seeker or Access Holder for the Interface Risks identified and assessed during the Interface Risk Assessment. As such, it will specify:
- (i) which Safeworking Procedures and Safety Standards are applicable to the proposed operation;
 - (ii) the additional controls, including Rollingstock Interface Standards, agreed between the parties for the proposed operation;
 - (iii) the audit, inspection and review regime agreed between the parties; and
 - (iv) the particular party responsible for ensuring that the various elements of the IRMP are implemented and that the IRMP remains effective in addressing the Interface Risks it was developed to address.
- (c) Prior to the operation of the Access Seeker's or Access Holder's Train Service on the Rail Infrastructure, QR shall ensure that its Safety Management System incorporates the elements agreed with the Access Seeker or Access Holder in the IRMP, that QR is responsible for implementing.
- (d) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Service on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a

Railway Operator appointed by the Access Seeker or Access Holder) will incorporate into its Safety Management System:

- (i) the elements agreed in the IRMP, that the Access Seeker or Access Holder is responsible for implementing; and
 - (ii) necessary processes for ensuring that the Access Seeker or Access Holder, its Rollingstock, Rollingstock Configurations and Train Services, at all times comply with the requirements of the Access Agreement, including the agreed IRMP.
- (e) The IRMP will become a schedule to the Access Seeker’s or Access Holder’s Access Agreement. If an Access Agreement has already been negotiated before the finalisation of the IRMP, the implementation of the IRMP may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and Environmental Investigation and Risk Management Report (“EIRMR”).
- (f) Schedule I contains a recommended table of contents for an IRMP, along with several template documents for inclusion in an IRMP.
- (g) If the Access Seeker or Access Holder and QR cannot agree the IRMP, then the Access Seeker or Access Holder shall only be entitled to refer the matter to Dispute resolution in accordance with Clause 8.1.8 for a determination as to whether QR’s failure to agree the IRMP was conduct engaged in for the purpose of preventing or hindering access contrary to sections 104 or 125 of the Act.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.3(g) and a new sub-paragraph 8.1.3(h):

- (g) **‘If the Access Seeker or Access Holder and QR cannot agree any aspect of the IRMP, then either party may give to the other party notice in writing of the Dispute (“IRMP Dispute Notice”), whereupon either party may refer the matter to an expert for resolution in accordance with Subclause 4.7.3. If the matter is not referred to an expert for resolution within 14 days after a party gives an IRMP Notice to the other party, then at any time thereafter refer the matter to:**
- (i) **If the matter has not been referred to the Safety Regulator in accordance with subparagraph 8.1.3 (g)(ii) or the QCA in accordance with Subparagraph 8.1.3(g)(iii), either party may refer the matter to an expert for resolution in accordance with Subclause 4.7.3;**
 - (ii) **If the matter has not been referred to an expert or to the QCA in accordance with 8.1.3(g)(iii), and in the opinion of the Safety Regulator the matters in dispute are solely related to safety issues, then either party may refer the matter to the Safety Regulator through any process that the Safety Regulator considers appropriate; and**
 - (iii) **If the matter has not been referred to an expert, or to the Safety regulator in accordance with 8.1.3(g)(ii), then either party may refer the matter to the QCA, acting with the advice of the Safety Regulator for resolution in accordance with Subclause 4.7.4;**

provided that if the matter is in the first instance referred to an expert for

resolution (whether this occurs during or after the relevant 14 day period) and either party is not satisfied with the determination which the expert makes, then notwithstanding paragraph 4.7.3(i), either party may, within 21 days after the expert makes the determination, refer the matter for resolution by the Safety Regulator under Subparagraph 8.1.3(g)(ii) or the QCA under Subparagraph 8.1.3(g)(iii). Any determination made by the safety regulator or the QCA (whether or not following a determination by an expert) shall be final and binding upon the parties.

- (h) If an expert, the Safety Regulator, or the QCA, is called upon, under paragraph 8.1.3(g), to make a determination the effect of which is to establish the content of any aspect of the IRMP, then the expert, Safety Regulator or the QCA (as the case may be) shall comply with any guiding principles for the resolution of a dispute under clause 8.1.3(g) that may from time to time be determined by the Safety Regulator.'**

8.1.4 Operating Plan

- (a) In order to analyse the impacts and requirements of the operations proposed by an Access Seeker or Access Holder on the Rail Infrastructure, the Access Seeker or Access Holder must submit an Operating Plan to QR during the negotiation process. The Operating Plan is an enhancement of the initial Operating Plan. An Access Seeker or Access Holder must finalise its Operating Plan during the Interface Risk Management Process, as the IRMP must be consistent with the Operating Plan.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the last two sentences of sub-paragraph 8.1.4(a).

- (b) Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule K.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.4(b):

- (b) 'Details of the contents typically required in an Operating Plan for new or varied Train Services are set out in Schedule K. While the Operating Plan may be subject to change during the negotiation process, an Access Seeker or Access Holder must finalise its Operating Plan during the Interface Risk Management Process, as the IRMP must be consistent with the Operating Plan.'**

- (c) The Operating Plan will be utilised by QR to refine and finalise the Train Service Entitlement, Interface Coordination Plan, Access Charge and other terms and conditions of the Access Agreement. It will also be used as a basis for the Capacity Analysis.
- (d) If, during the course of an Access Agreement, an Access Holder wishes to change its Operating Plan, QR and the Access Holder will undertake a further Interface Risk Assessment in accordance with the process outlined in Subclause 8.1.2 and jointly develop and agree a revised IRMP in accordance with Subclause 8.1.3.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.4(d):

- (d) 'If, during the course of an Access Agreement, an Access Holder wishes to change its Operating Plan, QR and the Access Holder will undertake a further Interface Risk Assessment in respect of such change in accordance with the process outlined in Subclause 8.1.2 and jointly develop and agree any necessary revisions to the IRMP in accordance with Subclause 8.1.3.'**

8.1.5 Provision of Assistance by QR

- (a) Where QR and an Access Seeker or Access Holder agree that training of the Access Seeker or Access Holder's staff or contractors is required as a control, or part of a control to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Seeker or Access Holder cannot reasonably obtain that training from a party other than QR, QR will exercise reasonable endeavours to provide the Access Seeker or Access Holder with that training.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.5(a):

- (a) 'Where QR and an Access Seeker or Access Holder agree that training of the Access Seeker or Access Holder's staff or contractors is required as a control, or part of a control, to a particular Interface Risk identified in the Interface Risk Assessment, and the Access Seeker or Access Holder can only obtain that training from QR, QR will provide the Access Seeker or Access Holder with that training.'**

- (b) Where QR provides training in accordance with Paragraph 8.1.5(a), it will be entitled to recover a reasonable commercial charge for providing such training.

8.1.6 Rollingstock Authorisation

- (a) In order to ensure only Rollingstock and Rollingstock Configurations that comply with the terms of the IRMP operate on the Rail Infrastructure:
- (i) all Rollingstock must be authorised by QR; and
 - (ii) all Rollingstock Configurations must be authorised by QR;
- prior to operation on the Rail Infrastructure.
- (b) To obtain authorisation of Rollingstock, the Access Seeker or Access Holder must demonstrate to QR that the Rollingstock has been designed, constructed or modified and appropriately tested to comply with the agreed Rollingstock Interface Standards in its IRMP. To demonstrate this compliance, the Access Seeker or Access Holder must certify that the Rollingstock meets the Rollingstock Interface Standards, by producing certificates of compliance prepared by a party who QR and the Access Seeker or Access Holder accept as being competent for the purpose of providing such certification. QR

may require the Access Seeker or Access Holder or the certifying party to provide it with documentation demonstrating that the Rollingstock is in compliance with the Rollingstock Interface Standards agreed in the IRMP. Such documentation may include the certificate of compliance, reports on trials and/or commissioning tests.

- (c) To obtain authorisation of Rollingstock Configurations, the Access Seeker or Access Holder must demonstrate to QR that the Rollingstock has been configured and operates in a manner that complies with the agreed Rollingstock Interface Standards in its IRMP. To demonstrate this compliance, the Access Seeker or Access Holder must certify that the Rollingstock Configurations meet the Rollingstock Interface Standards by producing a certificate of compliance prepared by a party who QR and the Access Seeker or Access Holder accept as being competent for the purpose of providing such certification. QR may require the Access Seeker or Access Holder or the certifying party to provide it with documentation demonstrating that the Rollingstock Configurations are in compliance with the Rollingstock Interface Standards agreed in the IRMP. Such documentation may include the certificate of compliance, reports on trials and/or commissioning tests.
- (d) Authorisation of Rollingstock and Rollingstock Configurations may be sought concurrently.
- (e) QR may refuse to authorise Rollingstock and/or Rollingstock Configurations where QR is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifying party in accordance with Paragraphs 8.1.6(b) and (c), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, provided that QR must not act in a manner that contravenes s.104 or s.125 of the Act.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.6(e):

- (e) **'Where QR is not satisfied, on the basis of the documentation provided by an Access Seeker or Access Holder or a certifying party in accordance with Paragraphs 8.1.6(b) and (c), that the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP, either QR or the Access Seeker or Access Holder may refer the adequacy of the documentation and whether the Rollingstock and/or Rollingstock Configurations comply with the terms of the agreed IRMP for resolution by an expert in accordance with Subclause 4.7.3.'**

8.1.7 Audit, Inspection and Review

- (a) The Access Holder must have in place processes to ensure that it complies with its IRMP at all times in its operations on the Rail Infrastructure.
- (b) QR and the Access Holder must inform each other of any failure to comply with the relevant IRMP, as and when they become aware of such non-compliance. This will include advice on the nature of the non-compliance and how the relevant party has rectified or intends to rectify the non-compliance. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the last sentence of sub-paragraph 8.1.7(b).

- (c) In addition, where such failure is relevant to its operations on the Rail Infrastructure, the Access Holder must inform QR of any failure to comply with:
- (i) any applicable laws;
 - (ii) QR Train Control directions; and
 - (iii) the Rollingstock and Rollingstock Configurations authorised under the Access Agreement.
- (d) In addition, QR will provide the Access Holder with Above Rail Rollingstock incident information concerning that Access Holder's Train Services.
- (e) Where QR has reasonable grounds to believe that the Access Holder has not or is not complying with any aspect of its IRMP, then QR may conduct or require the conduct of an audit or inspection of the relevant aspect of the Access Holder's Train Services provided that QR advises the Access Holder of the reasonable grounds in writing upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by QR, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of the Access Holder, and the Access Holder has a legitimate commercial reason for wanting to withhold access to that information from QR, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by the Access Holder, but who shall be prohibited from disclosing that commercially sensitive information to QR. In carrying out such an inspection or audit, QR must not interfere unreasonably with the Access Holder's Rollingstock or Trains and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the Access Holder's business activities.
- (f) Where the Access Holder has reasonable grounds to believe that QR has not or is not complying with any aspect of the relevant IRMP, it may conduct or require the conduct of an audit or inspection of the relevant aspect of the Rail Infrastructure provided that the Access Holder advises QR of the reasonable grounds in writing upon which it requires the audit or inspection prior to the audit or inspection. Any such inspection or audit may be conducted by the Access Holder, its appointed representative or by a suitably qualified person reasonably acceptable to both parties, provided that if the audit or inspection would require access to commercially sensitive information of QR, and QR has a legitimate commercial reason for wanting to withhold access to that information from the Access Holder, then the audit or inspection shall be conducted by a suitably qualified independent person reasonably acceptable to both parties who shall be given access to the commercially sensitive information by QR, but who shall be prohibited from disclosing that commercially sensitive information to the Access Holder. In carrying out such an inspection or audit, the Access Holder must not interfere unreasonably with QR's provision of Above Rail Services and Below Rail Services and must use reasonable endeavours to avoid damage or injury and to minimise any disruption to the business activities of QR or other Access Holders.

- (g) In addition to the rights to inspect or audit specified in Paragraphs (e) and (f) of this Subclause, both QR and the Access Holder may carry out an inspection of the relevant parts of the other party's operation for the purpose of ascertaining whether they are entitled to exercise a right of suspension as agreed in the relevant Access Agreement, provided that they cannot reasonably otherwise ascertain whether this is the case.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.7(g):

(g) 'Any other rights of inspection or audit will be specified in the Access Agreement.'

- (h) At any time that either party has reasonable grounds to believe that the IRMP is no longer effective either in managing the Interface Risks that it was intended to manage or in managing new Interface Risks, QR and the Access Holder will, in accordance with the Access Agreement, jointly review the effectiveness of the IRMP in addressing the Interface Risks posed by the Access Holder's operations on the Rail Infrastructure.
- (i) The Access Holder's Access Agreement will specify the obligations of both QR and the Access Holder in relation to the implementation of the outcomes of inspections, audits and/or reviews conducted in accordance with the processes outlined in this Subclause 8.1.7.
- (j) The Access Holder's Access Agreement will specify the circumstances in which QR may suspend the operation of an Access Holder's Rollingstock or Trains, or the right of an Access Holder's Train Services to operate on the relevant part of the Rail Infrastructure during the course of the Access Holder's Access Agreement.
- (k) The Access Holder's Access Agreement will specify the circumstances in which QR may vary System-wide Requirements, including Safeworking Procedures, Safety Standards and Rollingstock Interface Standards, during the course of an Access Holder's Access Agreement.
- (l) Where an Access Holder (or group of Access Holders) and QR agree to vary Rollingstock Interface Standards consistent with this Subclause 8.1.7 and such variation(s) involve an additional cost funded exclusively by that Access Holder (or group of Access Holders), QR will be entitled to restrict other Access Holders from benefiting from the variation in the Rollingstock Interface Standards unless and until they make an appropriate contribution to the costs thereof.
- (m) The party whose operations are audited or inspected under Paragraph 8.1.7(e) or (f) shall bear the reasonable costs of such audit or inspection provided that the party which conducted or required the conduct of the audit or inspection had reasonable grounds for conducting or requiring the conduct of the audit or inspection as required by Paragraph 8.1.7(e) or (f) (as applicable).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.1.7(m):

(m) 'The party whose operations are audited or inspected under Paragraph

8.1.7(e) or (f) shall bear the reasonable costs of conducting such audit or inspection unless it is demonstrated that the stated grounds for requiring the conduct of the audit did not exist. In circumstances where the stated grounds for such audit have not been demonstrated to exist, the party which required the conduct of the audit or inspection shall bear the reasonable costs of conducting such audit or inspection.'

8.1.8 Dispute Resolution

- (a) If any Dispute arises in relation to any aspect of the Interface Risk Management Process, the Dispute shall be resolved, subject to Paragraphs 8.1.8(b) and (c), by the QCA in accordance with Subclause 4.7.4.
- (b) If the Dispute concerns a safety-related matter, and reasonable efforts have been made to resolve the Dispute at Chief Executive level, but no resolution has been reached within fourteen (14) days of receipt of the written Dispute Notice, either party may seek the advice of the Safety Regulator prior to referring the Dispute to the QCA, as provided in Subclause 4.7.4.
- (c) Where one of the parties to the Dispute seeks the advice of the Safety Regulator as provided in Paragraph 8.1.8(b), the advice provided will be non-binding and will not preclude either party subsequently referring the Dispute to the QCA, as provided in Subclause 4.7.4. In addition, the Safety Regulator may recover its costs in providing non-binding advice from the parties involved in the Dispute and in a manner determined by the Safety Regulator.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-clause 8.1.8.

8.2 ENVIRONMENTAL RISK MANAGEMENT PROCESS

8.2.1 Environmental Investigation and Risk Management Report

- (a) As outlined in Clause 4.5, as part of the negotiation process or as otherwise specified in an Access Agreement, the Access Seeker or Access Holder will commission a suitably qualified person, reasonably acceptable to both QR and the Access Seeker or Access Holder, to prepare an Environmental Investigation and Risk Management Report ('EIRMR') containing an environmental investigation component and an environmental risk management component which respectively identify:
 - (i) possible risks of Environmental Harm arising out of the proposed use of the Rail Infrastructure by the Access Seeker or Access Holder, including risks associated with those matters identified in Schedule J; and
 - (ii) the manner in which the Access Seeker or Access Holder proposes to address the possible risks of Environmental Harm identified, as well as the roles and responsibilities, including financial responsibility, for the control measures proposed (including an audit regime).
- (b) In order to ensure that an appropriate EIRMR is developed, QR will disclose to an Access Seeker or Access Holder on a timely basis all information, reasonably available to it, relevant to the assessment by the Access Seeker or Access Holder of a real or potential risk of Environmental Harm involving its proposed operations on the Rail Infrastructure. This information may include:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend the first sentence of sub-paragraph 8.2.1(b) as follows:

- (b) **'In order to ensure that an appropriate EIRMR is developed, QR will disclose to an Access Seeker or Access Holder on a timely basis all relevant information, reasonably available to it, relating to the environmental impact of the Access Seeker's or Access Holder's proposed operations on the Rail Infrastructure. This information may include:'**
- (i) details of any Environmental Authorities held by QR that are relevant to the operation by the Access Seeker or Access Holder of its proposed Train Services on the Rail Infrastructure;
 - (ii) relevant environmental reports;
 - (iii) a copy of QR's Code of Practice for Railway Noise Management;
 - (iv) any currently applicable noise levels or limits; and
 - (v) particulars of noise complaints and enforcement actions.
- (c) If an Access Seeker or Access Holder has an existing Environmental Management System ('EMS') that it proposes to use in connection with its proposed operation on the Rail Infrastructure, the EIRMR should also detail the relevant parts of the Access Seeker's or Access Holder's existing EMS, including how those parts address the risks identified in the EIRMR. Extracts of the relevant parts of the EMS should also be included in the EIRMR.
- (d) The Access Seeker or Access Holder must provide a copy of the EIRMR to QR for its consideration.
- (e) QR will consider whether the EIRMR adequately addresses the issues outlined in Paragraph 8.2.1(a) and advise the Access Seeker or Access Holder of its decision.
- (f) In order to assist QR in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR all relevant available information relating to the environmental impacts of its proposed operations on the Rail Infrastructure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a replacement sub-paragraph 8.2.1(f) as follows:

- (f) **'In order to assist QR in determining the adequacy of an EIRMR provided to it, the Access Seeker or Access Holder will disclose to QR all relevant information reasonably available to it relating to the environmental impact of its proposed operations on the Rail Infrastructure.'**
- (g) If, in QR's reasonable opinion, the EIRMR discloses areas of risk that cannot be adequately managed by the proposals included in the EIRMR, or the EIRMR fails to identify and adequately deal with additional relevant environmental risks, QR may notify

the Access Seeker or Access Holder in writing of the risks not adequately managed or not identified or adequately dealt with.

- (h) If QR considers that the EIRMR does adequately address the issues outlined in Paragraph 8.2.1(a), or if QR fails to give the Access Seeker or Access Holder the notice referred to in Paragraph 8.2.1(g) within forty-five (45) days of receipt (or such other period as the parties agree), the EIRMR will be accepted.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.2.1(h):

(h) 'If QR considers that the EIRMR does adequately address the issues outlined in Paragraph 8.2.1(a), or if QR fails to give the Access Seeker or Access Holder the notice referred to in Paragraph 8.2.1(g) within thirty (30) days of receipt (or such other period as the parties, acting reasonably, agree), the EIRMR will be accepted.'

- (i) If QR gives the Access Seeker or Access Holder a notice pursuant to Paragraph 8.2.1(g), the Access Seeker or Access Holder may respond to QR, by a date agreed by the parties, with a written proposal that:
- (i) contains an investigation of the areas of risk and/or additional relevant environmental risks referred to in Paragraph 8.2.1(g);
 - (ii) specifies risk abatement or attenuation measures that the Access Seeker or Access Holder proposes to undertake in relation to the relevant risks, or specifies how the Access Charge might contain a component reflecting the cost to QR of assuming all or some portion of the risk;
 - (iii) where risk abatement or attenuation measures are proposed pursuant to Subparagraph 8.2.1(i)(ii), specifies a timeframe for implementation of those measures; and
 - (iv) specifies details of any public consultation the Access Seeker or Access Holder proposes to undertake in connection with the implementation of any such measures.
- (j) QR may, exercising reasonable discretion, accept or reject all or part of the Access Seeker's or Access Holder's proposal ('the proposal'). If QR accepts the proposal, it will be incorporated into and form part of the EIRMR, which will then be accepted. If QR rejects all or part of the proposal, it may advise the Access Seeker or Access Holder of the risks not adequately managed or not identified or adequately dealt with.
- (k) If the Access Seeker or Access Holder fails to submit its proposal within the specified time, or if QR rejects all or part of the proposal, then either QR or the Access Seeker or Access Holder may refer the issue of whether the EIRMR and/or the proposal does not adequately manage or does not identify or adequately deal with the relevant environmental risks, to an expert, either in accordance with Subclause 4.7.3 if an Access Agreement has not already been signed, or if an Access Agreement has already been signed, in accordance with the Dispute resolution procedure provided therein.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the words 'to an expert, either in accordance with Subclause 4.7.3' must be deleted and replaced with 'to Dispute resolution or determination in accordance with Clause 4.7'.

- (l) If the expert determination finds that the proposal and/or the EIRMR does adequately manage the risks or identifies and adequately deals with the risks, then the EIRMR (as modified by the proposal, where applicable) will be accepted.
- (m) If the expert determination finds that the proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder amends the EIRMR in accordance with the expert's determination and/or recommendations, the EIRMR (as amended) will be accepted.
- (n) The accepted EIRMR will be incorporated as a schedule to the Access Seeker's or Access Holder's Access Agreement. If the Access Agreement has already been negotiated before the acceptance of the EIRMR, the implementation of the EIRMR may necessitate changes in the terms and conditions of the Access Agreement, including variations to the Access Charge and the IRMP.
- (o) If the expert determination finds that the proposal and/or the EIRMR fails to adequately manage the risks or fails to identify and adequately deal with the risks, and the Access Seeker or Access Holder fails, within the timeframe nominated by the expert, to amend the EIRMR in accordance with the expert's determination and/or recommendations, QR may cease negotiations or terminate the Access Agreement (whichever is applicable).
- (p) A new or varied EIRMR shall be prepared as outlined in this Subclause 8.2.1 for all new Train Services and for any variation to Train Services prior to the operation of such new or varied Train Services.

8.2.2 Environmental Management System

- (a) Prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, the Access Seeker or Access Holder (or where relevant, a Railway Operator appointed by the Access Seeker or Access Holder) must have in place an Environmental Management System ('EMS') that:
 - (i) has regard to the issues raised in the EIRMR and contains procedures for implementing the risk management proposals identified in it. The EIRMR will include the results of any expert determination referred to in Paragraph 8.2.1(k) and any amendment of the EIRMR arising from the recommendations of any environmental audit or review undertaken in accordance with Paragraph 8.2.3(e);
 - (ii) is consistent with the relevant parts of any existing QR EMS for the Rail Infrastructure;

QCA's Position

In order to approve QR's 2001 draft access undertaking, sub-paragraph 8.2.2(a)(ii) should be deleted.

- (iii) addresses all relevant legislative requirements including the relevant requirements of the Environmental Authorities held by QR from time to time; and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace sub-paragraph 8.2.2(a)(iii) with the following paragraph:

- (iii) **'addresses all relevant legislative requirements including the requirements of the Environmental Authorities held by QR from time to time that are relevant to the Access Seeker's or Access Holder's Train Services;'**

- (iv) identifies systems (including audit systems) and procedures to address all relevant environmental risks and ensure compliance with Environmental Laws.
- (b) Similarly, prior to the operation of the Access Seeker's or Access Holder's Train Services on the Rail Infrastructure, QR will ensure that the elements included in the EIRMR, which QR is responsible for implementing, are incorporated in QR's EMS.

8.2.3 Audit and Review of EIRMR

- (a) As noted in Subparagraph 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.2.3(a):

- (a) **'As noted in Subparagraph 8.2.1(a)(ii), an Access Holder's EIRMR will specify the environmental audit requirements for its Train Services. The frequency of environmental audits must be reasonably linked to the risks identified in the EIRMR.'**

- (b) An Access Holder will provide QR with copies of those parts of any environmental audits undertaken by or on behalf of the Access Holder in respect of its Train Services on the Rail Infrastructure.
- (c) QR will provide an Access Holder with copies of those parts of QR's internal environmental audits that are relevant to the Access Holder's operation of Train Services on the Rail Infrastructure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the word 'internal' from sub-paragraph 8.2.3(c).

- (d) An Access Holder must advise QR of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. Similarly, QR will advise an Access Holder if it fails to comply with the EIRMR applicable under the Access Holder's Access Agreement. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph 8.2.3(d).

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.2.3(d):

- (d) 'An Access Holder must advise QR of any failure to comply with its EIRMR, as and when the Access Holder becomes aware of such failure. QR must advise an Access Holder of any failure to comply with the EIRMR applicable under the Access Holder's Access Agreement, as and when QR becomes aware of such failure. The Access Agreement will specify the consequences for a party's failure to notify in accordance with this Paragraph 8.2.3(d).'**

- (e) If QR becomes aware of any inadequacy of the Access Holder's EIRMR due to:
- (i) any change in applicable Environmental Laws
 - (ii) any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
 - (iii) non-compliance by the Access Holder with the EIRMR;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 8.2.3(e)(i) and (ii):

- (e) 'If QR becomes aware of:**
- (i) any inadequacy of the Access Holder's EIRMR due to:**
 - any change in Environmental Laws of relevance to the Access Holder's Train Services;
 - any conduct on the part of the Access Holder which causes or threatens to cause Serious Environmental Harm or Material Environmental Harm; or
 - (ii) any non-compliance by the Access Holder with the EIRMR'**

then, QR may by notice to the Access Holder direct the Access Holder to undertake a review of the adequacy of its EIRMR and/or the Access Holder's compliance with it. The review will only deal with:

- (iv) the extent to which the EIRMR appears not to address a change in applicable Environmental Laws; or
- (v) the conduct causing or threatening to cause Serious Environmental Harm or Material Environmental Harm; or
- (vi) the extent of non-compliance by the Access Holder with its EIRMR;
- (vii) whichever is applicable in the circumstances.

- (f) If directed by QR to undertake a review in accordance with Paragraph 8.2.3(e), the Access Holder will ensure the review is carried out and will provide QR with a copy of the review report not later than three (3) months after the notice was received from QR.
- (g) The Access Holder’s Access Agreement will specify the obligations of both QR and the Access Holder in relation to the implementation of the outcomes of a review carried out in accordance with Paragraph 8.2.3(e), including the implementation of changes to its EIRMR and/or EMS.
- (h) The Access Holder’s Access Agreement will specify the circumstances in which QR may suspend the operation of an Access Holder’s Rollingstock or Train Services, on environmental grounds, during the course of the Access Holder’s Access Agreement.

8.3 ADJOINING INFRASTRUCTURE

- (a) Unless otherwise agreed, where a Third Party Access Seeker or Third Party Access Holder proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR will not be Railway Manager, QR reserves the right to design, project manage, construct, commission, maintain, upgrade, and in any other way manage the Connecting Infrastructure, provided that:
 - (i) in undertaking any tasks associated with this right, QR may only undertake a reasonable standard of works bearing in mind the nature of the traffic and the current, planned or expected future service standards for the Rail Infrastructure; and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 8.3(a)(i):

- (i) **‘in undertaking any tasks associated with this right, QR may only undertake a reasonable standard of works bearing in mind the nature of the traffic and the current or planned service standards for the Rail Infrastructure; and’**

- (ii) the Third Party Access Seeker or Third Party Access Holder is given a reasonable period within which to provide comments to QR on any design or construction matters.
- (b) The Third Party Access Seeker or Third Party Access Holder will pay QR an amount, for work carried out in accordance with Paragraph 8.3(a), which is reasonable given the terms and conditions of the agreement governing the development of the Connecting Infrastructure, provided that QR will pay the reasonable costs incurred by the Third Party Access Seeker or Third Party Access Holder as a result of QR conduct, under the agreement governing the development of the Connecting Infrastructure, engaged in for the purpose of preventing or hindering access contrary to sections 104 or 125 of the Act.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 8.3(b):

- (b) **‘The Third Party Access Seeker or Third Party Access Holder will pay QR an**

amount, for work carried out in accordance with Paragraph 8.3(a), which is reasonable given the terms and conditions of the agreement governing the development of the Connecting Infrastructure, provided that QR will pay the reasonable costs (excluding consequential loss or damage) incurred by the Third Party Access Seeker or Third Party Access Holder where QR has unreasonably delayed the development of the Connecting Infrastructure.'

9. PUBLIC REPORTING

9.1 QUARTERLY REPORTS

- (a) QR will publicly release quarterly reports in relation to each complete Quarter within the term of this Undertaking and which contain the information set out in Paragraphs 9.1(c) to (i). QR will use reasonable efforts to ensure that the information contained in each quarterly report is accurate.
- (b) The quarterly reports will be publicly released within forty-five (45) days of the end of the subject Quarter.
- (c) Information on the reliability of Train Services that have operated in the subject Quarter, as follows:
 - (i) number and percentage of Healthy Train Services that reach their destination within the Agreed Threshold; and
 - (ii) number and percentage of Unhealthy Train Services that do not deteriorate further, within the Agreed Threshold.
- (d) Information on the transit time of Train Services that have operated in the subject Quarter, as follows:
 - (i) for those Train Services that do not reach their destination within the Agreed Threshold, the average Above Rail Delay, in minutes, per one hundred (100) train kilometres;
 - (ii) for those Train Services that do not reach their destination within the Agreed Threshold, the average Below Rail Delay, in minutes, per one hundred (100) train kilometres; and
 - (iii) for those Train Services that do not reach their destination within the Agreed Threshold, the average Unallocated Delays, in minutes, per one hundred (100) train kilometres.
- (e) For Quarters following 30 June 2003, information on the availability of the network for Train Services in the subject Quarter, as follows:
 - (i) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributable directly to QR as Railway Manager;
 - (ii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that can be attributable directly to an Access Holder (which would include cancellations attributable to a Railway Operator appointed by the Access Holder); and
 - (iii) number and percentage of Train Services scheduled in the MTP cancelled due to a reason that cannot be clearly assigned as directly attributable to an Access Holder or to QR as Railway Manager;
- (f) Information on the safety of Train Services that have operated in the subject Quarter, being the number of major reportable incidents, as reported to the Safety Regulator;
- (g) Information on speed restrictions, being the average percentage of Track under temporary speed restriction;

- (h) Information on QR's billing performance, being the number of instances where an Access Holder has made a complaint to QR about an incorrectly calculated bill, and where QR's investigation into the complaint identifies that the bill was incorrectly calculated;
- (i) For Quarters following 30 June 2003, where there is a Third Party Access Holder operating Train Services in competition with a QR Operational Business Group, information on QR's impartiality in providing Train Control Services to the Third Party Access Holder and the QR Operational Business Group. This information will be provided by way of a performance indicator that will be agreed between QR and the QCA prior to the first Quarter for which the indicator is to be reported, or in the absence of such agreement, a performance indicator as reasonably specified by the QCA.
- (j) For the purposes of Paragraphs 9.1(c) to (i) other than Paragraph 9.1(g), the Train Services will be aggregated as follows:
 - (i) Train Services operated for the purpose of transporting bulk coal and minerals products;
 - (ii) Train Services operated for the purpose of transporting freight products, other than those products referred to in Subparagraph 9.1(j)(i); and
 - (iii) Train Services operated for the purpose of providing long distance passenger transport.
- (k) For the purposes of Paragraph 9.1(g), information on speed restrictions will be reported in the following segments:
 - (i) the Central Queensland Coal Region; and
 - (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.

9.2 ANNUAL REPORTS

- (a) QR will publicly release annual reports in relation to each Year (either complete or partial) within the term of this Undertaking containing the information set out in Paragraphs 9.2(c) to (f). QR will use reasonable efforts to ensure that the information contained in each annual report is accurate.
- (b) The annual reports will be publicly released within six (6) months of the end of the subject Year.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following words at the end of paragraph 9.2(b):

'or such longer time as agreed by the QCA.'

- (c) Financial Statements in relation to the subject Year, that have been prepared and certified by QR's Chairman and Chief Executive in accordance with Subclause 3.2.1 and which will be accompanied by the audit certificate prepared in accordance with Subclause 3.2.3.

- (d) Information in relation to QR's compliance with the Undertaking over the subject Year, or such part of the subject Year to which this Undertaking applies, as follows:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved it must delete the words 'which this undertaking applies' and replace it with 'within the term'.

