



**NETWORK
ACCESS**

**Submission
accompanying QR's**

**DRAFT
ACCESS
UNDERTAKING**

OCTOBER 2001

QR Submission Accompanying Draft Access Undertaking October 2001

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Executive Summary

QR initially submitted its Draft Access Undertaking (“the draft undertaking”) to the Queensland Competition Authority (QCA) in December 1998. Since this time the QCA has undertaken a consultative analysis of both the draft undertaking and a further series of related documents addressing specific issues that the QCA wished to consider in conjunction with the draft undertaking.

The QCA released its draft decision on the draft undertaking in December 2000. Submissions from a number of stakeholders, including QR, were subsequently provided to the QCA. On 5 July 2000 the QCA released its final decision on the draft undertaking after considering the various submissions made. The final decision rejected the draft undertaking and identified the ways in which the QCA considered it appropriate to amend the draft undertaking.

At the same time the QCA released its final decision, the QCA also issued QR with an Initial Undertaking Notice in accordance with section 133 of the *Queensland Competition Authority Act 1997*, requiring QR to give the QCA a “Draft Access Undertaking for the services declared under the Queensland Competition Authority Regulation 1997” within 90 days of receipt of the notice.

This submission accompanies the draft access undertaking that QR is submitting to the QCA in response to the abovementioned notice (“the new draft access undertaking”). The submission is not provided as part of the new draft access undertaking but is provided to assist stakeholders and the QCA readily identify how QR has responded to the recommendations contained in the QCA’s final decision in developing the new draft access undertaking. Although the new draft access undertaking must be dealt with on its own merits, irrespective of the final decision, at a practical level QR has been cognisant of the fact that the final decision represents the views of the QCA on many relevant matters, and as a result the new draft access undertaking was prepared with the final decision firmly in mind.

On this basis QR has prepared this submission in a format that identifies:

- (i) each recommended position put forward by the QCA in Volume 2 of its final decision;
- (ii) an outline of QR’s response to the QCA position; and
- (iii) where applicable, the relevant reference in the new draft access undertaking for that issue.

Generally speaking QR has adopted an approach of endeavouring to accommodate the position recommended by the QCA wherever possible and in many cases has been able to simply accept the QCA position. Often though, QR has been able to accept the principle or intent of the QCA position but has proposed alternate or varied approaches to achieve the same or similar outcome. The need for such alternate or varied approaches has arisen for a variety of reasons but principally through the need to recognise practical, implementation issues or related QR concerns about the unintended consequences of the QCA’s recommended approach.

In addition, there remain a number of areas where QR still has difficulty with the QCA position. In some of these areas QR has been prepared to accept the QCA position notwithstanding QR's disagreement with the recommended approach. Unfortunately, however, there remain some QCA positions that QR feels it cannot accept. These are highlighted throughout the submission, with QR's response in most cases proposing some level of compromise.

In terms of the more significant issues arising out of the new draft access undertaking and the QCA's final decision, these can best be summarised by revisiting the major areas of concern highlighted by QR in the executive summary to its submission responding to the QCA's draft decision.

1. Ringfencing Controls and Compliance

Much of the QR concern in this area stems from the level of prescriptiveness of the approach put forward by the QCA and the high resultant cost associated with compliance. Additionally, some of the concepts, such as specifying liquidated damages and the reversal of the onus of proof (once confidential information is identified as being in the possession of a QR above rail group), were considered somewhat heavy handed.

QR's response to ringfencing has involved a restructuring of its earlier proposals with the following major elements:-

- (i.) procedural elements have now been incorporated into the undertaking largely as sought by the QCA and not left as a separate schedule or document as previously contemplated by QR;
- (ii.) a proforma confidentiality deed has been incorporated as a schedule to the undertaking which QR will enter into with an access seeker if requested, similar to the concept put forward by the QCA but removing the uncertainty posed by not addressing the drafting now; and
- (iii.) the liquidated damages and reversal of the onus of proof concepts have been specifically addressed in the confidentiality deed.

QR believes that its approach to ringfencing broadly achieves the policy outcomes sought by the QCA albeit with some variations to the mechanisms contemplated by the QCA, with these variations largely being introduced to achieve a greater level of certainty and to simplify some aspects of the QCA's concepts.

Given the substantial changes adopted by QR in this area, and noting the significant organisational change (and cost) QR is currently undergoing in transferring the functional control of train control to Network Access, QR believes it has put forward a more than reasonable response to the QCA's requirements although QR essentially remains concerned as to the significant costs and administrative inefficiencies that ringfencing will bring to its business. These issues are largely addressed in Table 2 of the submission.

2. Limits on Price Differentiation

In regard to price differentiation, the position put forward by the QCA in its final decision, which modifies that of its draft decision, largely addresses the concerns of QR regarding the effect of these recommendations. However, there remain for QR some issues in relation to the QCA's approach for new reference tariffs. QR has proposed a varied concept of adopting two types of reference tariffs: "published" (non QCA endorsed) and "authorised" (QCA endorsed as per the coal reference tariffs in the draft access undertaking). This approach moderates what QR considers to be the inappropriate level of intrusion on its pricing flexibility that the QCA's final decision contemplates.

3. Rollingstock Interface Management Arrangements

Considerable discussion has occurred between QR, the QCA and Queensland Transport (as the safety regulator) in terms of QR's concerns about interface management, and particularly the legal position of QR concerning third party access to its rail infrastructure. QR's views as to the inappropriateness of some of the QCA's recommendations in this area have effectively been reinforced by the further legal advice it has received. However, in order to address what QR sees as the core aspect of the QCA's interest in this area; whether QR has acted with the purpose of hindering or preventing access; QR has proposed an approach which gives the QCA the ability to ensure QR does not act in such a manner, without at the same time unreasonably impinging on QR's legal exposures at common law or under statute. This matter is further discussed in Table 6 of the submission.

4. Arrangements for the Management of Volume

It is noted that the QCA has proposed an additional element to the take or pay package previously proposed under the draft decision. It is acknowledged that this has served to strengthen the volume risk measures but in QR's view the overall effect of the QCA provisions still places access holders in an advantaged position in terms of their level of commitment under the access agreement and the consequences for failing to achieve those commitments over time. QR's position remains that it is preferable to approach the regime from a regulatory price cap approach rather than the revenue cap option offered by the QCA in its final decision. Hence, generally speaking, in order to facilitate finalisation of the undertaking, QR has adopted the vast majority of the provisions put forward by the QCA in this area, notwithstanding its previous disagreement. Some minor variations have been proposed, but QR does not believe any of these undermine the outcome sought by the QCA.

5. Allowable Revenue from Coal Services

In the area of allowable rate of return QR has generally adopted the recommendations of the QCA despite still being of the view that the QCA has tended to err on the low side in its determination of a number of the inputs into the derivation.

Similarly, QR's views on the QCA assessment of efficient costs remain unchanged in that QR believes that the QCA's assessment is unrealistic and has not been substantiated. However, again QR has accepted the QCA position to progress finalisation of the undertaking process.

Table 1 - Scope and Administration – Parts 2 and 9 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Coverage of Declared Services	<p>1. The QCA considers it appropriate that the undertaking does not cover provision of:</p> <ul style="list-style-type: none"> • Above rail services; and • Below-rail standard gauge services used by interstate services. 	<p>QR has previously agreed to amend the undertaking to include the declared service element of stations and platforms and marshalling yards in QR’s submission to the QCA on its Draft Decision, providing that the ringfencing issues in relation to stations and platforms are remedied in favour of QR. The QCA has agreed to exempt QR from the Undertaking’s ringfencing obligations in relation to negotiation of the access agreements for access to stations and platforms.</p> <p>In addition, QR has also previously agreed to provide access to all marshalling yards covered by the declaration, in accordance with the undertaking. To provide certainty QR has agreed to include line diagrams in the Undertaking (see Schedule A).</p> <p>In drafting the revised undertaking, QR identified another issue regarding the service covered by the undertaking. This issue is QR’s right to sell or supply electricity to an access seeker. In recognition of the fact that QR currently does not have a right to do this, QR has inserted a provision in the undertaking to this effect.</p>	2.1(h)
Rail infrastructure on privately owned land	<p>2. QR to commit to provide an access seeker, seeking access to rail infrastructure on land to which QR is not authorised to grant access, with:</p> <ul style="list-style-type: none"> • name, address and contact details of the relevant land owner; • advice of the nature and extent of the rights, if any, which QR holds in relation to the infrastructure; and • a letter indicating that the Access Seeker is negotiating with QR with respect to the use of QR’s rail infrastructure and whether or not QR has an objection to the third-party operator negotiating access to the land and in that event full details of the objections; within 14 days of the lodgement of the access application by the access seeker. 	<p>QR does not object to the intent of the QCA’s recommendation. QR had originally committed in the undertaking to provide ‘reasonable assistance’ to access seekers in identifying the landowner they need to negotiate access with. In its submission to the QCA, QR agreed to define what reasonable assistance meant, but did not go into detail on how it should be defined.</p> <p>In order to streamline the process for providing information to access seekers, QR has incorporated the QCA’s intent into the revised undertaking in the following manner:</p> <ul style="list-style-type: none"> • QR is happy to provide the name, address and contact details of the person that the access seeker needs to negotiate with for access to the land, provided that such information is reasonably obtainable by QR. While QR will be able to access this information in the vast majority of instances, there may be some unforeseen circumstances where this information is not available to QR. It is consistent with the QCA’s intent (i.e. to define what ‘reasonable assistance’ means) that a reasonableness test on the provision of such information is retained. • By virtue of the fact that access to the infrastructure is governed under QR’s access undertaking, and it will be clear that QR controls the infrastructure in question, QR has assumed that rather than seeking advice on the nature and extent of the rights, if any, that QR holds in relation to the infrastructure, the QCA is seeking such information in relation to the relevant land. QR has included a provision in the revised undertaking to reflect this understanding. • QR has no objection to access seekers negotiating for access to any land upon which its infrastructure is located. QR is willing to make this clear to access seekers in the undertaking itself negating the necessity to include this in individual advice. QR is also prepared to provide a document for the access seeker to provide to the landowner 	2.1(g) and 4.3(a)(iv)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>advising that access to the infrastructure is being sought from QR.</p> <ul style="list-style-type: none"> QR believes that a more streamlined process would be achieved if this information were provided as part of the Indicative Access Proposal. QR understands that the QCA's primary purpose for putting a limited timeframe on the provision of this information was to ensure that access seekers were aware of a requirement to negotiate with a landowner at an early stage in the process. While QR agrees that this is desirable, it is not clear as to why the provision of this information to the access seeker is of any higher priority than other information that is provided as part of the Indicative Access Proposal. 	
Term of QR's Undertaking	3. The Undertaking's term should commence from its date of approval and expire on 30 June 2005.	This is acceptable to QR.	2.3
Review of Undertaking	4. QCA and QR to conduct a review of the operations of the Undertaking 12 months after its commencement.	This is consistent with QR's original draft undertaking, and therefore is acceptable to QR.	2.4
Public reporting of QR's compliance with Undertaking	<p>5. The number, and percentage, of requests by access seekers for preliminary information responded to within the nominated timeframe.</p> <p>[For this recommendation and those below, to the recommendation at point 22, the QCA has recommended that QR report within the first half of each financial year, in respect of the previous financial year]</p>	This is acceptable to QR.	9.2(d)(i) and 9.2(b)
	6. The number of additional days taken when QR fails to meet the specified timeframes for provision of preliminary information for each inquiry.	QR has no objection to an indicator measuring the time taken to provide preliminary information in the event that QR does not meet the required timeframe. Consistent with the format of other indicators accepted by the QCA, QR will report the average number of additional days taken when QR fails to meet the nominated timeframes for provision of preliminary information.	9.2(d)(ii)
	7. The number, and percentage, of access applications acknowledged within the nominated timeframe.	This is acceptable to QR.	9.2(d)(iii)
	8. The number, and percentage, of access applications in which an extension of time for provision of an indicative access proposal is sought by QR.	This is acceptable to QR.	9.2(d)(vi)
	9. The number, and percentage, of indicative access proposals provided within the nominated timeframe.	This is acceptable to QR.	9.2(d)(v)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	10. The average number of days taken to acknowledge an access application, in those circumstances where QR has taken in excess of 7 days to respond to access seekers.	This is acceptable to QR, although QR has chosen to incorporate delays arising out of 4.2(b) circumstances as well in drafting this provision in the undertaking.	9.2(d)(iv)
	11. The average number of days taken to provide the indicative access proposals, in those instances where QR has taken in excess of 30 days to provide the document to access seekers.	This is acceptable to QR, although QR has chosen to incorporate delays arising out of 4.2(c) circumstances as well in drafting this provision in the undertaking.	9.2(d)(vii)
	12. The number, and percentage, of instances in which an access seeker has notified QR that it believes that the indicative access proposal has not been prepared in accordance with the Undertaking.	This is acceptable to QR.	9.2(d)(viii)
	13. The number of non-ringfencing related disputes, regarding an alleged procedural breach of the Undertaking, that are referred to the dispute resolution process.	QR does not object to the intent of this indicator. However, it is proposed to combine the indicators and recommendations 13 and 14 into a single indicator. The nature of the dispute, and therefore whether it relates to a procedural or substantive breach of the undertaking, may not be apparent prior to the resolution of the dispute. There is a risk that, in the event that QR is required to categorise disputes prior to their resolution, that QR may provide misleading information.	9.2(d)(ix)
	14. The number of non-ringfencing related disputes, regarding an alleged substantive breach of the Undertaking, that are referred to the dispute resolution process.	See recommendation 13 above.	9.2(d)(ix)
	15. The number of disputes where QR was found to have committed a procedural breach of the Undertaking.	This is acceptable to QR.	9.2(d)(x) and (xiii)
	16. The number of disputes where QR was found to have committed a substantive breach of the Undertaking.	This is acceptable to QR.	9.2(d)(xi) and (xiv)
	17. The number of complaints received regarding an alleged breach of QR's ringfencing obligations	While QR would prefer not to report the number of unverified complaints regarding a breach of its ringfencing obligations, as discussed in Part 3 of this submission, QR is prepared to accept this recommendation.	9.2(d)(xii)
	18. The number of complaints where QR was found to have breached its ringfencing obligations.	QR does not object to the intent of this recommendation. However, consistent with the way in which breaches of the undertaking in relation to non-ringfencing issues are reported, QR intends to separately report the number of instances where QR breached its ringfencing obligations in either a procedural or substantive manner.	9.2(d)(xiii) &(xiv)
	19. The time taken to negotiate each access application resulting in an agreement.	QR has concerns with this indicator (and the indicator at recommendation 20) as it is not a measure of QR's compliance with the undertaking. There may be a number of reasons for a protracted negotiation, many of which are unrelated to QR's compliance with the undertaking. For example, an extended period of time taken by the access seeker to consider issues will not	9.2(e)

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		<p>be apparent from these indicators. The abovementioned indicators, particularly in relation to the number of disputes, are a better indicator of whether QR is complying with the undertaking. QR is very concerned that stakeholders may inappropriately interpret this as a measurement of how effectively QR is managing access in accordance with its undertaking.</p> <p>From discussions with the QCA, QR understands that the QCA is seeking reporting of this indicator for the purpose of informing potential access seekers of how long it may take to gain access to QR's network. QR also has concerns about the validity of this indicator for this purpose, as the nature of access negotiations will vary considerably from case to case, and there may be substantial variation around the average length of a negotiation.</p> <p>However, QR recognises that there are few alternatives in terms of informing potential access seekers of the potential length of access negotiations. Therefore, QR is prepared to report this indicator on the following basis:</p> <ul style="list-style-type: none"> • QR will report on negotiations that have commenced in accordance with the undertaking; • This information will be reported as the average length of the negotiation period for the year; and • The reports will clearly identify that this indicator is not intended to be a measure of QR's compliance with the undertaking. 	
	20. The time taken to negotiate each access application that does not result in an agreement.	See comments in relation to recommendation 19.	9.2(e)
	21. The number of agreements concluded.	<p>Once again, this indicator and that at recommendation 22 do not strictly measure QR's compliance with the undertaking. There will be a variety of reasons why a negotiation may not conclude in an agreement, many of which do not relate to QR's compliance with the undertaking. Therefore, it is proposed to report on these indicators on the following basis:</p> <ul style="list-style-type: none"> • Combine this indicator with that at recommendation 22 so that the indicator is the number of negotiations that are finalised through a new access agreement or variation to an existing access agreement; and • The reports will clearly identify that this measure is not intended to be a measure of QR's compliance with the undertaking. 	9.2(e)
	22. The number of variations to existing agreements concluded.	See comments in relation to recommendation 21.	9.2(e)
	23. The QCA has a right to, by written notice, request that QR provide any information and documents the QCA requires for the purpose of performing its functions under the QCA Act or this Undertaking. QR will comply with any such request, by the time stated in the notice, unless there is a reasonable excuse for QR's non-compliance.	<p>QR agrees that it is appropriate that the QCA be able to access information that is required for it to perform a function under the QCA Act or the undertaking. However, QR has some concerns regarding the breadth of the QCA's recommendation.</p> <p>QR believes that the QCA's requirements to gather information for the purpose of performing a function under the QCA Act were fully considered by the Queensland Government in the drafting of the Act, and the Act provides the QCA with broad information gathering powers in relation to an investigation under the Act. In this context, QR considers that it is neither necessary nor appropriate for an undertaking to provide rights for the QCA to gather</p>	Dealt with on a case-by-case basis where functions are assigned to the QCA under the undertaking.