- (i) the number and percentage of requests for Preliminary Information received in accordance with this Undertaking and responded to within the applicable timeframe nominated in Paragraph 4.1(d);
- (ii) for those requests for Preliminary Information received in accordance with this Undertaking not responded to within the applicable timeframe nominated in Paragraph 4.1(d), the average delay (in days) taken to provide the Preliminary Information;
- (iii) the number and percentage of Access Applications acknowledged in accordance with this Undertaking and within the applicable timeframe nominated in Paragraph 4.2(a) or (b);
- (iv) for those Access Applications received in accordance with this Undertaking and that have not been acknowledged within the applicable timeframe nominated in Paragraph 4.2(a) or (b), the average delay (in days) taken to acknowledge the Access Applications;
- (v) the number and percentage of Indicative Access Proposals provided in accordance with this Undertaking within the applicable timeframe nominated in Paragraph 4.2(a) or (c);
- (vi) the number and percentage of Access Applications received in accordance with this Undertaking for which an extension of time for provision of an Indicative Access Proposal is sought by QR in accordance with Paragraph 4.2(c);
- (vii) for those Indicative Access Proposals provided in accordance with this Undertaking but that have not been provided within the applicable timeframe nominated in Paragraph 4.2(a) or (c), the average delay (in days) taken to provide the Indicative Access Proposals;
- (viii) the number, and percentage, of instances where an Access Seeker has notified QR in accordance with Paragraph 4.4(b) that it believes that an Indicative Access Proposal has not been prepared in accordance with this Undertaking;
- (ix) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7;
- (x) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7 and QR was found to have committed a Procedural Breach of the Undertaking;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'Procedural Breach' from paragraph 9.2(d)(x) and replace it with 'breach'.

- (xi) the number of instances where a non-ring fencing related issue has been referred to Dispute resolution in accordance with the process set out in Clause 4.7 and QR was found to have committed a Substantive Breach of the Undertaking;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 9.2(d)(xi).

- (xii) the number of instances where QR has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3;
- (xiii) the number of instances where QR has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR is found to have committed a Procedural Breach of those ring fencing obligations; and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'Procedural Breach' from paragraph 9.2(d)(xiii) and replace it with 'breach'.

- (xiv) the number of instances where QR has received a complaint from a Third Party that it has allegedly breached one or more of its obligations relating to the management of Confidential Information as set out in Clause 3.3 and QR is found to have committed a Substantive Breach of those ring fencing obligations.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 9.2(d)(xiv).

- (e) Information in relation to the outcome of QR's negotiations with Access Seekers over the subject Year, or such part of the subject Year to which this Undertaking applies, as follows:

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'which this Undertaking applies' and replace it with 'within the term'.

- (i) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker;
- (ii) the average length of the Negotiation Period (in days), where the Negotiation Period has commenced in accordance with this Undertaking and has ceased as the

result of any reason other than the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker; and

- (iii) the number of instances where a Negotiation Period commenced in accordance with this Undertaking has ceased as the result of the execution of an Access Agreement, or variation to an existing Access Agreement, in respect of the Access sought by the Access Seeker.
- (f) Information on network service quality most recently measured within the subject Year, being Track quality for the network measured by a quality index with component measures including gauge, top, twist and versine.
- (g) For the purpose of Paragraph 9.2(f), the network service quality will be reported in the following segments:
 - (i) the Central Queensland Coal Region; and
 - (ii) the remainder of the network, with the exception of:
 - the Metropolitan Region; and
 - Standard Gauge Rail Infrastructure.

10. DEFINITIONS & INTERPRETATIONS

10.1 DEFINITIONS

In this Undertaking, unless inconsistent with the context, the following words and expressions shall have the respective meanings:

“Above Rail Delay” means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to an Access Holder (including a Railway Operator appointed by the Access Holder) in operating its Train Services, but excludes:

- (iii) cancellations; and
- (iv) delays resulting from a Force Majeure Event;

“Above Rail Services” means those activities, other than Below Rail Services, required to provide and operate Train Services including Rollingstock provision, Rollingstock maintenance, non Train Control related communications, train crewing, terminal provision and services, freight handling and marketing and administration of those services and **“Above Rail”** has a similar meaning;

“Access” means the non-exclusive utilisation of a specified section of Rail Infrastructure for the purposes of operating Train Services;

“Access Agreement” means an agreement between QR and an Access Holder for the provision of Access and will include arrangements between Network Access and other QR Operational Business Groups for the provision of Access for the purpose of QR operated Train Services;

“Access Application” means a request for Access by an Access Seeker which has been prepared in writing and which complies with the information requirements of Paragraph 4.1(b);

“Access Charge” means the price paid by an Access Holder for Access under an Access Agreement;

“Access Coordination Plan” means a document compiled by Network Access from an Access Agreement for provision to those persons providing scheduling and Train Control Services, and detailing operational and interface information concerning the Access Holder’s operation to assist in the performance of scheduling, Train Control Services and associated incident management services;

“Access Holder” means a party who holds Access Rights;

“Access Rights” means the entitlement of an Access Holder to Access in accordance with a specified Train Service Entitlement;

“Access Seeker” means a party who is seeking new or additional Access Rights;

“Accreditation” means accreditation in accordance with Part 4, Chapter 6 of the *Transport Infrastructure Act 1994 (Qld)* and **“Accredited”** has a similar meaning;

“Act” means the *Queensland Competition Authority Act 1997 (Qld)*;

“Ad Hoc Train Service” means any Train Service, additional to the number of Train Services permitted under an existing Access Agreement, but otherwise consistent with the Train Service Entitlement and Rollingstock specification specified in that existing Access Agreement;

“Additional Information” means that information that is to be provided by QR to an Access Seeker during the Negotiation Period as set out in Schedule D, excluding any information that is provided as part of the Preliminary Information, but only to the extent required either by the Access Seeker or as part of the Access Agreement;

“Agreed Threshold” means the threshold allowance for deviations from a Train Path within which a Train Service is considered to be on time, as agreed between QR and the Access Holder in its Train Service Entitlement;

“Authorised Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, established by QR and authorised by the QCA in accordance with Subclause 6.3.3, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition of “Authorised Reference Tariff”.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Approval Date” has the meaning given to that term in Paragraph 2.3(a).’

“Authority” means the Crown, a minister of the Crown, a federal, state or local government department, a corporation or authority constituted for a public purpose, a holder of an office for a public purpose, a local authority, a court, a tribunal and any officer or agent of the foregoing acting as such that lawfully exercise jurisdiction over QR;

“Available Capacity” means Capacity that is not Committed Capacity and includes Capacity that will cease being Committed Capacity prior to the time in respect of which Capacity is being assessed;

“Below Rail Delay” means a delay to a Train Service from its scheduled Train Path in the DTP, where that delay can be attributed directly to QR as Railway Manager, but excludes:

- (i) cancellations; and
- (ii) delays resulting from a Force Majeure Event;

“Below Rail Services” means the activities associated with the provision and management of Rail Infrastructure, including the construction, maintenance and renewal of Rail Infrastructure assets, and the network management services required for the safe operation of Train Services on the Rail Infrastructure, including Train Control Services and the implementation of Safeworking Procedures;

“Below Rail Transit Time” means, for a Train Service traveling between its origin and destination, the sum of:

- (i) the relevant nominated section running times (in the direction of travel) as specified in the Train Service Entitlement;

- (ii) identified Below Rail Delays for that Train Service;
- (iii) time taken in crossing other Trains to the extent that such time is not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (i) of this definition; and
- (iv) delays due to Operational Constraints directly caused by the activities of QR in maintaining the Rail Infrastructure or due to a fault or deficiency in the Rail Infrastructure provided such delays are not contributed to by Above Rail causes or Force Majeure Events or otherwise included in Paragraph (ii) or (iii) of this definition.

“Capacity” means the capability of a specified section of Rail Infrastructure to accommodate Train Services within a specified time period after providing for QR’s reasonable requirements for the exclusive utilisation of that specified section of Rail Infrastructure for the purposes of performing activities associated with the repair or enhancement of the Rail Infrastructure, including the operation of work Trains;

“Capacity Analysis” means an assessment of the extent a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access requirements and, if the Available Capacity is not sufficient for the proposed Access requirements, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access requirements;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved it must insert the following replacement definition of “Capacity Analysis”:

“Capacity Analysis” means an assessment of the extent a specified section of Rail Infrastructure has Available Capacity and whether that Available Capacity is sufficient for the proposed Access Rights and, if the Available Capacity is not sufficient for the proposed Access Rights, an assessment of Rail Infrastructure expansion or other Capacity enhancement required to meet those proposed Access Rights.

“Capacity Resumption Register” means a register maintained by QR and including the information identified in Paragraph (b) of Subclause 7.5.2;

“Central Queensland Coal Region” means the rail corridors:

- (i) from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and the junction with the Gladstone to Gregory mine corridor;
- (ii) from the port of Gladstone to Gregory mine;
- (iii) from the port of Gladstone to Moura mine;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraphs (ii) and (iii) of the definition of “Central Queensland Coal Region”:

“Central Queensland Coal Region” means the rail corridors:

- (ii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine;**
- (iii) from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine;**

(iv) from the port of Abbot Point to Newlands mine; and

(v) all branch lines directly connecting coal mine loading facilities to the abovementioned corridors;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Changes in Market Circumstances” means changes in circumstances which have occurred in any market and which have had, or will have, a material effect on the future sustainable level of Access Charges.’

“Commencing Date” has the meaning given to that term in Paragraph 2.3(a);

“Committed Capacity” means that portion of the Capacity that is required to meet the Train Service Entitlements of Access Holders;

“Committed Capacity Register” means a register maintained by QR and including the information identified in Paragraph (b) of Subclause 7.5.1;

“Common Corridor” means:

- (i) in relation to transfers of Access Rights for coal carrying Train Services within an Individual Coal System in accordance with Paragraph 7.4.3(c), the part of the Rail Infrastructure that will be utilised by the new Access Holder’s relevant Trains in respect of which the Access Holder’s Relinquishment Fee is to be reduced, provided that where the distance from the new Access Holder’s origin to its destination is greater than the distance from the existing Access Holder’s origin to its destination (‘existing Access Holder’s haul distance’), the Common Corridor will only extend from the new Access Holder’s destination for a distance equal to the existing Access Holder’s haul distance; and
- (ii) in all circumstances other than those described in Paragraph (i) of this definition, that part of the Rail Infrastructure that was utilised by the existing Access Holder for the Train Services for which Access Rights are being relinquished and will also be utilised by the new Access Holder’s Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace paragraph (i) of the definition of “Common Corridor” with the following paragraph:

- (i) in relation to transfers of Access Rights for coal carrying Train**

Services within an Individual Coal System in accordance with Paragraph 7.4.3(c), the part of the Rail Infrastructure that will be utilised by the new Access Holder’s relevant Trains in respect of which the existing Access Holder’s Relinquishment Fee is to be reduced, provided that where the distance from the new Access Holder’s origin to its destination is greater than the distance from the existing Access Holder’s origin to its destination (‘existing Access Holder’s haul distance’), the Common Corridor will only extend from the new Access Holder’s destination (unloading facility) for a distance equal to the existing Access Holder’s haul distance; and

“Common Costs” means those costs associated with provision of Rail Infrastructure that are not Incremental Costs for any particular Train Service using that Rail Infrastructure;

“Confidential Information” means any information, data or other matter disclosed to a party by, or on behalf of, another party where:

- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or
- (ii) the information is marked confidential by a party when disclosed;

provided that such information:

- is not already in the public domain;
- does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking;
- was not in the other party’s lawful possession prior to such disclosure; and
- is not received by the other party independently from a third party free to disclose such information, data or other matter;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Confidential Information”:

“Confidential Information” means any information, data or other matter disclosed to a party by, or on behalf of, another party where:

- (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or**
- (ii) the information is marked confidential by a party when disclosed;**

provided that such information:

- is not already in the public domain;**
- does not become available to the public through means other than a breach of the confidentiality provisions in this Undertaking or any**

confidentiality deed contemplated in Paragraph 3.3(c);

- **was not in the other party’s lawful possession prior to such disclosure; and**
- **is not received by the other party independently from a third party free to disclose such information, data or other matter;**

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example,

- **the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;**
- **the information is now in the public domain through means other than a breach of the confidentiality provisions in this Undertaking or any confidentiality deed contemplated in Paragraph 3.3(c); or**
- **the information has been received by the recipient independently from a third party free to disclose the information.’**

“Connecting Infrastructure” means the infrastructure including, but not limited to, the track, signaling and electrical overhead traction system (if applicable), which connects the Rail Infrastructure to Private Infrastructure, including those elements of the adjoining infrastructure that impact upon QR’s management of the Rail Infrastructure and any part of the Rail Infrastructure that is varied or created to facilitate the creation of the Private Infrastructure;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved it must delete the word ‘adjoining’ and replace it with ‘Private’ in the 3rd line of the definition of “Connecting Infrastructure”.

“Contested Train Path” means a Train Path in respect of which more than one Access Holder has expressed an interest in operating a Train Service in the week in question;

“Corporations Act” means the Corporations Act 2001 (Cth) and the Corporations Regulations made under it, as amended from time to time;

“Costing Manual” means a manual prepared by QR that identifies the matters outlined in Paragraph 3.2.2(a);

“Cross Subsidy” means where one Train Service or combination of Train Services pays Access Charges which are insufficient to meet:

- (i) the Incremental Cost imposed on the Rail Infrastructure by that Train Service or combination of Train Services; and
- (ii) in respect of a combination of Train Services, the Common Costs related specifically to sections of Rail Infrastructure that are used solely for the purpose of Train Services within that combination of Train Services;

and the shortfall is contributed to by another Train Service or combination of Train Services;

“Customer” means a person or entity that the Access Holder or Access Seeker is providing or intending to provide Train Services for or on behalf of, and for the purpose of providing such Train Services to the Customer, the Access Seeker or Access Holder is acquiring or has acquired Access Rights to the Rail Infrastructure except, for the purposes of Subclause 7.4.4 and Paragraph 5.3(a), where “Customer” has the more limited meaning of a person or entity that has a rail haulage agreement with the Access Holder in respect of some or all of the Access Rights subject to the Access Holder’s Access Agreement;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the words ‘and paragraph 5.3(a)’ from the definition of “Customer”.

“Cyclic Traffic” means traffics whose Train Service Entitlements are defined in terms of a number of Train Services within a particular period of time, for example, a year, month or week. Coal traffic is an example of such traffic;

“Daily Train Plan” or “DTP” means that document detailing the scheduled times for all Train Services and any Planned Possessions for a particular day on a specified part of the Rail Infrastructure;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Daily Train Plan”:

“Daily Train Plan” or “DTP” means that document detailing the scheduled times for all Train Services and any Planned Possessions, Urgent Possessions and Emergency Possessions for a particular day on a specified part of the Rail Infrastructure;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Declared Service” means the service that is declared under the Act in accordance with s.4 of the Queensland Competition Authority Regulation;’

“Depreciated Optimised Replacement Cost” means the value of assets determined in the following manner:

- (i) the replacement value of the assets will be assessed as the cost of the modern engineering equivalent replacement asset;
- (ii) optimisation of the asset base will occur, but such optimisation will only consider whether or not the infrastructure standard and infrastructure capacity are excessive, given the current and likely future requirements of Access Holders; and
- (iii) depreciation of the optimised replacement asset value will be undertaken on a straight line basis over the useful life of the assets;

“Dispute” has the meaning given to that term in Paragraph 4.7.1(a);

“Draft Amending Undertaking” means a document specifying amendments to the relevant provisions of this Undertaking, which is submitted to the QCA in the circumstances envisaged in Part 5 of the Act;

“Efficient Cost” means the cost for each Year during the Evaluation Period, that reflects the cost that would be reasonably expected to be incurred by a Railway Manager adopting efficient work practices in the provision of the Rail Infrastructure to the required service standard, having regard to any matters particular to the environment in which QR operates, and including any transition arrangements agreed between QR and the QCA to reflect the transition from QR’s actual cost to that efficient cost;

“Emergency Possession” is similar to Planned Possessions except that these possessions are required to rectify serious faults with the Rail Infrastructure that are considered dangerous to either Access Holders and/or QR employees, or where severe speed restrictions have been imposed, affecting the scheduled Train Services of Access Holders. The possession must be carried out less than 7 days from the detection of the problem.

“Environmental Authorities” has the meaning given to that term in the *Environmental Protection Act 1994 (Qld)*;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Environmental Authorities”:

“Environmental Authorities” has the meaning given to that term in the EPA Act.’

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition of “Environmental Harm”:

- **“Environmental Harm” means serious or material environmental harm or environmental nuisance as defined in the EPA Act;**

“Environmental Investigation and Risk Management Report” or **“EIRMR”** has the meaning given to it in Paragraph 8.2.1(a);

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Environmental Investigation and Risk Management Report”:

“Environmental Investigation and Risk Management Report” or “EIRMR” is a report containing the matters referred in Paragraph 8.2.1(a);

“Environmental Laws” means all planning, environmental, health, toxic, contaminating materials and dangerous goods, waste disposal or pollution laws, environmental protection

policies and relevant approved codes of practice and the conditions of all licences, approvals, consents, permissions or permits issued there under or amended from time to time;

“Environmental Management System” means a plan of management to address all environmental risks and to ensure compliance with all Environmental Laws and licenses;

“EPA” means the Environmental Protection Authority - an authority established under the *Environmental Protection Act 1994 (Qld)*;

“EPA Act” means the *Environmental Protection Act 1994 (Qld)*;

“Evaluation Period” means:

- (i) when in reference to an individual Train Service, the period which is equal to the length of the expected duration of the existing or proposed Access Agreement in respect of the relevant Train Service;
- (ii) when in reference to a combination of Train Services for the purpose of determining a Reference Tariff to apply for some or all of those Train Services, the period for which that Reference Tariff will apply; or
- (iii) when in reference to a combination of Train Services other than referred to in Subparagraph (ii) of this definition, the period which is equal to the length of the expected duration of the longest existing or proposed Access Agreement in respect of any of the Train Services comprising the combination of Train Services, provided that such period does not exceed ten (10) years;

“Field Incident Management” means the field management of incidents and accidents occurring on or affecting the Rail Infrastructure;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Financial Statements” has the meaning given to that term in Paragraph 3.2.1(a).’

“Force Majeure Event” means any cause, event or circumstance or combination of causes, events or circumstances which:

- (a) is beyond the reasonable control of the affected party; and
- (b) by the exercise of due diligence the affected party was not reasonably able to prevent or is not reasonably able to overcome;

and includes:

- (i) compliance with a lawful requirement of an Authority or an order of any court having jurisdiction other than where that requirement or that order results from any act or omission of the affected party ;
- (ii) a strike, lockout, stoppage, go slow, labour disturbance or other such industrial action, whether or not the parties are a party to such industrial action or would be able to influence or procure the settlement of such industrial action;

- (iii) act of God;
- (iv) war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, blockade or civil commotion;
- (v) equipment failure or breakdown where such failure or breakdown could not have been prevented by Good Engineering Practices;
- (vi) malicious damage or sabotage;
- (vii) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
- (viii) failure of electricity supply from the State electricity grid;
- (ix) delay, restraint, restriction, embargo or other material adverse effect of any Authority;
- (x) fire, flood, earthquake, washaway, landslide, explosion or other catastrophe, epidemic and quarantine restriction; and
- (xi) delay of a supplier due to any of the foregoing;

“Good Engineering Practices” means, in respect of any undertaking in any circumstances, the exercise of that degree of care, foresight, prudence and skill that would reasonably and ordinarily be expected from a competent, skilled and experienced person in the same type of undertaking in the same or similar circumstances;

“Healthy Train Service” means a Train Service that has experienced no cumulative delay, within an Agreed Threshold, attributable to an Above Rail Delay or Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

“Incremental Costs” means those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, and where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Incremental Costs”:

“Incremental Costs” means those costs of providing Access, including capital (renewal and expansion) costs, that would not be incurred (including the cost of bringing expenditure forward in time) if the particular Train Service or combination of Train Services (as appropriate) did not operate, where those costs are assessed as the Efficient Costs and based on the assets reasonably required for the provision of Access;

“Indicative Access Proposal” means a non-binding response from QR to an Access Application, prepared in writing and including the information set out in Clause 4.3;

“Individual Coal System” means any one of the following:

- (i) all coal carrying Train Services operating to or from the port of Abbot Point on the Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (ii) all coal carrying Train Services operating to or from the ports of Hay Point or Dalrymple Bay on the Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and Oaky Creek mine and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines south of Oaky Creek;
- (iii) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura;
- (iv) all coal carrying Train Services operating to or from the Stanwell Power Station on the Rail Infrastructure comprising the rail corridor from the Stanwell Power Station to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek and the corridor to Moura; or
- (v) all coal carrying Train Services operating to or from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) on the Rail Infrastructure comprising the rail corridor from the port of Gladstone to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Blackwater.

“Infrastructure Service Providers” means those parties who provide maintenance, construction and other related services in respect of the Rail Infrastructure;

“Initial Capacity Assessment” means a preliminary Capacity Analysis undertaken in a manner to give an indicative assessment of Available Capacity only and which will require further analysis as part of the final Capacity Analysis;

“Insolvent” means where one of the following events has happened in relation to the Access Seeker:

- (i) the Access Seeker is unable to pay all its debts as and when they become due and payable or it has failed to comply with a statutory demand as provided in Section 459F(1) of the Corporations Act;
- (ii) a meeting is convened to place it in voluntary liquidation or to appoint an administrator, unless the resolution is withdrawn within fourteen (14) days or the resolution fails to pass;
- (iii) an application is made to a court for it to be wound up and the application is not dismissed within one month;
- (iv) the appointment of a controller (as defined in the Corporations Act) of any of its assets, if that appointment is not revoked within fourteen (14) days after it is made; or

- (v) the Access Seeker proposes to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement (v) of the definition of “*Insolvent*”:

- (v) **‘the Access Seeker resolves to enter into or enters into any form of arrangement (formal or informal) with its creditors or any of them, including a deed of company arrangement’.**

“*Interface Coordination Plan*” means a plan that identifies the procedures to be followed and the responsible officers from both QR and the Access Holder, in respect of all regular operational interfaces between the parties that arise in the exercise of rights and the performance of obligations under the Access Agreement other than those specified in the Network Management Principles;

“*Interface Risk Assessment*” means an assessment that ensures that the Interface Risks are properly managed within a risk management framework and which will identify all reasonably foreseeable hazards related to the Interface Risks, assess the risks of such hazards occurring and the implications of such hazards occurring as well as nominating suitable control mechanisms to manage the Interface Risks;

“*Interface Risk Management Plan*” or **“*IRMP*”** means a document that identifies the Interface Risks associated with the Access Seeker’s proposed operations and outlines both the control mechanisms agreed between QR and an Access Seeker to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “*Interface Risk Management Plan*”:

“*Interface Risk Management Plan*” or **“*IRMP*”** means a document that identifies the Interface Risks associated with the Access Seeker’s or Access Holder’s proposed operations and outlines both the control mechanisms agreed between QR and an Access Seeker or Access Holder to ensure those Interface Risks are managed to an acceptable level, and the parties responsible for implementing those controls and ensuring they remain effective;

“*Interface Risk Management Process*” means a risk management framework to evaluate and address Interface Risks, conducted collaboratively by QR and an Access Seeker;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert words ‘or Access Holder’ at the end of the definition of “*Interface Risk Management Process*”.

“Interface Risks” means all risks associated with the hazards (excluding environmental hazards and risks) arising from the interaction between the Access Seeker’s proposed operations and:

- (i) the Rail Infrastructure;
- (ii) the operation of other Train Services; and
- (iii) any other activities on the Rail Infrastructure that affect QR staff or QR’s interfaces with members of the public;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the words ‘or Access Holder’s’ after ‘Access Seeker’s’ in the definition of “Interface Risks”.

“Major Periodic Maintenance” means activities that renovate the Rail Infrastructure to retain it in a functional condition. It is completed on track sections at intervals of more than one year, and includes activities such as re-railing, rail grinding, resurfacing, re-signaling, communications upgrades, renovating structures, ballast cleaning and re-sleepering;

“Master Train Plan” or “MTP” means that document detailing the scheduled times as advised by QR from time to time for all Train Services and any Planned Possessions on a specified part of the Rail Infrastructure, where such scheduled times remain unchanged from week to week;

“Material Default” means:

- (a) repeated failure to comply with any non trivial terms and/or conditions of a relevant agreement in accordance with Subparagraph 4.6(c)(ii); or
- (b) any breach of a fundamental term and/or condition of a relevant agreement in accordance with Paragraph 4.6(c)(ii), where a fundamental term is one that, if breached, gives rise to a remedy of termination;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Material Default”:

“Material Default” means:

- (a) **repeated failure to comply with any non trivial terms and/or conditions of a relevant agreement, where a relevant agreement is as described in accordance with Subparagraph 4.6(c)(ii); or**
- (b) **any breach of a fundamental term and/or condition of a relevant agreement, where a relevant agreement is as described in accordance with Paragraph 4.6(c)(ii), where a fundamental term is one that, if breached, gives rise to a remedy of termination;**

“Material Environmental Harm” means material environmental harm as defined in the EPA Act;

“Metropolitan Region” means the Rail Infrastructure bounded to the north by Nambour and to the west by Rosewood;

“Negotiation Cessation Notice” has the meaning given to that term in Paragraph 4.6(a);

“Negotiation Period” means the period during which the terms and conditions of an Access Agreement will be negotiated and which commences upon the Access Seeker providing QR with a notification of intent to proceed with negotiations pursuant to Clause 4.4 and concludes upon any of the events set out in Paragraph 4.5.1(c);

“Network Access” means the business group established within QR to manage the provision of Below Rail Services with the exception of stations and platforms;

“Network Management Principles” are the principles set out in Schedule G;

“Noise Planning Levels” means the planning levels for railways referred to in the Environmental Protection (Noise) Policy 1997;

“Nominated Weekly Train Services” means, for a Cyclic Traffic, the number of Train Services that an Access Holder has an entitlement to operate during any one week period, as specified in its Train Service Entitlement;

“Operating Plan” is a description of how the proposed Train Services are to be operated, including the matters identified in Schedule K;

“Operational Constraint” means any restriction on the use of any part of the Rail Infrastructure that impacts adversely on Train Services, including but not limited to speed restrictions, load restrictions, Planned Possessions, Emergency Possessions or signaling or overhead restrictions;

“Other Rail Infrastructure” has the meaning given to that term in the *Transport Infrastructure Act 1994 (Qld)*;

“Out-Of-Course Running” means the circumstances that occur when the actual running of one or more Train Service/s differs, by more than the relevant Agreed Threshold/s, from that provided in the DTP;

“Planned Possessions” means the temporary closure and/or occupation by QR of part of the Rail Infrastructure, including but not limited to closure of track or isolation of any electrical overhead traction system, for the purpose of carrying out infrastructure maintenance, enhancement, or other work on or in the proximity of the Rail Infrastructure which may affect the safety of any person or property where such closure or occupation is entered into the MTP and adversely impacts upon the operation of Train Services;

“Published Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, established by QR in accordance with Clause 6.3.2, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition of “Published Reference Tariff”.

“Preliminary Information” means that information that QR will be required to provide to an Access Seeker, if and to the extent requested by the Access Seeker, where the scope of such information is as set out in Schedule D;

“Private Infrastructure” means the infrastructure, including but not limited to the track, signaling and electrical overhead traction system (if applicable) for which a party other than QR is the Railway Manager (whether or not they are Accredited);

“Procedural Breach” means a breach of a provision of this Undertaking where:

- (i) the provision obliges QR to comply with a procedural or administrative matter; and
- (ii) the effect of the breach would not reasonably be expected to have any significant, adverse impact on an Access Seeker or Access Holder;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition of “Procedural Breach”.

“QCA” means the Queensland Competition Authority as established by the Act;

“Quarter” means the periods of three (3) months commencing 1 July, 1 October, 1 January and 1 April;

“Queensland Transport” means the Department of Transport for the State of Queensland;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

““QR” means Queensland Rail.’

“QR Rollingstock Interface Standards” are those standards set by QR for the purpose of defining the minimum requirements for Rollingstock to safely operate on the Rail Infrastructure;

“QR’s Code of Practice for Railway Noise Management” means QR’s code of practice for railway noise management approved under the *Environmental Protection Act 1994*;

“QR Operational Business Groups” means business groups within QR that are separate from Network Access and that undertake the operation of Train Services for transporting passengers or freight for reward;

“Rail Infrastructure” means Rail Transport Infrastructure as defined in the *Transport Infrastructure Act 1994 (Qld)* for which QR is the Railway Manager, except that the term does not include the track and associated infrastructure on those parts of the network not identified as the responsibility of Network Access in Schedule A;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Rail Infrastructure”:

“Rail Infrastructure” means Rail Transport Infrastructure, except that the term does not include the track and associated infrastructure on those parts of the network not identified as the responsibility of Network Access in Schedule A but, for the purpose of clarity, does include all stations and platforms;’

“Railway Manager” has the meaning given to that term in the *Transport Infrastructure Act 1994 (Qld)*;

“Railway Operator” has the meaning given to that term in the *Transport Infrastructure Act 1994 (Qld)*;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Rail Transport Infrastructure” means rail transport infrastructure as defined in the TIA Act for which QR is the Railway Manager;’

“Reduction Factor” means:

A / B

Where:

A = the annual train kilometres over the Common Corridor attributable to the new Access Holder’s Trains in respect of which Access Rights could not have been provided without using the whole or part of the Access Rights relinquished by the existing Access Holder; and

B = the annual train kilometres over the Rail Infrastructure attributable to the Train Services for which the existing Access Holder is seeking to relinquish Access Rights;

“Reference Tariff” is either a Published Reference Tariff or an Authorised Reference Tariff;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Reference Tariff”:

“Reference Tariff” is an Access Charge applicable for a specified Reference Train Service, established by QR and authorised by the QCA in accordance with Subclause 6.3.2, the purpose of which is to provide information to Access Seekers as to the likely level of Access Charge for Train Services of a similar type as the specified Reference Train Service;’

“Reference Train Service” means a notional Train Service identified in respect to a Reference Tariff and conforming to certain criteria, including carrying a specified commodity type, operating between specified geographical areas and conforming to specified technical characteristics, operational characteristics and contract terms and conditions;

“Related Party” has the meaning given to Related Body Corporate in the Corporations Act;

“Relinquishment Fee” means:

- (i) for a Train Service that is of a type subject to a Reference Tariff, the amount that would be payable over the following two (2) year period as Access Charges for the relevant Train Services on the basis that the Access Holder does not seek to operate the relevant Train Services and the take or pay components of the Access Charge is fully applicable to the Train Service; and
- (ii) for a Train Service that is of a type not subject to a Reference Tariff, the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as the result of operation of the relevant Train Services and payment of the applicable Access Charge;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement definition of "Relinquishment Fee":

"Relinquishment Fee" means:

- (i) for coal carrying Train Services, the amount that would be payable over the following two (2) year period if the Access Holder were to pay 40% (forty percentage points) of the Access Charge that would be payable if it operated the relevant Train Services,**
- (ii) for a Train Service that is of a type subject to a Reference Tariff other than those nominated in Subparagraph (i) of this definition, the amount that would be payable over the following two (2) year period as Access Charges for the relevant Train Services on the basis that the Access Holder does not seek to operate the relevant Train Services and the take or pay components of the Access Charge are fully applicable to the Train Service; and**
- (iii) for a Train Service that is of a type not subject to a Reference Tariff, the amount that would have been contributed over the following two (2) year period to the Common Costs of providing the Rail Infrastructure as the result of operation of the relevant Train Services and payment of the applicable Access Charge;**

"Revenue Limit" is the maximum revenue that QR should be entitled to earn from the provision of Access to the relevant Train Service(s) over the Evaluation Period;

"Rollingstock" means locomotives, carriages, wagons, rail cars, rail motors, light rail vehicles, light inspection vehicles, rail/road vehicles, trolleys and any other vehicle that operates on or uses the Track;

"Rollingstock Configuration" means the description of the combination of Rollingstock comprising a Train including identification number and gross mass of individual items of Rollingstock and the order in which those Rollingstock items are placed in the Train;

"Rollingstock Interface Standards" are the minimum standards relating to the interface between Rollingstock and the Rail Infrastructure with which the Rollingstock and Rollingstock Configurations must comply in order for them to be able to be operated on the relevant parts of the Rail Infrastructure;

"Safety Management System" means:

- (i) in respect of a Railway Operator, a system developed by the Railway Operator to manage all risks associated with the operation of Train Services including specifically those risks identified in the relevant Interface Risk Assessment; and
- (ii) in respect of a Railway Manager, a system developed by the Railway Manager to manage all risks associated with the provision of Rail Infrastructure and safe management of Train operations on the Rail Infrastructure, including specifically those risks identified in Interface Risk Assessments undertaken with Access Seekers and Access Holders;
- (iii) and which forms a basis upon which the Railway Operator or Railway Manager becomes Accredited;

“Safety Regulator” means the Chief Executive of Queensland Transport (or his delegate) operating in accordance with Part 4 of the *Transport Infrastructure Act 1994*;

“Safety Standards” means all standards relating to safety, including occupational health and safety, established in published guidelines, industry practice or QR policies and all standards relating to safety, including occupational health and safety, prescribed by any laws;

“Safeworking Procedures” means the procedures and systems, including supporting communications systems, for the safe operation of Trains and protection of work sites on the Rail Infrastructure;

“Scheduled Train Path” means, for a Timetabled Traffic, the entitlement of an Access Holder, as identified in its Train Service Entitlement, to use a specified portion of the Rail Infrastructure at the times and between the locations specified in the relevant MTP, so as to allow the passage of one Train;

“Serious Environmental Harm” means serious environmental harm as defined in the EPA Act;

“Stand Alone Costs” means those costs that QR would incur if the relevant Train Service(s) was (were) the only Train Service(s) provided Access by QR, and where those costs are assessed as the Efficient Costs and on the basis of the assets reasonably required for the provision of Access, and **“Stand Alone”** has a similar meaning;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

“Standard Access Agreement” means a pro forma Access Agreement incorporating terms and conditions that are consistent with Schedule E;

“Standard Gauge” means a nominal gauge between rails of 1435 mm;

“State” means the state of Queensland;

“Substantive Breach” means a breach of the Undertaking that is not a Procedural Breach;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the definition of "Substantive Breach".