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>necessary nor appropriate for an undertaking to provide rights for the QCA to gather information in relation to a function that it performs under the QCA Act.</p> <p>Where the QCA is assigned a function under the undertaking, QR agrees that it is necessary for the undertaking to specify the QCA's access to information. However, there are only limited areas where the QCA is assigned a function under the undertaking that is not actually a function under the Act (eg. approval of authorised reference tariffs is approval of a draft amending undertaking, dispute resolution by the QCA will typically be an arbitration under the Act). The primary function of the QCA under the undertaking is limited dispute resolution role where the dispute is not a dispute in accordance with the Act. As a result, QR prefers to deal with the required information gathering powers of the QCA in relation to functions performed under the undertaking, on a case-by-case basis as the function is assigned to the QCA.</p>	

Table 2 - Ringfencing Arrangements – Parts 3 and 5 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Organisational Structure	<p>1. Undertaking should be amended such that Network Access is assigned management and operational responsibility for performance of scheduling and train control with the exception of Brisbane Mayne centre</p>	<p>In response to this recommendation by the QCA in its Draft Decision, QR advised that it was undertaking the reassignment of the operational management of train control to Network Access. In the intervening months, QR has continued to work on the implementation of this obligation. In terms of what this change means for QR, QR can now confirm that the reassignment of operational responsibility for the scheduling and train control function, entails the reassignment to Network Access of:</p> <ul style="list-style-type: none"> • Train controllers; • Shift supervisors; • Train control centre management; and • Infrastructure co-ordinators to manage the coordination of all maintenance work, whilst the people carrying out the maintenance work will remain with QR's Infrastructure Services Group. <p>These people will join those scheduling staff who had already been reassigned to Network Access as a result of previous concessions made by QR to the QCA's requirements on this issue.</p> <p>However, QR proposes to leave signalmen, who control the movement of trains within yards, with QR's above rail operators who will provide this function to Network Access through a service agreement. This is considered to be the most efficient way of handling the issue of resourcing and the duplication of staff performing both above and below rail functions. As a result, QR's undertaking does not satisfy this aspect of QCA's Final Decision. In addition, in relation to incident management, Network Access will manage all incidents, however, QR's above rail operators may provide field investigators for incidents. QR's undertaking reflects these exceptions to the detail behind the QCA's Final Decision on this point.</p>	3.1
	<p>2. If at any time during the life of undertaking, QR proposes to make changes to its organisational structure that would adversely affect the capacity of Network Access to perform its functions, including those listed below, it must submit a draft amending undertaking to the QCA for approval:</p> <ul style="list-style-type: none"> • Network Access is abolished; • any of Network Access's current functions, including the scheduling and train control function, is reassigned to any other QR business group; 	<p>QR accepts the principle behind this recommendation, namely that QR not undertake an organisational restructure that results in any below rail functions being reassigned to an above rail group without first submitting an amending undertaking with the QCA. Rather than try to come up with an exhaustive list of the circumstances in which QR would need to lodge an amending undertaking, however, QR has adopted this recommendation by including an obligation upon itself not to lodge an amending undertaking with the QCA if, during the term of the undertaking, it seeks to undertake a restructure that has the effect of making QR's above rail groups responsible for the provision of any functions (not already permitted by the undertaking) integral to the provision of below rail functions.</p>	3.1(d)

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	<ul style="list-style-type: none"> • any construction, maintenance or associated functions performed by Infrastructure Services Group are assigned to above rail business groups; • any functions performed by Technical Services Group associated with processing access applications are assigned to above rail business groups; • Safety and Environment Strategy Group is subsumed within an above rail business group. 		
Protection of Confidential Information	3. Definition of <i>confidential information</i> should be amended to include the word ‘lawful’ in para. (iii) of definition	QR has accepted this recommendation.	Part 10
	<p>4. <i>Confidential information</i> should be defined as any information, data or other matter in any form whatsoever which:</p> <ul style="list-style-type: none"> • is not already in public domain; • does not become available to the public through means other than a breach of confidentiality; • was not in the other party’s lawful possession prior to such disclosure; • is not received by the other party independently from a third party free to disclose it; and • the disclosure of which might reasonably be expected to affect the commercial affairs of the person giving it OR is marked confidential by a party when disclosed. <p>Such information, data, or other matter must be treated as confidential by the party receiving it.</p>	<p>QR accepts this recommendation, subject to the following comments on how it has reflected the recommendation in drafting the undertaking:</p> <ul style="list-style-type: none"> • The last sentence of the recommendation states a substantive obligation, and does not belong in a definition. As such, QR has included this as an obligation in the body of Part 3 rather than in the definitions section; • The QCA has previously acknowledged that QR’s obligations relating to confidential information apply only where the third party has given confidential information to Network Access and not another area of QR. Rather than include this limitation in the definition, QR has included it in the body of Part 3; and • The QCA has previously acknowledged the need for exclusions, from QR’s obligations relating to confidential information, for dealings in relation to access to stations and platforms, and the provision of train control and scheduling in the Metropolitan Region. QR has dealt with these exclusions in the body of Part 3 also. 	3.3(a), 3.3(c), 3.3.2(a), and Part 10
	5. Both QR and access seekers will, at all times, keep confidential and not disclose to any other person, any confidential information exchanged as part of negotiation for access or in the course of any access agreement, without the approval of the party who provided it, except where disclosure is in any of the following	QR has accepted this recommendation.	3.3(a). 3.3(c) and Schedule B