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following definition:

"Support Staff" means the person or persons who provide clerical and administrative assistance to the QR Board or the nominated manager, as the case may be;

"System-wide Requirements" means requirements, specified in Access Agreements, which depend, for their operability and efficacy, on their acceptance by all parties operating on the Rail Infrastructure in the same system;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement definition of "System-wide Requirements":

"System-wide Requirements" means the Network Management Principles, possession protocols, Interface Coordination Plan, the Rollingstock Interface Standards, Safeworking Procedures and Safety Standards, QR emergency procedures and QR's investigation procedures;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following definition:

"Term" means the period between Commencing Date and the Terminating Date.'

"Terminating Date" has the meaning given to that term in Paragraph 2.3(b);

"Third Party" means a party other than QR;

"Timetabled Traffic" means traffics, the Train Service Entitlement in respect of which, are defined in terms of a specified Train Path on a particular day and/or week;

"Track" means that part of the Rail Infrastructure comprising the rail, ballast, sleepers and associated fittings upon which Trains operate;

"Train" means any configuration of Rollingstock operating as a unit on the Track;

"Train Controller" means a person performing Train Control Services;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the

words ‘from within a Train Control Centre’ at the end of the definition of “*Train Controller*”.

“*Train Control*” has a related meaning to Train Control Services;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition of “*Train Control*”.

“*Train Control Services*” means the management and monitoring of Train movements and of all other operation of Rollingstock on the Rail Infrastructure and of any activities affecting or potentially affecting such Train movements or Rollingstock operation. Train Control Services specifically include:

- (i) recording Train running times on Train diagrams and in QR’s information systems;
- (ii) reporting of incidents occurring on the Rail Infrastructure;
- (iii) managing incidents occurring on the Rail Infrastructure from within a Train Control centre; and
- (iv) exchanging information with Access Holders;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the words ‘and “*Train Control*” has a related meaning’ at the end of the definition of “*Train Control Services*”.

“*Train Path*” means the occupation of a specified portion of Rail Infrastructure, which may include multiple sections in sequential order, for a specified time;

“*Train Service*” means the operation of a Train between specified origins and destinations on the Rail Infrastructure;

“*Train Service Entitlement*” means an Access Holder’s entitlement under an Access Agreement to operate a specified number and type of Train Services over the Rail Infrastructure within a specified time period and in accordance with specified scheduling constraints for the purpose of either carrying a specified commodity or providing a specified transport service, and, until such time that Access Agreements have been developed for all existing QR operated Train Services, includes the Capacity that is demonstrably required for the purpose of QR operated Train Services;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the words ‘and for which Access Charges are applicable’ at the end of the definition of “*Train Service Entitlement*”.

“*Transport Service Payments*” means payments to QR from Queensland Transport in consideration of specified Below Rail Services for nominated sections of Rail Infrastructure;

“Unallocated Delay” means a delay to a Train Service from its Train Path scheduled in the DTP that is neither an Above Rail Delay nor a Below Rail Delay;

“Undertaking” has the meaning given to that term in the Act;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Undertaking”:

“Undertaking” means this document (including schedules) which is an undertaking for the purposes of the Act;’

“Urgent Possession” is similar to a Planned Possession, except that these possessions are required to correct problems that are considered potentially dangerous and as a result, the possession must be carried out between 7 days and 3 months from the detection of the problem;

“Unhealthy Train Service” means a Train Service that has experienced a cumulative delay, outside an Agreed Threshold, attributable to an Above Rail Delay or an Unallocated Delay, either on entry or whilst on the Rail Infrastructure;

“Yard Control” means the control of Train movements, and other activities affecting Train movements, at those locations that are not under the direct control of a Train Controller;

“Weekly Train Plan” or “WTP” means a seven (7) day plan that details the scheduled times for all Train Services and Planned Possessions on a specified part of the Rail Infrastructure on each day of the relevant week;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition of “Weekly Train Plan”:

“Weekly Train Plan” or “WTP” means a seven (7) day plan that details the scheduled times for all Train Services and Planned Possessions, Urgent Possessions and Emergency Possessions on a specified part of the Rail Infrastructure on each day of the relevant week; and

“Year” means the period of twelve (12) months commencing 1 July.

10.2 INTERPRETATION

In this Undertaking unless the context otherwise requires:

- (a) where reference is made to a position or group name, and that position or group name changes during the course of the Undertaking, provided the position or group retain responsibility for the same or substantially the same tasks, the reference will be taken to cover the changed name;
- (b) reference to a person includes any other entity recognised by law and vice versa;
- (c) reference to “dollars” or “\$” means a reference to Australian dollars;
- (d) words importing the singular number includes the plural number and vice versa;

- (e) words importing any gender include the other gender;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) any reference to any parties by their defined terms includes that party’s executors, administrators, permitted assigns or permitted subcontractors or, being a company, its successors, permitted assigns or permitted subcontractors and the obligation of any party extends to those persons;
- (h) a reference to conduct includes a benefit, remedy, discretion, authority or power;
- (i) a reference to conduct includes any omission and any representation, statement or undertaking, whether or not in writing;
- (j) every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligations or derives any benefit binds or enures for the benefit of those persons jointly and each of them severally;
- (k) clause headings are for reference purpose only;
- (l) any reference to the words “include” or “including” must be read as if they are followed by the words “without limitation”;
- (m) any reference to time is to local time in Queensland;
- (n) reference to a Part, Clause, Subclause, Paragraph, Subparagraph or Schedule is a reference to the corresponding Part, Clause, Subclause, Paragraph, Subparagraph or Schedule to this Undertaking as amended or replaced from time to time;
- (o) this or any other document or agreement includes the document or agreement as varied, amended or replaced from time to time;
- (p) reference to any legislation includes all legislation under and amendments to that legislation and any legislation passed in substitution for that legislation or incorporating any of its provisions to the extent that they are incorporated;
- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions of the Undertaking prevail.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 10.2(q) and new paragraphs (r), (s) and (t)(i) and (ii):

- (q) if there is any inconsistency between matters contained in a Schedule and the body of this Undertaking, the provisions in the body of the Undertaking prevail.**
- (r) ‘QR may be taken to have engaged in conduct for a purpose referred to in Paragraph 6.1.2(a) or Subclause 6.1.4 even though, after all the evidence has been considered, the existence of the relevant purpose is ascertainable only by inference from the conduct of QR or other relevant circumstances.**
- (s) where in this Undertaking QR is prohibited from engaging in conduct for the**

purpose of preventing or hindering Access, QR will be taken to have engaged in such conduct if, having regard to the criteria set out in Paragraph 10.2(t), QR provides or proposes to provide Access to itself or a Related Party on more favourable terms than the terms on which QR provides Access to a competing Third Party Access Holder, or proposes to provide Access to a competing Third Party Access Seeker.

- (t) for Paragraph 10.2(s), the criteria is the terms, taken as a whole, on which QR provides or proposes to provide Access to itself and the competitor having regard, in particular to:**
- (i) the Access Charge to be paid by QR and the competitor; and**
 - (ii) the nature and quality of the Access provided or proposed to be provided to QR and the competitor.**

SCHEDULE A

Rail Access Line Diagrams

QCA's Position

The QCA approved the Rail Access Line Diagrams without amendment.

SCHEDULE B

Confidentiality Deed

BETWEEN

QUEENSLAND RAIL (ABN 47564 947 264) of 305 Edward Street, Brisbane in the State of Queensland

(“QR”)

AND

(“Access Seeker”)

RECITALS

- A. The Access Seeker has made or intends to make enquiries of QR regarding the provision of Access and the parties may commence negotiation of the terms of an Access Agreement under which QR will provide the Access Seeker with Access to the Rail Infrastructure;
- B. In the course of the Access Seeker’s enquiry and/or during the negotiations for the provision of Access to the Access Seeker and/or during the term of the Access Agreement it is envisaged that the parties will have to provide each other with Confidential Information;
- C. This deed sets out the terms upon which the parties will disclose Confidential Information to each other.

OPERATIVE PROVISIONS

1 Definitions

- 1.1 Unless the context otherwise requires, terms defined in QR’s Undertaking have the same meanings when used in this Agreement, provided that the term “Confidential Information” where used in this deed shall be limited to Confidential Information that is provided in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or in the course of the Access Agreement that results from those Access negotiations.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement clause 1.1:

‘Unless the context otherwise requires and subject to Clause 1.2, terms defined in the Undertaking have the same meanings when used in this deed.’

- 1.2 “Permitted Purpose” means a purpose associated with negotiations for the provision of Access to the Access Seeker or the management and implementation of resulting Access Rights.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the

following replacement clause 1.2:

‘In this deed, the following words and expressions shall have the respective meanings:

“Confidential Information” means:

- (i) any information, data or other matter disclosed to a party by, or on behalf of, another party in contemplation of, or during the course of, the negotiations for Access in respect of which this deed was signed, or during the term of the Access Agreement that results from those Access negotiations, where:**
 - (i) the disclosure of the information by the recipient might reasonably be expected to affect the commercial affairs of the owner of the Confidential Information; or**
 - (ii) the information is marked confidential by a party when disclosed; and**
- (ii) any information or data collected by Network Access or an Access Holder in the performance of an Access Agreement where the disclosure of the information by the collector might reasonably be expected to affect the commercial affairs of the other party to the Access Agreement, which party shall be deemed to be the owner of such Confidential Information;**

provided that such information;

- is not already in the public domain;**
- does not become available to the public through means other than a breach of the confidentiality provisions in this deed;**
- was not in the other party’s lawful possession prior to such disclosure; and**
- is not received by the other party independently from a third party free to disclose such information, data or other matter;**

and provided further that information will cease to be Confidential Information if the information has ceased to retain its confidential nature, for example:

- the disclosure of the information by the recipient would no longer reasonably be expected to affect the commercial affairs of the owner of the information;**
- the information is now in the public domain through means other than a breach of the confidentiality provisions in this deed; or**
- the information has been received by the recipient independently from a third party free to disclose the information;**

”Permitted Purpose” means a purpose associated with responding to an Access Application, negotiating an Access Agreement or administering an Access Agreement.

“Undertaking” means the access undertaking prepared by QR and approved by the

QCA in accordance with the Act.’

2 Disclosure and Use of Confidential Information

2.1 Each party (“Recipient”) undertakes to:

- (a) keep confidential;
- (b) not disclose; and
- (c) use only for a Permitted Purpose,

any Confidential Information of the other party (“Owner”) unless:

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace paragraphs 2.1(a), (b) and (c) with the following paragraph:

‘Each party (“Recipient”) undertakes to keep confidential and not disclose any Confidential Information of the other party (“Owner”) or permit any person employed or engaged by it to disclose any such Confidential Information to any person (including other individuals employed or engaged by that party) except in accordance with this deed or the Undertaking, and to use Confidential Information of the other party only for a Permitted Purpose, unless:’

- (d) the Owner provides its prior written approval, which approval shall not be unreasonably withheld; or
- (e) the disclosure and/or use is:
 - (i) required or compelled by any law;
 - (ii) required or compelled by any order of a court;
 - (iii) required or compelled by notice validly issued by any Authority;
 - (iv) necessary for the conduct of any legal proceedings;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace sub-paragraph 2.1(e)(iv) with the following:

‘necessary for the conduct of any legal proceedings, including any dispute resolution process under this Undertaking or the Act;’

- (v) required under any stock exchange listing requirement or rule;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following:

‘(vi) to the Safety Regulator;’
--

- (vi) to the Recipient’s solicitors, barristers, or accountants under a duty of confidentiality;
- (vii) to the Recipient’s banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, if such banker or financial institution has executed a legally enforceable confidentiality deed in favour of the Owner; or
- (viii) requested by QR’s shareholding ministers.

2.2 For the purposes of Clause 2.1(d), it is deemed to be unreasonable for QR to refuse to approve the disclosure of its Confidential Information by an Access Seeker to that Access Seeker’s external consultant/s, independent adviser/s or Customer/s where the Access Seeker enters into a contract with the recipient of the Confidential Information on the following terms:

- (a) specifying the individual/s employed by the recipient who may have access to any QR Confidential Information provided under the contract;
- (b) specifying that those individual/s must not disclose any QR Confidential Information provided under the contract to any other person unless otherwise agreed by QR; and
- (c) if required by QR, requiring the recipient to execute a confidentiality deed in favour of QR on terms and conditions reasonably satisfactory to QR.

2.3 For the purposes of Clause 2.1(d), it is deemed to be unreasonable for the Access Seeker to refuse to approve the disclosure of its Confidential Information by QR to QR’s external consultant/s or independent adviser/s where QR enters into a contract with the recipient of the Confidential Information on the following terms:

- (a) advising the recipient that the duty of confidentiality under the contract is owed not just to QR but to Network Access within QR, and that a conflict of interest may exist with respect to the recipient providing services on a related matter to a QR Operational Business Group;
- (b) specifying the individual/s employed by the recipient who may have access to the Access Seeker’s Confidential Information provided under the contract, after receiving the recipient’s assurance that those individuals are not, and will not at the time of the contract with Network Access, be working for a QR Operational Business Group on the same or a related matter;

<i>QCA’s Position</i>

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 2.3(b):

‘specifying the individual/s employed by the recipient who may have access to the Access Seeker’s Confidential Information provided under the contract and, where QR has not been able to reasonably avoid appointing an external consultant or independent advisor to review, and provide advice in relation to Confidential Information and that same external consultant or independent advisor is also advising a QR Operational Business Group in relation to the same or a related matter, after receiving the recipient’s assurance that those individuals are not, and

will not for as long as the information remains Confidential Information, be working for a QR Operational Business Group on the same or a related matter.’

- (c) specifying that those individual/s must not disclose the Access Seeker’s Confidential Information provided under the contract to:
- (i) any person outside of QR; or
 - (ii) any QR staff other than those within Network Access, except where such disclosure is necessary for the purpose of the contract. In such circumstances, the recipient will advise the Network Access project officer responsible for the contract and the project officer will ensure that any such disclosure occurs in accordance with QR’s obligations relating to the management of Confidential Information as set out in Clause 3.3 of the Undertaking; and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 2.3(c)(ii):

- (ii) **‘any QR staff other than those within Network Access.’**

- (d) if required by the Access Seeker, requiring the recipient to execute a confidentiality deed in favour of the Access Seeker on terms and conditions reasonably satisfactory to the Access Seeker.
- 2.4 (a) QR will not disclose the Access Seeker’s Confidential Information to a QR Operational Business Group unless:
- (i) the Access Seeker approves such disclosure;
 - (ii) such disclosure is required for the purpose of responding to an Access Application or administering an Access Agreement in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;
 - (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or
 - (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.
- (b) Network Access will not, where reasonably practicable, disclose the Access Seeker’s Confidential Information to a QR employee where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, Network Access will advise the Access Seeker before providing the Confidential Information to the QR employee.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the

following replacement clause 2.4:

- (a) **‘QR may disclose the Access Seeker’s or Confidential Information to:**
- (i) **individuals within Network access; and**
 - (ii) **the QR Chief Executive, QR Board and their respective Support Staff.**
- (b) **Subject to Clause 2.4(c), QR may disclose the Access Seeker’s Confidential Information to those groups within QR specified in this Paragraph, provided that disclosure to each recipient is limited to the extent necessary to carry out a Permitted Purpose:**
- (i) **Civil Engineering Division, Technical Services Group in relation to Rail Infrastructure issues;**
 - (ii) **Rollingstock Engineering Division, Technical Services Group in relation to Rollingstock or Rollingstock Interface issues;**
 - (iii) **Electrical Engineering Division, Technical Services Group in relation to Rail Infrastructure electrification or electric energy issues;**
 - (iv) **Telecommunications Division, Technical Services Group in relation to communications issues;**
 - (v) **Signal and Operational Systems Division, Technical Services Group in relation to signalling and operational systems issues;**
 - (vi) **Property Division, Corporate Services Group in relation to real property issues; and**
 - (vii) **Infrastructure Services Group employees in management level 2, 3 and 4 in relation to Rail Infrastructure issues.**
- (c) **The Access Seeker may, in an Access Application, give notice to QR that it does not wish QR to disclose its Confidential Information to any one or more of the groups listed in Clause 2.4(b). If the Access Seeker gives such a notice to QR, then:**
- (i) **upon receipt of such notice QR may not disclose Confidential Information to the groups so noted;**
 - (ii) **QR will make reasonable efforts to suggest a reasonable alternate mechanism whereby QR can obtain the information it requires to respond to the Access Application and the Access Seeker will not unreasonably withhold its agreement to this alternate mechanism. If the parties fail to agree on an alternate mechanism either party may seek to resolve the Dispute in accordance with the Dispute resolution process outlined in Clause 4.7 of the Undertaking.**
 - (iii) **all reasonable costs incurred by QR in obtaining information by means of an alternate mechanism agreed in accordance with Clause 2.4(c)(ii) may be recovered by QR from the Access Seeker as a debt due and owing. All relevant timeframes applicable to QR under the Undertaking will be extended by the same number of days as equals the number of days from QR’s receipt of the Access Application to**

QR's receipt of the information it requires to respond to the Access Application; and

(iv) if:

- **the Dispute resolution process determines that no reasonable alternate mechanism exists whereby QR can obtain the information it requires to respond to the Access Application; or**
- **the parties fail to agree on an alternate mechanism but do not seek resolution by the Dispute resolution process;**

QR may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(a) of the Undertaking.

(d) QR may disclose the Access Seeker's Confidential Information to a QR Operational Business Group where:

- (i) the Access Seeker approves such disclosure;**
- (ii) such disclosure is required for a Permitted Purpose in respect of Access to a station or platform, provided that any disclosure is limited to the extent required for this purpose;**
- (iii) such disclosure is required for the purpose of facilitating the performance of Field Incident Management and Yard Control services, provided that any disclosure is limited to the extent required for this purpose; or**
- (iv) such disclosure is required for the purpose of facilitating the performance of scheduling and Train Control Services in the Metropolitan Region, provided that any disclosure is limited to the extent required for this purpose.**

(e) If, for a Permitted Purpose, QR wishes to disclose the Access Seeker's Confidential Information to a QR group not specified in Clauses 2.4(a), (b) or (d), or to a group specified in Clause 2.4(b) on an issue not specified in that Clause, Network Access must:

- (i) obtain the consent of the Access Seeker prior to making the disclosure; and**
- (ii) only disclose the Confidential Information to that QR employee to the extent necessary for the Permitted Purpose.**

(f) Network Access will not, where reasonably practicable, disclose the Access Seeker's Confidential Information to a QR employee where that person is advising one of the QR Operational Business Groups in relation to the same or a related matter. Where such a situation is not reasonably avoidable, notwithstanding the provisions of Clause 2.4(b), Network Access must obtain the consent of the Access Seeker prior to making the disclosure.

(g) If, during the process of responding to an Access Application or negotiating an Access Agreement, Network Access seeks the consent of an Access Seeker for the disclosure of Confidential Information pursuant to Clause 2.4(e) or (f)

and:

- (i) where such consent has been sought during the Negotiation Period and the owner of the Confidential Information refuses its consent to the disclosure of that Confidential Information, or fails to respond to QR's request for consent within thirty (30) days of its receipt of QR's written request, then QR may give a Negotiation Cessation Notice to the Access Seeker, in accordance with Paragraph 4.6(a) of the Undertaking; or
- (ii) where such consent has been sought at any time during the negotiation process (including during the Negotiation Period) and the owner of the Confidential Information fails to respond to QR's request for consent within five (5) days of its receipt of QR's written request (referred to as the "Consent Response Date"), then all relevant timeframes applicable to QR will be extended by the same number of days as the day on which a response is given exceeds the Consent Response Date.

This Paragraph does not apply where Network Access has requested consent to disclose the information to a QR Operational Business Group.

- (h) **If, during the process of administering an Access Agreement, Network Access seeks the consent of the Access Seeker for the disclosure of Confidential Information pursuant to Paragraph 2.4(e) or (f), such consent shall not be unreasonably withheld. If the Access Seeker fails to respond to QR's request for consent within thirty (30) days of its receipt of QR's written requests consent shall be deemed to have been given. This Clause does not apply where Network Access has requested consent to disclose the Confidential Information to a QR Operational Business Group.'**
- (i) **The Access Seeker acknowledges that the Ringfencing Compliance Officer, and QR employees in Internal Audit, Chief Management Accounting Division, Signal and Operational Systems Division and Information Services Division will from time to time, in the course of their duties, have access to the Access Seeker's Confidential Information. QR is permitted to disclose Confidential Information to these employees, to the extent necessary for these employees to perform their duties, without obtaining the consent of the Access Seeker.'**

2.5 For the purpose of this deed, a person who has been a consultant or contractor to either QR or the Access Seeker for a continuous period of at least three months, who works at least an average of 30 hours per week for that party, and who is subject to confidentiality obligations in favour of that party, shall be treated as if they were an employee of that party rather than an external consultant or independent adviser of that party.

3 General Obligations

3.1 Each Recipient acknowledges and agrees that:

- (c) the Confidential Information of the Owner is confidential to the Owner and is and remains at all times the valuable and exclusive property of the Owner;
- (d) the Recipient is responsible for any use or disclosure of Confidential Information which is contrary to the provisions of this deed by persons to whom the Recipient discloses the

Confidential Information, and shall take such steps as may be necessary to prevent any such improper use or disclosure;

- (e) the Recipient shall not copy or reduce into tangible, visible or recorded form or allow to be copied or reduced into tangible, visible or recorded form, any Confidential Information furnished to it by or on behalf of the Owner except to the extent necessary to carry out a Permitted Purpose;
- (f) this deed shall not be construed as assigning any other rights to use Confidential Information, or as granting to the Recipient any licence or other rights relating to any Confidential Information or other intellectual property rights owned by the Owner;
- (g) the Recipient shall secure and protect the Confidential Information received from the Owner from unauthorised disclosure, access or use;
- (h) the Owner may take legal proceedings against the Recipient and/or any third party if there is any actual, threatened or suspected breach of this deed; and
- (i) damages may be inadequate compensation for breach of this deed and, subject to the court's discretion, the Owner shall be entitled to specific performance of this deed and may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this deed.

4 Liquidated Damages

4.1 Subject to Clause 5.1, where the Access Seeker can establish that:

- (a) A QR Operational Business Group is in possession of the Access Seeker's Confidential Information; and
- (b) The Access Seeker has suffered some form of loss or damage as a result of the possession by the QR Operational Business Group of the Confidential Information,

In order for QR's 2001 draft access undertaking to be approved, it must delete paragraph 4.1(b)

QR will pay to the Access Seeker an amount of \$10,000 by way of liquidated damages in full and final settlement of any claim that the Access Seeker may have against QR in respect of the breach, UNLESS QR can establish that the QR Operational Business Group came into possession of the Confidential Information by means other than as a result of a breach by QR of Clause 2.4.

4.2 Any Dispute arising in connection with this Clause may be referred to the QCA. The QCA's review will determine whether QR is liable to pay the complainant the liquidated damages specified in Clause 4.1.

5 Compensation for loss in excess of \$50,000

5.1 If and only if the Access Seeker is able to establish that it has suffered more than \$50,000 loss or damage as a result of a breach by QR of Clause 2.4, this deed shall not preclude the Access Seeker from taking action to recover compensation from QR in any court of competent jurisdiction. In these circumstances the parties agree that QR shall not be liable to the Access Seeker for the payment of liquidated damages in accordance with Clause 4.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and only if' from the first sentence of clause 5.1.

6 General

- 6.1 Nothing in this deed obliges either party to disclose any particular Confidential Information or enter into any further agreement with the other party if it decides, in its absolute discretion, that it is not in its commercial interests to do so.
- 6.2 Unless otherwise terminated by mutual consent in writing, this deed will continue in force notwithstanding:
- (a) any subsequent termination of any discussions or negotiations between the parties; or
 - (b) the return of all copies of the Confidential Information to the Owner.
- 6.3 This deed is personal to the parties and may not be assigned or otherwise transferred in whole or in part without the prior written consent of the other party.
- 6.4 The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements, understandings and undertakings in respect of the Confidential Information.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement clause 6.4:

'The laws of Queensland will govern the construction and performance of this deed and the parties submit to the non-exclusive jurisdiction of the Supreme Court of Queensland. This deed constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all previous agreements, and understandings in respect of the Confidential Information. Nothing in this Deed derogates from any obligation of QR under the Undertaking with respect to the Confidential Information.'

- 6.5 In this deed, references to Clauses are references to Clauses contained in this deed unless otherwise stated.

[Appropriate execution clauses to be included.]

SCHEDULE C

Summary of Information Requirements as part of Access Application

1 ACCESS SEEKER'S NAME AND CONTACT DETAILS

(if the Access Seeker is an unincorporated joint venture, all parties should be identified)

2 COAL & FREIGHT SERVICES

(a) Train Service Description

- Route of operation (include diagram if necessary)
- Required term of Access Agreement
- Method of transporting freight (e.g. containers, louvered wagons, bulk wagons)
- Description of freight
- Net tonnes of product per annum each year of operation, represented on a monthly basis (where monthly railings are not even)

(b) Timetable Requirements

- Whether new service or variation to existing service for the Access Seeker
- Whether new service or variation to existing service on the rail network
- Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term
- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend paragraph 2(b), 4th dash point as follows:

'Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys, where relevant.'

- Requirements for shunting or dwell times enroute, separately for forward and return journeys

(c) Rollingstock Details

- Proposed number of locomotives per Train
- Proposed number of wagons per Train
- Type and class of locomotive

- Mass of each locomotive (includes full sand and fuel load)
 - Type and class of wagons
 - Nominal gross mass of wagon
 - Tare mass of each wagon
 - Tare mass per container
 - Average number of containers per wagon
 - Average proposed load (of product) per wagon
 - Maximum proposed gross tonnes per wagon
 - Maximum axle load
 - Gross tonnes per Train Service, separately for forward and return journeys
 - Total length of train (including locomotives)
- (d) Infrastructure Requirements
- Details of any infrastructure enhancements that may be necessary for operation of service

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend paragraph 2(d) as follows:

'Details of any infrastructure enhancements that may be necessary for operation of service, where known'.

3 PASSENGER SERVICES

- (a) Train Service Description
- Route of operation (include diagram if necessary)
 - Required term of Access Agreement
 - Type of passenger traffic (e.g. long distance, commuter, tourist)
- (b) Timetable Requirements
- Whether new service or variation to existing service for the Access Seeker
 - Whether new service or variation to existing service for the rail network
 - Required frequency of Train Services, including weekly requirements, seasonality variations and any trends over the agreement term

- Preferred departure and arrival windows on preferred days of operation, separately for forward and return journeys
 - Requirements for shunting or dwell times enroute, separately for forward and return journeys
- (c) Rollingstock Details
- Total number of locomotives per Train
 - Total number of carriages per Train
 - Total number of passenger multiple units (PMU) per Train
 - Type and class of locomotive
 - Mass of each locomotive (including full sand and fuel load)
 - Type and class of carriage
 - Nominal gross mass of each carriage
 - Type and class of PMU
 - Average gross mass of PMU
 - Maximum number of vehicles
 - Maximum axle load
 - Total length of Train (including locomotives)
 - Gross tonnes per Train Service, separately for forward and return journeys
 - Maximum operation speed separately for loaded and empty Trains
- (d) Infrastructure Requirements
- Details of any infrastructure enhancements that may be necessary for operation of service

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend paragraph 3(d) as follows:

'Details of any infrastructure enhancements that may be necessary for operation of service, where known'.

SCHEDULE D

Preliminary and Additional Information

PART A. PRELIMINARY INFORMATION

1 Information Pack

Content	Cost	System Definition
(a) Introduction <ul style="list-style-type: none"> • Criteria for use of data • Purpose of document 	\$500.00 per system	Blackwater
(b) Civil Infrastructure <ul style="list-style-type: none"> • Description of the railway • Description of Track • Operational constraints, eg grades and curves 		Brisbane Metropolitan
(c) Signals and Operational Systems <ul style="list-style-type: none"> • Description of safeworking systems 		Central Western
(d) Telecommunications <ul style="list-style-type: none"> • Description of communication system used 		Goonyella
(e) Electric Traction <ul style="list-style-type: none"> • General system description 		Maryborough
(f) Rollingstock Interface Requirements <ul style="list-style-type: none"> • Track gauge • Axle load/s • Train speed/s • Rollingstock gauge • Noise limits 		Moura
(g) Locality Information <ul style="list-style-type: none"> • Terrain information • Climatic conditions 		Mt Isa
(h) Committed Corridor Upgrades		Newlands
(i) Relevant Maps and Drawings (CD version) <ul style="list-style-type: none"> • Corridor maps • Working plan and section drawings 		North Coast Line
(j) Level Crossings <ul style="list-style-type: none"> • Number of level crossings • Type of protection used 		South Western
(k) Train Operations <ul style="list-style-type: none"> • Sectional running times 		Tablelands
		Western

<ul style="list-style-type: none"> • Maximum Train lengths <p>(l) Description of Systems</p> <ul style="list-style-type: none"> • Operational • Safeworking <p>(m) Capacity Information</p> <ul style="list-style-type: none"> • MTP * 		
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QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must be amended to include 'Climatic conditions and resultant system disruptions' in paragraph (g) and 'Incident recovery times' in paragraph (k) of the Information Pack.

* The MTP is provided subject to the following caveats:

- The identity of other Access Holders will not be detailed on the information provided;
- The terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
- The MTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Capacity of the Rail Infrastructure detailed.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement 3rd dot point regarding the MTP:

'The MTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact on the Capacity of the Rail Infrastructure detailed, but QR will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.'

QCA's Position

In order to approve QR's 2001 draft access undertaking, it must insert an additional clause as follows:

2. Access to Rail Corridor*

***This advice will identify if QR does not have authority to authorise Third Party Access seekers to access land upon which Rail Infrastructure on a route nominated by the Access Seeker is situated and, if so, will include the following information:**

- **Identification of the relevant party (including that party's name, address and contact details) that the Third Party Access Seeker would need to obtain approval from to gain access to that land, where this information is reasonably available to QR;**

- Advice as to the nature and extent of the rights, if any, that QR holds in relation to the relevant land; and
- A notice that may be provided to that party identifying that QR has no objection to the Third Party Access Seeker negotiating for access to that land.

2 Rollingstock Interface Standards

Content	Cost
QR Rollingstock Interface Standards *	\$1000.00 per set

* QR Rollingstock Interface Standards are provided subject to the following caveats:

- QR will provide uncontrolled versions of the documents; and
- Changes may occur to the documents subsequent to their provision.

3 Commercial Information

Content	Cost
Authorised Reference Tariffs <ul style="list-style-type: none"> - Central Blackwater - North Goonyella - South Goonyella - West Goonyella - North Blackwater - Gregory Branch via Goonyella - Moura - Newlands - Stanwell 	Nil
Published Reference Tariffs	Nil
Applicable QR Standard Access Agreement	Nil

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must be amended to delete the reference to 'Authorised' and 'Published' Reference Tariffs in Table 3, Commercial Information.

PART B. ADDITIONAL INFORMATION

1 Capacity Information

- (a) The relevant current DTP, assessed in accordance with Paragraph (b) below, for the relevant part of the Rail Infrastructure subject to the following caveats:
- (i) The identity of other Access Holders will not be detailed on the information provided;
 - (ii) The terms and conditions of other Access Holders' Train Service Entitlements will not be detailed; and
 - (iii) The DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Capacity of the Rail Infrastructure detailed.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement paragraph 1(a)(iii):

- (iii) 'The DTP will not show all parts of the Rail Infrastructure, and as such may not show all Train Services that may impact upon the Capacity of the Rail Infrastructure detailed, but QR will note those other parts of the Rail Infrastructure where interaction with other Train Services is most likely to impact on the Capacity of the Rail Infrastructure detailed.'**

- (b) The relevant current DTP will be assessed as:
- (i) for an Access Application in respect of a Timetabled Traffic, the current DTP for the relevant day (or days) of the week; or
 - (ii) for an Access Application in respect of a Cyclic Traffic, the current DTP for a week, unless QR reasonably believes that provision of DTPs show a use of Capacity that is representative of current utilisation.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following paragraph 1(c):

- (c) 'Access to Train Control diagrams, indicating actual running of Train Services against the relevant DTP, for those days for which the DTP has been provided in accordance with paragraph (a) above.'**

2 Information for EIRMR

- (c) All relevant information reasonably available to QR that is required for the purpose of the Access Seeker's EIRMR, in accordance with Paragraph 8.2.1(b).

3 Information for Interface Risk Assessment

- (d) All relevant information reasonably available to QR that is required for the purpose of the Interface Risk Assessment, in accordance with Paragraph 8.1.1(c).

4 Other Information

- (e) Other Information as follows:
 - (i) information required in accordance with Section 101(2) of the Act, to the extent that this information has not already been provided; and
 - (ii) other information that is reasonably required by the Access Seeker in accordance with Section 101(1) of the Act, provided such information is reasonably able to be provided by QR and cannot be reasonably obtained from a source other than QR.

SCHEDULE E

Principles for inclusion in Standard Access Agreement

1 Access Rights

- The Access Agreement will provide for non-exclusive Train Service Entitlements for the operation of Train Services in terms of agreed service levels over the nominated network.
- Long term Train Service Entitlements can be varied only in accordance with agreed scheduling procedures specified in the Access Agreement or as otherwise agreed between the parties. The Network Management Principles should guide the performance of the scheduling function by QR.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the words 'and be incorporated by reference in the Access Agreement' at the end of the second dot point of paragraph 1.

- It is the responsibility of the Access Seeker entering into an Access Agreement with QR to ensure that the operator of Train Services utilising the Access Rights is Accredited.
- Access Agreements will be for a specified term and include a good faith negotiation process for renewal.

2 Access Charges

- Access Charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the Access Agreement. Late payments or credits by either party will bear interest at an agreed default rate.
- The Access Agreement will provide for a fair and reasonable mechanism for dealing with bona fide Disputed invoices.
- The Access Agreement may provide for periodic review of Access Charges.
- Unless otherwise stated, all amounts payable under the Access Agreement are exclusive of GST.
- In appropriate cases QR may require lodgement of a security deposit to secure performance by the Access Holder of its obligations under the Access Agreement having regard to QR's reasonable assessment of the creditworthiness of the Access Holder. Any required security deposit should reflect the cash flow risk that QR has taken on.
- Where there are no security arrangements in place and a user defaults on its payments, QR is entitled to require some form of security deposit equivalent to its financial exposure, where the default was not attributable to a legitimate Dispute.
- An Access Holder paying a cash security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR.

3 Train Service Entitlements

- The Access Holder shall not be entitled to commence Train Services unless and until all provisions of the Access Agreement required to be completed or complied with prior to the commencement of Train Services have been completed or complied with by the due date specified in the Access Agreement. QR will use all reasonable endeavours to cooperate with the Access Holder to facilitate the Access Holder's completion or compliance with such requirements.
- The Access Holder must only operate Trains of the nominated specification for the transport of the nominated product type over the nominated network.
- The Access Agreement will contain provisions regarding the resumption of capacity by QR. Unless otherwise agreed by the parties, the provisions will include objective criteria to assess consistently under-utilised capacity, a test for alternative demand for non-coal traffics and a tailored Dispute resolution process conducted by an expert. Appropriate adjustments will be made to the Access Charges payable following a reduction in Train Service Entitlements.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace the 3rd dot point of paragraph 3 with the following:

'The Access Agreement will contain provisions regarding the resumption of capacity by QR. Unless otherwise agreed by the parties, the provisions will include objective criteria to assess consistently under-utilised capacity, a requirement that there be either a reasonable expectation of a sustained alternative demand or a reasonable expectation of a commercial benefit for the provision and management of the infrastructure sufficiently material to justify the resumption of capacity and a Dispute resolution process conducted by an expert. Appropriate adjustments will be made to the Access Charges payable following a reduction in Train Service Entitlements.'

4 Day-to-Day Train Movements

- QR is to have responsibility for Train Control and shall exercise Train Control having regard to the safe conduct of rail operations on the nominated network.
- QR and the Access Holder shall ensure that the operation of Train Services is in accordance with entry and exit times in the relevant Daily Train Plan unless otherwise permitted by the Network Management Principles or varied in the circumstances specified in the Access Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Access Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).
- The Network Management Principles establish the procedures QR must follow in varying the Daily Train Plan.
- The Access Holder is required to comply with all QR Train Control directions and ensure all Trains and Rollingstock are equipped with appropriate communication systems to comply with the agreed Rollingstock Interface Standards.

5 Train Operations

- The Access Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.
- QR and the Access Holder are to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Access Agreement. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all Railway Operators on the nominated network.
- The Access Holder must obtain certification from an appropriately qualified person whom both parties accept as being competent to provide certification for the Access Holder’s Rollingstock and Rollingstock Configurations. QR has a right to view a certificate of compliance and associated test results from an Access Holder in order to satisfy itself that the Rollingstock and Rollingstock Configurations are as agreed by the two parties in the IRMP. Rollingstock and Rollingstock Configurations that are so certified will be included in the Rollingstock specification as being authorised to operate on the nominated network subject to continuing compliance with the IRMP and the Rollingstock specification.
- The Access Agreement will specify relevant Rollingstock Interface Standards. QR may vary the agreed Rollingstock Interface Standards, the Safeworking Procedures and Safety Standards and other System-wide Requirements in respect to the management of the Rail Infrastructure in the following circumstances:
 - on safety grounds, at any time following consultation with the Access Holder provided that QR must not act in a manner that contravenes s.104 or s.125 of the Act. In such circumstances, each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system wide change;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement dash point under the 4th dot point of paragraph 5:

‘on safety grounds, acting reasonably, at any time following consultation with, the Access Holder and the provision of reasonable notice to the Access Holder. In such circumstances, each party is responsible for its own costs (including the costs of additional or modified equipment) in complying with the system-wide change.’

- in any other circumstance requiring a system wide change, QR may, acting reasonably, negotiate such changes with the Access Holder and the Access Holder must not unreasonably withhold its consent to the change. Each party is responsible for costs in complying with the system wide change (including the cost of additional or modified equipment or modification of either party’s Rollingstock) as agreed between them or, failing agreement, as determined by an expert.
- The parties should agree specific performance levels and measurement criteria as a basis for creating effective performance management and incentives. This may involve financially based incentives and sanctions. The performance levels may also be reviewed periodically.
- The Access Holder is responsible for the safe operation of its Rollingstock on the nominated network and must ensure that at all times its Rollingstock and Rollingstock

Configurations comply with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement.

- QR may suspend the operation of Rollingstock and Trains for actual non-compliance or anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property. QR may also suspend the operation of the affected Rollingstock and Trains for actual non-compliance where such non-compliance does not create a risk to the safety of any person or a material risk to property and the Access Holder has failed to rectify the non-compliance within a reasonable period of time. Where QR suspends Rollingstock and/or Trains in these circumstances, the suspension will only apply until the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement first sentence in the 7th dot point of paragraph 5:

'QR may suspend the operation of Rollingstock and Trains for actual non-compliance or, acting reasonably, anticipated non-compliance with all applicable laws, the Rollingstock specification and the Rollingstock Interface Standards specified in the Access Agreement where such non-compliance creates a risk to the safety of any person or a material risk to property.'

and a dot point as follows:

'Where QR suspends an Access Holder's Rollingstock and/or Trains, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.'

- Where QR suspends an Access Holder's Rollingstock and/or Trains other than in accordance with the provisions of the Access Agreement, the Access Agreement will specify the consequences.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the 8th dot point in paragraph 5.

- The Access Holder must ensure all loadings of Rollingstock are secure.

6 Infrastructure Management

- QR is responsible for the management and control of the nominated network.
- QR will carry out maintenance work on the nominated network such that, subject to any agreed criteria and the Network Management Principles, the infrastructure is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.
- QR may impose operational constraints (such as speed or load restrictions) for the protection of persons or property or to facilitate maintenance work or enhancements and has reasonable entitlements to take possession of the track for the purpose of maintenance

work, emergency repairs and enhancements. In carrying out such work QR will use its reasonable endeavours to minimise disruption to Train Services so that the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

- The Access Agreement will contain principles for consultation with the Access Holder regarding maintenance that will impact on the Access Holder’s schedule.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the words ‘principles’ from the 4th dot point of paragraph 6 and replace it with ‘possession protocols’.

- The Access Agreement will contain provisions requiring the parties to provide advice to each other in relation to factors that could affect the Access Holder’s operation of Train Services or the integrity of the nominated network.
- QR will not be liable for claims in relation to, or arising out of, the standard of the infrastructure except where QR fails to maintain the infrastructure such that, subject to any agreed criteria (including those specified in the Network Management Principles), it is consistent with the agreed Rollingstock Interface Standards and the Access Holder can operate Train Services in accordance with its Train Service Entitlements.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must add the following additional sentence to the beginning of the 6th dot point of paragraph 6:

‘Prior to the commencement of Train Services, the Access Holder may, subject to reasonable terms and conditions, inspect the nominated network for the purposes of assessing the operational, environmental and safety risks with respect to the infrastructure, as well as the standard of the infrastructure comprising the nominated network including, but not limited to, fencing and at-grade crossings.’

- The Network Management Principles should be incorporated by reference in the Access Agreement.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the 7th dot point of paragraph 6.

7 Incident Management

- Prior to the commencement of Train Services the Access Holder is required to develop an emergency response plan containing procedures for dealing with incidents which must be compatible with QR’s emergency procedures.
- In the event of an incident, QR is responsible for the overall coordination and management of incident responses and may, subject to using reasonable efforts to consult with the Access Holder, take any action it considers reasonably necessary to recommence services as soon as possible. The Access Holder is responsible for recovery of its Rollingstock in accordance with its emergency response plan.

- The Access Holder must cooperate and assist with the restoration of the network in accordance with directions from Train Controllers seeking to coordinate the clearance of network blockages. Any Access Holder so directed should be adequately compensated for doing so and is entitled to expect that all rail operators will be subject to the same obligation. QR has the right to pass through the cost of clearing the blockage to the party that has caused the damage.
- Investigations into incidents are to be commenced as soon as practicable after an incident and carried out in accordance with the process specified in the Access Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.

8 Environmental Protection and Other Issues

- All Environmental Laws, regulations and relevant guidelines must be complied with.
- Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network. Auditing requirements should be linked to the environmental risks posed by an Access Holder's Train Services and be established in that Access Holder's Environmental Investigation and Risk Management Report (EIRMR) which should be amended as necessary from time to time to address ongoing risk and compliance issues.
- The Access Holder is required to inform QR of non-compliance with its Environmental Investigation and Risk Management Report (EIRMR) and provide details of how it intends to address the non-compliance. The Access Holder is required to rectify the non-compliance as soon as practicable having regard to the nature of the non-compliance, the reasonable interests of QR and any action required by the EPA.
- The Access Holder should comply with its obligations under the *Environmental Protection Act 1994* including any notices or directions it receives from the EPA. The Access Holder is required to inform QR of non-compliance with the Access Holder's obligations under the EPA Act. Failure to comply with such an obligation, where that failure causes or threatens Serious Environmental Harm, establishes grounds for a material event of default.
- QR reserves the right to suspend the right of an Access Holder to operate on the nominated network in the event that, in QR's reasonable opinion, the Access Holder's Train Services cause or threaten Material Environmental Harm or Serious Environmental Harm. A suspension will only apply until the Access Holder demonstrates to QR that the circumstances that gave rise to QR's right to suspend have ceased to exist.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following new dot point in paragraph 8:

'Where QR suspends an Access Holder's Rollingstock and/or Trains on these grounds, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.'

- Where QR suspends an Access Holder's Train Services on environmental grounds other than in accordance with the provisions of the Access Agreement, the Access Agreement will specify the consequences.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the 6th dot point of paragraph 8:

9 Accreditation

- QR must have and maintain Accreditation as a Railway Manager under the *Transport Infrastructure Act 1994* to the extent required to perform its obligations under the Access Agreement.
- An operator Accredited as a Railway Operator under the *Transport Infrastructure Act 1994* must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Access Agreement.

10 Access Holder's Staff

- The Access Holder is responsible for demonstrating through the Interface Risk Assessment process the competence of its staff performing safety related work.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement 1st dot point of paragraph 10:

'The Access Holder is responsible for demonstrating through the Interface Risk Assessment process that it has in place a process for ensuring the competence of its staff performing safety related work.'

- QR reserves the right to suspend the right of the Access Holder's Train Services to operate on the nominated network in the event of breach or anticipated breach of any laws relating to rail safety, QR Train Control directions, Safeworking Procedures or Safety Standards. A suspension will only apply until the breach is rectified or, in the event of an anticipated breach, the Access Holder demonstrates to QR that the circumstances that gave rise to QR's right to suspend have ceased to exist.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement 2nd dot point of paragraph 10:

'QR reserves the right to suspend the right of the Access Holder's Train Services to operate on the nominated network in the event of breach or (acting reasonably) anticipated breach of any laws relating to rail safety, QR Train Control directions, Safeworking Procedures or Safety Standards. A suspension will only apply until the breach is ratified or, in the event of an anticipated breach, the Access Holder has demonstrated to QR that it is in compliance.'

and a new bullet point as follows:

'Where QR suspends an Access Holder's Train Services, it must provide the Access Holder with a written notice stating the grounds for suspension prior to, or immediately following, the suspension.'

- Where QR suspends an Access Holder’s Train Services other than in accordance with the provisions of the Access Agreement, the Access Agreement will specify the consequences.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the 3rd dot point of paragraph 10:

11 Safety Risk Management

- Safety risk management must be addressed by risk identification through the Interface Risk Assessment process and the formulation of an IRMP. The parties will be required to comply with the IRMP.

12 Inspection and Audit Rights

- Rights of inspection and audit in relation to each party’s compliance with the Access Agreement and inspection of Trains and Rollingstock shall be included in the Access Agreement.
- The Access Agreement will specify the terms and conditions on which the parties can carry out such inspections and audits.
- Each party will, in carrying out any inspection or audit, give the other party reasonable notice and use reasonable endeavours to minimise disruption to the other party’s operations.

13 Insurance

- The Access Agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.

14 Indemnities and Liabilities

- Each party is liable for, and is required to release and indemnify each other for, all claims in respect of personal injury, death or property damage caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of that party or its staff
- The Access Holder is solely liable for and is required to release and indemnify QR for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of QR or its staff. This exception shall not apply to intermodal and any other traffics where the commodity carried is not specified in the Access Agreement.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must replace the 2nd dot point of paragraph 14 with the following:

‘The Access Holder is solely liable for and is required to release and indemnify QR for any damage to property or personal injury or death of any person being transported on Train Services except to the extent that the damage or harm is

caused or contributed to (to the extent of the contribution) by the wilful default or negligent act or omission of QR or its staff. Unless otherwise agreed, the Access Holder shall extend to QR any exclusion or limitation of liability afforded by the Access Holder’s conditions of carriage with its customers.’

15 Limitation of Liability

- The liabilities of the parties for default shall be limited as agreed in the Access Agreement.
- Neither party has any liability for consequential loss or damage or loss of profits in any circumstances.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement 2nd and new 3rd dot point of paragraph 15:

‘Except as otherwise provided in the Access Agreement neither party has any liability for consequential loss or damage or loss of profits in any circumstances.’

Unless otherwise agreed in the Access Agreement, where a party:

- **(whether QR or the Access Holder), requires the conduct of an audit or inspection under Paragraph 8.1.7(e) or (f) of the Undertaking (as applicable); or**
- **(being QR), suspends an Access Holders’ Rollingstock, Trains and/or Train Services;**

that party (referred to as the ‘First Party’) will be liable for damages (including damages for consequential loss or damage) to the other party in respect of loss or damage arising from the conduct of the audit or inspection or the suspension (as applicable) if, and only if, no reasonable person in the position of the First Party could have formed the view that the stated grounds for such an audit, inspection or suspension existed (such circumstances being referred to as the ‘Liability Trigger’), provided that the other party must use all reasonable endeavours to mitigate the loss or damage arising from the conduct of the audit or inspection or suspension. The first party shall bear the burden of establishing that the Liability Trigger has not occurred’

- Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.

16 Material Change

- Access Charges will be adjusted to reflect the net impact of any material change where such material change results in a variation to the net cost to QR of performing its obligations under the Access Agreement.
- A material change shall be limited to changes in taxes, laws or funding from QR’s Transport Service Payments. The effects of material changes should be assessed on a case-by-case basis and in consultation with the Access Holder.

- An independent expert will determine any Dispute regarding the impact on Access Charges as a result of a material change.

17 Disputes

- Any Dispute between the parties is to be firstly referred in writing to the respective chief executives for resolution. If the Dispute is not resolved, then the parties may agree to refer the Dispute for resolution by an expert or arbitration. If there is no agreement to resolve the Dispute in this manner then the Dispute is to be determined by a court.

18 Default, Suspension and Termination

- The Access Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.

19 Force Majeure Event

- The obligations of either party (other than an obligation to pay monies due) will be suspended where by reason of a Force Majeure Event, that party is delayed in, or prevented from, carrying out its obligations under the Access Agreement. The Access Agreement will provide for relief in respect of the payment of Access Charges to the extent that QR is unable to provide Access Rights because of a Force Majeure Event affecting QR.
- In the event that infrastructure on specified lightly trafficked corridors of the nominated network is damaged by a Force Majeure Event and in QR's reasonable opinion the cost of repairing the damage is not economic, QR may elect not to proceed with repairs or replacement unless the parties agree as to the funding of the cost of that work.
- The Access Agreement will provide for a process that might result in termination of the Access Agreement in the event that circumstances of a prolonged Force Majeure Event prevent the performance by a party of its obligations.

20 Assignment

- The Access Holder may assign the whole of its rights and obligations under the Access Agreement to a related body corporate, provided that the assignor remains liable for the performance of obligations under the Access Agreement or to a non-related body corporate, with the prior written consent of QR (such consent not to be unreasonably withheld).
- A change in control of an Access Holder not a publicly listed corporation will be deemed to be an assignment of the Access Agreement.

21 QR's Access Undertaking

- The parties will comply with all applicable laws.
- The parties will comply with the terms of the Undertaking, including the ring fencing obligations, in effect from time to time, unless the Access Agreement varies those terms.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement 2nd dot point of paragraph 21:

‘The parties will comply with the terms of the Undertaking, including the ringfencing obligations, in effect from time to time, unless otherwise agreed in the Access Agreement.’

SCHEDULE F

Reference Tariff Schedules

SECTION 1. COAL CARRYING TRAIN SERVICES

Part A.

General Provisions

1 Scope

This Section specifies the Reference Tariffs applicable to nominated coal carrying Reference Train Services. This Section has been developed by QR in accordance with the principles contained in Part 6 of this Undertaking and has been endorsed by the QCA for application in accordance with the terms and conditions set out in this Section. Part A contains the provisions that generically apply to all coal carrying Reference Train Services and Part B identifies the requirements specific to each nominated Reference Train Service subject to this Section. The requirements set out in Part B must always be read in conjunction with the provisions of Part A.

Each Reference Train Service includes a defined level of Below Rail Services as specified in Part 2 of the Undertaking. Consistent with Part 2 of the Undertaking, the Reference Train Service does not include any Above Rail Services such as the carrying out of any provisioning, inspection, testing and maintenance of Rollingstock, or storage, marshalling, shunting or other relocation of Rollingstock.

A varied Access Charge shall be applicable to Train Services that vary from the Reference Train Service characteristics specified in Clause 2.3 of this Part A and/or operate under terms and conditions with agreed variations from the requirements of Clause 2.4 of this Part A, but otherwise satisfy the nominated Reference Train Service description, whereby the varied Access Charge varies from the applicable Reference Tariff due to differences in cost or risk to QR of providing Access for that Train Service compared to the Reference Train Service.

The provisions of this Section will be the basis for Access Charges negotiated for new Access Agreements for relevant Train Services or for rate review provisions that specifically refer to the Reference Tariff for the nominated Reference Train Service.

2 Reference Train Service Description

2.1 Commodity Type

The Reference Train Service carries bulk coal. In defining bulk coal, no differentiation is to be made between coal qualities or types, or between the end use markets of the coal.

2.2 Geographic Scope

- 2.2.1 The Reference Train Service operates on the rail corridor directly connecting certain specified Nominated Loading Facility/ies and certain specified Nominated Unloading Facility/ies and includes the empty return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and includes the empty return journey from the relevant Nominated

Unloading Facility to the relevant Nominated Loading Facility’ from sub-clause 2.2.1.

- 2.2.2 A new coal loading facility may be included as a Nominated Loading Facility for a nominated Reference Train Service in accordance with and subject to the provisions of Clause 5 of this Part A.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 2.2.2:

‘A new coal loading facility may only be considered for addition to the existing Nominated Loading Facilities for a Reference Train Service if it satisfies the requirements in relation to additional loading facilities that are set out in Part B for the relevant Reference Train Service.’

- 2.2.3 Diagrams showing the location of the Nominated Loading Facilities and the Nominated Unloading Facilities for a nominated Reference Train Service are included in the Information Pack for the relevant system.

2.3 Reference Train Service Characteristics

2.3.1 Each Reference Train Service:

- (a) has a maximum length (including the locomotive/s) as specified in Part B for that Reference Train Service;
- (b) has a maximum axle load as specified in Part B for that Reference Train Service with loading in excess of this maximum axle load dealt with in accordance with the relevant Load Variation Table;
- (c) complies with the maximum speeds permitted on the Nominated Infrastructure as specified in the relevant Information Pack;
- (d) complies with QR’s Rollingstock Interface Standards applicable to the Nominated Infrastructure;
- (e) is otherwise compatible with the Nominated Infrastructure described in the relevant Information Pack and requires no additional expenditure by QR to implement varied Below Rail controls identified in the IRMP or EIRMR;
- (f) operates in accordance with nominated sectional running times specified in the relevant Information Pack;
- (g) does not exceed the Loading Times specified in Part B for that Reference Train Service;
- (h) does not exceed the Unloading Times specified in Part B for that Reference Train Service;
- (i) utilises loading and unloading facilities that each have a balloon loop terminal configuration;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-paragraph 2.3.1 (i).

- (j) operates as an empty Train on the return journey from the relevant Nominated Unloading Facility to the relevant Nominated Loading Facility;
- (k) utilises Rollingstock that has an external noise limit no greater than the noise planning level/s required by the Environmental Protection (Noise) Policy 1997;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-paragraph 2.3.1 (k).

- (l) will operate on the configuration of the Nominated Infrastructure existing at the Commencing Date without limiting the ability of existing Train Services to operate in accordance with their Train Service Entitlements;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 2.3.1 (l):

- (l) **'has the ability to operate on the configuration of the Nominated Infrastructure existing at the Approval Date without limiting the ability of existing train services to operate in accordance with the Train Service Entitlements;'**

- (m) utilises bottom dump wagons with the "KWIK DROP" door operating mechanism;
- (n) utilises reasonable measures to minimise coal spillage and/or leakage enroute;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 2.3.1 (n):

- (n) **'utilises measures to minimise coal spillage and/or leakage enroute that are reasonable, having regard to the practices existing at the Approval Date'.**

- (o) measured as an average over a Year, has a maximum Stowage period for each Train Service no greater than that specified in Part B for that Reference Train Service; and
- (p) has any other characteristics specified for that Reference Train Service set out in Part B.

2.3.2 An Access Holder for a Reference Train Service will:

- (a) demonstrate, to QR's reasonable satisfaction, a reasonable expectation that the tonnage volume upon which its Train Service Entitlement is based will be hauled;

- (b) ensure that its Trains are available for operation 24 hours per day and 365 days per year; and
- (c) have its Train Service Entitlement specified in terms of a Cyclic Traffic, operated evenly throughout each yearly, monthly and weekly period, and will comply with the applicable coal corridor scheduling procedures.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 2.3.2:

'An Access Seeker for a Reference Train Service will have its Train Service Entitlements:

- (a) based on its Trains being available for operation 24 hours per day and 360 days per year; and
- (b) specified in terms of a Cyclic Traffic, operated evenly throughout each yearly, monthly and weekly period, and will comply with the applicable coal corridor scheduling procedures.'

2.4 Conditions of Access

- 2.4.1 The Reference Train Service will operate in accordance with the terms and conditions of the QR standard coal Access Agreement that will:
- (a) be developed in accordance with Paragraph 5.1(d) of the Undertaking;
 - (b) have a term of 10 years;
 - (c) have incorporated into it an Access Charge review provision that relates the movement in Access Charges to the movement in the Reference Tariff specified for the relevant Reference Train Service in this Section; and
 - (d) be otherwise consistent with the contents of this Section.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must replace the words 'QR standard coal Access Agreement' in sub-clause 2.4.1 with 'Standard Access Agreement for coal carrying services'.

- 2.4.2 Under the Access Agreement QR will commit to operate the Rail Infrastructure such that, on average over a Year, the Below Rail Transit Time specified in Part B can be achieved for the relevant Reference Train Service.

3 Access Charge

3.1 Reference Tariff

- 3.1.1 The applicable Reference Tariff for a nominated Reference Train Service shall be assessed as:

$$(AT_1 \times g_{tk}/1000) + (AT_2 \times r_{tp}) + (AT_3 \times n_{tk}/1000) + (AT_4 \times n_t) + (AT_5 \times e_{gk}/1000)$$

where:

- AT₁ is the incremental maintenance tariff specified as AT₁ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.
- AT₂ is the incremental capacity tariff specified as AT₂ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.
- AT₃ is the allocative part of the Reference Tariff that is levied on a net tonne kilometre basis specified as AT₃ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.
- AT₄ is the allocative part of the Reference Tariff that is levied on a net tonne basis specified as AT₄ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.
- AT₅ is the electric access tariff specified as AT₅ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.
- gtk is the gross tonne kilometres attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock utilised in the relevant Train Service (including all goods, product, persons or matter carried) multiplied by the distance (in kilometres) travelled by the Train Service.
- rtp is the number of reference Train Paths used by the relevant Train Service where a Reference Train Service uses one reference Train Path;
- nt is the net tonnes attributed to the relevant Train Service, being the total gross weight (in tonnes) of the Rollingstock when loaded utilised in the relevant Train Service (including all goods, product, persons or matter carried) less the weight of such Rollingstock (in tonnes) when empty;
- ntk is the net tonne kilometres attributed to the relevant Train Service, being the nt for the Train Service multiplied by the distance (in kilometres) travelled by the Train Service.
- egtk is the electric gross tonne kilometres attributed to the relevant Train Service, being the gtk for the Train Service if that Train Service uses electric traction, and zero if the Train Service does not use electric traction.

Where the above terms are used elsewhere in this Section they shall have the same meaning.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must amend the Reference Tariff formula and insert a new definition of AT₆ in sub-clause 3.1.1 as follows:

- **'(AT₁ x gtk/1000) + (AT₂ x rtp) + (AT₃ x ntk/1000) + (AT₄ x nt) + ([AT₅ + AT₆] x egtk/1000)'; and**

- **‘AT₆ is the electric energy tariff specified as AT₆ for the nominated Reference Train Service in Part B and escalated in accordance with the provisions at Clause 4.1 of this Part A.’**

3.1.2 The amounts of AT1, AT2, AT3, AT4 and AT5 specified in Part B are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 3.1.2:

‘The amounts of AT₁, AT₂, AT₃, AT₄, AT₅ and AT₆ specified in Part B are GST exclusive. An amount for GST will be added to the total calculated Access Charge, in accordance with the provisions of the applicable Access Agreement, when an Access Holder is invoiced.’

3.1.3 For the purposes of this Section, a Train Service is a one way Train Service, that is, the journey from the Nominated Loading Facility to the Nominated Unloading Facility is one Train Service, and the return journey from the Nominated Unloading Facility to the Nominated Loading Facility is a second Train Service.

3.1.4 For the purposes of this Clause 3.1 the measures gtk, rtp, ntk, nt and egtk shall be assessed for the relevant Train Service over the Billing Period for which the Reference Tariff is being calculated.

3.2 Take or Pay

3.2.1 QR will be entitled to earn Take or Pay revenue in accordance with the provisions of this Clause 3.2.

3.2.2 Take or Pay revenue from a particular Train Service will be determined for each Billing Period as the sum of:

- (a) a variable take or pay component (VTP) determined as follows:
 - (i) VTP shall be zero where:
 - in the relevant Billing Period both the System Gtk and the System Tkm exceeds 90% of the proportion of the System Forecast that would be attributed to that Billing Period for the relevant Coal System Infrastructure; or
 - if in the three Billing Periods up to the end of the relevant Billing Period the Access Holder in respect of the relevant Train Service has railed in excess of 90% of the maximum tonnage achievable under the contractual entitlement for that Train Service for that three Billing Periods;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.2.2(a)(i):

‘(i) VTP shall be zero where:

- **in the relevant Billing Period, the System Gtk exceeds 90% of the System Forecast identified for the nominated Reference Train Service in Part B less the gtk not achieved due to the non-operation of Train Services for a QR Cause; or**
- **if in the three Billing Periods up to the end of the relevant Billing Period the Access Holder in respect of the relevant Train Service has railed in excess of 90% of the maximum gtk achievable under the contractual entitlement for that Train Service for that three Billing Periods less the tonnage no achieved due to the non-operation of Train Services for a QR Cause.’**

(ii) if VTP is not equal to zero pursuant to Subparagraph 3.2.2(a)(i), then VTP shall be 30% of the amount calculated by subtracting:

- the value derived from applying AT3 and AT4 of the relevant Reference Tariff to the actual ntk and nt respectively achieved for the relevant Train Service for the relevant Billing Period;

from

- 90% of the value derived from applying AT3 and AT4 of the relevant Reference Tariff to the maximum ntk and nt respectively that would have been achievable for the relevant Billing Period had the full contracted entitlement been attained for the relevant Train Service,

provided that VTP shall not be less than zero; and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement second dash point of sub-paragraph 3.2.2(a)(ii):

‘90% of the value derived from applying AT3 and AT4 of the relevant Reference Tariff to the maximum ntk and nt respectively that would have been achievable for the relevant Billing Period had the full contracted entitlement been attained for the relevant Train Service less the ntk and nt not achieved due to the non-operation of Train Services for a QR Cause.’

(b) an annual take or pay component (ATP) determined as follows:

(i) ATP shall be zero where:

- for that part of the current Year up to the end of the relevant Billing Period both the System Gtk and the System Tkm exceeds 100% of the proportion of the System Forecast that would be attributable to that period of time for the relevant Coal System Infrastructure;

(ii) if ATP is not equal to zero pursuant to Subparagraph 3.2.2(b)(i), then ATP shall be the amount calculated by subtracting:

- the net aggregate of the values determined for ATP for each previous Billing Period of the Year up to the end of the Billing Period prior to the relevant Billing Period

from

- that value that is 30% of the amount calculated by subtracting:
- (1) the value derived from applying AT_3 and AT_4 of the relevant Reference Tariff to the actual ntk and nt respectively achieved for the relevant Train Service for that part of the current Year up to the end of the Billing Period for which ATP is being calculated;
- from
- (2) 100% of the value derived from applying AT_3 and AT_4 of the relevant Reference Tariff to the maximum ntk and nt respectively that would have been achievable for that part of the current Year up to the end of the Billing Period for which ATP is being calculated had the full contracted entitlement been attained for the relevant Train Service,

provided that the net aggregate of the values determined for ATP for that part of the Year up to the end of the relevant Billing Period shall not be less than zero.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 3.2.2(b):

(i) 'ATP shall be calculated by subtracting:

- the net aggregate of the values determined for ATP for each previous Billing Period of the Year up to the end of the Billing Period prior to the relevant Billing Period**

from

- that value that is 30% of the amount calculated by subtracting:**

the value derived from applying AT_3 and AT_4 of the relevant Reference Tariff to the actual ntk and nt respectively achieved for the relevant Train Service for that part of the current Year up to the end of the Billing Period for which ATP is being calculated;

from

100% of the value derived from applying AT_3 and AT_4 of the relevant Reference Tariff to the maximum ntk and nt respectively that would have been achievable for that part of the current Year up to the end of the Billing Period for which ATP is being calculated had the full contracted entitlement been attained for the relevant Train Service less the ntk and nt not achieved due to the non-operation of Train Services for a QR Cause;

provided that the net aggregate of the values determined for ATP for that part of the Year up to the end of the relevant Billing Period shall not be less than zero. For clarification, where the net aggregate of the values determined or ATP for that part of the Year up to the end of the relevant Billing Period is less than the amount of ATP previously paid in that Year, the difference will be reflected in a reduction to the Access Charge invoiced for the relevant Billing Period, except that such reduction shall be limited to an amount that would make the sum of ATP for the

Year to date no less than zero.

- (ii) **Notwithstanding Sub-paragraph 3.2.2(b)(i), ATP shall not be payable for a Billing Period where for that part of the current Year up to the end of the relevant Billing Period, the System G_{tk} exceeds 100% of the System Forecast identified for the nominated Reference Train Service in Part B less the g_{tk} not achieved due to the non-operation of Train Services for a QR Cause.'**
- (iii) **'ATP will only be invoiced:**
- **in a Billing Period where the net aggregate of the values determined for ATP for each Billing Period of the Year up to and including the relevant Billing Period is equal to or greater than 25% of the value derived from applying AT₃ and AT₄ of the relevant Reference Tariff to the maximum n_{tk} and n_t respectively that would have been achievable for the relevant Billing Period had the full contracted entitlement been attained for the relevant Train Service; or**
 - **in the final Billing Period of the Year.'**
- (iv) **'In the final Billing Period of the Year, if the System G_{tk} for the Year exceeds 100% of the System Forecast for the Year identified for the nominated Reference Train Service in Part B less the g_{tk} not achieved due to the non-operation of Train Services for a QR Cause, the value of ATP shall not be calculated in Subparagraph 3.2.2(b)(i), (ii) and (iii), but shall be the value to make the net aggregate of the values determined for ATP for the Year to be equal to zero.'**

- 3.2.3 QR shall provide to the Access Holder the System Forecast along with the actual System G_{tk} and System T_{km} achieved in each Billing Period at the same time as the invoice is provided.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 3.2.3:

'QR shall provide to the Access Holder the actual System G_{tk} achieved in each Billing Period and the g_{tk} not achieved die to the non-operation of Train Services for a QR Cause at the same time as the invoice is provided.'