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	<p>circumstances:</p> <ul style="list-style-type: none"> • any disclosure required by law, the listing requirements of a stock exchange or the lawful requirements of any Authority; • disclosure to the recipient's solicitors, barristers or accountants under a duty of confidentiality; • disclosure to the recipient's banker or other financial institution, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangement, if such banker etc has executed a legally enforceable confidentiality undertaking in favour of the party who originally disclosed the information; <p>AND subject to the proviso that information which was once considered to be confidential, will only continue to be confidential for as long as it retains its confidential nature as set out in the definition. In addition, the parties may agree in writing that specified confidential information is no longer required to be kept confidential.</p>		
	<p>6. Both QR and access seekers will ensure that all confidential information provided by the other party is used only for the purpose for which it was provided</p>	<p>This recommendation is consistent with QR's draft undertaking. To clarify that the same exemptions apply to this obligation as apply to the obligation to not disclose confidential information (such as the consent of the information owner), QR has combined these obligations in its redrafted undertaking.</p> <p>It is also worth noting that this recommendation links with that in point 7 below. As discussed in response to the recommendation at point 7, QR accepts an obligation to enter into a confidentiality deed with access seekers, and has prepared such deed for inclusion in the undertaking. This deed, at Schedule B, specifies the 'permitted purpose' for the use of the confidential information covered by the deed.</p>	<p>3.3(c) and Schedule B</p>
	<p>7. Undertaking must provide for confidentiality deed to be executed between QR and access seekers in favour of owner of confidential information at commencement of access negotiations – with the deed to be agreed between the parties or as otherwise developed by the QCA.</p>	<p>The QCA indicated elsewhere in its Final Decision, that it envisaged the confidentiality deed containing a liquidated damages provision (discussed further in response to the recommendation at point 23 below). As indicated above, QR has drafted into the undertaking, an obligation for it to enter into a confidentiality deed with an access seeker, if requested, at the commencement of access negotiations, and for that deed to include a liquidated damages provision. Unless otherwise agreed between the parties the deed will be in the form specified in Schedule B.</p>	<p>3.3(b) and Schedule B</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>QR's response to this recommendation needs to be considered in light of the following comments:</p> <ul style="list-style-type: none"> QR does not consider it appropriate, in the absence of agreement between QR and an access seeker or access holder, for the QCA to have the power to draft a confidentiality deed with which QR has to comply. This would leave QR with no certainty regarding the contents of a contract that it may be forced to be party to. As a result, QR has included a confidentiality deed as a schedule to the undertaking; Although this issue is discussed in more detail below, in QR's response to the QCA recommendation at point 23, it is worth flagging here that the confidentiality deed drafted by QR does not oblige QR to pay out the specified liquidated damages in circumstances where a party has not suffered any loss as a result of QR's conduct; and By adopting this recommendation, QR is accepting the QCA's desire to convey, upon access seekers and access holders, a contractual right against QR in respect of its compliance with its obligations in relation to confidential information. In particular, access seekers and access holders are granted a right to liquidated damages where confidential information is disclosed to a QR above rail group in breach of QR's obligations relating to confidential information in the undertaking. This contractual right is additional to those rights already specified in the QCA Act. Sections 158A, 152 and 153 of the QCA Act provide access seekers with rights (of amongst other things, damages and injunctive relief) in the event that QR fails to comply with its approved undertaking, or engages in conduct for the purpose of preventing or hindering access. Whilst QR has compromised its own position in this matter in the interests of minimising the issues in the undertaking on which QR and the QCA disagree, at a principle level, the QCA's approach implies that the QCA Act provisions are inadequate in relation to QR, and that additional obligations need to be created and placed upon QR through the undertaking. 	
	<p>8. QR is obliged to establish an acknowledgement register for each access negotiation (including the access application, and if relevant, access agreement) to provide an ongoing record of those persons who are disclosed third party operators' confidential information outside of Network Access</p>	<p>In response to this recommendation in the Draft Decision, QR objected to the QCA's intrusion on QR internal processes (this same objection applies to the QCA recommendations at points 9, 15 and 16 below). As a result, QR refused to include, in the undertaking, obligations upon itself to comply with internal procedures, which of themselves do not lead to breaches of true confidentiality obligations (such as not to disclose confidential information to QR's above rail groups). QR's alternative approach involved the specification in the undertaking (in Schedule B), in a general way, of the internal procedures it would implement in order to assist it to comply with its obligations relating to confidential information, and it would undertake a reasonable endeavours obligation to comply with those procedures and to include its compliance with internal procedures as part of the annual audit on its compliance.</p>	<p>3.3.2(c) and Part 9</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>In effect, this meant that the QCA and access seekers would have a clearer idea of QR's internal procedures, but QR would not be placed in breach of the undertaking, and subject to the other enforcement provisions the QCA proposed, for failure to comply with an internal procedure given that such non-compliance would not, of itself, necessarily establish a breach by QR of substantive obligations relating to confidential information. QR's approach required a failure to comply with internal procedures to result in a failure to comply with a substantive obligation regarding the treatment of confidential information (such as not to disclose confidential information to QR's above rail groups) for a breach of the undertaking to occur.</p> <p>Given the QCA's rejection of QR's approach, QR has now amended its position such that the proposed Schedule B has been removed from the undertaking (as discussed above, Schedule B now specifies a pro forma confidentiality deed), and a provision reflecting the QCA's recommendation has been incorporated in Part 3 of the undertaking. QR has taken this approach in response to this recommendation and those at points 9, 15 and 16 below.</p> <p>In adopting this recommendation, QR has made a number of clarifications in drafting, to reflect the practical issues discussed below:</p> <ul style="list-style-type: none"> • In the discussion surrounding this recommendation in the Final Decision, the QCA notes that it should be a requirement for QR officers outside Network Access to sign the register to acknowledge a verbal exchange of confidential information. Such a requirement creates practical problems, particularly when those officers could be outside of Brisbane. It raises timing issues in terms of QR meeting the timeframes imposed upon it by the undertaking, as well as exposing QR to the risk of losing the register, which would play an important part in any attempt by QR to discharge the onus of proof where an access seeker is seeking liquidated damages (see points 23 and 25 below). QR proposes that a more workable obligation would be for Network Access to maintain the register and be responsible for including on it the names of officers outside Network Access who are verbally provided with confidential information. In terms of the QCA being concerned about QR employees external to Network Access being aware of their ring fencing obligations, the QCA has also recommended (in point 9) that QR employees receiving confidential information be reminded of their ring fencing obligations and that confidential information is not disclosed to a person who has not undergone the QR education and acknowledgement process. This should be more than adequate an obligation to cover the QCA's concerns in this regard; • The QCA has also suggested, in its discussion surrounding this recommendation, that QR enter on the register all marked pieces of confidential 	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>information provided by an access seeker. As this could have the effect of requiring the register to include details of information that does not need to go outside of Network Access, and appears to be broader than the QCA's intended purpose, QR proposes that the register only record, as the QCA recommendation states, where confidential information has to be disclosed outside of Network Access; and</p> <ul style="list-style-type: none"> In terms of QR's reporting obligations, a misleading impression could be given if no distinction is made between procedural and substantive breaches by QR. QR has dealt with this issue by drafting QR's reporting obligations in the undertaking to distinguish between procedural and substantive breaches. QR has expressly noted that a failure to comply with this obligation will constitute a procedural breach. <p>QR has also added a right for parties to view the register in relation to their own confidential information.</p>	
	<p>9. QR employees receiving confidential information are reminded of their ringfencing obligations and that confidential information is not disclosed to a person that has not undergone the education and acknowledgement process QR has proposed</p>	<p>The comments made in point 8 in relation to QR's overall approach to the inclusion of obligations to comply with internal procedures in the undertaking equally apply here (including the comments on the consequences of QR breaching such obligations).</p> <p>In adopting this recommendation, QR has made two clarifications in drafting to reflect the following practical issues:</p> <ul style="list-style-type: none"> To avoid the need for QR employees who regularly receive confidential information to be continually reminded of QR's obligations relating to confidential information, QR has worded the obligation upon itself to be to ensure that such employees are aware of these obligations; and The second element ('confidential information will not be disclosed to a person who has not undergone the education and acknowledgement process QR proposes') should be clearly limited to internal QR persons. The obligations of external parties are dealt with by other recommendations and will be governed by contractual confidentiality obligations. 	3.3.2(d)
	<p>10. Schedule E will include a principle that QR will comply with the ringfencing obligations in the undertaking as in force from time to time</p>	<p>QR has accepted this recommendation in principle with the proviso that any obligation to continue to comply with its ring fencing obligations after an access agreement has been entered into will be subject to agreement to the contrary in the access agreement. The QCA has acknowledged this proviso in its Final Decision. QR has dealt with the QCA's suggested Schedule E principle in its response to the QCA's Final Decision on Schedule E – Table 7.</p>	Schedule E
	<p>11. Network Access can disclose confidential information to the following persons and/or segments within QR, but outside of Network</p>	<p>This recommendation, together with the recommendations at points 12, 13, and 14 below, form the QCA's position on when Network Access can disclose third parties' confidential information to other QR groups without the consent of the third party</p>	3.3.2(a)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>Access, without the approval of the information owner:</p> <ul style="list-style-type: none"> • Chief Executive Officer and Board; • Group General Manager Technical Services Group; • Rollingstock Engineering Unit within Technical Services Group; • Executive General Manager Safety & Environment Strategy Group; • Safety & Environment segments within Safety & Environment Strategy Group; • Group General Manager Infrastructure Services Group; and • Corporate Counsel 	<p>information owner.</p> <p>These recommendations have the following effect:</p> <ul style="list-style-type: none"> • The QCA’s Final Decision recognises that it would be unreasonable for an access seeker to withhold its consent to Network Access disclosing its confidential information to an internal advisor if either QR has executed a confidentiality deed in favour of the access seeker, or the internal advisor has no direct or indirect involvement in advising an above rail group on that or related matters (see the recommendation at point 13); • QR has agreed to enter into a confidentiality deed where requested by an access seeker (see the discussion at point 7). As a result, where an access seeker requests QR to enter into a confidentiality deed, it is always going to be unreasonable for an access seeker to refuse their consent to the disclosure of their information by Network Access to an internal QR advisor. Even where an access seeker does not require QR to enter into a confidentiality deed, according to the Final Decision, it will be unreasonable for an access seeker to refuse its consent to QR providing its confidential information to an internal advisor with no direct or indirect involvement in advising an above rail group on that or a related matter; • In addition, QR has included a provision in the undertaking prohibiting the disclosure of confidential information to QR’s above rail groups (except in the listed, permitted circumstances: such as to Passenger Services Group for the provision of train control and scheduling services at Mayne Control Centre, and the management of stations and platforms); • This being the case, QR questions the value in being obliged to seek consent in circumstances where such consent cannot be refused; particularly when QR has agreed to maintain a register that will detail when confidential information is passed out of Network Access to another part of QR. Access seekers will be able to access the register relating to their access enquiry, and will, as a result, have a record of where their confidential information has gone within QR. As a result, requiring QR to seek consent will not provide an access seeker with any additional information to that they already have access to regarding the passage of their confidential information within QR. <p>As a result, QR has not included the list within the undertaking, on the basis that it simply produces an administrative burden (of seeking consent in circumstances where it cannot be refused) for no perceivable benefit (given that QR has an obligation not to disclose confidential information to its above rail groups, and access seekers will have the means to track the passage of their confidential information throughout QR via the register discussed at point 8). However, if the</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>QCA is still minded to insist upon the inclusion of a list, QR would suggest the following list in substitution. This expanded list covers off those relevant segments and/or persons outside of Network Access, but within QR, that Network Access is most likely to provide confidential information to. The list suggested by the QCA included a mixture of both segments and persons that would be used for advice in responding to access requests (for instance, the Safety & Environment Group), as well as those that may be given confidential information for information only (for instance, the Board and Chief Executive Officer). QR has amended the list to fully reflect both categories. There is one exception to this however, in relation to the disclosure of confidential information to Passenger Services Group for the provision of train control and scheduling services at Mayne Control Centre, and the management of stations and platforms. QR has dealt with the QCA's recommendations in this regard in another provision in the undertaking (paragraph 3.3.2(a)), which prohibits the disclosure of a third party's confidential information to a QR above rail group otherwise than as expressly permitted. The expanded list is:</p> <ul style="list-style-type: none"> • QR Board and support staff; • QR Chief Executive and support staff; • Safety & Environment Strategy Unit (reporting to the Chief Executive); • Finance Unit (reporting to the Chief Executive); • Group General Manager Technical Services Group and support staff; • Group General Manager Infrastructure Services Group and support staff; • Group General Manager Workshops and support staff; • Group General Manager Corporate Services Group and support staff; • Civil Engineering Division, Technical Services Group; • Rollingstock Engineering Division, Technical Services Group; • Projects Division, Technical Services Group; • Electrical Engineering Division, Technical Services Group; • Spatial & Information Solutions Division, Technical Services Group; • Survey Division, Technical Services Group; • Telecommunications Division, Technical Services Group; • Signalling and Operational Systems, Technical Services Group; • QR On Track Insurance; • QR Risk & Insurance Manager; • Corporate Counsel and support staff; • Internal Audit (reporting to the Chief Executive); • Property Division, Corporate Services Group; • Information Services Division, Corporate Services Group. • Infrastructure Services Group employees to Level 4; and • QR's Ringfencing Compliance Officer. 	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>12. Where reasonably practicable, no internal advisor will be asked to advise Network Access and an above rail group on the same or a related matter; and where an internal advisor is advising both Network Access and a QR above rail group on the same or a related matter, QR must advise the third party prior to providing the information, notwithstanding the advisor is within one of the areas that Network Access can otherwise provide confidential information to without the information owner's consent.</p>	<p>As noted in response to point 11 above, whilst QR accepts the principle behind this recommendation, it questions the need for such a provision where QR has entered into a confidentiality deed with an access seeker. Notwithstanding this reservation, QR has adopted this recommendation. QR has included this provision in the undertaking on the understanding that it does not compromise the QCA's acceptance in the Draft Decision that QR need not advise owners of confidential information where Network Access wishes to pass information to the Chief Executive, QR Board and/or Corporate Counsel..</p>	3.3.2(b)
	<p>13. An access seeker's consent to release of its confidential information within QR cannot be unreasonably withheld where:</p> <ul style="list-style-type: none"> • Network Access is passing the information to an internal advisor, and executes a confidentiality deed in an agreed form (as discussed at point 7 above) with the access seeker; or • Network Access is passing the information to an internal advisor who has no direct or indirect involvement in advising an above rail group on that or related matters. 	<p>QR accepts this recommendation in principle but considers that a specific provision reflecting it is not required in the undertaking, given the approach outlined above in response to the recommendations at points 11 and 12.</p>	
	<p>14. QR must advise the access seeker if an internal advisor has direct or indirect involvement in advising an above rail group on that or a related matter</p>	<p>This recommendation is inseparable from that at points 12 and 13, and QR's response at these points applies equally here. QR accepts this recommendation.</p>	3.3.2(b)
	<p>15. Management levels 2, 3 and 4 in Network Access cannot work, elsewhere in QR, on a matter they were directly or indirectly involved in with Network Access for three months after leaving Network Access</p>	<p>The comments made in point 8 in relation to QR's overall approach to the inclusion, in the undertaking, of obligations to comply with internal procedures equally apply here (including the comments on the consequences of QR breaching such obligations). Unlike the recommendations discussed at points 8 and 16, however, this recommendation was not included in the QCA's Draft Decision. As a result, QR has not previously had the opportunity to comment on its application. QR considers the following points to be relevant:</p> <ul style="list-style-type: none"> • The QCA has taken a broader than necessary approach to confining QR's rights in this matter, given the purpose that the QCA has stated is behind this recommendation. The issue for the QCA is the ability for Network Access management, who have access to third parties' confidential information whilst with Network Access, using that information to influence the decision-making in another QR area in a manner that disadvantages the third party. Arguably, to 	3.3.2(f)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>achieve this, the QCA only needs to place the 3 month restriction on management staff transferring from Network Access to one of QR's operating groups, to act on a matter in respect of which they have had access to confidential information belonging to a third party whilst with Network Access. As worded, the QCA's recommendation could include situations where Network Access management transfer to Technical Services Group or Infrastructure Services Group to deal with infrastructure issues that they have also dealt with whilst in Network Access. In such circumstances, there is no potential for confidential information belonging to a third party access seeker to reach QR's above rail groups;</p> <ul style="list-style-type: none"> The QCA also requires these same people to sign undertakings upon leaving Network Access that they won't use third party access seekers' confidential information, acquired whilst working in Network Access, in their new position in a QR above rail group (see point 16 below). Although, as advised in point 16, QR does not accept the need to require individual staff members to sign such undertakings (for a number of reasons), there are a number of other obligations it has accepted, primarily an obligation to only use confidential information for the purpose for which it is provided. The QCA has argued, in its Final Decision, that this additional restriction is intended to stop people influencing decisions on a matter where they face a conflict of interest – in other words not necessarily disclosing confidential information but still using it improperly. As a result, QR questions the need for such an obligation, in addition to the obligation to use confidential information only for the purpose for which it is provided. <p>Notwithstanding QR's reservations about the need for this restriction on its staff members, in the interests of minimising the issues on which it's undertaking differs from the QCA's Final Decision, QR has included a provision in the undertaking that reflects what QR understands to be the principle behind this recommendation.</p>	
	<p>16. There is a debriefing process for all Network Access staff prior to their departure to another QR business group to remind them of their confidentiality obligations</p>	<p>The comments made in point 8 in relation to QR's overall approach to the inclusion of obligations to comply with internal procedures in the undertaking equally apply here (including the comments on the consequences of QR breaching such obligations).</p> <p>QR has accepted this recommendation subject to the following observation on how it has reflected the recommendation in drafting the undertaking:</p> <ul style="list-style-type: none"> In its discussion on this recommendation in the Final Decision, the QCA states that it expects Network Access staff to sign a separate acknowledgement form saying they will not disclose third parties' confidential information in their new position. In practice, it's questionable whether QR can make its staff sign such 	<p>3.3.2(e)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>an acknowledgement form. But in any event such a requirement runs counter to the QCA's acknowledgement, in relation to its recommendation at point 9, that staff need not be required to sign a document that effectively personalises a breach of QR's ringfencing obligations. QR has an obligation to only use confidential information for the purpose for which it is provided. As a result, the need for a personal acknowledgement form is superfluous as well as potentially unenforceable by QR.</p>	
	<p>17. Only Network Access has access to confidential information belonging to third parties in the Freight Management System (FMS)</p>	<p>QR accepts this recommendation in principle, but does not consider there to be a need for a specific provision in the undertaking dealing with the flows of confidential information through QR information systems. The same obligations that apply generally to confidential information, will also apply to QR's management of confidential information in its information systems.</p> <p>QR is moving towards implementation of another system for 'below rail' use and it is envisaged that FMS will eventually be left as an exclusively 'above rail' system. However this changeover will not be complete before the undertaking becomes enforceable. In the interim, Network Access has strategies, if necessary, for dealing with the separation of information belonging to third party access holders from that belonging to QR operators to ensure that QR's above rail groups do not have access to third parties' confidential information or vice versa.</p>	
	<p>18. QR will employ different external advisors for it's above and below rail business groups where there is a potential for a conflict of interest to occur (when advisor is an individual.)</p>	<p>QR accepts this recommendation and has drafted this restriction into the processes in the undertaking detailing when and how QR can disclose an access seeker's confidential information to an advisor outside of QR.</p>	<p>3.3.1(b)(ii)</p>
	<p>19. Where Network Access intends to disclose an access seeker's confidential information to an external advisor (other than those specified in existing 4.2(c)(ii) and (iii)), it must obtain the consent of the access seeker, that consent not be unreasonably withheld. Consent cannot be unreasonably withheld where QR undertakes to contract with the external advisor on the following terms:</p> <ul style="list-style-type: none"> • specifying the person/s who may have access to the information; • specifying that those persons must not speak or disclose information to any QR staff, other than those within Network Access; and • requiring them to execute a confidentiality deed in favour of the owner of the 	<p>QR accepts this recommendation in principle, and has included a provision in the undertaking to reflect it. For practical application, QR has drafted the requirement covered by the second dot point in the QCA's recommendation, less restrictively. Rather than saying that external advisors cannot disclose information to any QR staff other than Network Access staff, QR has noted that where an external advisor considers that it is necessary for the purpose of the contract to make such disclosure, they must advise the relevant Network Access project officer, who will be responsible for ensuring that any such disclosure occurs in accordance with QR's obligations in relation to the management of confidential information. This will remove the need for an external advisor to relay queries, etc, through a Network Access staff member when they are able to get their queries answered directly by someone else within QR, whilst at the same time, leaving Network Access with responsibility for ensuring that its ring fencing obligations are met by the external party.</p> <p>In drafting this recommendation into the revised undertaking, QR also identified an</p>	<p>3.3.1(b) and 3.3.1(c)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	information (if required by the owner).	issue that it had not previously picked up. This relates to the use by QR of consultants on a long-term basis. Such a practice reflects the changing nature of workplace employment to accommodate different forms of agreements for service or services. For instance, Network Access has a number of people, under long-term contract, who are not regarded as employees. Whilst some of these people fall within the exemptions envisaged by 4.2(c) in the previous draft undertaking (for example, legal advisors), others do not. Rather than treating such people as external consultants who have to execute a separate confidentiality deed each time Network Access wishes to disclose confidential information to them, QR has drafted an additional provision in the undertaking stating that people who meet the specified criteria may be treated as employees for the purposes of QR's obligations in relation to the management of confidential information. This means that QR will ensure that such people are contracted to provide their services on the basis, amongst other things, that they will comply with QR's obligations relating to confidential information, but will not necessitate QR getting these people to execute a confidentiality deed every time they are provided with confidential information. QR has recognised that an access seeker may well face the same situation and as a result, the drafting of this provision has generic application to the QCA recommendation at both this point and at point 20 below.	
	<p>20. Where an access seeker intends to disclose Network Access's confidential information to an external advisor (other than those specified in existing 4.2(c)(ii) and (iii)), or to a customer, it must obtain the consent of Network Access, that consent not be unreasonably withheld. Consent cannot be unreasonably withheld where the access seeker undertakes to contract with the external advisor or customer on the following terms:</p> <ul style="list-style-type: none"> • specifying the person/s who may have access to the information; • specifying that those persons must not speak or disclose information to anyone else except on the same terms as the information was disclosed to them; and • requiring them to execute a confidentiality deed in favour of the owner of the information (if required by the owner). 	QR accepts this recommendation in principle, however, QR has used slightly different wording on the second dot point in its drafting of the obligation in the undertaking. Rather than saying that external advisors may disclose confidential information to other persons on the same terms as it was disclosed to them, QR has specified that such on-disclosure is not permitted without QR's consent. This is consistent with the approach taken in relation to the treatment of external advisors used by QR.	3.3.1(a)
Breaches of Ringfencing	21. QR is required to report immediately to the QCA any actual or alleged breach of the ringfencing	In response to this recommendation in the Draft Decision, QR offered to report actual breaches of its obligations in relation to ring fencing, along with any response	3.4.1(b) and (d)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Obligations	provisions of the undertaking and any response by QR	<p>proposed or taken by QR. The QCA has rejected this approach in its Final Decision. Accordingly, QR has amended its undertaking to accept an obligation to report to the QCA any third parties' complaints that QR had breached its obligations relating to the management of confidential information (at the time a complaint is received), and then advise the QCA of actual breaches, and any QR action, once QR has had the opportunity to investigate the relevant complaints. As a result, QR has accepted an obligation to report to the QCA both actual and alleged breaches of its obligations in relation to the management of confidential information.</p> <p>Whilst the QCA's Final Decision was unclear on this point, QR has clarified, in its drafting of the undertaking, that its obligation to report complaints and breaches to the QCA does not extend to internal enquiries raised through QR's internal compliance system. Clearly, QR's internal mechanisms for dealing with ring fencing are designed to encourage QR staff to ask questions of the Ring Fencing Compliance Officer in terms of what they should be doing, as well as reporting incidents that have occurred so that processes may be improved over time. To require QR to report internal enquiries would have the effect of discouraging QR staff from making enquiries. In the long term, this will hinder QR's ability to improve its compliance. At the same time, the exclusion of internal enquiries will not hinder the QCA's ability to monitor QR's compliance with its obligations in relation to the management of confidential information as the undertaking already places an annual audit obligation upon QR's compliance and this will pick up QR's compliance with internal processes (including QR's compliance system).</p> <p>In line with QR's proposed approach to distinguishing between procedural breaches and substantive breaches, it is also proposed that this obligation should make a distinction between substantive and procedural breaches – in other words, QR will notify the QCA whether an alleged or actual breach is of a procedural or substantive obligation.</p>	
	<p>22. QR must establish an initial internal review process for alleged ringfencing breaches such that:</p> <ul style="list-style-type: none"> • internal review is completed and the access seeker notified in writing of findings of review within 28 days of the alleged breach being brought to QR's attention in writing; • an access seeker and QR could refer a dispute over the findings of the internal review to the QCA at the end of the 28 day period; and 	<p>In relation to QR's internal review, QR accepts the principle behind this recommendation, and has drafted a provision into its undertaking reflecting the following refinement to the QCA's wording in the Final Decision:</p> <ul style="list-style-type: none"> • QR has accepted an obligation to establish an internal complaint handling mechanism, specifically for breaches of its obligations in relation to the management of confidential information, however, to accommodate the need for different degrees of analysis to be undertaken by QR in order to investigate different complaints, QR will use 'reasonable endeavours' to complete its internal investigation and advise the complainant of its outcome within 28 days of receiving a written complaint. This both places QR under some time restraint and recognises that in some circumstances a longer timeframe will not 	3.4.1(c) and Schedule B