3.3 Varied Components of Applicable Access Charge

- 3.3.1 Nothing in this Section will preclude QR and the Access Holder agreeing to Access Charges that have varied cash flows but the same net present value as the Reference Tariff as applied in accordance with the other provisions of this Section.
- 3.3.2 Varied cash flows could be achieved by variations to the structure of the charges and/or variations to the escalation arrangements. In any case the variation from the specified application of the Reference Tariff will be assessed on the basis of the risks and costs, including opportunity cost, associated with the timing of the resultant cash flows.

3.3.3 Nothing in this Section will preclude QR from seeking an upfront contribution pursuant to Paragraph 6.4(b) of the Undertaking.

4 Variation to Access Charge

4.1 Escalation

4.1.1 Each component of the Reference Tariff will escalate on each Escalation Date in accordance with the following formula:

$$AT_n = AT_{n-1} \times (CPI_n / CPI_{n-1} - X)$$

Where:

AT_n means the value of the relevant Reference Tariff component to apply after escalation;

AT_{n-1} means the escalated value of the relevant Reference Tariff component immediately prior to the relevant Escalation Date, or in the case of the First Escalation Date means the relevant Reference Tariff component specified in Part B for each nominated Reference Train Service;

X means the amount specified as X in Part B for each nominated Reference Train Service;

CPI_n means the Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 6 months prior to the Escalation Date for which the variable AT_n is being determined;

CPI_{n-1} means the Consumer Price Index: All Groups - Brisbane (Australian Bureau of Statistics Publication No.6401.0), as first published, for the Quarter which commenced 9 months prior to the Escalation Date for which the variable AT_n is being determined.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new sub-clause 4.1.2 as follows:

'Within seven (7) days of each escalation date, QR will publish the escalated components of the Reference Tariff on its website.'

4.2 Reference Tariff Review

4.2.1 Within its specified term a Reference Tariff will be reviewed in accordance with this Clause 4.2 where:

- (a) the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the Nominated Infrastructure measured for a Quarter falls outside the traffic volume range specified for that Quarter for the relevant Reference Train Service in Part B and it is reasonably expected to remain outside that traffic volume range on a sustained basis; or

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 4.2.1(a):

- (a) **'the sum of the gtk for coal carrying Train Services consistent with the relevant Reference Train Service measured for a Quarter falls outside the traffic volume range specified for that Quarter for the relevant Reference Train Service in Part B and it is reasonably expected to remain outside that traffic volume range on a sustained basis; or'**

- (b) a Change in Law or a Change in Relevant Taxes occurs that, either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Commencing Date, would cause a financial effect greater than two and a half percentage points (2.5%) of the relevant Reference Tariff excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a review of the Reference Tariff.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 4.2.1(b):

- (b) **'a Change in Law or a Change in Relevant Taxes occurs that, either alone or in combination with all other Changes in Law or Changes in Relevant Taxes that have occurred since the Approval Date, would cause a change in the costs reflected in the AT₃ and AT₄ components of the relevant Reference Tariff greater than two and a half percentage points (2.5%) excluding the impact of any Change in Law or Change in Relevant Taxes that have previously resulted in a review of the Reference Tariff.'**

4.2.2 Where a review is undertaken as a result of the circumstances specified in Subclause 4.2.1(a), QR will:

- (a) review and revise the forecast traffic volume for the relevant Reference Train Service for the remainder of the Evaluation Period, in a manner consistent with Paragraph 6.2.4(b) of the Undertaking;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 4.2.2(a):

- (a) **'review and revise the forecast traffic volume for the Reference Train Service(s) for which the Review Trigger occurred for the remainder of the Evaluation Period, in a manner consistent with Paragraph 6.2.4(b) of the Undertaking;'**

- (b) identify the extent to which the revised forecast traffic volume identified in Paragraph 4.2.2(a) deviates from the midpoint of the traffic volume range specified for the relevant Reference Train Service in Part B; and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 4.2.2(b):

- (b) **'identify the extent to which the revised forecast traffic volume identified in Paragraph 4.2.2(a) deviates from the midpoint of the traffic volume range specified for the Reference Train Service(s) for which the Review Trigger occurred in Part B;'**

- (c) review and revise the relevant Reference Tariff having regard to the financial impact for QR's Below Rail Service arising from the revised forecast identified in Paragraph 4.2.2(a) in accordance with Subclause 4.2.4.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-paragraph 4.2.2(c):

- (c) **'review and revise the Reference Tariff(s) applicable for Reference Train Services operation in the applicable Individual Coal System having regard to the financial impact for QR's Below Rail Service arising from the revised forecast identified in Paragraph 4.2.2(a) in accordance with Subclause 4.2.4.'**

4.2.3 Where a review is undertaken as a result of the circumstances specified in Paragraph 4.2.1(b), QR will review and revise the relevant Reference Tariff to reflect the specific impact of the Changes in Law and/or Changes in Relevant Taxes on the financial position of QR's Below Rail Services.

4.2.4 In assessing the revised Reference Tariff to apply in accordance with Subclause 4.2.2 or Subclause 4.2.3:

- (a) QR will recalculate the Reference Tariff as if all other Reference Tariffs were also being recalculated due to the occurrence causing the Review Trigger;
- (b) QR will take account of the totality of relevant departures from forecasts that underpinned the original assessment of the relevant Reference Tariff(s), where relevant departures are those that are the result of the occurrence of the Review Trigger; and
- (c) QR will only vary those Reference Tariffs for which a Review Trigger has occurred.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete sub-paragraph 4.2.4(c).

4.2.5 Where a review of a Reference Tariff is undertaken in accordance with Subclause 4.2.2 or Subclause 4.2.3, QR will notify the QCA of the occurrence of the Review Trigger, and will provide details of the Review Trigger and the required revisions to the Reference Tariff. The QCA will endorse the changes to the Reference Tariff if it considers that the changes have

been made in accordance with this Clause 4.2 and consistent with the principles of Part 6 of the Undertaking.

- 4.2.6 A variation to a Reference Tariff occurring in accordance with this Clause 4.2 shall take effect from the Escalation Date immediately following the event causing the Review Trigger.
- 4.2.7 Nothing in this Section prevents QR from varying any Reference Tariff component or X factor specified for a nominated Reference Train Service in Part B at any time where it has the net effect of reducing the Reference Tariff payable.

5 Additional Loading Facilities

- 5.1 A new coal loading facility may only be considered for addition to the existing Nominated Loading Facilities for a Reference Train Service if it satisfies the requirements in relation to additional loading facilities that are set out in Part B for the relevant Reference Train Service.
- 5.2 Except as provided in Subclause 5.3, QR may include a new coal loading facility as a Nominated Loading Facility for an existing Reference Train Service where the Total Weighted Tonnes/Distance ratio that would be determined for the new coal loading facility if it were to be a Nominated Loading Facility based on its expected average tonnages, is greater than the lowest such ratio for any existing Nominated Loading Facility using existing tonnage levels.
- 5.3 Where a new coal loading facility is located in an area where the terrain or other physical constraints means the cost per kilometre of providing Rail Infrastructure connecting the Nominated Infrastructure to the new coal loading facility is greater than 20% higher than the average replacement cost per kilometre of providing Rail Infrastructure to existing Nominated Loading Facilities, the new loading facility will not be added to the Nominated Loading Facilities notwithstanding it satisfies the Total Weighted Tonnes/Distance ratio test in Clause 5.2.
- 5.4 In the event that Clause 5.2 and Clause 5.3 are not applicable, QR and/or all of the Access Holders for existing coal carrying Train Services operating between the Nominated Loading Facilities and Nominated Unloading Facilities for the relevant Reference Train Service, may ask the QCA to determine whether the new coal loading facility should nonetheless be added to Part B as a Nominated Loading Facility for that Reference Train Service. In making such a determination the QCA will consider the consequent impacts upon QR's Below Rail functions and the operations of those Access Holders of existing coal carrying Train Services on the Nominated Infrastructure.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete clause 5.

6 Definitions and Interpretation

- 6.1 **In this Section, references to Parts, Clauses, Subclauses, Paragraphs and Subparagraphs are references to Parts, Clauses, Subclauses Paragraphs and Subparagraphs contained in this Section unless otherwise stated.**
- 6.2 The following definitions are specific to this Schedule. In addition to these definitions, Part 10 of the Undertaking sets out the definitions of defined terms used in this Section and applicable to the Undertaking generally:

“Billing Period” means a period of a calendar month;

“Change in Law” means:

- (a) any amendment, repeal, modification or enactment of any Law;
- (b) any change in the interpretation or application, including by the exercise of delegated authority, of any Law resulting from a decision of a court or Authority;
- (c) the making of any new directive, or any change in an existing directive, of any Authority;
- (d) the imposition of a requirement for authorisations not required as at the Approval Date;
- (e) after the date of grant of any authorisation, a change in the terms and conditions attaching to that authorisation or the attachment of any new terms or conditions; or
- (f) any such authorisation as has been granted ceasing to remain in full force and effect or, if granted for a limited period, not being renewed on a timely basis on application therefore being duly made, or being renewed on conditions which are materially less favourable than those attached to the original authorisation.

“Change in Relevant Taxes” means:

- (g) the imposition of a new Relevant Tax;
- (h) an increase in the rate of a Relevant Tax; or
- (i) a change in the basis of calculation of a Relevant Tax;

“Coal System Infrastructure” means the relevant one of the following:

- (a) that Rail Infrastructure comprising the rail corridor from the port of Abbot Point to Newlands mine, and all branch lines directly connecting coal mine loading facilities to that corridor;
- (b) that Rail Infrastructure comprising the rail corridor from the ports at Hay Point and Dalrymple Bay to Blair Athol mine, North Goonyella mine and the junction with the Gregory mine branch line and all branch lines directly connecting coal mine loading facilities to those corridors, with the exception of any branch lines beyond the junction with the Gregory mine branch line;
- (c) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Gregory mine, and all branch lines directly connecting coal mine loading facilities to that corridor with the exception of the corridor to Oaky Creek (and beyond) and the corridor to Moura mine (and beyond); or
- (d) that Rail Infrastructure comprising the rail corridor from the port of Gladstone (including domestic coal terminals in the vicinity of Gladstone) to Moura mine, and all branch lines directly connecting coal mine loading facilities to that corridor but excluding the corridor to Blackwater (and beyond);

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, the definition for ‘Coal System Infrastructure’ must be renamed “Individual Coal System Infrastructure”.

“Common Rail Infrastructure” means that Rail Infrastructure over which all coal carrying Train Services from all Nominated Loading Facilities for a Reference Train Service travel in order to get to the relevant Nominated Unloading Facilities;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘Common Rail Infrastructure’.

“Distance” means the distance, comprising one or more Line Sections, from the relevant coal loading facility to the point on the relevant Common Rail Infrastructure nearest to the relevant Nominated Unloading Facilities, and where there is only one such Nominated Unloading Facility, the distance will extend to that Nominated Unloading Facility;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘Distance’.

“Escalation Date” means the date being 1 January, 1 April, 1 July and 1 October in each year;

“First Escalation Date” means that date identified as the first escalation date for each nominated Reference Train Service in Part B;

“GST” means a tax in the nature of a supply or goods or services tax levied or imposed by the Commonwealth of Australia;

“Information Pack” means the document issued by QR meeting the requirements of Part A of Schedule D and relevant to the system in which the Nominated Infrastructure is located;

“Law or Laws” means a statute, ordinance, rule or regulation;

“Line Section” means a portion of the Rail Infrastructure, between 2 specified locations (generally stations, crossing loops, balloon loops or junctions) and which is identified by a unique line code number;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘Line Section’.

“Line Section Weighted Tonnes” means, for the purposes of assessing the Total Weighted Tonnes, the product of the annual estimated net tonnage of all coal carrying Train Services operating on a Line Section and the percentage proportion that the length of that Line Section is of the Distance;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘Line Section Weighted Tonnes’.

“Loading Time” means the time between a Train Service arriving at a Nominated Loading Facility and that same Train departing the Nominated Loading Facility;

“Load Variation Table” means a table published by QR in respect to a nominated Reference Train Service or Train Service type identifying allowable overloads for wagons and bogies and specifying relevant Operational Constraints and additional charges, where applicable, for such overloads

“Nominated Infrastructure” means that Rail Infrastructure over which the relevant Reference Train Service travels between the Nominated Loading Facility/ies and Nominated Unloading Facility/ies;

“Nominated Loading Facility” means a loading facility specified for a nominated Reference Train Service in Part B, and Nominated Loading Facilities has a corresponding meaning;

“Nominated Unloading Facility” means an unloading facility specified for a nominated Reference Train Service in Part B, and Nominated Unloading Facilities has a corresponding meaning;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following definition:

““QR cause” means where QR is unable to make available capacity for the operation of Train Services in accordance with an Access Holder’s Train Service Entitlement as a result of:

- (a) Planned Possessions, Urgent Possessions or Emergency Possessions;**
- (b) a Force Majeure Event; or**
- (c) any other action by QR which may directly result in the Rail Infrastructure not being so available;**

provided that the above reasons are not in any way attributable to the Access Holder.’

“Relevant Tax” means a tax, charge, levy, duty, impost, rate, royalty, or imposition which is imposed on QR by, or payable by QR to, any Authority but does not include any income tax, fringe benefits tax, capital gains tax or any tax that replaces any of those taxes;

“Review Trigger” means the occurrence of an event described in Subclause 4.2.1;

“Storage” means the storage of individual items of Rollingstock, long-term storage of Trains, or short-term storage of Trains where the Access Holder does not operate Train Services in accordance with its Train Service Entitlement;

“Stowage” means the short-term storage of Trains on the Rail Infrastructure, at locations specified by QR exercising its reasonable discretion, for the purpose of:

- (a) enabling an Access Holder to carry out scheduled Above Rail Services normally carried out during a scheduled operational cycle (such as crew changes, meal breaks, and provisioning) in accordance with the relevant Train Service Entitlement; and/or**
- (b) providing an Access Holder with a place to temporarily store its Train/s:**

- (i) between scheduled Train Services in accordance with the relevant Train Service Entitlement; or
- (ii) when the Access Holder cannot operate its Train Service in accordance with its Train Service Entitlement as the result of a breakdown situation or temporary outage of the Access Holder, the loading facility or the unloading facility, and/or unavailability of the Nominated Infrastructure;

but does not include Storage;

“System Forecast” means the quantum of coal carrying Train Services to the extent those Train Services travel on the relevant Coal System Infrastructure that has been forecast for the purpose of assessing Reference Tariffs, and which is identified in terms of both gtk and train kilometres for each Quarter over the term of the Reference Tariffs;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition for ‘System Forecast’:

“System Forecast” means the gtk for the relevant Individual Coal System Infrastructure that is specified for the relevant Reference Train Service in Part B.’

“System Gtk” means the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the relevant Coal System Infrastructure over the relevant period;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement definition for ‘System Gtk’ must be amended as follows:

“System Gtk” means the sum of the gtk for all coal carrying Train Services to the extent those Train Services travel on the relevant Individual Coal System Infrastructure over the relevant period.’

“System Tkm” means the sum of the train kilometres for all coal carrying Train Services to the extent those Train Services travel on the relevant Coal System Infrastructure over the relevant period;

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘System Tkm’.

“Take or Pay” means that part of the Access Charge payable pursuant to Clause 3.2;

“Total Weighted Tonnes” means the aggregate of the Line Section Weighted Tonnes for each Line Section from the relevant coal loading facility to the point on the Common Rail Infrastructure nearest to the relevant Nominated Unloading Facilities (and where there is only one such Nominated Unloading Facility, to that Nominated Unloading Facility); and

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the definition for ‘Total Weighted Tonnes’.

“Unloading Time” means the time between a Train Service arriving at a Nominated Unloading Facility and that same Train departing the Nominated Unloading Facility.

Part B

Provisions Specific to Individual Reference Train Services

1 Central Blackwater Cluster

1.1 Application of this Clause

This Clause 1 should be read in conjunction with Part A of this Section.

1.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

1.3 Reference Train Service Characteristics

1.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 1670 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220¹ loading, or otherwise generates a loading equivalent to M220¹;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.25 hours.

1.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 1.3.2:

‘The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 27%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.’

1.4 Loading Facilities

Nominated Loading Facilities

*Average Loading Time (hours) per return trip
assessed on a monthly basis*

¹ As specified in the ANZRC Railway Bridge Design Manual 1974

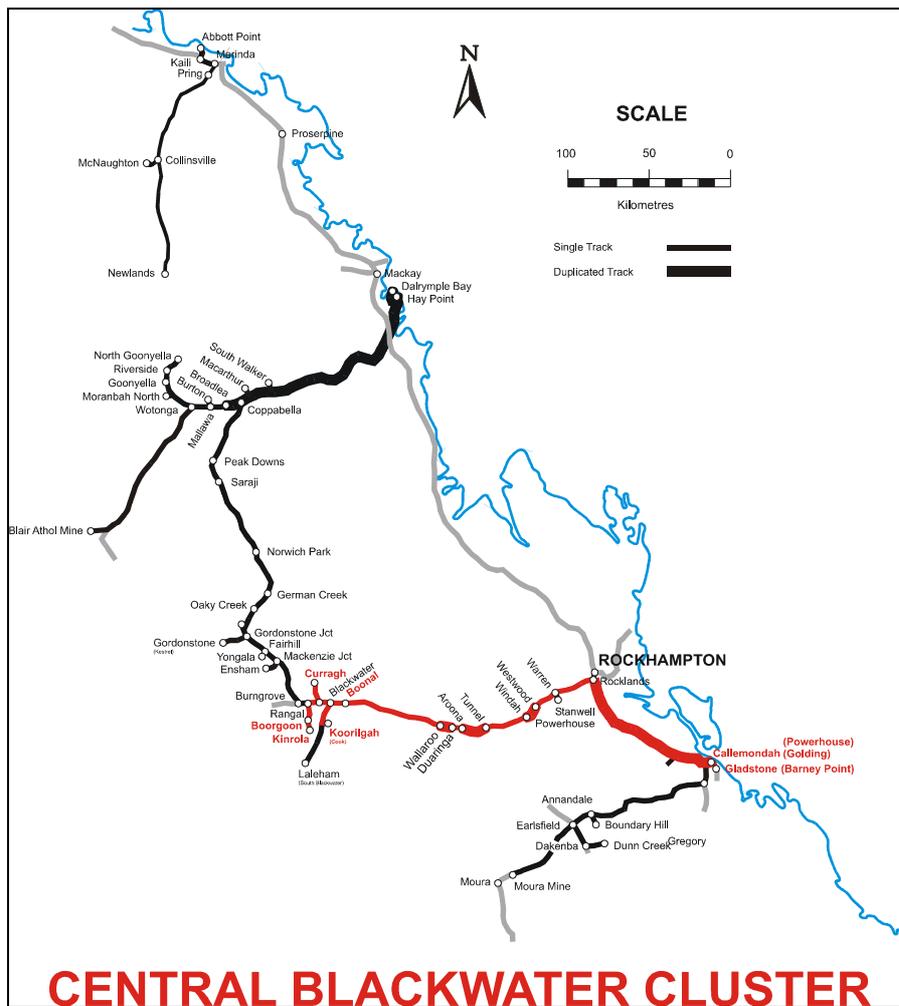
- Boonal 4.2
- Koorilgah 5.7
- Curragh 3.3
- Boorgoon 5.5
- Kinrola 5.5
- Laleham/South Blackwater Mine* 4.5

* Although not a loading facility the average Loading Time for the Laleham/South Blackwater Mine represents the average time the Train Service is off the Rail Infrastructure on the relevant Private Infrastructure.

1.5 Unloading Facilities

<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i>
• Golding/RG Tanna Terminal	2.72
• Barney Point	4.5
• Gladstone Power Station	4.3

1.6 Cluster Map



² This time will reduce once terminal upgrades are undertaken over the next six months.

1.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Bluff and Burngrove or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Gregory beyond Burngrove, and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 1.7.

1.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$3.64	0.0034
AT ₄	\$1.12	0.0034
AT ₅	\$1.79	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 1.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$3.53	0.0024
AT ₄	\$1.08	0.0024
AT ₅	\$1.03	0.0013
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	1,610,008	Jan 2003	1,727,393	Jul 2004	1,724,919
Aug 2001	1,610,008	Feb 2003	1,560,226	Aug 2004	1,724,919
Sep 2001	1,558,072	Mar 2003	1,727,393	Sep 2004	1,669,276
Oct 2001	1,620,117	Apr 2003	1,655,782	Oct 2004	1,725,438
Nov 2001	1,567,855	May 2003	1,710,975	Nov 2004	1,669,779
Dec 2001	1,620,117	Jun 2003	1,655,782	Dec 2004	1,725,438
Jan 2002	1,666,452	Jul 2003	1,711,267	Jan 2005	1,764,312
Feb 2002	1,505,183	Aug 2003	1,711,267	Feb 2005	1,593,572
Mar 2002	1,666,452	Sep 2003	1,656,065	Mar 2005	1,764,312
Apr 2002	1,604,864	Oct 2003	1,712,233	Apr 2005	1,689,144
May 2002	1,658,360	Nov 2003	1,656,999	May 2005	1,745,449
Jun 2002	1,604,864	Dec 2003	1,712,233	Jun 2005	1,689,144
Jul 2002	1,684,769	Jan 2004	1,751,269		
Aug 2002	1,684,769	Feb 2004	1,581,792		
Sep 2002	1,630,422	Mar 2004	1,751,269		
Oct 2002	1,687,305	Apr 2004	1,677,098		
Nov 2002	1,632,876	May 2004	1,733,001		
Dec 2002	1,687,305	Jun 2004	1,677,098		

1.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	4,218,000	5,155,000
2001 Quarter 4	4,227,000	5,166,000
2002 Quarter 1	4,236,000	5,177,000
2002 Quarter 2	4,245,000	5,188,000
2002 Quarter 3	4,369,000	5,340,000
2002 Quarter 4	4,375,000	5,348,000
2003 Quarter 1	4,381,000	5,355,000
2003 Quarter 2	4,387,000	5,362,000
2003 Quarter 3	4,379,000	5,352,000
2003 Quarter 4	4,379,000	5,352,000
2004 Quarter 1	4,379,000	5,352,000
2004 Quarter 2	4,379,000	5,352,000
2004 Quarter 3	4,412,000	5,393,000
2004 Quarter 4	4,414,000	5,395,000
2005 Quarter 1	4,415,000	5,396,000
2005 Quarter 2	4,417,000	5,398,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 1.9 of Part B, Schedule F.

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	2,221,000	2,714,000
2001 Quarter 4	2,230,000	2,725,000
2002 Quarter 1	2,239,000	2,736,000
2002 Quarter 2	2,248,000	2,747,000
2002 Quarter 3	2,330,000	2,848,000
2002 Quarter 4	2,334,000	2,853,000
2003 Quarter 1	2,338,000	2,858,000
2003 Quarter 2	2,342,000	2,863,000
2003 Quarter 3	2,358,000	2,882,000
2003 Quarter 4	2,359,000	2,883,000
2004 Quarter 1	2,360,000	2,884,000
2004 Quarter 2	2,361,000	2,886,000
2004 Quarter 3	2,392,000	2,924,000
2004 Quarter 4	2,393,000	2,925,000
2005 Quarter 1	2,395,000	2,927,000
2005 Quarter 2	2,396,000	2,929,000

2 North Blackwater Cluster

2.1 Application of this Clause

This Clause 2 should be read in conjunction with Part A of this Section.

2.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

2.3 Reference Train Service Characteristics

2.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 1670 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220¹ loading, or otherwise generates a loading equivalent to M220³;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.25 hours.

2.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 2.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 27%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.'

2.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

- | | |
|----------------|-----|
| • Ensham | 3.2 |
| • Kestrel | 3.6 |
| • Gregory | 2.8 |
| • Oaky Creek | 3.0 |
| • German Creek | 3.0 |

¹ As specified in the ANZRC Railway Bridge Design Manual 1974.

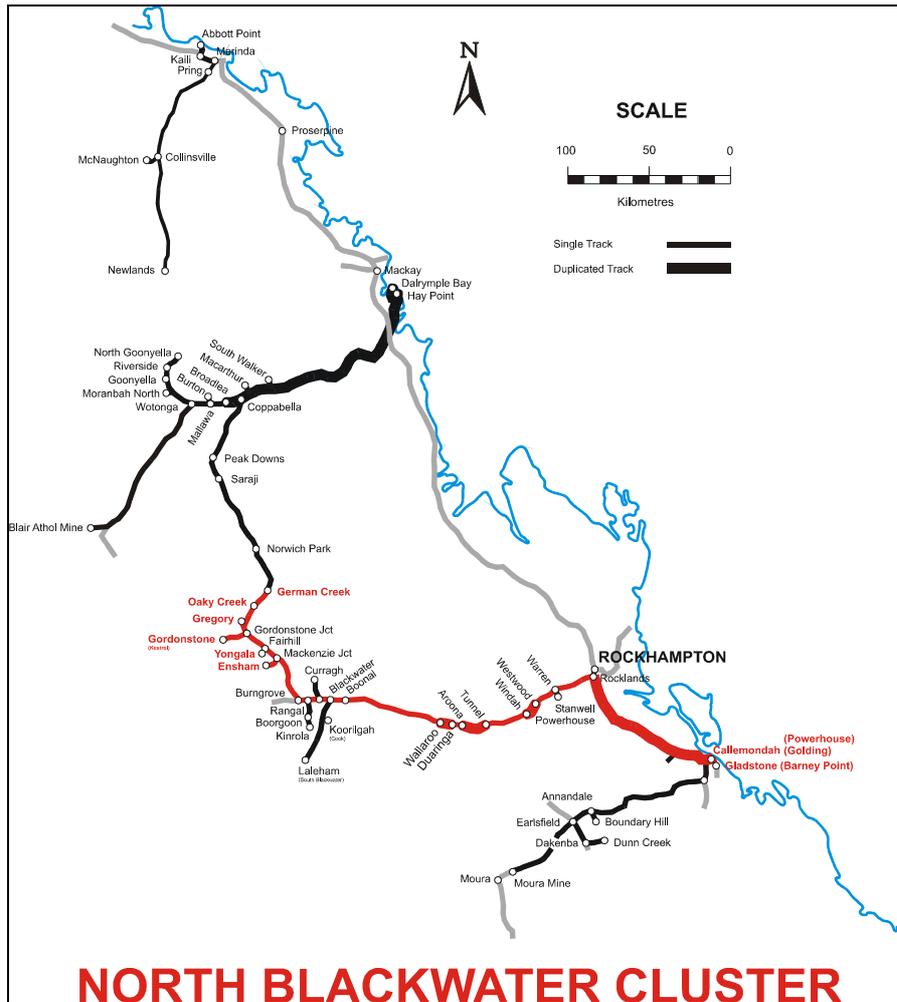
2.5 Unloading Facilities

Nominated Unloading Facilities

Average Unloading Time (hours) per return trip assessed on a monthly basis

- | | |
|-----------------------------|------------------|
| • Golding/RG Tanna Terminal | 2.7 ² |
| • Barney Point | 4.5 |
| • Gladstone Power Station | 4.3 |

2.6 Cluster Map



2.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Burngrove and German Creek or to any of the branch lines to any Nominated Loading Facility but not including the corridor towards Coppabella and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

² This time will reduce once terminal upgrades are undertaken over the next six months.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 2.7.

2.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$0.00	0.0034
AT ₄	\$2.17	0.0034
AT ₅	\$1.79	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 2.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$0.00	0.0024
AT ₄	\$2.17	0.0024
AT ₅	\$1.03	0.0013
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
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Aug 2001	1,610,008	Feb 2003	1,560,226	Aug 2004	1,724,919
Sep 2001	1,558,072	Mar 2003	1,727,393	Sep 2004	1,669,276
Oct 2001	1,620,117	Apr 2003	1,655,782	Oct 2004	1,725,438
Nov 2001	1,567,855	May 2003	1,710,975	Nov 2004	1,669,779
Dec 2001	1,620,117	Jun 2003	1,655,782	Dec 2004	1,725,438
Jan 2002	1,666,452	Jul 2003	1,711,267	Jan 2005	1,764,312
Feb 2002	1,505,183	Aug 2003	1,711,267	Feb 2005	1,593,572
Mar 2002	1,666,452	Sep 2003	1,656,065	Mar 2005	1,764,312
Apr 2002	1,604,864	Oct 2003	1,712,233	Apr 2005	1,689,144
May 2002	1,658,360	Nov 2003	1,656,999	May 2005	1,745,449
Jun 2002	1,604,864	Dec 2003	1,712,233	Jun 2005	1,689,144
Jul 2002	1,684,769	Jan 2004	1,751,269		
Aug 2002	1,684,769	Feb 2004	1,581,792		
Sep 2002	1,630,422	Mar 2004	1,751,269		
Oct 2002	1,687,305	Apr 2004	1,677,098		
Nov 2002	1,632,876	May 2004	1,733,001		
Dec 2002	1,687,305	Jun 2004	1,677,098		

2.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	4,494,000	5,493,000
2001 Quarter 4	4,503,000	5,504,000
2002 Quarter 1	4,512,000	5,515,000
2002 Quarter 2	4,521,000	5,526,000
2002 Quarter 3	4,650,000	5,684,000
2002 Quarter 4	4,656,000	5,691,000
2003 Quarter 1	4,662,000	5,699,000
2003 Quarter 2	4,668,000	5,706,000
2003 Quarter 3	4,654,000	5,688,000
2003 Quarter 4	4,654,000	5,688,000
2004 Quarter 1	4,653,000	5,687,000
2004 Quarter 2	4,653,000	5,687,000
2004 Quarter 3	4,686,000	5,727,000
2004 Quarter 4	4,687,000	5,729,000
2005 Quarter 1	4,689,000	5,731,000
2005 Quarter 2	4,690,000	5,732,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 2.9 of Part B, Schedule F:

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	1,863,000	2,277,000
2001 Quarter 4	1,872,000	2,288,000
2002 Quarter 1	1,881,000	2,299,000
2002 Quarter 2	1,890,000	2,310,000
2002 Quarter 3	1,940,000	2,371,000
2002 Quarter 4	1,942,000	2,374,000
2003 Quarter 1	1,945,000	2,377,000
2003 Quarter 2	1,948,000	2,381,000
2003 Quarter 3	1,983,000	2,423,000
2003 Quarter 4	1,984,000	2,425,000
2004 Quarter 1	1,986,000	2,427,000
2004 Quarter 2	1,988,000	2,429,000
2004 Quarter 3	1,985,000	2,426,000
2004 Quarter 4	1,985,000	2,426,000
2005 Quarter 1	1,985,000	2,426,000
2005 Quarter 2	1,985,000	2,426,000

3 Stanwell Cluster

3.1 Application of this Clause

This Clause 3 should be read in conjunction with Part A of this Section.

3.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

3.3 Reference Train Service Characteristics

3.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 1670 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220³ loading, or otherwise generates a loading equivalent to M220⁵;
- (c) utilises electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.25 hours.

3.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 3.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 27%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 27%.'

3.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

• Boonal	4.2
• Boorgoon	5.5
• Curragh	3.3
• Ensham	3.2
• Gregory	2.8
• Kestrel	3.6

³ As specified in the ANZRC Railway Bridge Design Manual 1974.

- Kinrola 5.5
- Koorilgah 5.7
- Laleham/South Blackwater Mine* 4.5

*Although not a loading facility, the average Loading Time for the Laleham/South Blackwater Mine represents the average time the train Service is off the Rail Infrastructure on the relevant Private Infrastructure. .