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<ul style="list-style-type: none"> the results of the subsequent QCA review provide a basis for compensation. 	<p>be unreasonable.</p> <p>In relation to the QCA's review of alleged breaches by QR of its obligations in relation to the management of confidential information, notwithstanding QR's desire to minimise the issues on which the undertaking differs from the QCA's Final Decision, QR has a number of strong objections to this recommendation.</p> <p>QR's initial objection relates to the fact that the recommendation assumes that the QCA needs to create an additional right, to those already specified in the QCA Act, the undertaking and the standard access agreement, for access seekers and access holders to pursue QR for an alleged breach of its ring fencing obligations. In its Final Decision, the QCA explained that it considers this additional review mechanism is required because it has legal advice that the arbitration mechanism spelt out in division 5 of part 5 of the QCA Act does not allow an access seeker to refer to the QCA a dispute about QR's compliance with its ring fencing obligations. This means that the dispute resolution process provided under the undertaking does not include the option of a QCA determination. Once a third party has an access agreement, however, that agreement will specify the mechanism for resolving such disputes. In the absence of a QCA approved standard access agreement, the QCA is concerned that there is no certainty that an access agreement will contain a process, presumably involving the QCA, for resolving a dispute concerning ring fencing breaches by QR, or that the parties will not agree something contrary to what is in the standard access agreement. As a result, the QCA consider that it needs to create an additional power, through the undertaking, for it to make a determination on a dispute concerning QR's compliance with its ring fencing obligations. The above reasoning fails to acknowledge that a third party still has rights under the QCA Act to take action against QR for a breach of its obligations in the undertaking (s. 158A). The QCA considers that it is reasonable for it to create this additional review mechanism because it will remove the need for parties to go to court. QR questions whether such a point legitimately justifies such a recommendation.</p> <p>However, whilst in principle the QCA's position on this issue seems to lack any thorough consideration of QR's business interests, QR is prepared to compromise on its position in the interests of reaching a resolution, provided that an access seeker only has the right to refer a dispute to the QCA on the issue of whether QR has breached its confidentiality deed in the circumstances that entitle the access seeker to the liquidated damages specified therein. QR has provided for such a review in the confidentiality deed it has drafted at Schedule B. This approach also means that the last dot point in the QCA's recommendation has no application. The QCA cannot bind a court, and there is no question of compensation under the confidentiality</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>23. A contractual liquidated damages clause of \$10,000 is to apply where confidential information is disclosed to an above rail business group in breach of the ringfencing provisions in the undertaking</p>	<p>deed, only liquidated damages.</p> <p>As noted in response to the recommendation at point 7, QR has accepted an obligation to enter into a confidentiality deed (specified in Schedule B), which includes a \$10,000 liquidated damages provision, to apply where confidential information covered by the deed is disclosed to a QR above rail operating group in breach of QR's obligations in relation to the management of confidential information set out in clause 3.3 of the undertaking.</p> <p>For the purposes of clarity, the liquidated damages clause included in Schedule B makes it clear that:</p> <ul style="list-style-type: none"> • An access seeker must establish that they have suffered some loss as a result of the QR conduct, before being able to collect the \$10,000 liquidated damages. Whilst this will not require a party to quantify their loss, it will at least mean that a party cannot collect the damages in a situation where they suffered no consequence as a result. QR notes that this approach is consistent with a comment made by the QCA in its Draft Decision ('The QCA believes that the confidentiality obligations established in the undertaking should include a liquidated damages clause. This is on the grounds that those who suffer loss from a breach of the ring fencing provisions of the undertaking should be compensated, however, quantification of that loss will be difficult'); and • QR's liability under the deed, in respect of the conduct in question (leaving aside the case where actual loss in excess of \$50,000 can be demonstrated) is limited to the specified liquidated damages. <p>QR's acceptance of this recommendation needs to be considered in light of the following comments:</p> <ul style="list-style-type: none"> • QR observes that a liquidated damages provision generally caps a party's liability, whereas the effect of the QCA's recommendation (in both points 23 and 24) leaves open the opportunity for access seekers to seek recourse through the courts if they can establish damage in excess of \$50,000. As a result, the liquidated damages clause recommended by the QCA does not effectively cap QR's liability – it merely provides third parties with an additional right to damages in circumstances where they cannot quantify the loss they have suffered as a result of the QR conduct in question. <p>QR's acceptance of this recommendation in light of the above observation indicates QR's willingness to achieve a meaningful outcome to this consideration of its undertaking.</p>	<p>Schedule B</p>
	<p>24. An access seeker can seek recourse through the courts if it can demonstrate that an alleged breach</p>	<p>As access seekers already have this right under s 158A of the QCA Act, QR has assumed that this recommendation applies to the contractual right conveyed on a</p>	<p>Schedule B</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	of the ringfencing provisions in the undertaking had caused damage in excess of \$50,000. In addition to any remedies at law or in equity, the access seeker could seek injunctive relief against QR	third party through the confidentiality deed and the liquidated damages provision there under. QR has reflected this in its undertaking.	
	25. In the event that confidential information falls into the hands of a person within QR who did not reasonably require access to it, the undertaking must place the onus of proof on QR to demonstrate that it didn't occur as a result of breach of the undertaking's confidentiality provisions.	<p>QR accepts that the QCA's intention, as stated in its Final Decision, is to limit this reversal of onus of proof to where the owner of information is enforcing the liquidated damages provision in their confidentiality deed. QR has accepted this as a general principle, however, the drafting of this principle in the undertaking was undertaken with the following considerations in mind:</p> <ul style="list-style-type: none"> • Firstly, the wording of the recommendation does not reflect the QCA's intention to restrict its application to those circumstances where a party is seeking to enforce the liquidated damages provision in its confidentiality deed. The words used by the QCA are clearly wider in this recommendation ('in the event that confidential information falls into the hands of a person within QR who did not reasonably require access to it') than those used in the recommendation at point 23 above ('confidential information is disclosed to an above rail business group in breach of the ring fencing provisions in the undertaking'). For instance, the QCA's words in this recommendation would cover a situation where a person within Network Access was given information that they didn't require for the performance of their duties – for example, in the course of a divisional meeting. As this was clearly not the QCA's intention, QR has drafted its obligation in the confidentiality deed more narrowly than the words of this recommendation; and • Secondly, QR considers that the QCA's justification for such a reversal is not strong. In truth, it means that where a QR above rail group is shown to possess an access seeker's confidential information, the assumption should be that QR has acted in breach of its obligations in managing confidential information. In a practical sense, it will be just as difficult, if not more so, for QR to discharge this onus as it would be for a third party. For instance, QR can demonstrate that it has strictly followed internal procedures, but it cannot prove that a Network Access employee has not had a discussion with an employee of an above rail group whilst they were both attending the same training course or riding home on the same train. As QR noted in its response to the draft decision, QR has been unable to find any similar provision in any other access regimes (whether for rail or other industries) in Australia. 	Schedule B
Auditing of QR's Compliance with Ringfencing Guidelines	26. QR must have an annual compliance audit conducted of compliance with the Ringfencing provisions in undertaking	QR accepts this recommendation.	3.4.2(a)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	27. QCA has the right to determine whether an internal or external compliance audit is conducted	QR accepts this recommendation.	3.4.2(c)
	28. Process for external audit as follows: <ul style="list-style-type: none"> • QR and QCA agree list of 3 auditors, and failing agreement, QCA will nominate a number sufficient to constitute a panel; • each auditor selected must acknowledge that they are to act for the QCA, if appointed, and owe their duties to the QCA under the terms of the undertaking, and they will accept instructions on subject matter of audit from QCA; • QR then chooses auditor from list. That auditor will undertake the audit and be directed by the QCA as to matters that are to be looked at and reported on; • the report of the auditor is to be given to the QCA with a copy to QR; • QR commits to provide all information requested by the auditor within specified timeframes determined at the time of the auditor's appointment; and • QR pays the audit bill 	QR accepts the need to set out a process to be followed in the event that the QCA requires an external audit to be conducted. However, QR has proposed an amended process to that suggested by the QCA in the Final Decision, after having referred to the ACCC's 'Audit and Compliance Framework for Revised Record Keeping Rules – April 1999'. In particular, the differences are as follows: <ul style="list-style-type: none"> • QR will appoint the auditor subject to the approval of the QCA; • Whilst QR will bear the costs of the audit, the auditor must prepare a formal documented work plan/program for the execution of the audit (including audit costs), and this plan must be agreed with QR, and approved by the QCA prior to the commencement of the audit; and • QR will provide all relevant information reasonably requested by the auditor within a nominated timeframe that is determined by the auditor to be reasonable after consultation with QR. 	3.4.2(c), (d), (e), (f), and (g)
	29. Scope of audit relates to QR's compliance with its Ringfencing obligations and associated procedures, including reporting on any inappropriate transmission of access seeker's confidential information	QR accepts this recommendation.	3.4.2(b) and (f)
	30. The process adopted for each audit will be published for each audit report	QR accepts this recommendation.	3.4.2(f)(iii)
	31. QR must provide compliance audit reports to the QCA	QR accepts this recommendation, but notes that it appears to be duplicating one step out of the process outlined by the QCA in its recommendation at point 28. In any event, QR has included a provision in its undertaking noting that the auditor will provide a copy of the audit report to both QR and the QCA.	3.4.2(g)
	32. QCA may publish, as appropriate, QR's compliance audit reports	QR accepts this recommendation and had included a provision in the undertaking noting that the QCA may publish the audit report provided to it by the auditor.	3.4.2 (h)
Internal Access Agreements	33. In developing internal access agreements for existing train services, the term of the internal access agreement should be the same as the term of the relevant external agreement between QR	QR has accepted this recommendation.	5.2.1(b)(i)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	and its private customers.		
	34. In developing internal access agreements for existing community service obligation train services, the term of internal access agreements should be the same as the term of the relevant external agreement with government for the above rail component of the service.	QR has accepted this recommendation.	5.2.1(b)(i)
	35. For existing general freight and freight forwarding services, a max transitional term of 2 years for internal access agreements is applied unless there is a longer external contract in place, and following this transitional period, internal access agreements would be set for commercially realistic terms.	QR accepts this recommendation, subject to the explicit recognition in the undertaking that QR operators will not be prevented from negotiating longer-term access agreements within the 2-year transitional period, provided they are consistent with the undertaking.	5.2.1(c) and 5.2.1(b)(ii)
	36. For new tonnages of bulk commodities not covered by an existing contract, the internal access agreement is linked to the term of the new contract	QR considers that as such internal access agreements will be developed subject to the undertaking, there is no need to specify what the term of the agreements must be.	5.2.2(a)
	37. 2 year transitional period starts from date of release of QCA final decision.	QR accepts this recommendation.	5.2.1(b)(ii)
	38. Internal access agreements should not contain rate review clauses	<p>QR had previously argued that rate review clauses in access agreements for marginal traffics would not prove effective. The QCA's recommendation in the Draft Decision accepted QR's argument but the wording of the actual recommendation had wider implications. In its Final Decision, the heading used by the QCA in its discussion on this point clarified that its initial recommendation was indeed intended only to state that rate review clauses would prove ineffective in internal access agreements for existing marginal traffics.</p> <p>QR's response to the QCA's recommendations on the Pricing Principles outlines QR's position on rate review comprehensively. See Table 4 - Pricing Principles.</p>	
	39. Existing subclause 3.4.2 of the undertaking is removed	QR has accepted this recommendation.	
	40. Following development of a standard access agreement for coal haulage services, internal access agreements for new or renewed train services that are developed in accordance with that standard agreement and approved reference tariffs are not subject to s.104 and 125 of the QCA Act.	QR accepts this recommendation, but does not consider that the undertaking needs to include such a statement as internal access agreements for new or renewed train services are subject to the undertaking, and QR should have the protection of the subsections 104(6) and 125(6) in the stated circumstances, without the need to state this in the undertaking.	
	41. Prior to the completion of the standard access	QR does not disagree with this recommendation, but does not consider that the	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	agreement for coal haulage services, internal access agreements for new or renewed train services will not hinder or restrict access to the declared service in any way contrary to s.104 and 125 QCA Act	undertaking needs to include such a statement given that it is merely a statement of QR's obligation under the QCA Act. Internal access agreements for new or renewed train services are subject to the undertaking so, provided QR complies with the undertaking, it should have the protection of subsections 104(6) and 125(6) in the event of a complaint that QR has engaged in conduct for the purpose of preventing or hindering access.	
	42. QR must disclose coal access agreements and internal access agreements between Network Access and QR business groups that operate coal train services	<p>The QCA has rejected QR's arguments against the need for the publication of coal access agreements, and as a result, QR has included in its revised undertaking, an obligation to permit the public disclosure of the below rail aspects of access agreements for all coal carrying train services (including internal agreements) for new or renewed train services. QR has limited its disclosure obligation to internal access agreements for new or renewed train services to align with the QCA's position on the development of internal access agreements, in particular, the acknowledgement that access agreements for existing train services need not be in accordance with the undertaking.</p> <p>The QCA accepted, in the Draft Decision, that its intent was only that the below rail aspects of coal access agreements be published, as a result, QR considers its drafting to be consistent with the intent behind this QCA recommendation. To clarify what 'below rail aspects' will include, QR has also included a provision listing those parts of the standard access agreement that it considers should not be disclosed.</p> <p>Although QR has now incorporated this recommendation into its undertaking, it still questions whether the disclosure envisaged will really produce benefits, in terms of transparency, that outweigh the negative effects of the disclosure, in terms of rigidity of agreement terms. In particular, partial disclosure may give a misleading impression of the total agreement. If QR negotiates a lower access charge based on a reduced risk to it in the particular access holder's rollingstock operation, this will not be transparent from the publicly available agreement. QR will disclose a negotiated departure from the reference tariff, but not the Interface Risk Management Plan (which specifies the access holder's agreement with QR on how the interface risks, including rollingstock interface risks, will be managed). The publicly available agreement will simply bring the price variation to the attention of interested parties. On the other hand, QR does not support the disclosure of confidential information. It merely questions whether this recommendation will achieve its intended purpose.</p>	5.3
	43. QR will provide its internal access agreements for non-coal train services to the QCA for review.	QR has accepted this recommendation.	5.2.2(b)

Table 3 – Negotiation Framework – Parts 4 and 5 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Management Responsibilities for QR's Infrastructure	<p>1. The QCA considers it appropriate to amend the draft undertaking such that management responsibility for QR's infrastructure is assigned in accordance with the relevant nominated line diagrams.</p>	<p>QR agrees that the infrastructure diagrams should be incorporated in the undertaking. QR has implemented this in the following manner:</p> <ul style="list-style-type: none"> • Access negotiated in accordance with the undertaking is only to defined rail infrastructure for the purpose of providing the declared service; • Rail infrastructure is defined in a way that aligns with the definition in the Transport Infrastructure Act, but so as to exclude lines marked in the infrastructure diagrams as not being the responsibility of Network Access; and • In Part 3 of the undertaking, it is acknowledged that Network Access is responsible for the provision and management of defined rail infrastructure. 	Part 10 – definition of Rail Infrastructure, Schedule A, and 3.1
	<p>2. The QCA considers it appropriate to amend the draft undertaking such that the following principles for the assignment of management responsibility for QR's rail infrastructure are incorporated as a schedule to the undertaking.</p> <p>In summary, the principles include:</p> <ul style="list-style-type: none"> • Network Access should operate as stand alone provider of declared rail transportation services. The onus of proof for justifying a departure from this principle rests with QR; • Existing market shares of QR's above rail groups should not be a factor in assigning management responsibility for declared services; • Network Access should provide access, using its own infrastructure, to any private siding; • Network Access should provide access to any end user's facility not owned or leased by a rail operator, or a facility where there is joint use by end users; and • Network Access should provide access to declared rail transport services that assist normal mainline operations. The principles include the list of activities considered to be part of the declaration, as found by the Solicitor General (not repeated here). 	<p>QR has previously broadly accepted these principles and the infrastructure diagrams have already been developed on this basis. Given that the infrastructure diagrams for QR's entire rail network have been included in QR's revised undertaking, QR questions the need to include these principles in the undertaking in their current form. Rather, the only requirement for any consideration of the infrastructure diagrams will be in the event of a dispute under recommendation 3.</p> <p>As a result, QR accepts in principle the intent of the QCA's recommendation, but considers that a better way of incorporating the QCA's intent into the revised draft undertaking is as follows:</p> <ul style="list-style-type: none"> • Specifying the scope of the service that is provided in accordance with the undertaking to reflect the final point of the QCA's proposed principles; • As noted above, provide that the undertaking will cover the use of the 'rail infrastructure' for the provision of this specified service. <p>See the comments in response to the QCA recommendation at point 3, in relation to dispute resolution.</p>	Part 10 – definition of Rail Infrastructure, Schedule A, and 3.1
	3. Disputes between an access seeker and QR with	The QCA points out that some aspects of rail infrastructure may become contentious	2.2