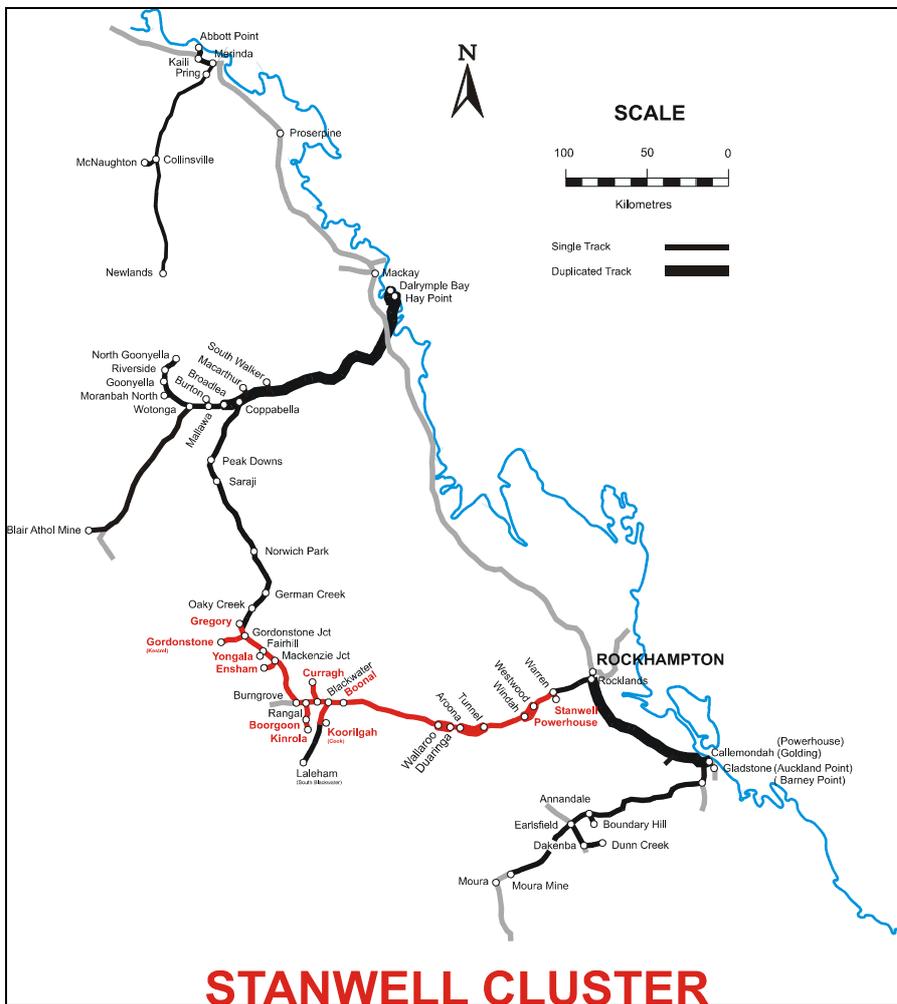
3.5 Unloading Facilities

Nominated Unloading Facilities

Average Unloading Time (hours) per return trip assessed on a monthly basis

- Stanwell Powerhouse 2.3

3.6 Cluster Map



3.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Bluff and Gregory mine, or to any branch lines to any Nominated Loading Facility but not including the corridor towards Oaky Creek, and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 3.7.

3.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$3.36	0.0034
AT ₄	\$0.62	0.0034
AT ₅	\$1.79	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 3.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.55	0
AT ₂	\$1,030	0
AT ₃	\$3.21	0.0024
AT ₄	\$0.59	0.0024
AT ₅	\$1.03	0.0013
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	1,610,008	Jan 2003	1,727,393	Jul 2004	1,724,919
Aug 2001	1,610,008	Feb 2003	1,560,226	Aug 2004	1,724,919
Sep 2001	1,558,072	Mar 2003	1,727,393	Sep 2004	1,669,276
Oct 2001	1,620,117	Apr 2003	1,655,782	Oct 2004	1,725,438
Nov 2001	1,567,855	May 2003	1,710,975	Nov 2004	1,669,779
Dec 2001	1,620,117	Jun 2003	1,655,782	Dec 2004	1,725,438
Jan 2002	1,666,452	Jul 2003	1,711,267	Jan 2005	1,764,312
Feb 2002	1,505,183	Aug 2003	1,711,267	Feb 2005	1,593,572
Mar 2002	1,666,452	Sep 2003	1,656,065	Mar 2005	1,764,312
Apr 2002	1,604,864	Oct 2003	1,712,233	Apr 2005	1,689,144
May 2002	1,658,360	Nov 2003	1,656,999	May 2005	1,745,449
Jun 2002	1,604,864	Dec 2003	1,712,233	Jun 2005	1,689,144
Jul 2002	1,684,769	Jan 2004	1,751,269		
Aug 2002	1,684,769	Feb 2004	1,581,792		
Sep 2002	1,630,422	Mar 2004	1,751,269		
Oct 2002	1,687,305	Apr 2004	1,677,098		
Nov 2002	1,632,876	May 2004	1,733,001		
Dec 2002	1,687,305	Jun 2004	1,677,098		

3.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	2,723,000	3,328,000
2001 Quarter 4	2,732,000	3,339,000
2002 Quarter 1	2,741,000	3,350,000
2002 Quarter 2	2,750,000	3,361,000
2002 Quarter 3	2,741,000	3,350,000
2002 Quarter 4	2,741,000	3,351,000
2003 Quarter 1	2,742,000	3,351,000
2003 Quarter 2	2,742,000	3,351,000
2003 Quarter 3	2,744,000	3,353,000
2003 Quarter 4	2,744,000	3,353,000
2004 Quarter 1	2,744,000	3,353,000
2004 Quarter 2	2,744,000	3,354,000
2004 Quarter 3	2,746,000	3,356,000
2004 Quarter 4	2,746,000	3,357,000
2005 Quarter 1	2,746,000	3,357,000
2005 Quarter 2	2,746,000	3,357,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 3.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	216,000	265,000
2001 Quarter 4	225,000	276,000
2002 Quarter 1	234,000	287,000
2002 Quarter 2	243,000	298,000
2002 Quarter 3	230,000	281,000
2002 Quarter 4	230,000	281,000
2003 Quarter 1	230,000	281,000
2003 Quarter 2	230,000	281,000
2003 Quarter 3	230,000	281,000
2003 Quarter 4	230,000	281,000
2004 Quarter 1	230,000	281,000
2004 Quarter 2	230,000	281,000
2004 Quarter 3	230,000	281,000
2004 Quarter 4	230,000	281,000
2005 Quarter 1	230,000	281,000
2005 Quarter 2	230,000	281,000

4 North Goonyella Cluster

4.1 Application of this Clause

This Clause 4 should be read in conjunction with Part A of this Section.

4.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

4.3 Reference Train Service Characteristics

4.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 2070 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220⁴ loading, or otherwise generates a loading equivalent to M220⁶;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.75 hours.

4.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 4.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 23%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.'

4.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

- | | |
|-----------------------------------|-----|
| • South Walker Creek ⁵ | 3.8 |
| • Macarthur/Coppabella | 3.7 |
| • Burton | 3.8 |
| • Moranbah North | 3.6 |

⁴ As specified in the ANZRC Railway Bridge Design Manual 1974.

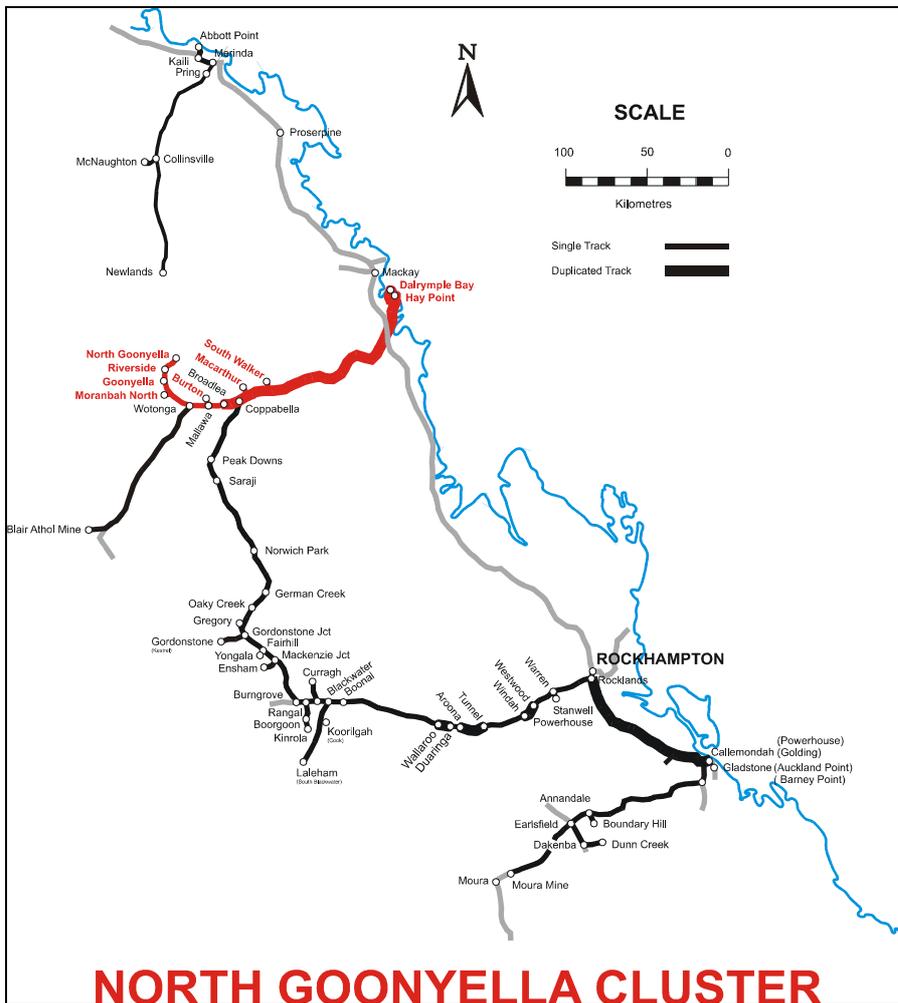
⁵ South Walker is not currently a balloon loop loading facility but is in the process of being upgraded. The time included is for the upgraded balloon loop facility.

- Goonyella 4.3
- Riverside 4.9
- North Goonyella 4.0

4.5 Unloading Facilities

<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis</i>
• Dalrymple Bay	3.0 ⁶
• Hay Point	3.0

4.6 Cluster Map



4.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Mindi and North Goonyella or to any of the branch lines to any Nominated Loading Facility excluding the

⁶ This time will reduce once terminal upgrades are undertaken over the next six months.

corridors to Blair Athol and Oaky Creek and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 4.7.

4.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$660	0
AT ₃	\$2.80	0.0022
AT ₄	\$0.51	0.0022
AT ₅	\$1.66	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking, it must insert the following replacement reference tariff components and X-factors in paragraph 4.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$660	0
AT ₃	\$2.49	0.0037
AT ₄	\$0.45	0.0037
AT ₅	\$0.82	0.0015
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	2,295,907	Jan 2003	2,463,680	Jul 2004	2,464,902
Aug 2001	2,295,907	Feb 2003	2,225,260	Aug 2004	2,464,902
Sep 2001	2,221,845	Mar 2003	2,463,680	Sep 2004	2,385,389
Oct 2001	2,309,385	Apr 2003	2,361,613	Oct 2004	2,465,058
Nov 2001	2,234,889	May 2003	2,440,334	Nov 2004	2,385,540
Dec 2001	2,309,385	Jun 2003	2,361,613	Dec 2004	2,465,058
Jan 2002	2,374,482	Jul 2003	2,458,052	Jan 2005	2,519,997
Feb 2002	2,144,694	Aug 2003	2,458,052	Feb 2005	2,276,126
Mar 2002	2,374,482	Sep 2003	2,378,760	Mar 2005	2,519,997
Apr 2002	2,285,822	Oct 2003	2,460,170	Apr 2005	2,412,060
May 2002	2,362,016	Nov 2003	2,380,810	May 2005	2,492,462
Jun 2002	2,285,822	Dec 2003	2,460,170	Jun 2005	2,412,060
Jul 2002	2,402,750	Jan 2004	2,517,006		
Aug 2002	2,402,750	Feb 2004	2,273,424		
Sep 2002	2,325,242	Mar 2004	2,517,006		
Oct 2002	2,406,436	Apr 2004	2,411,117		
	2,406,655	May 2004	2,491,487		
Dec 2002	2,406,436	Jun 2004	2,411,117		

4.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	4,290,000	5,243,000
2001 Quarter 4	4,299,000	5,254,000
2002 Quarter 1	4,308,000	5,265,000
2002 Quarter 2	4,317,000	5,276,000
2002 Quarter 3	4,370,000	5,341,000
2002 Quarter 4	4,372,000	5,344,000
2003 Quarter 1	4,375,000	5,348,000
2003 Quarter 2	4,378,000	5,351,000
2003 Quarter 3	4,497,000	5,496,000
2003 Quarter 4	4,502,000	5,502,000
2004 Quarter 1	4,507,000	5,509,000
2004 Quarter 2	4,512,000	5,515,000
2004 Quarter 3	4,490,000	5,488,000
2004 Quarter 4	4,490,000	5,487,000
2005 Quarter 1	4,489,000	5,487,000
2005 Quarter 2	4,489,000	5,486,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 4.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	1,953,000	2,387,000
2001 Quarter 4	1,962,000	2,398,000
2002 Quarter 1	1,971,000	2,409,000
2002 Quarter 2	1,980,000	2,420,000
2002 Quarter 3	2,025,000	2,475,000
2002 Quarter 4	2,027,000	2,478,000
2003 Quarter 1	2,030,000	2,481,000
2003 Quarter 2	2,032,000	2,484,000
2003 Quarter 3	2,107,000	2,576,000
2003 Quarter 4	2,111,000	2,580,000
2004 Quarter 1	2,114,000	2,584,000
2004 Quarter 2	2,117,000	2,588,000
2004 Quarter 3	2,061,000	2,520,000
2004 Quarter 4	2,059,000	2,517,000
2005 Quarter 1	2,057,000	2,514,000
2005 Quarter 2	2,055,000	2,512,000

5 South Goonyella Cluster

5.1 Application of this Clause

This Clause 5 should be read in conjunction with Part A of this Section.

5.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

5.3 Reference Train Service Characteristics

5.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 2070 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220⁷ loading, or otherwise generates a loading equivalent to M220⁹;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.75 hours.

5.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 5.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 23%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.'

5.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

- | | |
|----------------|-----|
| • Peak Downs | 4.6 |
| • Saraji | 4.9 |
| • Norwich Park | 4.2 |
| • German Creek | 3.8 |
| • Oaky Creek | 3.7 |

⁷ As specified in the ANZRC Railway Bridge Design Manual 1974.

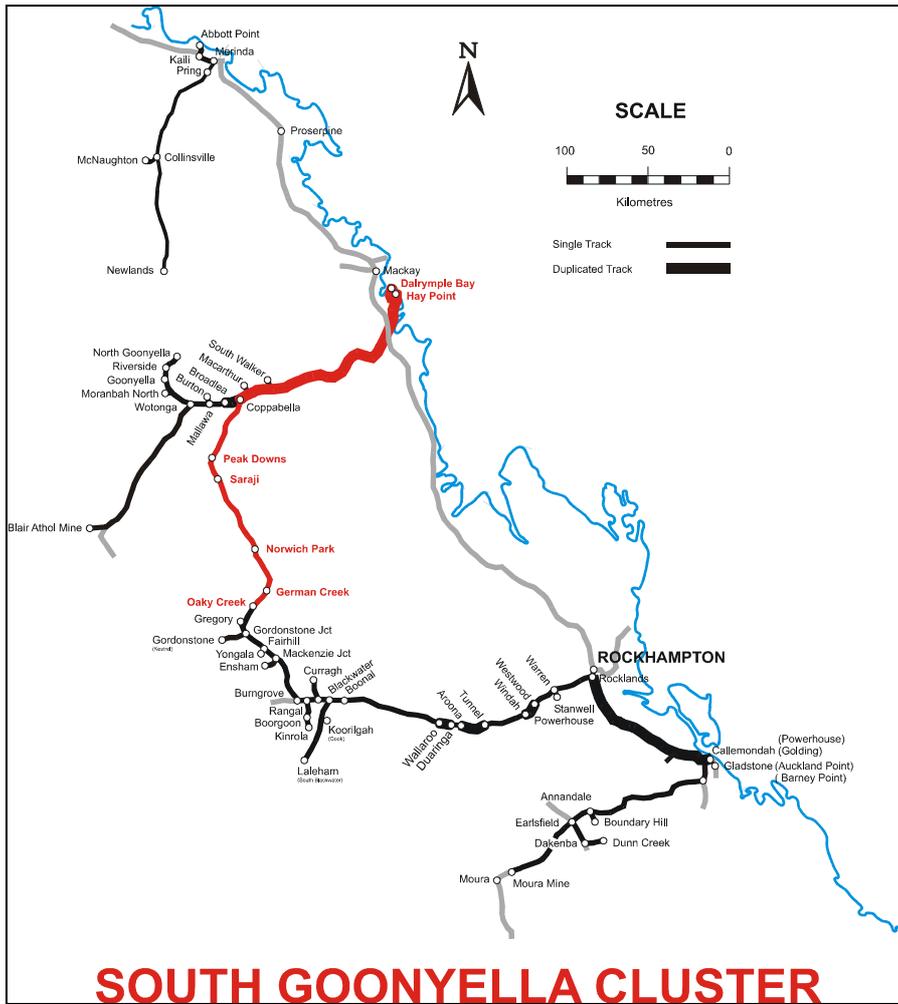
5.5 Unloading Facilities

Nominated Unloading Facilities

Average Unloading Time (hours) per return trip assessed on a monthly basis

- Dalrymple Bay 3.0⁸
- Hay Point 3.0

5.6 Cluster Map



5.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Coppabella and Oaky Creek or to any of the branch lines to any Nominated Loading Facility but excluding the corridor to the junction south of the Gregory mine branch line and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

⁸ This time will reduce once terminal upgrades are undertaken over the next six months.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 5.7.

QR accepts this amendment.

5.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$750	0
AT ₃	\$5.73	0.0022
AT ₄	\$0.00	0.0022
AT ₅	\$1.66	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 5.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$750	0
AT ₃	\$2.55	0.0037
AT ₄	\$0.64	0.0037
AT ₅	\$0.82	0.0015
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	2,295,907	Jan 2003	2,463,680	Jul 2004	2,464,902
Aug 2001	2,295,907	Feb 2003	2,225,260	Aug 2004	2,464,902
Sep 2001	2,221,845	Mar 2003	2,463,680	Sep 2004	2,385,389
Oct 2001	2,309,385	Apr 2003	2,361,613	Oct 2004	2,465,058
Nov 2001	2,234,889	May 2003	2,440,334	Nov 2004	2,385,540
Dec 2001	2,309,385	Jun 2003	2,361,613	Dec 2004	2,465,058
Jan 2002	2,374,482	Jul 2003	2,458,052	Jan 2005	2,519,997
Feb 2002	2,144,694	Aug 2003	2,458,052	Feb 2005	2,276,126
Mar 2002	2,374,482	Sep 2003	2,378,760	Mar 2005	2,519,997
Apr 2002	2,285,822	Oct 2003	2,460,170	Apr 2005	2,412,060
May 2002	2,362,016	Nov 2003	2,380,810	May 2005	2,492,462
Jun 2002	2,285,822	Dec 2003	2,460,170	Jun 2005	2,412,060
Jul 2002	2,402,750	Jan 2004	2,517,006		
Aug 2002	2,402,750	Feb 2004	2,273,424		
Sep 2002	2,325,242	Mar 2004	2,517,006		
Oct 2002	2,406,436	Apr 2004	2,411,117		
	2,406,655	May 2004	2,491,487		
Dec 2002	2,406,436	Jun 2004	2,411,117		

5.9 Traffic Volume Range

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	4,995,000	6,105,000
2001 Quarter 4	5,004,000	6,116,000
2002 Quarter 1	5,013,000	6,127,000
2002 Quarter 2	5,022,000	6,138,000
2002 Quarter 3	5,112,000	6,248,000
2002 Quarter 4	5,116,000	6,253,000
2003 Quarter 1	5,121,000	6,258,000
2003 Quarter 2	5,125,000	6,264,000
2003 Quarter 3	5,303,000	6,482,000
2003 Quarter 4	5,311,000	6,491,000
2004 Quarter 1	5,319,000	6,501,000
2004 Quarter 2	5,327,000	6,511,000
2004 Quarter 3	5,334,000	6,519,000
2004 Quarter 4	5,335,000	6,520,000
2005 Quarter 1	5,336,000	6,521,000
2005 Quarter 2	5,336,000	6,522,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 5.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	2,783,000	3,402,000
2001 Quarter 4	2,792,000	3,413,000
2002 Quarter 1	2,801,000	3,424,000
2002 Quarter 2	2,810,000	3,435,000
2002 Quarter 3	2,931,000	3,582,000
2002 Quarter 4	2,937,000	3,589,000
2003 Quarter 1	2,942,000	3,596,000
2003 Quarter 2	2,948,000	3,603,000
2003 Quarter 3	2,994,000	3,659,000
2003 Quarter 4	2,996,000	3,662,000
2004 Quarter 1	2,998,000	3,664,000
2004 Quarter 2	3,000,000	3,667,000
2004 Quarter 3	3,058,000	3,737,000
2004 Quarter 4	3,060,000	3,740,000
2005 Quarter 1	3,063,000	3,744,000
2005 Quarter 2	3,066,000	3,747,000

6 West Goonyella Cluster

6.1 Application of this Clause

This Clause 6 should be read in conjunction with Part A of this Section.

6.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

6.3 Reference Train Service Characteristics

6.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 2070 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220⁹ loading, or otherwise generates a loading equivalent to M220¹¹;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.75 hours.

6.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 6.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 23%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.'

6.4 Loading Facilities

Nominated Loading Facilities

- Blair Athol

Average Loading Time (hours) per return trip assessed on a monthly basis

3.0

6.5 Unloading Facilities

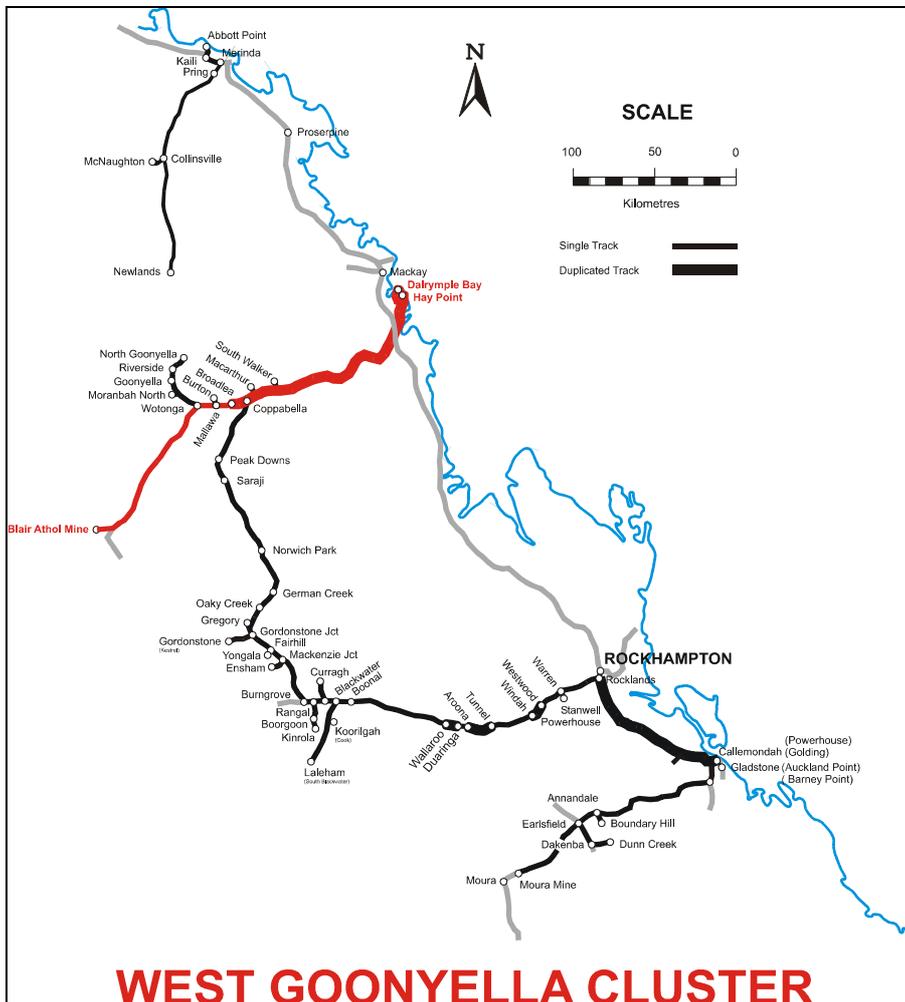
Nominated Unloading Facilities

Average Unloading Time (hours) per return trip assessed on a monthly basis

⁹ As specified in the ANZRC Railway Bridge Design Manual 1974.

- Dalrymple Bay 3.0¹⁰
- Hay Point 3.0

6.6 Cluster Map



6.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Wotonga and Blair Athol, and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the words ‘and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section’ from clause 6.7.

6.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

¹⁰ This time will reduce once terminal upgrades are undertaken over the next six months.

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$660	0
AT ₃	\$2.93	0.0022
AT ₄	\$0.82	0.0022
AT ₅	\$1.66	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 6.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$660	0
AT ₃	\$2.61	0.0037
AT ₄	\$0.73	0.0037
AT ₅	\$0.82	0.0015
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	2,295,907	Jan 2003	2,463,680	Jul 2004	2,464,902
Aug 2001	2,295,907	Feb 2003	2,225,260	Aug 2004	2,464,902
Sep 2001	2,221,845	Mar 2003	2,463,680	Sep 2004	2,385,389
Oct 2001	2,309,385	Apr 2003	2,361,613	Oct 2004	2,465,058
Nov 2001	2,234,889	May 2003	2,440,334	Nov 2004	2,385,540
Dec 2001	2,309,385	Jun 2003	2,361,613	Dec 2004	2,465,058
Jan 2002	2,374,482	Jul 2003	2,458,052	Jan 2005	2,519,997
Feb 2002	2,144,694	Aug 2003	2,458,052	Feb 2005	2,276,126
Mar 2002	2,374,482	Sep 2003	2,378,760	Mar 2005	2,519,997
Apr 2002	2,285,822	Oct 2003	2,460,170	Apr 2005	2,412,060
May 2002	2,362,016	Nov 2003	2,380,810	May 2005	2,492,462
Jun 2002	2,285,822	Dec 2003	2,460,170	Jun 2005	2,412,060
Jul 2002	2,402,750	Jan 2004	2,517,006		
Aug 2002	2,402,750	Feb 2004	2,273,424		
Sep 2002	2,325,242	Mar 2004	2,517,006		
Oct 2002	2,406,436	Apr 2004	2,411,117		
	2,406,655	May 2004	2,491,487		
Dec 2002	2,406,436	Jun 2004	2,411,117		

6.9 Traffic Volume Range

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	4,552,000	5,563,000
2001 Quarter 4	4,561,000	5,574,000
2002 Quarter 1	4,570,000	5,585,000
2002 Quarter 2	4,579,000	5,596,000
2002 Quarter 3	4,631,000	5,661,000
2002 Quarter 4	4,634,000	5,664,000
2003 Quarter 1	4,637,000	5,668,000
2003 Quarter 2	4,640,000	5,671,000
2003 Quarter 3	4,772,000	5,833,000
2003 Quarter 4	4,778,000	5,840,000
2004 Quarter 1	4,784,000	5,847,000
2004 Quarter 2	4,790,000	5,854,000
2004 Quarter 3	4,778,000	5,840,000
2004 Quarter 4	4,778,000	5,840,000
2005 Quarter 1	4,778,000	5,839,000
2005 Quarter 2	4,778,000	5,839,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 6.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	1,178,000	1,439,000
2001 Quarter 4	1,187,000	1,450,000
2002 Quarter 1	1,196,000	1,461,000
2002 Quarter 2	1,205,000	1,472,000
2002 Quarter 3	1,230,000	1,503,000
2002 Quarter 4	1,232,000	1,505,000
2003 Quarter 1	1,233,000	1,508,000
2003 Quarter 2	1,235,000	1,510,000
2003 Quarter 3	1,233,000	1,507,000
2003 Quarter 4	1,233,000	1,507,000
2004 Quarter 1	1,233,000	1,507,000
2004 Quarter 2	1,233,000	1,507,000
2004 Quarter 3	1,233,000	1,507,000
2004 Quarter 4	1,233,000	1,507,000
2005 Quarter 1	1,233,000	1,507,000
2005 Quarter 2	1,233,000	1,507,000

7 Gregory Branch via Goonyella Cluster

7.1 Application of this Clause

This Clause 7 should be read in conjunction with Part A of this Section.

7.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

7.3 Reference Train Service Characteristics

7.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 2070 metres;
- (b) has a maximum axle load of 26 tonne for a wheel configuration consistent with M220¹¹ loading, or otherwise generates a loading equivalent to M220¹;
- (c) utilises either electric or diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.75 hours.

7.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 7.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 23%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 23%.'

7.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

- | | |
|-------------------------|-----|
| • Gregory | 3.7 |
| • Kestrel ¹² | 4.8 |
| • Ensham ¹⁴ | 4.2 |

¹¹ As specified in the ANZRC Railway Bridge Design Manual 1974.

¹² These mines do not have angles to the north.

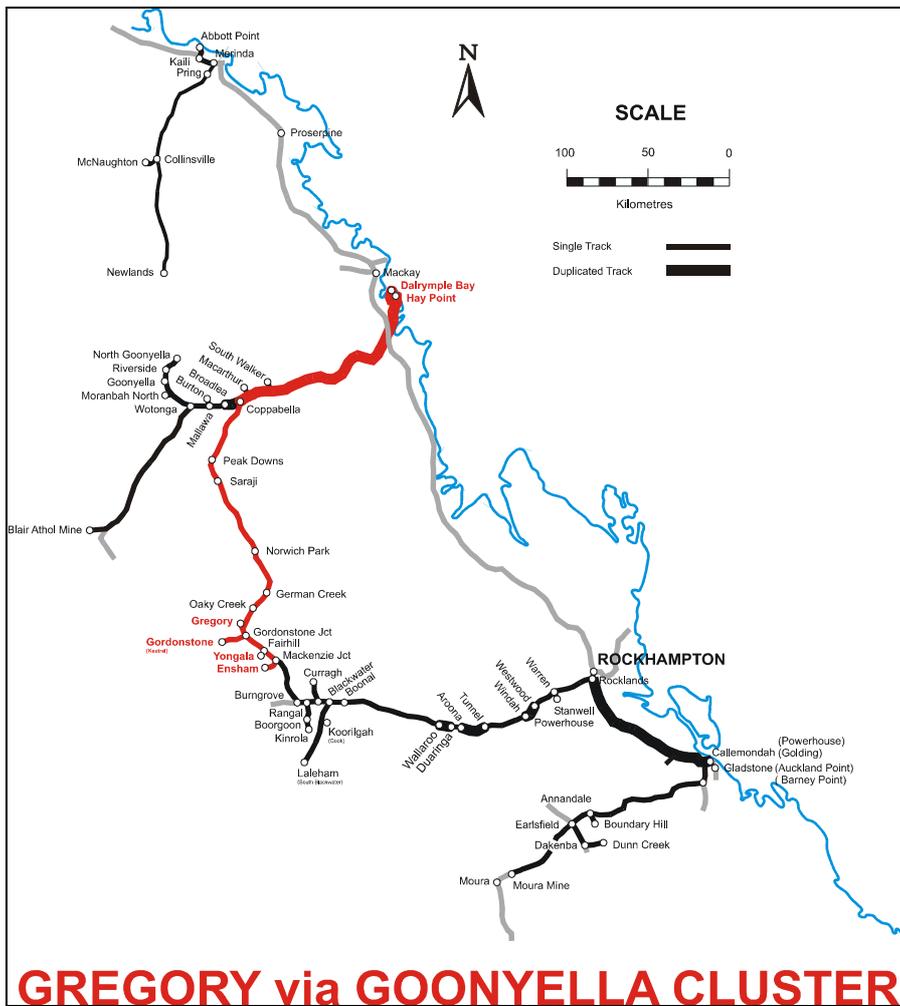
7.5 Unloading Facilities

Nominated Unloading Facilities

Average Unloading Time (hours) per return trip assessed on a monthly basis

- Dalrymple Bay 3.0¹³
- Hay Point 3.0

7.6 Cluster Map



7.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Gregory mine and Burngrove or to any of the branch lines to any Nominated Loading Facility but excluding the corridors towards Oaky Creek and Bluff and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

¹³ This time will reduce once terminal upgrades are undertaken over the next six months.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 7.7

7.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$750	0
AT ₃	\$6.55	0.0022
AT ₄	\$0.00	0.0022
AT ₅	\$1.66	0.0035

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 7.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$0.38	0
AT ₂	\$750	0
AT ₃	\$3.31	0.0037
AT ₄	\$0.87	0.0037
AT ₅	\$0.82	0.0015
AT ₆	\$0.81	0

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts.

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	2,295,907	Jan 2003	2,463,680	Jul 2004	2,464,902
Aug 2001	2,295,907	Feb 2003	2,225,260	Aug 2004	2,464,902
Sep 2001	2,221,845	Mar 2003	2,463,680	Sep 2004	2,385,389
Oct 2001	2,309,385	Apr 2003	2,361,613	Oct 2004	2,465,058
Nov 2001	2,234,889	May 2003	2,440,334	Nov 2004	2,385,540
Dec 2001	2,309,385	Jun 2003	2,361,613	Dec 2004	2,465,058
Jan 2002	2,374,482	Jul 2003	2,458,052	Jan 2005	2,519,997
Feb 2002	2,144,694	Aug 2003	2,458,052	Feb 2005	2,276,126
Mar 2002	2,374,482	Sep 2003	2,378,760	Mar 2005	2,519,997
Apr 2002	2,285,822	Oct 2003	2,460,170	Apr 2005	2,412,060
May 2002	2,362,016	Nov 2003	2,380,810	May 2005	2,492,462
Jun 2002	2,285,822	Dec 2003	2,460,170	Jun 2005	2,412,060
Jul 2002	2,402,750	Jan 2004	2,517,006		
Aug 2002	2,402,750	Feb 2004	2,273,424		
Sep 2002	2,325,242	Mar 2004	2,517,006		
Oct 2002	2,406,436	Apr 2004	2,411,117		
	2,406,655	May 2004	2,491,487		
Dec 2002	2,406,436	Jun 2004	2,411,117		

7.9 Traffic Volume Range

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	5,074,000	6,201,000
2001 Quarter 4	5,083,000	6,212,000
2002 Quarter 1	5,092,000	6,223,000
2002 Quarter 2	5,101,000	6,234,000
2002 Quarter 3	5,191,000	6,344,000
2002 Quarter 4	5,195,000	6,349,000
2003 Quarter 1	5,199,000	6,355,000
2003 Quarter 2	5,204,000	6,360,000
2003 Quarter 3	5,361,000	6,552,000
2003 Quarter 4	5,368,000	6,561,000
2004 Quarter 1	5,375,000	6,570,000
2004 Quarter 2	5,382,000	6,578,000
2004 Quarter 3	5,390,000	6,588,000
2004 Quarter 4	5,391,000	6,589,000
2005 Quarter 1	5,392,000	6,590,000
2005 Quarter 2	5,393,000	6,591,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 7.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	218,000	267,000
2001 Quarter 4	227,000	278,000
2002 Quarter 1	236,000	289,000
2002 Quarter 2	245,000	300,000
2002 Quarter 3	232,000	283,000
2002 Quarter 4	232,000	283,000
2003 Quarter 1	232,000	283,000
2003 Quarter 2	232,000	283,000
2003 Quarter 3	232,000	283,000
2003 Quarter 4	232,000	283,000
2004 Quarter 1	232,000	283,000
2004 Quarter 2	232,000	283,000
2004 Quarter 3	232,000	283,000
2004 Quarter 4	232,000	283,000
2005 Quarter 1	232,000	283,000
2005 Quarter 2	232,000	283,000

8 Moura Cluster

8.1 Application of this Clause

This Clause 8 should be read in conjunction with Part A of this Section.

8.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

8.3 Reference Train Service Characteristics

8.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 1000 metres;
- (b) has a maximum axle load of 22.5 tonne for a wheel configuration consistent with M220¹⁴ loading, or otherwise generates a loading equivalent to M220¹;
- (c) utilises diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 2.25 hours.

8.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 30%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 8.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 30%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 30%.'

8.4 Loading Facilities

Nominated Loading Facilities

Average Loading Time (hours) per return trip assessed on a monthly basis

- | | |
|----------------------------------|-----|
| • Boundary Hill | 3.4 |
| • Dunn Creek/Callide Coal Fields | 3.6 |
| • Moura Mine | 3.2 |

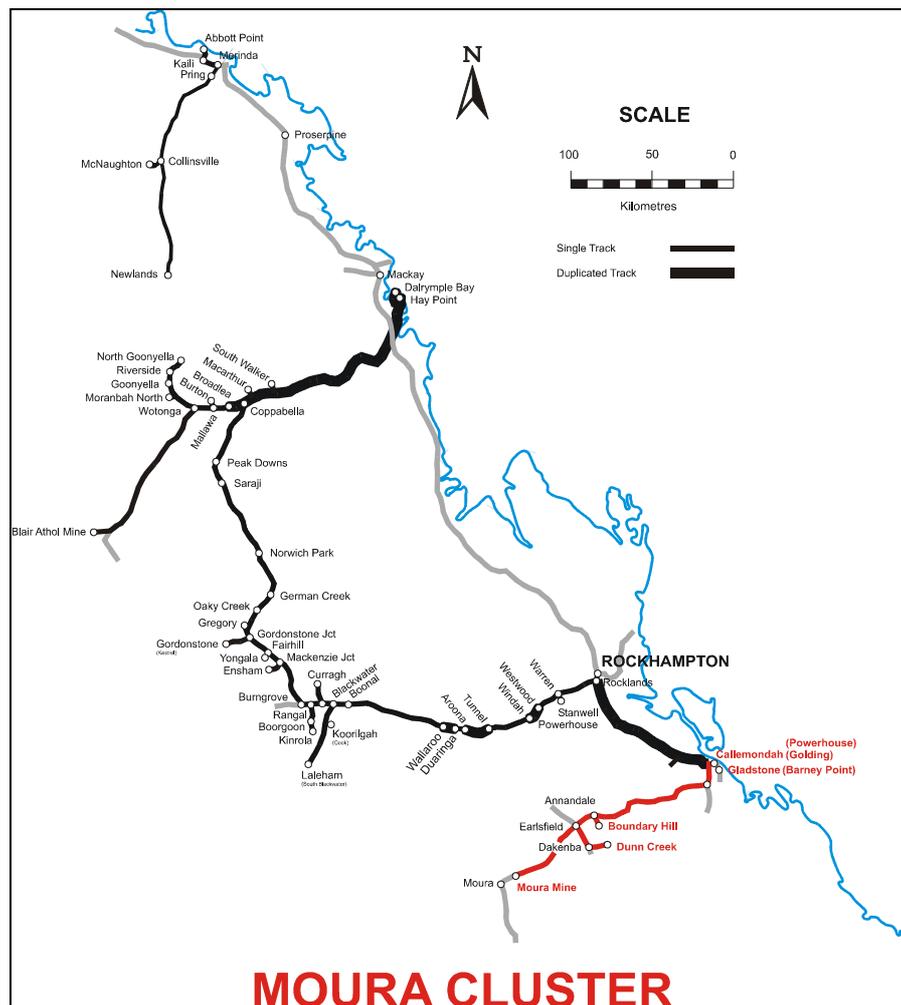
¹⁴ As specified in the ANZRC Railway Bridge Design Manual 1974.

8.5 Unloading Facilities

<i>Nominated Unloading Facilities</i>	<i>Average Unloading Time (hours) per return trip assessed on a monthly basis Year</i>
• Golding/RG Tanna Terminal	1.8 ¹⁵
• Barney Point	2.9
• Gladstone Power Station	2.9
• QAL refinery*	8.0

*The average Unloading Time for the QAL refinery represents the average time the Train Service is off the relevant Rail Infrastructure on the Private Infrastructure.

8.6 Cluster Map



8.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Annandale and Moura Mine or to any of the branch lines to any Nominated Loading Facility and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

¹⁵ This time will reduce once terminal upgrades are undertaken over the next six months.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must delete the words 'and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section' from clause 8.7.

8.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$1.03	0
AT ₂	\$370	0
AT ₃	\$7.76	0.0025
AT ₄	\$1.25	0.0025
AT ₅	n/a	n/a

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 8.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$1.03	0
AT ₂	\$370	0
AT ₃	\$7.96	0.0017
AT ₄	\$1.27	0.0017
AT ₅	n/a	n/a
AT ₆	n/a	n/a

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	203,911	Jan 2003	215,058	Jul 2004	209,948
Aug 2001	203,911	Feb 2003	194,246	Aug 2004	209,948
Sep 2001	197,334	Mar 2003	215,058	Sep 2004	203,176
Oct 2001	203,911	Apr 2003	206,684	Oct 2004	209,948
Nov 2001	197,334	May 2003	213,573	Nov 2004	203,176
Dec 2001	203,911	Jun 2003	206,684	Dec 2004	209,948
Jan 2002	208,443	Jul 2003	209,948	Jan 2005	214,614
Feb 2002	188,271	Aug 2003	209,948	Feb 2005	193,845
Mar 2002	208,443	Sep 2003	203,176	Mar 2005	214,614
Apr 2002	199,502	Oct 2003	209,948	Apr 2005	205,408
May 2002	206,152	Nov 2003	203,176	May 2005	212,255
Jun 2002	199,502	Dec 2003	209,948	Jun 2005	205,408
Jul 2002	208,644	Jan 2004	214,614		
Aug 2002	208,644	Feb 2004	193,845		
Sep 2002	201,914	Mar 2004	214,614		
Oct 2002	209,513	Apr 2004	205,408		
Nov 2002	202,755	May 2004	212,255		
Dec 2002	209,513	Jun 2004	205,408		

8.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	691,000	845,000
2001 Quarter 4	691,000	845,000
2002 Quarter 1	691,000	845,000
2002 Quarter 2	691,000	845,000
2002 Quarter 3	695,000	849,000
2002 Quarter 4	695,000	849,000
2003 Quarter 1	695,000	850,000
2003 Quarter 2	695,000	850,000
2003 Quarter 3	695,000	849,000
2003 Quarter 4	695,000	849,000
2004 Quarter 1	695,000	849,000
2004 Quarter 2	695,000	849,000
2004 Quarter 3	696,000	850,000
2004 Quarter 4	696,000	850,000
2005 Quarter 1	696,000	851,000
2005 Quarter 2	696,000	851,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 8.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	545,000	666,000
2001 Quarter 4	545,000	666,000
2002 Quarter 1	545,000	666,000
2002 Quarter 2	545,000	666,000
2002 Quarter 3	557,000	681,000
2002 Quarter 4	560,000	684,000
2003 Quarter 1	562,000	687,000
2003 Quarter 2	564,000	690,000
2003 Quarter 3	561,000	685,000
2003 Quarter 4	561,000	685,000
2004 Quarter 1	561,000	685,000
2004 Quarter 2	561,000	685,000
2004 Quarter 3	561,000	685,000
2004 Quarter 4	561,000	685,000
2005 Quarter 1	561,000	685,000
2005 Quarter 2	561,000	685,000

9 Newlands Cluster

9.1 Application of this Clause

This Clause 9 should be read in conjunction with Part A of this Section.

9.2 Term

The term of this Reference Tariff is from the Commencing Date to 30 June 2005.

9.3 Reference Train Service Characteristics

9.3.1 The Reference Train Service:

- (a) has a maximum length (including the locomotive/s) of 1380 metres;
- (b) has a maximum axle load of 20 tonne for a wheel configuration consistent with M16016 loading, or otherwise generates a loading equivalent to M16018;
- (c) utilises diesel traction; and
- (d) measured as an average over a Year, has a Stowage period (excluding Stowage due to the unavailability of the Nominated Infrastructure) for each Train Service of no greater than 1.5 hours.

9.3.2 The Below Rail Transit Time shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 18%.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement sub-clause 9.3.2:

'The conditions of Access for the Reference Train Service include a Below Rail Transit Time which shall be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Information Pack) increased by a factor of 18%. If a Train Service varies from these section running times, but is otherwise subject to this Section, the Below Rail Transit Time will be determined as the sum of the nominated section running times for the Nominated Infrastructure (as included in the relevant Access Agreement) increased by a factor of 18%.'

9.4 Loading Facilities

Nominated Loading Facilities

- Newlands
- McNaughton

Average Loading Time (hours) per return trip assessed on a monthly basis

2.1
2.5

¹⁶ As specified in the ANZRC Railway Bridge Design Manual 1974.

9.5 Unloading Facilities

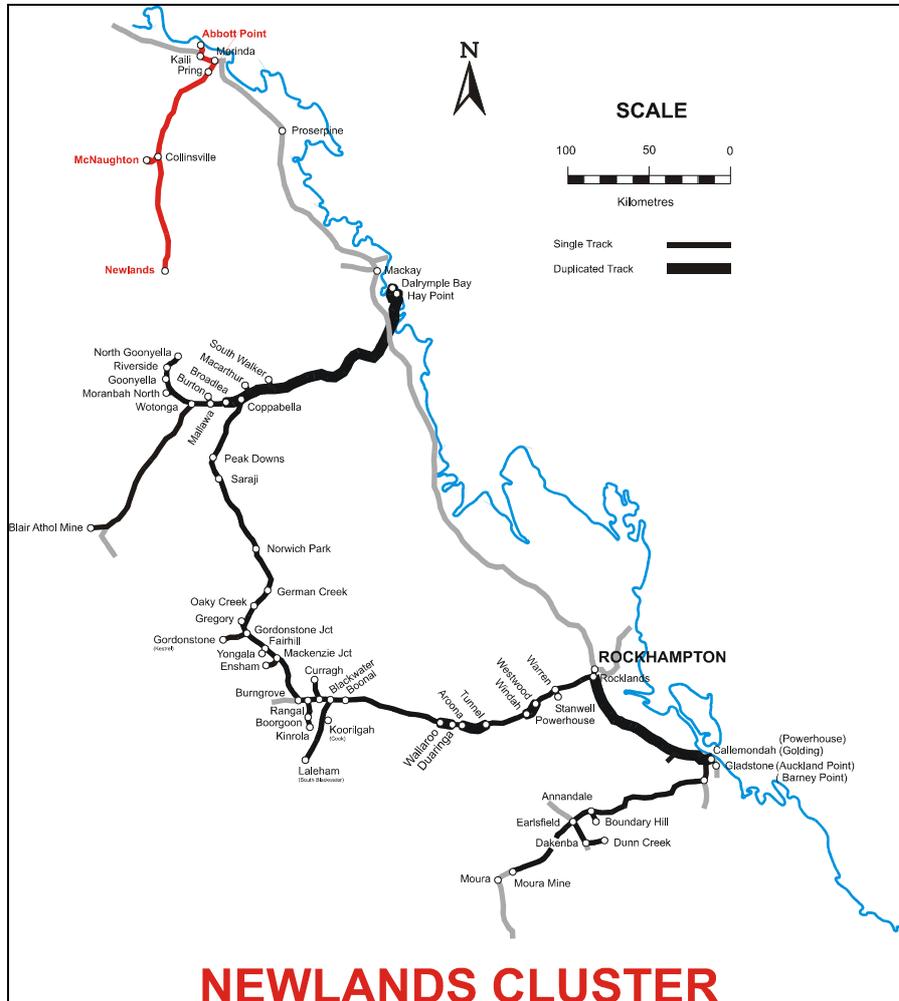
Nominated Unloading Facility/ies

Average Unloading Time (hours) per return trip assessed on a monthly basis

- Abbot Point

1.6

9.6 Cluster Map



9.7 Additional Loading Facilities

A new coal loading facility may only be considered for addition to the above listed loading facilities if its direct connection to the Rail Infrastructure is to the corridor between Collinsville and Newlands, or to the Line Section between Collinsville and McNaughton, and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section.

QCA’s Position

In order for QR’s 2001 draft access undertaking to be approved, it must delete the words ‘and it satisfies the relevant principles relating to the addition of new loading facilities set out in Part A of this Section’ from clause 9.7.

9.8 Reference Tariff

- (a) The Reference Tariff components (as at 1 July 2001) and the variable X for the purposes of Subclause 4.1.1 for each component are:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$1.07	0
AT ₂	\$165	0
AT ₃	\$5.74	0.0031
AT ₄	\$0.89	0.0034
AT ₅	n/a	n/a

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement reference tariff components and X-factors in paragraph 9.8(a) of Part B, Schedule F:

Reference Tariff Component	Reference Tariff	X Factor
AT ₁	\$1.07	0
AT ₂	\$165	0
AT ₃	\$6.02	0.0025
AT ₄	\$0.90	0.0025
AT ₅	n/a	n/a
AT ₆	n/a	n/a

- (b) The First Escalation Date is 1 October 2001.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert a new clause which tabulates monthly system GTK forecasts as follows:

Month	System Gtk '000 gtk	Month	System Gtk '000 gtk	Month	System Gtk '000 gtk
Jul 2001	234,004	Jan 2003	239,204	Jul 2004	214,989
Aug 2001	234,004	Feb 2003	216,056	Aug 2004	214,989
Sep 2001	226,456	Mar 2003	239,204	Sep 2004	208,054
Oct 2001	234,004	Apr 2003	228,944	Oct 2004	214,180
Nov 2001	226,456	May 2003	236,576	Nov 2004	207,271
Dec 2001	234,004	Jun 2003	228,944	Dec 2004	214,180
Jan 2002	239,204	Jul 2003	234,004	Jan 2005	218,113
Feb 2002	216,056	Aug 2003	234,004	Feb 2005	197,005
Mar 2002	239,204	Sep 2003	226,456	Mar 2005	218,113
Apr 2002	228,944	Oct 2003	234,004	Apr 2005	207,966
May 2002	236,576	Nov 2003	226,456	May 2005	214,898
Jun 2002	228,944	Dec 2003	234,004	Jun 2005	207,966
Jul 2002	234,004	Jan 2004	239,204		
Aug 2002	234,004	Feb 2004	216,056		
Sep 2002	226,456	Mar 2004	239,204		
Oct 2002	234,004	Apr 2004	228,944		
Nov 2002	226,456	May 2004	236,576		
Dec 2002	234,004	Jun 2004	228,944		

9.9 Traffic Volume Range

Quarter	Minimum ('000 gtk)	Maximum ('000 gtk)
2001 Quarter 3	647,000	791,000
2001 Quarter 4	647,000	791,000
2002 Quarter 1	647,000	791,000
2002 Quarter 2	647,000	791,000
2002 Quarter 3	647,000	791,000
2002 Quarter 4	647,000	791,000
2003 Quarter 1	647,000	791,000
2003 Quarter 2	647,000	791,000
2003 Quarter 3	647,000	791,000
2003 Quarter 4	647,000	791,000
2004 Quarter 1	647,000	791,000
2004 Quarter 2	647,000	791,000
2004 Quarter 3	594,000	726,000
2004 Quarter 4	592,000	723,000
2005 Quarter 1	589,000	720,000
2005 Quarter 2	587,000	717,000

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, it must insert the following replacement traffic task volume ranges in paragraph 9.9 of Part B, Schedule F:

Quarter	Minimum (‘000 gtk)	Maximum (‘000 gtk)
2001 Quarter 3	625,000	764,000
2001 Quarter 4	625,000	764,000
2002 Quarter 1	625,000	764,000
2002 Quarter 2	625,000	764,000
2002 Quarter 3	625,000	764,000
2002 Quarter 4	625,000	764,000
2003 Quarter 1	625,000	764,000
2003 Quarter 2	625,000	764,000
2003 Quarter 3	625,000	764,000
2003 Quarter 4	625,000	764,000
2004 Quarter 1	625,000	764,000
2004 Quarter 2	625,000	764,000
2004 Quarter 3	574,000	702,000
2004 Quarter 4	572,000	699,000
2005 Quarter 1	570,000	697,000
2005 Quarter 2	568,000	694,000

SCHEDULE G

Network Management Principles

Part A. Scheduling Principles

1 Train Service Entitlements

- (a) Access Holders operating the same types of traffics will have their Train Service Entitlements defined using consistent terminology¹.
- (b) Train Service Entitlements will be expressed in terms that can be interpreted for the development of a Master Train Plan (MTP) and a Daily Train Plan (DTP).
- (c) Where an Access Seeker's required Capacity cannot be met fully, it may, in accepting a Train Service Entitlement, note its interest in the Committed Capacity Register and/or the Capacity Resumption Register and in the event that the relevant Capacity becomes available, the Access Seeker will be able to negotiate for that Capacity, along with any other interested parties.

2 Master Train Plan Principles

- (a) The MTP will detail the Capacity required for the provision of Train Service Entitlements and periods of time allocated for the purposes of providing Planned Possessions, in a form that indicates the time/distance (location) relationship of the Train Services and other activities on the Rail Infrastructure in question. Train Service Entitlements applicable to Timetabled Traffics will be allocated particular Train Paths. Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the operation of the expected peak demand for such Train Service Entitlements. In other words, the Train Paths indicated in the MTP for Cyclic Traffic need not necessarily represent the Train Paths that those Train Services will operate on. This will be the case for coal traffics. However, in the case of some Cyclic Traffics, like grain, the Train Paths indicated in the MTP may well indicate the actual Train Path that a Train Service will operate on. Where Cyclic Traffics and Timetabled Traffics both appear in the same MTP, they will be separately identified.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the third sentence of paragraph 2(b) must be deleted and replaced with 'Train Service Entitlements applicable to Cyclic Traffics will be detailed in the MTP as an allocation of Capacity required for the maximum level of operation for such Train Service Entitlements'.

- (b) Unless otherwise expressly provided in an Access Holder's Access Agreement, the MTP may be modified, as specified in Paragraphs c), d), e) and f) of these MTP Principles, where:
 - (i) an Access Holder notifies Network Access that it wishes to make a long-term change to the **times** at which its Train Service/s, as scheduled in the MTP, operate, provided that change is within the scope of its Train Service Entitlement, and does

¹ For example, Timetabled Traffics may be defined in terms of a path between certain locations, on particular days, and at particular times. Cyclic Traffics may be defined in terms of a number of train paths per specified period of time.

not result in any other Access Holder’s scheduled Train Service/s not being met, or a Planned Possession not being met;

- (ii) Network Access receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder’s scheduled Train Service/s not being met, or a Planned Possession not being met;
- (iii) a Planned Possession is cancelled;
- (iv) Network Access notifies all affected parties that a new or additional Train Service Entitlement has been created, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder’s Train Service Entitlement, provided that the new or additional Train Service Entitlement does not result in any other Access Holder’s scheduled Train Service/s not being met, or a Planned Possession not being met;
- (v) Network Access notifies all affected parties that it wishes to make a long-term change to the **times**² at which one or more scheduled Train Service/s operate, provided that change is within the scope of the relevant Access Holders’ Train Service Entitlement/s and is intended to accommodate:
 - the creation of a new or additional Train Service Entitlement, through the signing of an Access Agreement, or the negotiation of a variation to an Access Holder’s Train Service Entitlement, where that new or additional Train Service Entitlement cannot otherwise be reasonably accommodated on the MTP;
 - the creation of new Planned Possessions or the modification of existing Planned Possessions; or
 - any other Operational Constraint affecting the MTP;
- (vi) Network Access notifies all affected parties that it wishes to make a long-term change to the **times**³ at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders’ Train Service Entitlement/s, provided that change is intended to accommodate:
 - the creation of new Planned Possessions or the modification of existing Planned Possessions;
 - the creation of an additional Train Service Entitlement, through either the signing of an Access Agreement or the variation of an existing Access Agreement; or
 - any other Operational Constraint affecting the MTP;

provided that where the change to the times at which scheduled Train Service/s operate results in any existing Access Holder’s Train Service Entitlement not being met, it is not unreasonable for the existing Access Holder/s to vary their Train Service Entitlement so as to accommodate the change;

² Importantly, this provision only covers a change to the **TIME or TIMES** at which Train Service/s run, and not the other conditions under which a party has an entitlement to run Train Service/s, for instance, the Rollingstock or Rollingstock Configuration that the party may run under their Access Agreement, and the Nominated Network on which it may operate.

³ See footnote 2 above.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the words 'it is not unreasonable for the existing Access Holder/s to vary their Train Service Entitlements so as to accommodate the change.' must be deleted from sub-paragraph 2(b)(vi) and replaced with 'such change is only made with the agreement of such Access Holder/s, such agreement not to be unreasonably withheld.'

- (vii) Network Access notifies all affected parties, within the time period specified in the affected parties' Train Service Entitlements, of a long-term change to the times⁴ at which one or more scheduled Train Service/s operate, whether or not within the scope of the affected Access Holders' Train Service Entitlements, for the purpose of carrying out Major Periodic Maintenance. Any limitations upon Network Access' ability to exercise this right will be specified in individual Access Agreements;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the words 'provided that, where such change is not within the scope of the affected Access Holders' Train Service Entitlements, QR has made reasonable efforts to mitigate the impact on that Access Holder' must be added to the end of the first sentence in sub-paragraph 2(b)(vii).

- (viii) an Access Holder's Access Agreement allows Network Access to alter the Access Holder's Train Service Entitlement, for instance by resuming Capacity through the Capacity resumption process outlined in Part 7 of this Undertaking;
- (ix) actual Train running indicates either that greater than 10% of Train Services on a particular system are consistently (over a 3 month period) varying from the Train Paths scheduled in the MTP, or that a particular Train Service is consistently (over a 3 month period) varying by greater than 10% from its Train Path scheduled in the MTP; and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, sub-paragraph 2(b)(ix) must be deleted.

- (x) Network Access, QR's Infrastructure Service Providers, and all affected Access Holders, otherwise agree.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'QR's' must be deleted from sub-paragraph 2(b)(x), 2(d) & 2(e).

- (c) Network Access may make modifications to the MTP, within the scope of Subparagraphs b)(i), b)(ii), b)(iii) and b)(iv) of these MTP Principles, on a case-by-case basis without the need for consultation.
- (d) Network Access may make modifications to the MTP, within the scope of Subparagraphs b)(v), b)(vi) and b)(vii) of these MTP Principles, on a case-by-case basis after consulting

⁴ See footnote 2 above.

with any Access Holders whose Train Service/s or Train Service Entitlements are affected by the proposed modification to the MTP, and/or with QR's Infrastructure Service Providers if the proposed modification affects a Planned Possession.

- (e) Where a change is being sought to the MTP that falls within the scope of Subparagraphs b)(ix) and b)(x) of these MTP Principles, Network Access will invite QR's Infrastructure Service Providers and all Access Holders whose Train Service Entitlements are affected by the proposed modification to the MTP to consider the modification in an appropriate forum⁵. Each party will be provided with a copy of the proposed changes seven (7) days prior to the scheduled consideration of the modification.
- (f) QR must notify any modifications to the MTP to all parties whose activities are affected by the modification at least thirty (30) days prior to the commencement of the modification. As a result, where reference is made in Paragraph b) of these MTP Principles to an Access Holder notifying Network Access that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved:

- **the words 'As a result, where reference is made in Paragraph (b) of these MTP Principles to an Access Holder notifying Network Access that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered' must be deleted from sub-paragraph 2(f);**
 - **the following new sub-paragraph (g) must be inserted:**
- (g) 'As a result of QR's obligations in accordance with Paragraph (f), where reference is made in Paragraph (b) of these MTP to an Access Holder notifying Network Access that it wishes to vary its Train Service Entitlement or Train Service/s, a reasonable notice period should be provided having regard to the necessary process and factors to be considered'.**

- (g) The cancellation of a Train Service or Train Services in accordance with the above MTP Principles, does not necessarily excuse either QR or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- (h) The MTP will be in a form that is readily convertible to a DTP, which is the principal reference document for Train Controllers in carrying out their duties. In parts of QR's network where Cyclic Traffics operate, for instance the Central Queensland Coal Region, there will be intermediate scheduling steps involved in progressing from the MTP to the DTP. A Weekly Train Plan (WTP) will be scheduled, utilising the Train Paths detailed in the MTP, and taking into account each Access Holder's Train Service Entitlement and Train requests for the particular week in question.
- (i) The process of scheduling a WTP may involve the allocation of a Contested Train Path, and as a result, may require a meeting of all affected Access Holders and QR's

⁵ This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

Infrastructure Service Providers, and the use of a decision-making process to finalise the WTP. This decision-making process is detailed in Appendix 1.

3 Daily Train Plan Principles

- (a) The DTP will indicate all scheduled Train Services and Planned Possessions, for the particular day in question, in a form that indicates the time/distance (location) relationship of all activities on the Rail Infrastructure.
- (b) In scheduling Cyclic Traffics on the DTP, Network Access may first schedule a WTP as discussed in the MTP Principles, in the week prior to operation, and then schedule the DTP from the WTP.
- (c) Network Access will schedule the DTP at least one (1) business day prior to the actual day of running, and provide all relevant Access Holders and QR's Infrastructure Service Providers with a copy of the DTP within the same timeframe.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'QR's' must be deleted from paragraph 3(c).

- (d) The DTP may be scheduled in variation to the MTP, or WTP, whichever is applicable, as specified in Paragraphs e), f), and g) of these DTP Principles, where at least two (2) business days prior to the actual day of running:
 - (i) an Access Holder notifies Network Access that it wishes to make a short-term change to the **times** at which its Train Service/s, as scheduled in the MTP, operate⁶, whether or not within the scope of its Train Service Entitlement, provided that change does not result in any other Access Holder's scheduled Train Service/s not being met or a Planned Possession not being met;
 - (ii) Network Access receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Planned Possession not being met;
 - (iii) a Planned Possession is cancelled;
 - (iv) Network Access notifies all affected parties that it wishes to make a short-term change to the **times**⁷ at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, provided the change is intended to accommodate:
 - the modification of an existing Planned Possession;
 - the creation of an Urgent Possession; or
 - any other Operational Constraint affecting the DTP,
 provided that where the change to scheduled Train Service/s results in any existing Access Holder's Train Service Entitlement not being met, it is not unreasonable for

⁶ See footnote 2 above.

⁷ See footnote 2 above.

the existing Access Holder/s to vary their Train Service Entitlement so as to accommodate the change;

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the words 'it is not unreasonable for the existing Access Holder/s to vary their Train Service Entitlement so as to accommodate the change' must be deleted from sub-paragraph 3(d)(iv) and replaced with 'such change is only made with the agreement of such Access Holder/s, such agreement not to be unreasonably withheld'.

- (v) Network Access requests a short-term change to the times at which one or more scheduled Train Service/s operate, whether or not within the scope of the applicable Access Holders' Train Service Entitlement, for the purpose of accommodating an Emergency Possession.
- (vi) Network Access, QR's Infrastructure Service Providers, and all affected Access Holders otherwise agree.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'QR's' must be deleted from paragraph 3(d)(vi).

- (e) Network Access may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(i), d)(ii), and d)(iii) of these DTP Principles, on a case-by-case basis without the need for consultation.
- (f) Network Access may make modifications from the MTP or WTP (where applicable), within the scope of Subparagraphs d)(iv) and d)(v) of these DTP Principles, on a case-by-case basis after consulting with any Access Holders whose Train Service/s are affected by the proposed modification, and/or with QR's Infrastructure Service Providers if the proposed modification affects a Planned Possession.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'QR's' must be deleted from paragraph 3(f).

- (g) Where a change is being sought from the MTP or WTP that falls within the scope of Subparagraph d)(vi) of these DTP Principles, Network Access will invite QR's Infrastructure Service Providers and all Access Holders whose scheduled Train Service/s are affected by the change to consider the modification in an appropriate forum⁸, at least 36 hours prior to the actual day of operation. Each affected party will be provided with a copy of the proposed changes from the existing MTP or WTP 12 hours prior to the scheduled consideration.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the word 'QR's' must be deleted from paragraph 3(g).

⁸ This could include a face-to-face meeting, a telephone conference or any other forum that provides the affected parties with the best opportunity to participate.

- (h) Other than as detailed in Paragraph i) of these DTP Principles, once the DTP is scheduled, any changes to the plan will be reflected as deviations from the DTP, not variations to the scheduled DTP.
- (i) Once the DTP is scheduled, variations to the DTP may only be made where:
 - (i) before the day of operation, Network Access receives a request from a party to run an Ad Hoc Train Service, provided that the Ad Hoc Train Service would not result in any existing Access Holder's scheduled Train Service/s not being met, or a Possession (whether Planned, Emergency or Urgent) not being met;
 - (ii) before the commencement of the relevant Train Service/s, an Access Holder notifies Network Access that it wishes to make a change to the times⁹ at which its Train Service/s operate, provided that change is within the scope of the Access Holder's Train Service Entitlement, and does not result in any other Access Holder's scheduled Train Service/s not being met or a Possession (whether Planned, Emergency or Urgent) not being met; and/or
 - (iii) before the commencement of the relevant Train Service/s, Network Access notifies an Access Holder that an Emergency Possession is required.
- (j) Network Access may make modifications to the DTP within the scope of Subparagraphs i) i), i) ii) and i) iii) of these DTP principles on a case by case basis without the need for consultation.
- (k) The cancellation of a Train Service or Train Services in accordance with the above DTP Principles, does not necessarily excuse either QR or an Access Holder from other Access Agreement obligations relating to the conduct in question.
- (l) The DTP will represent the expected train operation performance target over its period.
- (m) Deviations to the DTP may occur on the day of operation in the event of Out-Of-Course Running. Those deviations will occur according to the Train Control principles.

Part B. Train Control Principles

- (a) The fundamental objective of Train Control will be to facilitate the safe running of Train Services, and the commencement and completion of Planned, Emergency and Urgent Possessions, as scheduled in the DTP.
- (b) The ability of QR and/or an Access Holder to deviate from the DTP on the actual day of running, as specified below, does not necessarily excuse either party from any other contractual obligations relating to the conduct in question.
- (c) The following general principles apply to Access Holders and Train Controllers:
 - (i) All parties will ensure that operational safety is maintained through compliance with Safeworking Procedures, Safety Standards, Rollingstock Interface Standards, applicable IRMPs and EIRMRs;

⁹ See Footnote 2 above.