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>respect to a request for a re-assignment of management responsibility for a part of QR's rail infrastructure from an above rail business group to Network Access should be referred to the QCA for resolution. The QCA would adopt the following four step dispute resolution process:</p> <ul style="list-style-type: none"> • the access seeker would write to QR seeking a re-assignment of management responsibility; • QR would be required to respond in writing within 30 days, providing an explanation of its decision; • if the access seeker did not accept QR's decision, the matter would be referred to the respective Chief Executive Officers of the two parties within 7 days for resolution. The Chief Executive Officers would have a further 14 days to resolve the dispute; and • if there were no resolution after 14 days, the access seeker or QR would give notice to the QCA about the dispute and the QCA would then resolve the matter. 	<p>throughout the term of the undertaking and that it is impossible to have full knowledge of the particular operations associated with a potential third-party operator's future traffic task. In its submission on the QCA's draft decision, QR had argued that there was no requirement for the undertaking to automatically adjust to any revised interpretation of the declared service. Rather, the purpose of the undertaking was to provide certainty to all parties for the term, and as a result it would be more consistent with this purpose for the line diagrams to be applicable for the term of the undertaking. Government also supported this position. However, QR recognises that the QCA did not change its recommendation in the Final Decision in this regard.</p> <p>QR remains of the view that the purpose of an undertaking is to create certainty for all stakeholders for the term of the undertaking. In principle, QR does not believe that there should be any requirement upon QR to amend the undertaking during its term, unless required in accordance with the Act. In addition, there are now limited 'grey areas' where it can be debated that infrastructure managed by an above rail group is required for the purpose of providing the declared service.</p> <p>Having said this, QR is prepared to incorporate a dispute resolution process in relation to infrastructure required for the purpose of providing the declared service. The reasons that QR has accepted this are that there are limited circumstances in which such a dispute is likely to arise; the question of whether or not certain infrastructure is required for the provision of that declared service should be able to be factually verified; and in the event that such infrastructure is required for the provision of the declared service, QR will have obligations to negotiate for such access in accordance with the Act.</p> <p>As a result, QR has incorporated a dispute resolution process into the revised undertaking in relation to the infrastructure subject to the undertaking. Some modifications have been made to the QCA's proposed dispute resolution process to accommodate the manner in which amendments to the infrastructure diagrams must be made, however QR believes that this process reflects the intent of the QCA's recommendation:</p> <ul style="list-style-type: none"> • As discussed in relation to recommendations 1 and 2 above, the service will be defined as those activities included in point 5 of the QCA's proposed principles over the defined rail infrastructure (which by definition excludes tracks that are not managed by Network Access); • If an access seeker believes that access to additional track owned by QR but not managed by Network Access is required in order to provide the declared service, then it will make a written request to QR to that effect; • QR will have 30 days to consider the request in the manner set out in the following point and if QR agrees to amend the scope of the infrastructure allocated to the declared service, then it will submit a draft amending 	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>undertaking with the line diagrams adjusted accordingly;</p> <ul style="list-style-type: none"> • In considering this request, QR will agree to the reassignment if, in its reasonable opinion, the track is required in order to meet the following criteria: <ul style="list-style-type: none"> • Network Access should operate as stand alone provider of declared rail transportation services. The onus of proof for justifying a departure from this principle rests with QR; • Existing market shares of QR's above rail groups should not be a factor in assigning management responsibility for declared services; • Network Access should provide access, using its own infrastructure, to any private siding, except if the agreement with the private siding owner explicitly recognises and accepts that the connection is to track managed by a group other than Network Access; • Network Access should provide access to any end user's facility not owned or leased by a rail operator, or a facility where there is joint use by end users, except if the agreement with the private facility owner explicitly recognises and accepts that the connection to the facility is managed by a group other than Network Access; and • Network Access should provide access to allow for the scope of activities to be undertaken, as discussed in recommendation 2. • If the access seeker disagrees with QR's response, it may refer the issue to the dispute resolution procedure under the undertaking. If the dispute is resolved in favour of the access seeker then QR will submit a draft amending undertaking with the infrastructure diagrams amended accordingly. <p>This process refers to the dispute resolution procedure under the undertaking, rather than developing a specific dispute resolution procedure for this issue that refers directly to the QCA. The reasons for adopting this approach are as follows:</p> <ul style="list-style-type: none"> • QR would prefer to simplify the drafting of the undertaking by minimising the number of separate dispute resolution clauses. Therefore, rather than defining different dispute resolution procedures for different issues, QR has attempted to incorporate all requirements in a single dispute resolution procedure, which recognises that certain amendments to that dispute resolution procedure are required for certain types of disputes. • It is unclear under what power the QCA intended to resolve such disputes – under its dispute resolution powers under the Act or acting in another capacity. While QR does not necessarily object to the QCA resolving such disputes, and in the absence of clarity of the QCA's intent on this matter, QR has drafted this provision to effectively allow the parties to the dispute to agree on who will resolve the dispute and under what power. This is 	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Assignment of management responsibilities for stations and platforms	4. The QCA considers it appropriate to amend the undertaking such that management responsibility, including access negotiations, for track adjacent to all platforms/stations is assigned to Network Access.	consistent with the way all other disputes are addressed. This is consistent with QR's existing approach to managing the infrastructure.	3.1
	5. The QCA considers it appropriate to amend the undertaking such that responsibility for access negotiations regarding declared services within stations and platforms is assigned to Network Access. Such negotiations should occur within the framework of the Undertaking.	This is acceptable to QR.	3.1
	6. Network Access is exempted from the requirement to obtain an access seeker's approval prior to passing its confidential information to an above-rail group for access negotiations regarding passenger services that utilise stations and platforms. All other protections for access seekers' confidential information provided for in the Undertaking will apply.	This recommendation is in accordance with QR's requirements for including access to the declared aspects of stations and platforms in the revised draft undertaking.	3.3.2(a)(ii)
Access seekers right to sign access agreements with QR	7. Both accredited and non-accredited organisations could execute access agreements with QR, provided that an appropriately accredited rail operator performs the train services.	While not objecting to the recommendation itself, QR has strongly objected to the QCA's interpretation of the recommendation, which it sees as requiring QR to enter into separate agreements with an end user for capacity and an operator for the operational aspects of access (referred to as 3-way agreements). QR remains strongly of the view that this interpretation is not supported by the Act. Therefore, while QR has incorporated this recommendation into the undertaking, stakeholders should be aware that QR considers that this will require it to enter into an access agreement with either an accredited rail operator, or an access seeker (eg an end user) who will secure the services of an accredited rail operator under subcontract, but that QR does not consider that it requires QR to separate the elements of the access agreement into two separate agreements that would be entered into separately with an end user seeking capacity and its railway operator.	5.1
Discretion to refuse to negotiate	8. QR is required to enter into negotiations with an access seeker in order that it could establish whether the circumstances for a refusal to enter into an access agreement are met.	This is acceptable to QR.	4.6
	9. The onus is on QR to justify its refusal to enter into an access agreement by demonstrating there was no reasonable likelihood of the access seeker meeting the terms and conditions specified in its	QR accepts the intent of the QCA's recommendation, as requiring QR only to cease negotiations with an access seeker where there is a reasonable likelihood that the access seeker will not meet the terms and conditions of access in a material way. However, QR has slightly modified the drafting of this requirement in recognition of	4.6

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	proposed access agreement in a material way.	the information that QR and the access seeker will have at their disposal.	
	10. Where QR established the circumstances for a refusal to enter into an access agreement, it must provide written reasons for its refusal to the access seeker within 14 days.	This is acceptable to QR.	4.6(b)
	11. The QCA has recommended minor variation to the definition of 'solvent' (not repeated here in full).	This is acceptable to QR.	Part 10
	12. Clause 4.1.2(d) is removed and replaced with the following principle for negotiating in respect of committed capacity - if QR can establish that an application is frivolous or vexatious, it is entitled to recover its costs. QR may seek acknowledgement of an access seeker's liability for costs in such a negotiation.	In its response to the QCA's draft decision, QR accepted the removal of clause 4.1.2(d) on the basis that its proposed 'forced trading' provisions would adequately deal with QR's concerns in this regard. Therefore, QR accepts the QCA's position on this matter.	4.6 and 7.4.4(g)
Access application process	13. Access seekers to have the opportunity to revisit the Schedule C information that they provide as the negotiation process proceeds.	It has always been QR's intent to allow access seekers the opportunity to revisit schedule C information that they have provided as the negotiation process proceeds. This is effected by the access seeker finalising its operating plan during the negotiation period.	4.5.2(a)
Information provided by QR	14. QR has an obligation to provide Schedule D preliminary information before it requires Schedule C information, provided the costs of provision are met.	It has always been QR's intent to allow access seekers to obtain the preliminary information prior to completing the access application. QR is happy to clarify this in the revised draft undertaking.	4.1(c)
	15. For rail corridors where no reference tariffs apply, the Schedule D preliminary information incorporates price and costing information consistent with ss101(2) and ss101(3) of the QCA Act.	QR agrees that the Act requires the provision of such information during the negotiation process. However, QR believes that the timing for the provision of this information should be during the negotiation for access, rather than in the preliminary information that may be sought prior to the access seeker making an access application.	Schedule D - Part B and 4.5.2(a)(i)
	16. The Information Packs provided by QR include an outline of any unusual signalling features on a particular system.	This is acceptable to QR in principle, and such information will be incorporated into the Information Packs.	
	17. QR is required to advise the access seeker of the expected delay in the provision of preliminary information if it is beyond 14 days to provide reasons for the delay.	This is acceptable to QR.	4.1(d)
QR's obligation to provide accurate and up to date information.	18. The QCA accepts QR committing to provide a 'reasonable efforts' obligation to ensure the information it provides access seekers is up to date and accurate.	QR has accepted an obligation to provide to access seekers, the most current information QR has, and to indicate the currency of the information.	4.1(e)
Appropriateness and	19. The QCA accepts QR establishing a right to	QR proposes to specify prices for all information provided as part of preliminary	Schedule D - Part

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
basis of fees for information provision by QR.	charge fees for information provision, provided such fees reflect the costs of provision, and guiding principles regarding the setting of fees are established in the Undertaking. A fee of \$500 for an Information Pack is acceptable to the QCA.	information, including a fee of \$500 for an Information Pack. QR believes a requirement that the cost of any additional information be consistent with the cost of preparation and supply by QR provides reasonable guidance as to the cost of this information.	A, and 4.1(f) and 4.5.2(c)
Timeframes for action	20. The time frame in paragraph 4.6(b) is extended to 60 days.	This is acceptable to QR.	4.4(b)
	21. Paragraph 4.6(c) reflects that QR will respond to concerns including, where appropriate, the making of revisions to the indicative access proposal, within a period of 30 days, under normal circumstances. If the required response is more complex, QR will advise the access seeker within 7 days of receipt of its written concerns regarding the time required to respond, consistent with the indicative access proposal process in paragraph 4.4(c).	This is acceptable to QR.	4.4(c) and (d)
	22. Paragraph 4.6(c) states, if an access seeker is satisfied with the response received from QR, including any revisions to the indicative access proposal, it must notify QR of its intent to proceed with negotiations within 60 days on receiving QR's response.	This is acceptable to QR.	4.4(e)
	23. Paragraph 4.6(c) states the third-party operator must commence dispute resolution within 60 days on receiving QR's response.	This is acceptable to QR.	4.4(e)
	24. The words "or as otherwise agreed" are inserted after each of the time frames in clause 4.6.	This is acceptable to QR.	4.4
Dispute resolution	25. The QCA accepts the proposed three-tier approach to dispute resolution, subject to an access seeker/third-party operator having a right to go straight to arbitration if QR puts forward a nominee in place of the Chief Executive that is unacceptable to the access seeker/third-party operator.	In its discussion on this issue, the QCA accepted that the primary obligation in respect of QR's nominee should be that the identity of the nominee should not be in breach of QR's ringfencing obligations. QR accepts this requirement and believes that it is consistent with the ringfencing obligations contained in Part 3 of the revised draft undertaking. In the revised draft undertaking, QR has clarified the link between the access seeker's concerns and a potential breach of QR's ringfencing obligations.	4.7.2(b)(ii)

Table 4 – Pricing Principles – Parts 3, 6 and 9 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Pricing Principles: (a) <i>Revenue Adequacy</i>	1.Revenue adequacy to be considered in the context of efficient operations and the efficient level of assets actually required to provide the service.	QR agrees with the intent of this QCA recommendation. QR also agrees with the QCA comment on page 128 of the Final Decision - “The QCA supports a transition period for QR to achieve its <i>efficient cost</i> target as part of this first regulatory period.” The need for a transition period in the QR undertaking recognises that QR would not reasonably be expected to have achieved efficient costs by the commencement of the undertaking. As such, if provision were not made for a transition period QR would be in immediate breach of the undertaking at its commencement. To reflect the QCA requirement, QR has amended the draft undertaking such that efficient costs will be applicable except to the extent that the QCA agrees to a transition period.	Part 10: Efficient Costs 6.1.1(b)
	2. In the event of a conflict between QR pursuing revenue adequacy and non-discriminatory pricing in a particular market, then the latter will prevail unless QR can justify the price difference to the QCA.	QR agrees with the intent of this QCA recommendation. While remaining of the view that the draft undertaking already precludes QR’s revenue adequacy principle from prevailing over its non-discriminatory pricing principles (as expressed in QR’s response to the Draft Decision) QR supports the principle the QCA is seeking. Therefore, to satisfy the Final Decision recommendation and ensure the QCA’s concerns are met QR has clarified its intent in the revised draft undertaking in the manner sought by the QCA.	6.1
(b) <i>Limits on Price Differentiation</i>	3.Price differentiation to be subject to a test in which all railway operators for a traffic in a geographic area be subject to price differentiation on cost or risk differences or market circumstances changing (whether or not they are competing head to head) with QR bearing the onus of justifying price differences. 4.QR is required to set access charges in a way that does not distort competition in the above-rail or end user market and does not hinder access. 5.A principle is included that price differentiation should not distort competition in above-rail or end user market nor hinder access within a market.	QR agrees with the intent of recommendations 3, 4 & 5, but has some concern regarding the clarity of the obligation ‘not to distort competition in the above rail or end user market’. As a result, QR has attempted to more clearly define the conduct that is prohibited, and in doing this has borrowed terminology from Part V of the Trade Practices Act (in particular, s.46). QR has drafted the undertaking to include an overriding obligation upon QR not to set access charges for the purpose of distorting competition in a relevant market (The requirement in the undertaking not to distort competition would also be a prohibition on QR from hindering access because if QR were to hinder access competition would be distorted). Where the difference in price between operators in a geographic area is due to cost or risk differences or market circumstances changing QR will not have breached this overriding obligation (i.e. it will have passed the test as outlined by the QCA recommendation). With regard to QCA recommendation 4, when drafting the revision of the draft undertaking QR has been mindful to reflect the QCA intent in a manner that is consistent with the QCA Act in which both sections 104(1) and 125 specifically relate to the <i>purpose</i> of distorting competition. Additionally, due to their similarity, recommendations 4 and 5 have been combined into a single obligation in the undertaking.	6.1.2(a) & (b)
(c) <i>Rate Review Options</i>	6.Operators have an option of a rate review arrangement in their access agreements. 7.Operators have the option of rate review provisions in access agreements if an operator is able to demonstrate that QR has sold a like path to another operator for a lower price than applies to that	QR agrees with the intent of recommendations 6, 7 & 8 (which are to be read in conjunction with each other) subject to the concern that in some circumstances, QR may want the ability to require an access holder to include a rate review provision in their access agreement. This concern has been magnified by the Final Decision recommendations on the rights of access holders to relinquish, trade or otherwise divest themselves of their obligations as access holder under an access agreement. The presence of these rights creates the potential for QR that parties will seek to sign up access agreements of substantial terms, without a rate review	6.1.2(a)- (d)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>operator.</p> <p>8.QR has an obligation to ensure its own traffics pay access charges that are as high as apply to third party operators for similar traffics.</p>	<p>provision, knowing that any risk they have of their charges becoming uncompetitive is mitigated by the various rights alluded to above. On the other hand QR's risk of a rate becoming unviable due to changing circumstances cannot be mitigated to the same extent without a rate review provision.. The longer the duration of the access agreement entered into, the greater the risk for QR.</p> <p>As a result, QR has amended the draft undertaking to reflect the principle that access holders have an option of a symmetrical rate review clause in an access agreement if they desire, which is consistent with the Final Decision discussion and recommendation 6. Where the term of their access agreement is greater than 5 years, QR reserves itself the right to require an access seeker to include a rate review provision in their access agreement.</p> <p>In redrafting the undertaking, QR was mindful to reflect the principles sought by the QCA in recommendation 7 without penalising QR where QR has not priced inappropriately. QR does not consider the QCA intent to be that QR be penalised in circumstances where it can be demonstrated that prices vary for legitimate reasons and an access holder had previously chosen not to have a rate provision included in its access agreement. Therefore, in drafting the required clause QR has provided that if an access holder can demonstrate that QR has subsequently entered into an access agreement with another access holder for a like train service and the access agreement contains an access charge that has been developed in contravention of the limits on price differentiation set out in Part 6 of the undertaking, QR will review the access charge. It is only where the price difference is due to legitimate price differentiation reasons set out in Part 6 of the undertaking that the difference in access charge is permissible.</p> <p>A similar approach has been applied with regard to recommendation 8. Subclause 6.1.2 contains clauses such that a third party operator has the option of a rate review clause, as well as providing that operators cannot be charged a higher access charge than QR unless the difference can be demonstrated to be in accordance with the pricing provisions in the undertaking, particularly in clause 6.1. Again QR does not consider it the intent of the QCA to restrict QR from pricing where the difference in access charges is due to legitimate reasons. In addition, paragraph 6.1.2(a) does not distinguish between QR's obligations to QR access holders and third party access holders.</p> <p>In reflecting the QCA's intent, QR has been mindful not to inappropriately inhibit the replication of a competitive environment or to restrict QR's ability to vary prices overtime where there is a legitimate reason for doing so. For example, access charges may vary over time for legitimate commercial reasons. An access price for a new rail access agreement may be lower than prices previously negotiated to reflect a recent decrease in road transport charges. An operator may not have chosen a rate review clause, preferring fixed price over time and avoiding the risk associated with exposure to rate review. In such an example QR did not</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		consider that the QCA recommendation sought to force QR to either charge the new operator an uncompetitive, high charge or to lower the price for the existing operator, even though the difference in price can be demonstrated to be for legitimate reasons and consistent with the undertaking's price differentiation principles. QR does not consider it the intent of the QCA to restrict QR from legitimate price differentiation that is reflective of what would be expected in a competitive environment (and therefore reflective of the competitive environment sought by the Trade Practices Act, Hilmer in his report, and national competition principles generally).	
<i>(d) Rail Infrastructure Utilisation</i>	9.The QCA considers it appropriate to amend the draft undertaking such that sub-cl 5.1.3 provides that QR's assessment of the commercial justification for the expansion of its network should focus on the net additional revenue it expects to earn.	<p>QR agrees with the intent of this QCA recommendation. In the Final Decision the QCA states "the QCA remains of the view that QR should clarify its proposed approach for the extension of rail infrastructure in the context of the undertaking". QR has satisfied this requirement in paragraph 7.4.1(e) of the undertaking. In drafting this clause, QR clarified its proposed approach to the expansion of the network and encompassed the QCA principle requiring appropriate consideration by QR of the net additional revenue (i.e. net of costs) QR expects to earn.</p> <p>Under current practices QR would expect that the assessment of the commercial justification for the expansion of QR's network would usually focus on the net additional revenue QR expects to earn. QR's initial objection to this recommendation was not against the intent of the QCA principle but rather on the basis that the QCA should not direct a GOC as to what is a legitimate business decision. This is viewed by QR as the appropriate function of the business manager who bears the risk of the consequences of such decisions. However, in recognition of QCA's concerns and the fact that the QCA recommendation is generally consistent with the current QR approach, QR has drafted the revision of the undertaking to include the intent of the QCA provision.</p>	7.4.1(e)
	10. The QCA refuses to accept Paragraph (a) of Subclause 5.1.3 because it is inconsistent with the QCA's positions at recommendations 3, 4 and 5.	QR understands that the QCA is not opposed to market based pricing but, rather, that the QCA's primary concern is that the relevant section of the undertaking was not clear on how this Paragraph related to the undertaking's limits on price differentiation. It is considered that the added clarity provided in response to the recommendation at point 2 should assist in achieving this.	6.1 and 6.1.3
	11. The QCA refuses to accept Paragraphs (c) and (d) of Subclause 5.1.3 because they are inconsistent with the QCA's position in relation to Capacity Management 9, 10 and 11.	<p>QR considers that by stating that it believes that these paragraphs are inconsistent with the QCA's recommendations on capacity allocation there is some confusion as to QR's objective in including these paragraphs. As such the following explanation is provided:</p> <p>Paragraph 6.1.3(b) has been included in the undertaking to address the circumstances where there is limited available capacity and existing and potential operators cannot afford to pay an access charge that will justify expansion of available capacity. Therefore the purpose of this clause is to allow QR to set an access charge that maximises the contribution to the common costs, even if this is beyond the means of some of the access seekers (i.e. using price to ration use).</p>	

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		<p>Paragraph 6.1.3(c) has been included to address issues that arise primarily in the metropolitan region. The intent of this paragraph is to allow QT to specify that it is funding a region primarily for a particular purpose (e.g. funding the metropolitan region to allow for access for commuter rail services), therefore in the event that another train service and a commuter service are competing for a path, the comparison of access charge will be the access charge paid by the competing train service and the sum of the access charge paid by the commuter rail service and the proportion of Transport Service Contract (TSC) payments for that region attributable to that commuter rail service. This is included in order to recognise the aggregate revenue contributed in respect to particular service types and effectively take account of the public interest implicit in targeted government funding.</p> <p>On that basis QR does not consider that paragraphs 6.1.3 (b) and (c) are inconsistent with the QCA's position on the recommendations at points 9, 10 and 11 in Table 5 - Capacity Management or, therefore, inconsistent with the Final Decision intent.</p>	
<i>(e) Pricing Limits</i>	12. QR be obliged to observe the limits on price differentiation irrespective of whether the resulting access charges cover the incremental cost of the individual train service.	<p>QR does not object to the intent of this QCA recommendation and has incorporated it into the drafting of the undertaking. The QCA advised QR in discussions in relation to the Draft Decision that the intent of this recommendation is to ensure that, in the event that QR charges its own operator below incremental cost (the floor price), QR will be obliged to either charge other operators in the geographic region carrying the same product the same charge (i.e. below incremental cost) or increase the charge to QR and other operators.</p> <p>QR had initial concerns that a requirement for QR to effectively breach the undertaking by charging below the floor price would have consequences for QR and may not be the most desirable outcome for the undertaking. Therefore, in order to satisfy the QCA recommendation, and at the same time take account of QR's concern regarding the recommendations potential to require QR to be in breach of the undertaking, QR has incorporated a provision in the undertaking such that if QR has set an access charge that is less than incremental cost in contravention of the terms of the undertaking, provided that QR observes its obligations regarding the limits of price differentiation, there will be no other consequences due to QR breaching its undertaking. In this way QR has fully reflected the intent of the QCA recommendation while ensuring that QR is not exposed to multiple consequences for a single breach.</p>	6.2.3(d)
	13. The definition of incremental cost should be "incremental costs (IC) means those costs of providing access, including capital (renewal and expansion costs), that would not be incurred if the particular train service or group of train services (as appropriate) did not operate. Incremental costs are considered in the context of efficient operations and an efficient level of assets actually required by	QR agrees to the intent of this recommendation and has reflected it in the drafting of the definition of incremental cost in the undertaking.	Part 10: Incremental Cost

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	QR, as network manager, to provide the service(s).”		
	14.The definition of stand-alone costs (SAC) should be “stand-alone costs mean those costs that would be incurred if the relevant train service or combination of train services (as appropriate) was the only train service or group of train services provided access by QR. Stand alone costs are considered in the context of efficient operations and an efficient level of assets actually required by QR, as network manager, to provide the service(s).”	QR agrees with the intent of this recommendation and has amended the draft undertaking to reflect this Final Decision principle. In doing this, QR has made allowance for the principle in the Final Decision discussion for the undertaking to incorporate a transition period to efficient costs through the definition of “Efficient Cost” (refer above to "Revenue Adequacy” for efficient cost/transition period discussion).	Part 10: Stand Alone Cost and Efficient Cost
(f)Reference Tariffs	<p>15.QR be required to submit reference tariffs for other services within three months of being required to do so by the QCA and is obliged to comply with any request from the QCA for information to enable the QCA to assess those reference tariffs.</p> <p>Before the QCA requested QR to submit further reference tariffs, it would need to:</p> <ol style="list-style-type: none"> a. be satisfied that the benefit to the competitiveness of the above-rail market from increased pricing transparency for a relatively homogenous set of train services justifies the intrusion into QR’s operational autonomy; and b. consult with QR. 	<p>QR supports the intent of this QCA recommendation. In particular, the QCA has identified in the Final Decision discussion that the primary purpose in seeking the ability to require QR to introduce reference tariffs is to ensure and encourage pricing transparency. The Final Decision specifically states: “<i>the ability to request the development of a reference tariff is important in ensuring there is sufficient level of transparency with respect to QR’s pricing</i>”. Also stated is that “<i>in the Draft Decision... (the QCA) considers the key consideration in the development of further reference tariffs is whether the benefit to the competitiveness of the above-rail market from increased pricing transparency justifies the intrusion into QR’s operational autonomy</i>”.</p> <p>QR supports the QCA view that the primary benefit from reference tariffs is the creation of pricing transparency. QR is also encouraged by the Final Decision’s view that the QCA considers there is a need to balance the “<i>benefits</i>” to be gained from the increased transparency that reference tariffs may create with the associated “<i>intrusion</i>” into QR’s operational autonomy (p. 142). In fact, the QCA’s recognition of the potential for intrusion into QR’s autonomy to be undesirable (at least under certain circumstances) is consistent with QR comments in its response to the Draft Decision.</p> <p>Therefore, in revising the Draft Undertaking QR was mindful to ensure drafting is consistent with the Final Decision comments on the need for pricing transparency as well as the undesirability for intrusion into QR’s autonomy as manager. To both obtain the transparency sought by the QCA and to protect QR’s legitimate business interests as rail manager, QR has included a two-stage approach to reference tariffs in the undertaking. Under this two stage approach there are two types of reference tariffs: ‘Published Reference Tariffs’ and ‘Authorised Reference Tariffs’. <i>Published Reference Tariffs</i> provide the transparency the Final Decision recommendations seek as well as recognising QR’s role as railway manager. They are required to be introduced either upon a request from the QCA or through an internal QR decision. The Final Decision in its discussion (p.142) recognises the importance that there be a sufficient level of interest from access seekers prior to the Authority requiring QR to</p>	6.3

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		<p>introduce reference tariffs. Consistent with the Final Decision QR has incorporated this principle into the undertaking (6.3.2(b)). This approach therefore provides the QCA with wide ranging powers to seek reference tariffs for transparency reasons, with the only qualification being the QCA and QR's shared view that there should be a reasonable level of interest prior to such a requirement being exercised. Under this methodology QR would set the reference access charge (QR does not consider that the QCA intent in this recommendation is the ability to set QR's prices, a view reflected through QCA comments regarding intrusion into QR's autonomy). Therefore, <i>Published Reference Tariffs</i> are not required to go through a QCA approval process, as their primary aim is to give the desired level of pricing transparency as stated in the Final Decision.</p> <p><i>Authorised Reference Tariffs</i> are the same as reference tariffs in the form proposed for the Central Queensland Coal Region and are required to go through the full QCA authorisation process. The requirement for the introduction of <i>Authorised Reference Tariffs</i> would be where a <i>Published Reference Tariff</i> has been found to be in breach of the pricing principles set out in Part 6 of the undertaking. This would protect the legitimate interests of access seekers against QR hindering access through inappropriate pricing.</p> <p>The revised reference tariff provisions in the undertaking enshrine the pricing transparency principles sought by the Final Decision by providing the "<i>above-rail benefits from increased price transparency for a relatively homogenous set of rail train services</i>" while, at the same time, limiting the need for "<i>intrusion into QR's operational autonomy</i>" (refer p.141 of the Final Decision).</p> <p>The QCA recommendation also seeks that QR be required to comply with any request from the QCA for information to enable the QCA to assess reference tariffs where it has required that a reference tariff be introduced. The undertaking has been amended to provide a mechanism whereby QR would be required to advise the QCA, upon request, as to whether the requirements that lead to either <i>Published Reference Tariffs</i> or <i>Authorised Reference Tariffs</i> have been met (6.3.2(c) & 6.3.3(c)). Notably, with regard to information in relation to <i>Authorised Reference Tariffs</i>, the QCA already has the relevant information gathering powers under the QCA Act to require QR to provide any information sought by the Authority. This is because the introduction of additional <i>Authorised Reference Tariffs</i> would require a draft amending undertaking to be submitted to the Authority.</p>	
	<p>16. When reviewing reference tariffs submitted by QR, the QCA must have regard to:</p> <p>a. whether the reference tariffs are likely to distort competition to the above-rail or end-user market(s); and</p>	<p>In order to satisfy this recommendation the drafting of the revision of the undertaking requires that 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 Part 6 of the undertaking. This provision does not limit in any way the things that the QCA can consider and therefore allows the QCA to consider whether the reference tariffs are likely to distort competition to the relevant market(s) or are likely to hinder access</p>	6.3.3(d)

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	b. whether the reference tariffs are likely to hinder access within a market.	<p>within a market</p> <p>In QR's response to the Draft Decision QR expressed the view that, provided QR sets a reference tariff in accordance with the undertaking's pricing principles including pricing limits and obligations not to distort competition in a market, the reference tariff should be approved. While not altering its position with regard to this issue, in order to facilitate a timely finalisation of the access undertaking QR has not objected to this recommendation.</p>	
<i>(g) Structure of Access Prices</i>	17. The QCA recommends that Paragraph 5.4(a) be retained provided that it applies to non-reference tariff traffics only, and that the structure of access charges for train services subject to a reference tariff should be the 5 part tariff specified in the reference tariff schedule.	QR does not object to the QCA's intent in making this recommendation and has amended the undertaking to reflect the principle sought in the Final Decision.	6.4 (a)
	18. The QCA refuses to accept Paragraph 5.4(b) as it is inconsistent with the QCA's recommendations 3, 4 and 5 of this section.	QR is unclear as to the reason for the QCA's concern regarding this recommendation (the Final Decision was silent on this matter). QR understands that the recommendations regarding price differentiation primarily relates to the level of the access charge. The purpose of this clause is to clarify that the structure of the access charge also needs to be consistent and to specifically address risk issues arising due to project specific works, bearing in mind the various rights of operators for relinquishment. QR has revised the drafting of this clause to further clarify this intent.	6.4 (b)
Costing Manual (CM) <i>(a) Assessment Process</i>	19. Costing Manual to be finished following the conclusion of its assessment of the undertaking.	QR accepts this recommendation.	3.2.2
	20. The Costing Manual should form part of the approved undertaking.	<p>QR is unsure of the reasons for this recommendation as neither the Draft nor Final Decision offers any explanation. QR notes that in relation to other documents that were previously referred to for inclusion in the undertaking (such as reference tariffs, scheduling & train control protocols, etc), the reason that the QCA has sought to bring them into the undertaking is that this is the only way that the QCA has the ability to directly influence those documents (to the point of drafting them itself if the Authority considers necessary). However, this is not the case with the Costing Manual, as it has specific legislative provisions separate to the undertaking governing its development. QR considers that trying to finalise the costing manual in conjunction with the undertaking is not practical due to the considerable amount of work involved and that it would unnecessarily add to the issues that need to be addressed at this time.</p> <p>Therefore, on the basis that the QCA has the necessary powers to exert the relevant influence regarding the development of the costing manual it is proposed that the costing manual be developed separately to the undertaking, but that QR commit to finalising the manual as soon as possible after the undertaking has been approved.</p>	
	21. CM to provide for default allocators for corporate	QR accepts this recommendation in principle.	Costing Manual

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	overheads.		
	22. CM to provide for the creation of additional account codes to more accurately reflect the split of costs and assets relating to declared and undeclared services.	QR accepts the intent of this recommendation. The recommendation provides for an approach that must be taken with regard to the costing manual rather than identifying a specific amendment to the undertaking or costing manual. Therefore, it is QR's understanding that amendment to the undertaking is not sought/required.	No Amendment Required.
	23. Telecommunications costs to be divided equally between above and below rail for coal.	QR accepts this recommendation.	Costing Manual
	24. QR's Central Queensland Coal systems to be treated as geographic regions in their own right	QR accepts this recommendation in principle.	Costing Manual
	25. The undertaking should provide for the more structured use of work orders.	QR supports the intent of this recommendation. QR understands that the recommendation stipulates an approach that must be taken with regard to the structured use of work orders and therefore does not seek/require specific amendment to the undertaking.	
	26. The netting off of 'like for like' cost recovery type revenue items against the relevant cost items.	QR has accepted the intent of this recommendation.	Costing Manual
	27. The assignment of corporate service costs to levels appropriate to where the costs are incurred rather than the Group General Manager level.	QR has accepted the intent of this recommendation.	Costing Manual
<i>(b) Financial Reporting (in Undertaking)</i>	28. QR commit to report to the QCA within the first half of each financial year: <ul style="list-style-type: none"> - a statement of assets, a statement of earnings before interest and tax and a statement investments, aggregated for the declared services, prepared using generally accepted accounting principles and in accordance with QR's normal external reporting format; and - a statement of assets, a statement of earnings before interest and tax and a statement of investments aggregated for operations on the Blackwater, Goonyella, Newlands and Moura coal systems, prepared using generally accepted accounting principles and in accordance with QR's normal external reporting format. 	QR has accepted the intent of this recommendation. The Final Decision discussion supports QR's view that the general purpose financial statements should be developed in accordance with generally accepted accounting principles and below-rail statements in accordance with the Costing Manual. QR has agreed to the split between coal and non-coal. QR intends to specify the format of the statements in the Costing Manual. Although, in saying that the format of the external reports will be the primary guide.	3.2.1 and Costing Manual
	29. QR to undertake to publish all material discrepancies, including asset values and depreciation discrepancies, for those services for which access charges are based on the ceiling of stand alone cost, in the instances where relevant asset values for pricing purposes	The QCA recommendation requires that QR publish all material discrepancies in instances where relevant asset values for pricing purposes depart from those published in financial statements. However, material departures of the type identified by this recommendation would be expected to occur due to the pricing methodology approved by the QCA. For example, differences may exist because the asset values used for the purpose of financial statements would be based upon the actual asset values contained in QR's asset register in some instances	