- (ii) Access Holders will ensure that Above Rail issues, including Train crewing, locomotive and wagon availability and loading requirements, are appropriately managed to ensure that such issues do not prevent the DTP from being met; and
 - (iii) QR will manage the Rail Infrastructure based on agreed entry/exit times as specified in the DTP with the objectives of managing Trains according to their schedule for on time exit, not contributing to late running and, if a Train is running late, making up time and holding the gain where reasonably possible.
- (d) The handling of Out-Of-Course Running is dependent on the particular circumstances of a rail corridor, including the traffic type using the corridor. The management of Out-Of-Course Running will be conducted so as not to unfairly disadvantage one Access Holder over another, and as a result, the identity of an Access Holder will not of itself be a legitimate reason for Train Controllers to alter a scheduled Train Service.
- (e) The traffic management decision making matrix, at Appendix 2, will be provided to assist Train Controllers in the resolution of disputes in accordance with the above principles.
- (f) QR will provide Access Holders with real time Train Control information that indicates actual train running against the relevant DTP.

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, Paragraph 3(f) must be replaced with:

'QR will provide Access Holders with:

- (i) real time Train Control information that indicates actual running of that Access Holder's Train Services against the relevant DTP; and**
- (ii) subject to reasonable terms and conditions, access to Train Control diagrams that indicates actual running of that Access Holder's Train Services against the relevant DTP.'**

Appendix 1

Contested Train Path Decision-making Process

Network Access will determine who gets a Contested Train Path, by:

- firstly, eliminating from consideration any Access Holder whose request for the Contested Train Path is outside the scope of its Train Service Entitlement. Where this step eliminates all of the parties seeking the Contested Train Path, but Network Access still has spare Capacity available, Network Access may determine which of the parties seeking the Contested Train Path get that path by considering the following three (3) matters. In addition, where this step does not eliminate all of the parties seeking the Contested Train Path, but there is still more than one party seeking the Contested Train Path, Network Access may determine which of the parties gets the path by considering the following three (3) matters;
- next, considering whether the parties contesting the Contested Train Path agree amongst themselves who should be allocated the relevant path. Where this is the case, the Contested Train Path will be allocated as agreed by the parties, and Network Access will document the parties' agreement and keep a record of such¹⁰.
- then, considering the number of Train Services per week that each Access Holder has a contractual entitlement to in accordance with their Train Service Entitlement. If Network Access is behind (in the contract year to date) in providing an Access Holder with its contracted Train Services, that Access Holder will get priority over an Access Holder that Network Access is either ahead or on target (in the contract year to date) in providing contracted Train Services to. Where Network Access is behind in providing contracted Train Services to more than one Access Holder, the Access Holder most behind will get first priority over others; and

QCA's Position

In order for QR's 2001 draft access undertaking to be approved, the final sentence of the third dot point must be deleted and replaced with 'Where Network Access is behind in providing contracted Train Services to more than one Access Holder, the Access Holder most behind (in terms of the Train Services provided as a percentage of contracted Train Services) will get first priority over others; and,'

- finally, where the above considerations do not assist Network Access in making a decision regarding which requested Train Service is scheduled, Network Access will unilaterally determine which Train Service/s get scheduled, and will keep a record of that decision and the reasoning behind that decision. Network Access will ensure that, over time, no Access Holder is favoured over another, and where possible, if one Access Holder is favoured this time, taking into account the Train Service Entitlement held by an Access Holder, next time they are not favoured. In other words, if one Access Holder has an entitlement to 10 services per week, and another Access Holder has an entitlement to 20 services per week, then it could not

¹⁰ QR envisages that this step will take into account the requirements of the relevant destinations of the Train Services in question. In the coal system, for instance, the ports and domestic users, if they are not Access Holders themselves, will have some arrangement in respect of the haulage of the coal, whether directly with the operators hauling the coal or with the mines who contract with the operators for the provision of rail haulage services. As a result, these parties' requirements, including shipment demands, sufficiency of stockpiles, coal blending requirements and unloading constraints, will be taken into account by the Access Holders in determining the priority of Train Services requested in their weekly train request.

be said that favouritism was shown to the second Access Holder if they received priority over the first Access Holder on 2 out of 3 consecutive occasions.

Appendix 2

Traffic Management Decision Making Matrix

Notes for the application of the Traffic Management Decision Making Matrix

As a generic principle for the performance of Train Control, QR recognises (as noted in paragraph a) of Part B of these Network Management Principles) that the objective will be to run to the scheduled DTP. However, it is worth noting that this simple objective assumes that all traffic types have the principal objective of ‘on time running’, and accordingly, running to the DTP will always result in the most efficient use of the Rail Infrastructure and provide those parties using the Rail Infrastructure with the best possible rail service. For Cyclic Traffics this may not be a correct assumption. In the Central Queensland Coal Region, for example, coal Train Services focus primarily on achieving a specified transit time over and above running to a scheduled DTP. For this reason, QR considers it necessary to permit Train Controllers sufficient discretion to take into account the varying objectives (as specified in the relevant Train Service Entitlements) of different traffic types, in assessing priority both between Trains of different traffic types and Trains of the same traffic type. Rules 5, 6 and 7 have been included for this purpose.

- Rule 5 recognises the general rule that passenger and livestock Trains may be given priority over other Trains due to the nature of their contents.
- Rule 6 recognises a broader rule concerning a Train Controller’s ability to manage an entire system for the most efficient outcome, taking into account the objectives of Train Services, as expressed in their Train Service Entitlements.
- Rule 7 has been included to cover the situation where a conflict occurs between two (2) Trains operated by the same Access Holder, regardless of traffic type.

		Train A – Current Status			
		Train A	Train Running “On Time”	Train Running “Ahead”	Train Running “Late”
Train B		Objective	On Time Exit	On Time Exit	1. Lose no more time 2. Make up time 3. Hold the gain
Train B – Current Status	Train Running “On Time”	On Time Exit	Scheduled Cross	A or B Rule 2	B Rule 3
	Train Running “Ahead”	On Time Exit	A or B Rule 2	A or B Rule 2	B Rule 3
	Train Running “Late”	1. Lose no more time 2. Make up time 3. Hold the gain	A Rule 1	A Rule 1	A or B Rule 4

Rules for the application of the Traffic Management Decision Making Matrix

- Rule 1. Subject to rules 5, 6 and 7, Train B may be given priority on condition Train A will still meet its “On Time” objective.
- Rule 2. Both trains must meet their “On Time” objective.
- Rule 3. Subject to rules 5, 6 and 7, Train A may be given priority on condition Train B will still meet its “On Time” objective.
- Rule 4. Subject to rules 5, 6 and 7, give priority to the Train where performance indicates it will lose least or no more time and even make up time and hold the gain.

- Rule 5. Passenger and livestock Trains may be given priority over other Trains if the Train Controller reasonably believes that this is consistent with the objectives of the Trains in question, as specified in the Train Service Entitlement/s for those Trains.
- Rule 6. Where a Train is running “Late” due to a Below Rail Delay, it may be given preference over other trains if the Train Controller reasonably believes that this is consistent with the critical objectives of the Trains in question, and that it will result in less aggregated consequential delays to other Trains than otherwise would be the case.
- Rule 7. Where a Train Controller has to decide which of two (2) Trains to give priority to, and both of those Trains are operated by the same Access Holder, the Train Controller may ask the Access Holder how they would prefer the Trains to be directed, and provided that taking the Access Holder’s preferred course of action does not adversely affect the Train Services of any other Access Holder, the Train Controller will follow the Access Holder’s request.

SCHEDULE H

Interface Risk Assessment

This list is to be taken as the minimum safety and Rollingstock issues to be addressed in the Interface Risk Assessment, and the IRMP should not be restricted to the elements included in this list.

Each of the categories below need to be considered in the following operational time frames:

- (a) Pre-departure – incorporates the Access Seeker’s timeframe of planning for the proposed Access, including long term and overarching operational planning, as well as immediate pre-departure timeframe from the depot.
- (b) En-route – incorporates actual operation of the Train Service, from start to finish of each shift/duty/service from depot to depot.
- (c) Post Arrival – incorporates the end/close of operations, in line with Train schedules and timetables.
- (d) Emergency – incorporates any unanticipated incidents or accidents. An Access Seeker’s or Access Holder’s emergency response plan will address perceivable risks within this timeframe.

4 Access/Security

Issues associated with gaining access to the Rail Infrastructure, including physical access (eg. keys to gates and site security) as well as the negotiation of Train schedules determining when a Train will enter and exit the Rail Infrastructure.

Examples include:

- How are Train schedules communicated to all relevant parties?
- Do relevant staff have access to necessary areas of the Rail Infrastructure?

5 Communications

Issues associated with all areas of operations that require communication to facilitate or manage the Access.

Examples include:

- Are communications protocols between parties’ management established between Access Seeker/Access Holder, other Access Seekers/Access Holders and QR?
- Are the costs/risks of establishing and maintaining appropriate communication processes viewed as acceptable? Are these costs/risks delegated appropriately?
- Are restrictions to specific routes communicated between parties, and documentation updated to reflect changes?
- Are the communication procedures in the Access Seeker’s/Access Holder’s emergency response plan compatible with QR Safeworking Procedures and Safety Standards?

6 Rollingstock

Issues associated with any vehicle that will need to be authorised prior to operation.

Examples include:

- Is the Rollingstock compatible with the Rail Infrastructure (eg. speed, axle loads, clearance issues, out-of-gauge)?
- Are audible warning devices available for use and maintained properly?
- Is the Rollingstock compatible with QR Rollingstock (for emergency purposes)?

7 Infrastructure

Issues associated with the Track and its supporting infrastructure.

Examples include:

- Is Rail Infrastructure compatible with Rollingstock (eg. gauge/load tolerances, platforms and other structures, trackside equipment, tunnels and bridges)?
- What hazards are created by electrification?
- Changes to Rail Infrastructure are communicated to relevant parties.

8 Operations

Issues associated with the ability of an Access Seeker/Access Holder to operate safely on QR's network, including Accreditation, qualifications and standard operating procedures and/or plans.

Examples include:

- Are drivers route and safeworking competent?
- Is appropriate communication hardware available and staff trained in its use?
- Is an audit regime agreed and implemented with results from audits communicated to relevant parties?
- Are dangerous goods to be carried on the proposed Train Services?

9 Health & Safety

Issues associated with the health and safety aspects of QR staff and members of the public affected by the proposed Access.

Examples include:

- Do operations create unacceptable health and safety risks for QR Track workers?

SCHEDULE I

IRMP Table of Contents and Template Documents

This Schedule contains a recommended table of contents for an IRMP (Part A), and templates of various documents referred to in the table of contents for inclusion in an IRMP (Part B). The table of contents is illustrative only of the proposed layout and content of an IRMP.

A. Table of Contents

1. Scope
 - a. Purpose
 - b. Scope
 - c. Responsibilities
 - i. Responsible manager
 - ii. Person responsible for proposed operation
 - d. Definitions and abbreviations
 2. Description of Proposed Operation
 - a. Objective
 - b. Background
 - c. Safety implications
 3. Risk Assessment and Risk Management
 - a. Introduction
 - i. Background
 - ii. Purpose of risk assessment
 - iii. Methodology
 - iv. Scope
 - v. Limitations
 - b. Assessment of Proposed Operation
 - i. Current practice (if applicable)
 - ii. New practice
 - iii. The change
 - c. Risk Assessment
 - i. Identified hazards
 - ii. Identified consequences and likelihood
 - d. Risk Management
 - i. Identified controls/treatments
 - e. Evaluation of Proposed Operation
 - i. Evaluation of proposed operation (including change from current practice if applicable)
 - ii. Recommendations
 - f. Summary of Safety Risk Analysis
 4. Coordination Plan
 - a. Interface with systems/users
 - b. Coordination table
 5. Certifications
 6. Appendix
-

- a. Operational Risk Assessment Report/s¹⁷, which document the hazards/risks associated with the proposed operation and the controls/treatments for those hazards/risks agreed following analysis (including risk scoring).
- b. Risk Coordination Plan/s¹⁸ which detail the responsible person/s for each hazard/risk identified in the Operational Risk Assessment Report/s, and includes certificates for the responsible person/s to sign off.
- c. Any other material.

¹⁷ See part B below.

¹⁸ See part C below.

SCHEDULE J

Issues for EIRMR

This list is to be taken as the minimum environmental issues to be addressed in the EIRMR, and the EIRMR should not be restricted only to the issues included in this list.

1 Water Quality Management

The Third Party Access Seeker must consider the impact on storm water systems and natural waterways. In doing so, all relevant water quality standards and regulations must be met.

2 Air Pollution Management

The Third Party Access Seeker must consider the impact on air quality. In doing so, all relevant air quality standards and regulations must be met.

3 Contaminated Land Management

The Third Party Access Seeker must consider the impact of the operation on land contamination. In doing so, all practicable control measures to prevent the contamination of land must be undertaken.

4 Nature Conservation

The Third Party Access Seeker must consider the impact of the operation on the flora and fauna.

5 Management of Hazardous Substances and Dangerous Goods

The Third Party Access Seeker must consider the environmental impacts associated with the management of hazardous substances and dangerous goods by the Third Party Access Seeker. In particular, the Third Party Access Seeker must ensure that QR's requirements for the management of hazardous substances and dangerous goods are complied with.

6 Waste Management

The Third Party Access Seeker must consider the impact of any waste produced by the operation. In doing so, all relevant government and local authority requirements must be met.

7 Environmental Noise Management

The Third Party Access Seeker must consider the impact of any noise produced by the operation. In particular, the Third Party Access Seeker must meet the requirements of the Rail Noise Plan referred to in the Environmental Protection Policy (Noise) and, where appropriate, must comply with QR's requirements for meeting the Rail Noise Plan referred to above.

8 Environmental Monitoring

The Third Party Access Seeker must address the requirements of environmental monitoring to ensure that the environmental standards are met.

9 Education, Awareness and Training

The Third Party Access Seeker must consider the impact of the level of employee training with particular emphasis on the implementation of the Environmental Management System

SCHEDULE K

Operating Plan

1 Area of Operation

- Origin
- Destination
- Cycle description (including nominated stops enroute)
- Entry and exit points onto Rail Infrastructure
- Details regarding repositioning of Rollingstock (prior to, during and after operation of the service)

2 Business Plan

- Tonnage profile (five year forecast)
- Passenger loading and unloading profile
- Anticipated project service life
- Seasonality of haulage/variability of services (peaks and troughs)

3 Operation

- Type of service (passenger, freight)
- Commodity
- Rollingstock and Rollingstock Configuration details (number of wagons/locomotives/carriages/self-propelled units)
- Special operating parameters (eg. key arrival and departure windows)
- Dangerous goods details
- Overload management system
- Timing of scheduled servicing/provisioning activities

4 Service Levels

- Train service levels, nominated weekly, monthly and annually
- Maximum number of one way Train Services per year – contracted Train Paths
- Dwell times at loading facility (minimum and maximum)
- Dwell times at unloading facility (minimum and maximum)
- Rollingstock operational speed
- Indicative timetable requirements (sectional run times)
- Any connecting services
- Any critical timings at specified locations
- Authority from Private Infrastructure manager to enter/exit a facility (loading/unloading/en route)

5 Train Service Planning

- Train Service planning/requesting preference
- Train Service cancelling preference

6 Train Information

- Type
- Class and number of locomotives per Train

- Maximum and average gross tonnage of loaded Train (including locomotives)
- Tare of empty Train
- Method of operation (push/pull)
- Traction type
- Safety systems
- Communication system
- Train length

7 Crewing Plan

- Train Service crew requirements
- Location of crew depots
- Crew change points
- Dwell times at change points (minimum and maximum)

8 Recovery Methods

- Recovery of marked off Rollingstock at loading/unloading locations/enroute
- Recovery of derailments
- Recovery of failed locomotives

QUANTIFICATION OF CAPACITY CONSUMPTION CHARGE

1. INTRODUCTION

As part of its Draft Decision on QR's Draft Undertaking, released in December 2000, the QCA published *Working Paper 3 – Incremental Cost of Capacity*. This research established a theoretical framework for the estimation of the incremental costs of capacity consumption and identified indicative costs for typical above-rail operational configurations applicable to various corridors on the Central Queensland coal system.

In submissions to the QCA in response to the Draft Decision, stakeholders expressed a number of concerns in relation to the quantification of capacity consumption for the purposes of calculating access charges. At the time of release of the Final Decision, there still remained a number of unresolved issues. Accordingly, the Authority committed to publishing a paper to clarify its approach in respect of these matters.

In particular, this technical paper proposes a simple transparent methodology by which the capacity consumption of a particular train service may be determined.

2. THE REFERENCE TARIFF FOR RAIL ACCESS

In order to avoid distorting the above-rail market, it is critical that users pay access charges according to the costs that they impose on the system. This is complicated by the fact that a large proportion of the total cost of providing infrastructure services is fixed and cannot be assigned unequivocally to any particular user. Setting access charges solely on the basis of marginal cost would result in QR failing to satisfy revenue adequacy requirements. Accordingly, in addition to the variable costs associated with rail access, these fixed costs need to be recovered from users.

2.1 Structure of the reference tariff

The structure of reference tariffs for rail access on the Central Queensland coal network was established by:

- firstly identifying any causative relationships that may exist between rail infrastructure usage and costs. The two below-rail causative relationships that are embodied in the reference tariffs are:
 - the relationship between maintenance costs and infrastructure usage (as measured by the gross tonnage of the train and commodity being transported); and
 - the relationship between capacity utilisation (as measured by the number of train paths used) and capacity expansion costs.

The tariff components that capture these two causal relationships are the incremental maintenance charge (expressed in \$/'000 GTK) and the incremental capacity charge (expressed in \$/train path) respectively; and

- assessing the extent to which pricing on the basis of those causative factors fails to achieve the recovery of QR's efficiently incurred costs. This shortfall needs to be recovered from users in a manner that minimises the impact on the efficient use of infrastructure. The QCA is of the view that that this outcome can best be achieved by using a composite allocator that employs the following measures in equal weights:

- net tonne kilometres; and
- net tonnes.

Separating the causative and non-causative (or allocative) elements of the infrastructure-charging regime brings transparency to the price setting process in a manner that can be understood by interested parties.

The reference tariff formula is given by:

$$\text{Reference tariff} = \text{MC} + \text{IC} + \text{AC}_{\text{ntk}} + \text{AC}_{\text{nt}}$$

where MC = incremental maintenance charge

IC = incremental capacity charge

AC_{ntk} = allocated cost, net tonne kilometres

AC_{nt} = allocated cost, net tonnes

2.2 Incremental capacity charge

The incremental capacity charge reflects the incremental cost to QR, as the network owner, of the provision of additional capacity. In other words, it represents the costs associated with the provision of an additional train path, assuming that the existing capacity is fully utilised. An above-rail operator is forced to confront the fact that its consumption of existing capacity is a factor that will affect the need for future infrastructure augmentation.

The total incremental capacity cost incurred by an above-rail operator is equal to the product of:

- the number of paths consumed by that operator's train; and
- the incremental capacity charge per path.

It is the purpose of this paper to provide guidance in determining both of these parameters for prospective above-rail operators.

The incremental capacity consumption charge should not be viewed as a form of sinking fund for the purposes of financing future network expansion. Rather, it represents a signal which alerts operators that they need to use the existing capacity wisely, since it is not an infinite resource. The size of this charge does not affect the total revenue required by QR over the regulatory period. QR's revenue requirement is determined by existing capacity and any revenue raised from the incremental capacity charge will merely reduce the amount of revenue that needs to be raised from the allocative components of the reference tariff.

Therefore, the incremental cost of capacity is distinct from other capacity-related costs which are associated with the provision of capacity currently in place.

3. THE STANDARD TRAIN PATH FRAMEWORK

Capacity consumption for an individual train is affected by several factors, including speed, length and braking profiles. However, its assessment is complicated by the fact that the capacity consumed by a train service cannot be considered in isolation of the preceding, following and oncoming trains. In other words, rail transport is different from most other natural monopoly industries, such as electricity and gas networks, because an operator's consumption of capacity is highly dependent upon the interaction between that user and others on the network. By contrast, electricity and gas networks each convey a homogenous product.

This characteristic necessitated the development of a standard to provide a basis for assessment. While the framework for calculating path consumption has evolved over time, so too has the adopted standard.

3.1 Standard Train Paths as a measure of capacity consumption

The QCA, in conjunction with QR, initially adopted the concept of a standard train path (STP) as an objective measure with which to assess the theoretical capacity of the network and the capacity consumed by above-rail operators running trains with a range of different performance characteristics on the system.

The approach was based upon the saturation of the network with predominant trains,¹ to determine the theoretical maximum number of trains that can operate on the existing infrastructure within a 24-hour period, ignoring practical limitations such as temporary speed restrictions, scheduled timetables and desired transit times. Consequently, it is a theoretical benchmark, independent of the way that the infrastructure is actually utilised.² Following this approach, Working Paper 3 identified the maximum capacity of the Blackwater system³ as 45 trains in each direction per day.

The path of an actual train service could be superimposed on a train-diagram containing the maximum number of STPs. By determining the number of STPs eliminated from the 24-hour period, the capacity consumption associated with the introduction of that actual train service could be determined.

A major weakness of this approach is that it yields a measure of capacity consumption for a service on the presumption that the network is already capacity constrained, thus potentially overstating the capacity consumed by that service when the network is not in fact fully utilised.

Stakeholders were generally supportive of the STP approach but remained concerned with aspects of its practical implementation.

3.2 Practical application of the STP approach

In a discussion paper, *Impact of Sectional Running Times on Capacity (Version 2)*, QR developed a framework to:

- assess the impact that train services with different sectional running times have on transit times and the capacity of the common track infrastructure; and
- determine the capacity consumption of train services.

QR identified that, in practical terms, the maximum number of available paths identified by the QCA's analysis of the common infrastructure should be discounted by a reduction factor. Due to planned maintenance, the need to comply with particular transit times and unplanned factors such as weather conditions, temporary speed restrictions and other infrastructure-related problems, the number of actual paths available for operational purposes was in fact some fraction of the theoretical maximum.

¹ The predominant train has the same physical attributes as QR's most commonly-used train on the network (for instance the electric train on the Blackwater system).

² The STP has its own transit time and stopping pattern, defined to maximise system capacity. Given that it does not take account of scheduling considerations (such as running empty train faster than slower train), is clearly different from the train paths to which QR's actual services run. In other words, the STP is solely concerned with system optimisation and is indicative of the operational capability of QR's train service.

³ The Goonyella, Moura and Newlands systems have not yet been assessed.

QR's approach utilised computer-based simulation techniques to model multiple scenarios representing different combinations of QR's predominant train and those of a prospective third-party operator, each characterised by different sectional running times.⁴ It recognised that when a non-predominant train is scheduled over the common track infrastructure with predominant trains:

- the number of available services changes; and
- there is increased pressure on the transit times of existing services.

The analysis found that path consumption is very sensitive to the number of non-predominant trains introduced into the system. For instance, as the proportion of non-predominant train services rises from 0 to 50%, the STP consumption of these services for a one-way journey falls, on average, from approximately 6 to around 2, while the predominant service continues to consume 1 path. The capacity consumption of the predominant service is held constant to reflect the transit time obligation that has been contracted for.

Clearly, incremental capacity consumption falls as an operator's presence on the network grows. This reflects the fact that the capacity of the rail network is maximised by all operators having the same or similar sectional running times.

Capacity consumption is therefore a variable, depending upon the relative mixes of predominant and other non-predominant services. As a consequence:

- a potential barrier to entry exists. A new above-rail operator would be unlikely to commence operations with a large fleet of trains and so would only account for a low proportion of train services (compared with the predominant train) on the network. As a result, it would incur a considerable cost penalty. Consequently, new entrants would generally incur a greater number of path charges per service than the incumbent operator;
- a capacity consumption range is established rather than a single outcome; and
- each time an above-rail operator introduces a new train service onto the system, the capacity consumption charge would need to be revisited.

In addition, the need for specialised computer-based simulation and optimisation software means that an access seeker will be heavily reliant on QR to carry out path consumption calculations. As the number of third-party operators on the network grows, it is likely that the operational characteristics of the various services will become more diversified and accordingly increasingly complicate the modelling process.

This dependence is further reinforced by the fact that QR's Planimate simulation tool, which is available commercially, has been custom-modified to accommodate its particular task. The extent and scope of this modification is unknown. Stakeholders, responding to the QCA's Draft Decision on QR's 1999 Draft Undertaking, identified that the use of such a complex tool which is unavailable to other operators, provides inadequate transparency.

4. CAPACITY CONSUMPTION AND THE PROMOTION OF COMPETITION

The declaration of the services of QR's rail infrastructure is clearly intended to promote competition⁵ in Queensland's above-rail market. As a consequence, the regulatory framework

⁴ In the analysis conducted, the non-predominant service was characterised by slower sectional running times than its predominant counterpart.

⁵ Competition is concerned with rivalry, or potential rivalry, between firms in a marketplace.

has been established to enhance the opportunities for competition by providing a stable environment within which the market may develop. Reference tariffs were set to reduce the transaction costs associated with negotiating access agreements and provide a transparent basis against which above-rail operators are able to most cost-effectively satisfy customer demand. The transparency of charges, and the linking of charges explicitly to specific cost drivers, have been important elements in meeting this objective.

Moreover, the QCA has taken the view that actual competition is likely to generate greater long-term economic benefits than potential competition. Accordingly, it considers that the method by which incremental capacity is assessed and determined should be such that third-party operators have an incentive to establish a presence on the network. In other words, new above-rail market entrants, who are not likely to commence operations with a relatively large number of train services, should not incur a higher incremental capacity charge as a result of having a smaller market share than any incumbent operator.

4.1 Conflict costs as the cost of above-rail competition

The expansion of network capacity by the infrastructure owner is largely driven by a number of factors including:

- increased demand for rail services, for instance due to an increase in the amount of coal transported;
- the demand for greater service standards; and
- changes in the operational characteristics of above-rail operators, such as the adoption of slower, larger trains.

If all operators utilised the same train configurations to haul coal, the measurement of capacity consumption would be a relatively simple task. However, in an emerging competitive above-rail market, this is unlikely to be the case and capacity measurement will need to be able to cater for a diverse range of train-types.

From a capacity consumption perspective, the cost impact of the introduction of a new train service possessing characteristics physically and operationally distinct from established train services is comprised of two elements:

- (a) the amount of network capacity required will alter irrespective of the level of market share it possesses. Even with 100% market share, a slower train will consume greater capacity than a faster train; and
- (b) capacity consumption will be greater due to the conflict arising between different train-types.

Clearly, above-rail operators should bear financial responsibility for any impact that their services have on the premature augmentation of the network. This would be the case where an operator chose a train-type with poor operational characteristics, such that its train services consumed far more capacity than any other operator on the network and so brought forward capacity augmentation earlier than if its train-type was similar to other operators.

However, the QCA is of the view that any conflict-related capacity costs should not be borne by new entrants, at least in the early stages of the development of the competitive above-rail market. Such costs are considered to be those incurred in the pursuit of competition. As the benefits of competition will ultimately accrue to all rail users, including QR's existing and future users, these conflict costs should not be borne by any particular group of users.

Accordingly, the QCA proposes to modify its capacity consumption methodology in light of this consideration. Specifically, the incremental capacity charge will now only be applied to capacity consumption which relates to an individual rail-operator's choice of train-type but not that which relates to the conflict arising between different train-types operating on the network.

4.2 The Ratio approach

The QCA's revised framework is not based on STPs, but rather on notional paths represented by the operational potential of a nominated benchmark train. The Authority is not endeavouring to identify an optimum (or standard) but rather some notional measure on which to base its calculations of capacity consumption.

In addition, the QCA believes that there is merit in focussing the analysis at an operational level. The QCA accepts QR's view that the capacity of the system should be measured from a practical, rather than theoretical perspective. Accordingly, it proposes that the total theoretical system capacity should be discounted to account for below-rail disruptions caused by factors such as weather conditions, temporary speed restrictions, minor signalling faults and other infrastructure-related aberrations. However, no allowance will be made for scheduling-related factors such as transit-time constraints. The rail industry generally accepts that, as a rule of thumb, a reduction factor of 15% is reasonable. Nevertheless, different factors may be considered for different systems within the coal network.⁶

The number of units of capacity (or notional paths) that a particular operator is deemed to consume will be determined by the quotient r , where:

$$r = \frac{\text{maximum number of benchmark trains}}{\text{maximum number of services, given the specific train configuration and characteristics}}$$

The numerator of this expression is a constant for each system, based on the operation of the benchmark service. For the Blackwater case discussed earlier, saturation of the train plan with QR's predominant electric service realised a maximum of 45 trains in each direction, per day. Therefore, after allowing for the reduction factor, 38 (85% of 45) would be the appropriate figure to use in Blackwater system assessments.

The denominator will vary depending upon the operational capability of the proposed service. A second train diagram will be saturated with that operator's train paths, which reflect the potential sectional running times of that operator's train. The maximum number of paths can be readily determined by commercially-available packages such as M-Train and this would subsequently need to be discounted by 15%.

The expression yields a single definitive measure of capacity consumption, which needs to be assessed individually for each train service – QR and third-party operator alike. This result would apply regardless of whether the operator runs 7 such services per week, or 7 such services per day.

This ratio is based on the *operational potential* of relative trains, disregarding any scheduling matters, and does not consider conflict costs. This is in contrast to the simulation-based approach proposed by QR which explicitly models network capacity reduction as a result of train-type conflict.

Using the Blackwater system as an example, once again:

⁶ QR would need to develop these factors in conjunction with the QCA and above-rail operators.

- if the operational characteristics of the third-party operator's train service resulted in a total of 35 trains in each direction per day, the number of capacity charges incurred would be 38/35, or 1.1 for each path in each direction.
- QR's predominant service would consume 38/38 or 1 path in each direction; and
- if a QR train service with a non-predominant configuration, for instance powered by a diesel locomotive, resulted in a practical maximum of 36 train paths in each direction per day, it would incur 38/36 or 1.06 path charges in each direction.

This approach has a number of clear advantages, including:

- simplicity – complex simulation is not required;
- transparency – there is no sole reliance on QR to perform the necessary calculations. Results may be independently verified;
- the result is definitive, applicable for each service and across all potential levels of operations; and
- the lessening of QR's inherent advantage of incumbency in having the most number of trains on the network.

5. DETERMINATION OF THE INCREMENTAL PATH COSTS

The second component of the incremental capacity charge is the incremental path cost. Working Paper 3 identified indicative costs for the Blackwater and Goonyella systems by:

- determining the optimal sequence of infrastructure enhancement for each system;
- quantifying the costs of the individual capacity improvements;
- aggregating, in a stepwise manner, the infrastructure improvements and the corresponding capacity benefits.

However, the resulting costs were expressed on a 'per STP' basis. As indicated earlier, the QCA accepts QR's view that path costs need to be expressed on the basis⁷ of potential actual train paths. Accordingly, revised figures for Blackwater and Goonyella, along with those for the Moura and Newlands system which were determined subsequent to the Final Decision, are summarised in Table One below.

⁷ Potential actual paths = theoretical actual paths adjusted to account for below-rail disruptions (for example, 85% in the case of the Blackwater system).

Table One: Incremental path costs

Cluster/System	Path Charges (\$)
Central Blackwater	1,030
Stanwell	1,030
North Blackwater	1,030
North Goonyella	660
West Goonyella	660
South Goonyella	750
Gregory via Goonyella	750
Moura	370
Newlands	165

6. FUTURE REGULATORY REVIEWS

The QCA recognises that, at this point in time, the competitive above-rail market is in an emergent state of development. This may mean that the approach to determining capacity consumption charges adopted by the QCA for the first regulatory term may need to be revisited in subsequent regulatory terms.

SUBMISSIONS

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (the Authority). It therefore invites submissions from interested parties.

Written submissions should be sent to the address below. While the Authority does not necessarily require submissions in any particular format, it would be appreciated if two printed copies are provided together with an electronic version on disk (Microsoft Word format) or by e-mail. Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001
Telephone: (07) 3222 0526
Fax: (07) 3222 0599
Email: rail.submissions@qca.org.au

The **closing date** for submissions is 31 March, 2002.

Confidentiality

In the interests of transparency and to promote informed discussion, the Authority would prefer submissions to be made publicly available wherever this is reasonable. However, if a person making a submission does not want that submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two copies of each version of these submissions (ie the complete version and another excising confidential information) could be provided. Again, it would be appreciated if each version could be provided on disk. Where it is unclear why a submission has been marked "confidential", the status of the submission will be discussed with the person making the submission.

While the Authority will endeavour to identify and protect material claimed as confidential as well as exempt documents (within the meaning of the *Freedom of Information (FOI) Act 1989*), it cannot guarantee that submissions will not be made publicly available. As stated in s187 of the *Queensland Competition Authority Act 1997* (the QCA Act), the Authority must take all reasonable steps to ensure the information is not disclosed without the person's consent, provided the Authority is satisfied that the person's belief is justified and that the disclosure of the information would not be in the public interest.

Public access to submissions

Subject to the above, submissions will normally be made available for public inspection at the Brisbane office of the Authority (see below), or on its website at www.qca.org.au.

Information about the role and current activities of the Authority, including copies of reports, papers and submissions can also be found on the Authority's website.