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	depart from those published in financial statements.	and in others on the historical cost of asset values while the asset values used in pricing methodology may be based upon economic concepts such as stand alone cost. Both the QCA and QR would expect these differences to exist and their occurrence will have been authorised by the QCA. As these discrepancies will have already been authorised, there seems little point in publishing them.	
<i>(c) Audit of Costing Manual (in Undertaking)</i>	<p>30. Undertaking to define the scope of the audit such that the auditor examines whether:</p> <ul style="list-style-type: none"> - the processes contained in the manual have been followed; and - the financial statements represent a reasonable allocation of costs and are consistent with the Manual. 	<p>QR does not object to the intent of this recommendation. In revising the draft undertaking QR notes that the recommendation seeks two things: Firstly, to confirm whether the processes contained in the Costing Manual have been followed. Secondly, to confirm whether the financial statements represent a reasonable allocation of costs and are consistent with the Costing Manual QR accepts the intent of these obligations and has undertaken the associated drafting to the undertaking.</p> <p>In reflecting the second obligation in drafting, QR notes that it has two elements i.e. whether the financial statements reflect a reasonable allocation of costs & whether the financial statements are consistent with the Costing Manual. QR considers that the second principle incorporates the first. That is, if the financial statements are consistent with the Costing Manual then the financial statements will represent a ‘reasonable’ allocation of costs. Additionally, QR will have done all that is ‘reasonable’ in ensuring that the financial statements represent a reasonable allocation of costs (having complied with applicable cost allocation rules).</p> <p>Under the scope of the undertaking’s auditing guidelines, prior to commencing the audit the auditor is to agree to an audit plan with QR, document that audit plan and obtain the QCA’s approval of the audit plan (The requirement for the approval of the QCA ensures inclusion in the undertaking of the principle expressed by the QCA on page 149 of the Final Decision as to the importance of the regulator’s role in the audit process i.e. the QCA will have the final say regarding the audit plan). The audit plan will consist of a proposed work program, including audit costs, 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.</p> <p>For further detail on audit provisions, refer to QR’s response to the recommendation at point 33 below.</p>	3.2.1 (b) & 3.2.3(e) & (f)
	31. QR be obliged to present financial statements prepared in accordance with the Manual within 6 months of the end of the financial year.	QR accepts this recommendation.	3.2.1 (a) & 3.2.3(a)
	32. These accounts be certified by the Chair and the Chair Executive or the Chair and a Director.	QR accepts this recommendation.	3.2.1 (b)
	<p>33. The following be the processes to select an auditor:</p> <ul style="list-style-type: none"> - QR and QCA agree to a list of three 	QR has responded to this recommendation in the same way that it responded to the recommendation at point 28 in Table 2 – Ringfencing Arrangements.	3.2.1 (b) & 3.2.3

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	<p>auditors. Failing agreement, QCA will nominate a number sufficient to constitute a panel of three;</p> <ul style="list-style-type: none"> - each auditor selected to the panel must acknowledge that if appointed they are to act for the QCA; that they owe their duties to the QCA under the terms of the Undertaking; and that they will accept instructions on the subject matter of the audit from the QCA. - QR then chooses the auditor to undertake the audit from the list. That Auditor will undertake the audit and may be directed by the QCA as to matters that are to be looked at and reported on. - the report of the auditor is to be given to the QCA with a copy to QR; and - QR commits to pay for the audit 		
	34. It is confirmed that the auditor is to be given full access to QR's information systems, with the degree of access forming part of the auditor's report to the QCA.	QR accepts this recommendation.	3.2.3(g), 3.2.3(e)(ii) & (iv)
	35. QR be obliged to provide any information the auditor reasonably requires within any reasonable timeframe nominated by the auditor.	QR accepts this recommendation.	3.2.3(g)
	36. QR must comply with the QCA's requirements in response to a qualified audit report in accordance with the Authority's timeframes.	QR is of the understanding that the QCA does not require that the undertaking specify the consequences of a qualified audit report regarding QR's compliance with the Costing Manual or that QR be obliged to change its financial statements in the event of a qualified audit. QR further understands that QR will be able to put forward a qualified audit report so long as QR produces any additional information the auditor requires, and as a result, QR should not, as the QCA discussion in the final decision on this recommendation suggests, be compelled to comply with the auditor's requirements regarding publication of notes to the auditor's satisfaction.	
	37. An audit may be undertaken at any time.	QR understands that the intent of this recommendation is that an audit would occur once a year but that aspects of the audit may be undertaken throughout the year. QR revised the drafting of the undertaking within the context of this understanding.	3.2.3(b)
Performance Regime <i>(a) Aggregation of</i>	38. With the exception of track-specific indicators, QR should report on KPIs in the following categories:	QR accepts this recommendation. QR intends to exclude infrastructure work trains in similar manner as CityTrain. Work trains are not be reflective of performance as only QR work trains will be on the network and there will not be a comparison.	9.1(j)

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<i>Information</i>	<ul style="list-style-type: none"> • Coal and mineral type services; • Freight services; and • Other services (excluding city train) 		
	<p>39. QR to report track quality indicator separately for the Central Qld coal region and the remainder of the network (excluding the Metropolitan system).</p> <p>40. This is to also apply to the temporary speed restriction measures.</p>	<p>QR accepts this recommendation.</p> <p>QR accepts this recommendation.</p>	<p>9.2(f) & (g)</p> <p>9.1(g) & (k)</p>
	<p>41. Performance statistics should be separated for QR above-rail and other third party operators.</p>	<p>The aim of this recommendation is to demonstrate QR's impartiality (in train control). To achieve this QR proposes a performance indicator be developed that is to be agreed between QR and the QCA prior to the first quarter for which the indicator is to be reported (and prior to a third party operator operating on QR's infrastructure network), or in the absence of such agreement, a performance indicator as specified by the QCA.</p> <p>QR is concerned that the level of detail required from the recommendation in its current form would result in the release of information confidential to QR and third party operators. Rather than providing a measure of impartiality, these published statistics would, in some instances, identify the performance of an individual above rail operator. For example, if there were only one third party operator on a QR branch line then that third party operator's information would be specifically identifiable to its operation, due to the Final Decision requirement for comparison of like services. Rather than this providing below rail declared infrastructure information, the measure serves to provide above rail performance statistics, which is moving away from the purpose of the undertaking and performance reporting.</p> <p>Alternatively, to report at too high a level would also be problematic as indicators can vary quite widely according to such factors as traffic type; tightness of schedule; level of network congestion; length of service journey and agreed thresholds. Therefore, direct comparison at the higher level becomes a less accurate indicator of performance. For example, it would not make sense to compare the performance of a service in a congested area of the network to a service where there is substantial capacity.</p> <p>QR believes it is important that impartiality reporting be accurate and meaningful (without providing confidential information). Otherwise the indicator might, for example, suggest that QR controllers are biased against third party operators when in fact they are not. The QCA has made the point at various times during the undertaking process that it is concerned that such an impression would act to hinder access due to a lack of confidence in the integrity of the QR network. Alternatively, a misleading indicator could suggest that QR operators are being disadvantaged. Therefore, QR is mindful of the requirement that indicators report in a</p>	<p>9.1(i)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		meaningful manner. To this end, QR is currently examining several possible methodologies to produce a more meaningful measure of train control impartiality that does not release above rail confidential information.	
	42.The following key performance indicators to be disclosed publicly on a quarterly basis.	QR has agreed to report publicly on the performance of its network. In some instances where QR has included the recommended performance indicator in the undertaking QR has adjusted it to reflect more accurately QR's network performance. In certain other instances QR is unable to publicly report on an indicator until the introduction of a new information system currently under development in June 2003.	Part 9
<i>(b) Reliability of the Service</i>	43. The number and percentage of healthy services that exit on time, within agreed tolerances.	QR accepts this recommendation.	9.1(c)(i)
	44.The number and percentage of unhealthy services that do not deteriorate further, within agreed tolerances.	QR accepts this recommendation.	9.1(c)(ii)
	45.The number and percentage of unhealthy services that exit on time, within agreed tolerances.	QR would always endeavour to ensure that, where appropriate, unhealthy trains exit on time. However, QR is under an obligation to manage out of course running in accordance with the Network Management Principles. At times, as a responsible railway manager, the most appropriate course of action will be for QR to make unhealthy trains deteriorate further or remain unhealthy. This is especially true where there is little or no additional capacity and therefore no additional train paths. In such circumstances a responsible manager may be required to ensure that an unhealthy train does not become 'healthy' to ensure that other on time services do not become unhealthy. At other times, for example, where the network has greater capacity the correct action may be to ensure that the train becomes healthy again. Therefore, sometimes the correct decision will be for a controller to allow a service to deteriorate further and other times to assist it to become healthy. These are two conflicting results. As such, QR does not consider that the indicator actually demonstrates QR's performance. QR considers it essential that publicly reported performance indicators relay meaningful performance information and on that basis QR has not included this indicator in the undertaking.	
	46.The number and percentage of total services that are operated in a healthy manner.	QR is not opposed to the principle behind this indicator in recommendation 46. However, QR notes that on page 159 paragraph 2 of the Final Decision the QCA states that a "meaningful definition of a delay specifically relates to the network exit time as the critical operational objective". As such, QR considers that the ' <i>Transit Time of the Service</i> ' indicators that relate to trains that exit late (refer below) already capture the information sought by this indicator. QR does not consider it desirable to double up on similar information when reporting. As such this indicator has not been included in the revised draft undertaking. However, QR would be willing to revise its position with regard to this if, as part of the undertaking process, a meaningful purpose for inclusion of this indicator were demonstrated.	
<i>(c) Transit Time</i>	47. The average number of kilometres under	QR has included this indicator in the undertaking. In including it, to more accurately	9.1(g)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
<i>of the Service</i>	<p>temporary speed restrictions that prevail during the reporting period</p> <p>48. The number and percentage of trains that experience an above-rail delay on the network that is in excess of 15 minutes.</p> <p>49. The number and percentage of trains that experience a below-rail delay on the network that is in excess of 15 minutes.</p> <p>50. The number and percentage of trains that experience an unallocated delay on the network that is in excess of 15 minutes.</p> <p>51. The average time, in minutes, of below-rail delays.</p> <p>52. The average time, in minutes, of above-rail delays;</p>	<p>demonstrate network performance, QR has adjusted the indicator to report on the average percentage of track under temporary speed restriction. Using the percentage will more accurately demonstrate performance as it is a measure of the total, whereas the indicator as it stood did not identify the proportion of the total track under speed restrictions. QR considers that the adjustment will make this indicator a more meaningful indicator of network performance.</p> <p>QR notes that recommendation 48 provides similar information to recommendations 43 and 52. Similarly for recommendations 49 and 51. Due to the similarity between the information provided by these similar indicators, QR has amended the undertaking to only include recommendations 51 & 52 and have added a relevant indicator with the associated unallocated delay category. QR does not consider the replication of similar information through performance reporting to be a desirable outcome. However, QR would be willing to revise its position with regard to this if, as part of the undertaking process, a meaningful purpose for inclusion of all of these indicators was identified.</p> <p>In including recommendations 51 & 52 in the undertaking, to ensure greater meaning these indicators have been adjusted in the following manner: ‘The average time in minutes of above rail/below rail/unallocated delays per 100 km of train journey’. This will take into account the fact that train journeys within QR’s network vary between smaller journeys to journeys of many hundreds of kilometres. This is because the length of a delay is only relevant in terms of the length of the journey as a whole (i.e. a 30 minute delay after a 1000km journey does not have the same impact as the same delay from a 50km journey).</p>	9.1(d)
<i>(d) Availability of the Service</i>	<p>53. The number and percentage of services cancelled due to below-rail factors.</p> <p>54. The number and percentage of services cancelled due to above-rail factors.</p> <p>55. The number and percentage of services cancelled due to unallocated factors.</p>	<p>QR agrees to include the performance indicators recommended in QCA recommendations 53-55 in the undertaking. However, QR’s information systems are not currently set up to provide this information. As such, QR intends to report on these indicators after the introduction of a new information system expected in June 2003.</p>	9.1(e)
<i>(e) Track Quality</i>	<p>56. Track quality measured by an index with component measures such as rail surface level, alignment, twist/cross level and gauge variation.</p>	<p>QR agrees with the intent in this principle. QR will provide information on the track quality for the network measured by an index with component measures including gauge, top, twist and versine. Given QR’s systems and frequency of measurement, it is only possible to report on this indicator annually.</p>	9.2(f)
<i>(f) Safety</i>	<p>57. The number of reported safety incidents (AS 4292);</p>	<p>QR agrees in principle and intends to report on the number of incidents reported to the safety regulator.</p>	9.1(f)
<i>(g) Accuracy of Billing</i>	<p>58. The number of complaints regarding billing accuracy.</p>	<p>QR has adjusted this performance indicator to reflect the number of complaints received regarding billing enquiries that are <i>verified</i>. QR considers that legitimate billing complaints more appropriately reflect QR performance. Otherwise the indicator would include, for example, complaints that have been demonstrated to be unfounded, which would not be as</p>	9.1(h)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
<i>(h) Frequency of Reporting</i>	59. The timing of publication shall be on or by the date agreed with the QCA.	reliable an indicator of compliance by QR. In response to this recommendation, QR proposes to report certain indicators on a quarterly basis and other indicators on an annual basis.	9.1 and 9.2

Table 5 – Capacity Management – Part 7 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
<p>Scheduling & Train Control Framework</p>	<p>1. References to Scheduling & Train Control Protocols should be removed to be replaced by references to a new schedule in undertaking (Network Management Principles ‘NMP’) and committing QR to provide scheduling and train control in accordance with those principles.</p>	<p>QR has previously agreed to this recommendation in principle.</p> <p>In response to the QCA’s Draft Decision, QR noted that whilst it did not object to the recommendation that the undertaking be amended to include a new schedule (or schedules) setting out how QR would carry out scheduling and train control, it thought that the suggested principles could be worded in a way that:</p> <ul style="list-style-type: none"> ▪ reflected a more practical approach to the provision of these services (for instance, removing the need for formal meetings to be scheduled when one access holder wishes to alter its scheduled path and that change does not affect any other parties on the rail infrastructure); ▪ recognised that whilst the principles were generic, it is simplistic to think that handling all traffic types in the same manner will provide the most appropriate outcome for the network. In particular, some recognition needs to be made of the different way that bulk (particularly, coal) traffic operates, from other traffic types such as passenger or general freight traffics. <p>As such QR has drafted a schedule in its revised Draft Access Undertaking – Schedule G – The Network Management Principles – which deals with the issues the QCA wanted to be dealt with in such a schedule, albeit with some variations, in drafting and at a policy level, to the principles suggested by the QCA in its Final Decision.</p> <p>In an attempt to minimise the deviations from the scheduling and train control principles proposed by the QCA, QR has drafted a set of principles that are intended to have generic application, whilst recognising certain coal-system specific procedures (such as the scheduling of a weekly train plan, and the resolution of conflicts that this scheduling step, in particular, involves). However, the attempt to come up with generic Network Management Principles has resulted in less specificity than might otherwise have been the case had different principles been prepared for different traffics using different areas of QR’s network. The train control decision-making matrix, in particular, highlights this issue. The note above the matrix, and the additional rules attaching to its application, further illustrate the point that separate sets of principles may provide a more accurate summary of how QR will provide scheduling and train control services. This may be an issue that the QCA raises when it consults on the NMP proposed by QR in Schedule G.</p>	<p>7.1(b) and Schedule G</p>
	<p>2. QR must provide a third party operator with a copy of its Access Coordination Plan and any related relevant documentation that train</p>	<p>In order to avoid dispute about whether certain documentation should or should not be provided to access holders, QR has implemented the principle behind this QCA recommendation by noting in the NMP that QR will provide access holders with the</p>	<p>Schedule G</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>controllers are supplied with to assist in the performance of their duties.</p>	<p>MTP, DTP, real-time train control information in respect of the access holder's train service/s. The absence of a reference to the Access Co-ordination Plan reflects the fact that it will be derived from relevant schedules in the access holder's Access Agreement, and as such, an access holder will already possess the information without QR having to provide it to them.</p>	
<p>Public Availability of Capacity Information</p>	<p>3. QR must make sufficient information available to access seekers for them to conduct their own capacity analysis.</p>	<p>Again, in order to avoid dispute about whether QR has an obligation to provide certain information to access seekers, QR has implemented the principle behind this QCA recommendation by specifically listing, in Schedule D, what QR will provide. This list includes those things listed by the QCA in the following 2 recommendations (at points 4 and 5).</p> <p>In addition, it is worth noting that QR is also obliged:</p> <ul style="list-style-type: none"> • to provide an access seeker, during access negotiations, with an estimate of the spare capacity of the service, including the way in which the capacity is calculated (s.101(2)(d) QCAA); and • to make all reasonable efforts to try to satisfy the reasonable requirements of an access seeker (s.101(1) QCAA). 	<p>Schedule D</p>
	<p>4. QR must include the following information in Information Packs provided to access seekers:</p> <ul style="list-style-type: none"> • MTP; • Details of committed capacity upgrades; • A general description of known capacity constraints; and • Historical delay and system disruption data. 	<p>This recommendation is linked to those at points 3, 5 and 6 – together these recommendations provide what the QCA see as QR's obligation in terms of the provision of capacity related information to access seekers.</p> <p>As noted above, QR has adopted this recommendation by including the listed things in Schedule D, as information that QR will provide to access seekers.</p> <p>QR notes that the QCA accepted, in the Final Decision, the following caveats being placed upon the provision of the MTP in this context:</p> <ul style="list-style-type: none"> • Identity of operators/access holders will not be disclosed; • The terms and conditions of operators/access holder's train service entitlements will not be detailed; and • The MTP will not show all parts of the network and as such may not show all train services that may impact upon the capacity of the infrastructure detailed. 	<p>Schedule D</p>
	<p>5. QR must provide an access seeker who has made an access application with the relevant DTP(s).</p>	<p>In response to this recommendation in the QCA's Draft Decision, QR proposed an obligation to provide the DTP only where QR could not provide an access seeker with the capacity sought, and the DTP provided an access seeker with more information than the MTP did concerning capacity availability. The QCA rejected this approach. As a result, QR has adopted the QCA recommendation, subject to the same caveats that the QCA has accepted for the MTP. As a result, QR will provide access seekers with the DTP subject to the following caveats:</p> <ul style="list-style-type: none"> • Identity of operators/access holders will not be disclosed; 	<p>Schedule D</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<ul style="list-style-type: none"> • The terms and conditions of operators/access holder’s train service entitlements will not be detailed; and • The DTP will not show all parts of the network and as such may not show all train services that may impact upon the capacity of the infrastructure detailed. <p>As noted at points 3 and 4 above, this obligation is included in Schedule D.</p> <p>As subsidiary issues:</p> <ul style="list-style-type: none"> • For the purpose of avoiding dispute on what the ‘relevant DTP(s) are’ QR proposes that it will provide the relevant, current DTP, which will be: <ul style="list-style-type: none"> ○ for an access application in respect of a timetabled traffic, the current DTP for the relevant day of the week; and ○ for an access application in respect of cyclic traffic, the current DTPs for a week, unless QR reasonably believes that provision of DTPs for a longer period of time is required in order that the DTPs show a use of capacity that is representative of current utilisation; and • In terms of QR providing the DTP in electronic form, once QR has the systems in place to do this, it will do so, but in the meantime, such information may be provided in paper form. 	
	<p>6. QR must provide an access seeker who has made an access application with the relevant train control diagrams. QR should be able to recover the reasonable costs of providing such diagrams.</p>	<p>In response to this recommendation in the Draft Decision, QR argued against the need to provide these diagrams to access seekers. QR’s concerns were, and remain:</p> <ul style="list-style-type: none"> • the unnecessary administrative burden of providing a document that does not provide any further information than either the MTP or the DTP does in relation to available network capacity; and • the potential for QR to reveal confidential operational information in meeting this recommendation, such as performance information, including deviations from scheduled paths. <p>The caveats placed upon the MTP and DTP will not necessarily protect the confidential information contained in train control diagrams. For instance, in the coal system, where there is currently only one access holder, even if the diagrams don’t name the access holder, this will be publicly known, and this will make the disclosure of performance information more likely to infringe confidentiality because it will be transparent that a particular access holder has performed in a certain manner.</p> <p>In responding to the QCA’s reasons for requiring this provision, QR believes that following points are relevant:</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<ul style="list-style-type: none"> • The QCA has suggested that disclosure of train control diagrams to access seekers is essential <i>to ensure integrity in the train control decision-making process</i>. Whilst such a reason is compelling in relation to access holders who have a contractual right to a particular train service entitlement and the provision of train control services as set out in the NMP, it is not a reason to give the information to access seekers. Access seekers' rights are as set out in the QCAA and under the provisions of the undertaking. As noted in QR's NMP at Schedule G, QR has agreed to provide train control diagrams to access holders; • The QCA has suggested that disclosure of train control diagrams to access seekers is essential <i>to show the difference between the planned DTP and actual running for capacity analysis purposes</i>. As noted above, QR has concerns that the provision of performance information concerning an access holder potentially requires QR to release confidential information. This is contrary to the QCA's own recommendation in relation to 'network operational information' in relation to Part 3 of the Draft Undertaking concerning Ringfencing Arrangements (see ring fencing recommendation 17 in Table 2). <p>As a result of QR's concerns, QR proposes not to undertake to provide train control diagrams to access seekers. It is worth noting however that:</p> <ul style="list-style-type: none"> • As noted above, QR will provide train control diagrams to access holders. Further, as noted in QR's NMP at Schedule G, access holders, who are running trains on the network, will also be provided with real time information on their train movements; and • Access seekers will be able to obtain information concerning the impartiality of train control decision making and the difference between the DTP and actual performance from the service quality indicators that QR will be obliged to publish under the undertaking. These are discussed further in QR's response on public reporting, which is covered in Table 4 - Pricing Principles. In addition, as set out in QR's response to the issues associated with Volume Management – see Table 9, QR has included in the undertaking, an obligation upon it to notify parties, interested in running train services on particular paths, whether an incumbent access holder has triggered the capacity resumption threshold. Access seekers will be able to obtain the same information sought from train control diagrams more efficiently through these means. 	
	7. QR must provide below rail transit times as part of the additional information (sub-para 4.7.2(a)(i) of the undertaking) once the formal negotiation	QR agrees to this recommendation and has adopted it in the drafting of Schedule D.	Schedule D

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Capacity Allocation Process	<p>period commences.</p> <p>8. Where 2 or more operators are seeking access with respect to mutually exclusive rights, prior to development of QCA approved standard access agreement, access rights are contingent on the winning of a contract with an end-user by a specified date.</p>	<p>In principle, QR does not object to what the QCA is trying to achieve in relation to the allocation of capacity where multiple access seekers have applied for mutually exclusive capacity for the purpose of running mutually exclusive traffics. QR has previously acknowledged that it would make the signing of an end contract the determining factor in the allocation of capacity.</p> <p>As QR advised in its response to the QCA's Draft Decision, however, the implementation of the QCA's recommendation could create problems for QR if it meant that QR was required to commit resources to fully negotiate 2 or more access agreements in circumstances where only one agreement would ever be signed. Once a standard access agreement is in place, the QCA appears comfortable with the fact that the indicative access charge provided by QR will be sufficiently linked to the terms and conditions of access to be meaningful to an access seeker. Given that an access seeker will always be able to attempt to negotiate away from the standard access agreement terms and conditions, the standard access agreement is simply creating a degree of certainty for them in terms of what they get for the access charge quoted by QR. If the QCA's goal is simply to achieve this certainty, QR would suggest that there is no reason why QR's current standard access agreement couldn't be used to achieve the same goal, assuming all indicative access proposals given in relation to the mutually exclusive traffics were based on the same standard access agreement. This would also alleviate the administrative burden upon QR of individually negotiating the terms and conditions of access for multiple access agreements, particularly when only one of those agreements will be signed. As a result, QR's proposed method for dealing with the circumstances envisaged by this recommendation reflects this alternative approach.</p>	7.4.1(c)
	<p>9. Para 4.7.1(c)(iii) should be removed and where 2 or more operators are seeking access with respect to mutually exclusive paths, if available capacity is reduced because one operator concludes an access agreement with QR, negotiations would continue with the other operator on the basis of a revised access proposal taking into account the reduction in available capacity.</p>	<p>QR has accepted this recommendation, and has redrafted the undertaking to accommodate it. For additional clarification, QR has explicitly noted that the same timeframes will apply in relation to the revised access proposal as applied for the original proposal. In other words, that the parties will resume negotiations from the nominated point in the process outlined in the undertaking.</p> <p>In terms of QR's obligations in relation to the allocation of capacity where multiple parties seek mutually exclusive access rights or capacity but not for the same traffic task (eg. where the signing of an end contract should not determine who gets the contested capacity) and all parties' requests for capacity cannot be accommodated, the QCA's Draft Decision acknowledged that QR must make a commercial judgement on which party to sign an access agreement with. As a result, QR has left the drafting of the undertaking as it was on this point. As a result, in such circumstances, QR will sign agreement with the party it can agree to terms and</p>	4.5.1(c)(v), 4.5.1(d) and 7.4.1(d)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		conditions, which QR considers to be the most favourable in terms of the commercial performance of below rail services.	
	10. QCA is reserved the right to approve the rules of a capacity auction prior to it being held.	<p>Whilst QR does not object to a party being able to dispute an auction process proposed by QR for the purpose of allocating capacity, it does object to giving the QCA, through the undertaking, an additional power to determine what is in QR's best, below rail commercial interests (this being the test for determining how to allocate capacity where more than one party seeks it under the undertaking).</p> <p>Additionally, QR does not believe that auctions will be a likely mechanism given the size of the market and the ability to fund capacity enhancements in those areas where traffic levels and the likelihood of competition are highest. As a result, QR has not included this recommendation in its undertaking.</p>	

Table 6 – Interface Considerations – Part 8 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
<p>Rollingstock and Safety Interface Management</p>		<p>In response to the QCA’s Draft Decision, QR advised that its understanding of its legal exposure prevented it from compromising any further on its proposed approach to managing the rollingstock and safety interface between an access holder and QR as railway manager. In summary, QR has a number of non-delegable duties, both at common law (an employer’s duty to provide a safe place and system of work for its employees, and an occupier’s duty to avoid reasonably foreseeable risks of injury or damage to person or property) and under statute [under the <i>Workplace Health and Safety Act 1995</i> (the WPHSA), as a person in control of a workplace, to, amongst other things, ensure that the risk of injury or illness from a workplace is minimised for persons coming onto the workplace to work, and ensure there is appropriate, safe access to and from the workplace for persons other than its own employees]. These duties are not overridden by QR’s obligation to provide access to its declared infrastructure under the QCA Act, nor by the rail safety regulatory regime established by the <i>Transport Infrastructure Act 1994</i> (the TIA).</p> <p>Since responding to the Draft Decision, QR has received further legal advice that not only supports QR’s proposed approach, it suggests that QR should, in relation to some aspects of the overall management approach, be taking a more prescriptive approach. As a result, in responding to the QCA’s recommendations in the Final Decision, QR has had to revisit its previous position, in an attempt not only to minimise differences between its undertaking and the QCA’s Final Decision, but also to ensure that it addresses the legal exposures that third party operation upon its rail infrastructure poses from a safety perspective. The following comments should be considered in light of these circumstances.</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>1. Undertaking should include the Interface Risk Assessment process, leading to the incorporation of the Interface Risk Management Plan (IRMP) in an access seeker's access agreement, as the means of specifying how the parties will deal with the risks involved in a particular operation's interface with QR rail infrastructure, and as a result, remove any references to QR's Rollingstock Interface Standards (rollingstock interface standards).</p>	<p>In response to the Draft Decision, QR advised that it would accept this recommendation to the extent that the relevant interface standards for rollingstock and rollingstock configurations would be agreed through the Interface Risk Assessment (IRA) process, and specified in an access holder's Interface Risk Management Plan (IRMP). In effect, this meant that if an element of the IRMP could not be agreed during the IRA, the issue would be dealt with under the undertaking's dispute resolution process. The parties may elect, before going to expert determination, to refer the dispute to the Rail Safety Accreditation Unit (RSAU) for a non-binding opinion, but ultimately in the absence of agreement between QR and an access seeker on, for instance, the appropriate rollingstock interface standards, QR would accept the outcome of the dispute resolution process as the final and binding decision on the matter.</p> <p>As advised above, QR has received further legal advice since responding to the QCA's Draft Decision, and in relation to this recommendation, the legal advice alters QR's response. Overall, the legal advice suggests that QR could justifiably take a harder line with third party access seekers by insisting on the observance of the minimum, irreducible standards identified by QR as necessary to ensure compliance with the obligations to which QR is subject. In other words, QR could insist that all operators comply with its Safe-Working Procedures, Safety Standards and Rollingstock Interface Standards. Alternately, the current approach to identifying an IRMP may well still be acceptable provided that QR has the final discretion as to the applicable standard. As a result, any dispute resolution procedure agreed to by QR should pay particular heed to QR's obligations under the WPHSA and at common law, and if QR accepts that another party may determine an applicable standard, it must realise that by delegating that responsibility it is not absolving itself from its obligations at law. In other words, if an expert were to make a decision on a standard that QR considered to be below the irreducible minimum required for safe operation, QR's acceptance of that expert's decision would not relieve it of its primary obligations at common law or under statute.</p> <p>QR is mindful of the QCA's concern that the discretion discussed above could be used by QR to prevent or hinder a third party's access. As a result, in altering its approach to accommodate its legal advice, QR has restricted the application of its discretion to legitimate circumstances. QR's altered approach is as follows:</p> <ul style="list-style-type: none"> • During the IRA, QR and an access seeker will determine the interface risks that the access seeker's proposed operation raises; • The IRA may commence with a consideration of existing QR standards rather than a blank sheet of paper approach which relies on a complete hazard inventory being identified by the parties from scratch; 	<p>8.1.2 and 8.1.3</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<ul style="list-style-type: none"> • The IRA should consider all relevant interfaces, not just the wheel/rail interface; • QR will not, in undertaking the IRA and agreeing the IRMP with an access seeker, engage in conduct for the purpose of preventing or hindering access; • If a dispute arises between QR and an access seeker during the IRA, the dispute resolution process provided in the undertaking will apply, subject to the following point: <ul style="list-style-type: none"> ▪ The question for determination will be whether QR has engaged in conduct for the purpose of preventing or hindering access (in contravention of the ss.104 or 125 QCA Act) by the access seeker. In effect, this means that where QR has identified standards (rollingstock, safety or otherwise) to address interface risks, and the IRA indicates that an access seeker's operation will raise those risks, QR may require access seekers to comply with those identified standards, subject only to the proviso that QR not seek to enforce a standard upon an access seeker for the purpose of preventing or hindering that access seeker's access to the declared service. This does not mean that QR could not elect to accept an access seeker's alternative standard or control during the IRA, but it is intended to ensure that if QR wants to enforce particular standards on access seekers that it does so for legitimate (safety and commercial) reasons. 	
	<p>2. Undertaking should include a schedule with the following list of non-exhaustive minimum interface requirements to guide negotiations regarding minimum rollingstock interface standards during the IRA, so that any vehicle an operator proposes to run on QR's network should be able to:</p> <ul style="list-style-type: none"> • Remain on the track up to the permissible speed limit; • Negotiate the varied track elements and configurations without interference or fouling; • Clear track-side structures and infrastructure; • Activate the signalling system; • Stop from track speed within the required distances; • Retain its loading; and • Comply with environmental requirements. 	<p>QR accepts that there is value in providing access seekers with an indication of the sorts of issues that will need to be considered in the IRA, and addressed in the IRMP. However, as noted in its response to the Draft Decision, QR maintains that including a list of minimum interface requirements may mislead access seekers as to the types of issues that will need to be addressed during the IRA. In particular, the list suggested by the QCA in this recommendation, implies that the only interface that QR should be concerned with is the wheel/rail interface. Our legal advice is that the potential consequences for QR of not identifying a risk and agreeing a control for that risk justify the need for an assessment of risks, which is more extensive than that contemplated by the non-exhaustive list suggested by QCA.</p> <p>As a result, rather than trying to list all of the technical and operational standards that an access holder's rollingstock and trains must meet, QR considers it more in line with the IRA process to set out the broad interface issues that QR and an access seeker must consider. To this end, QR has included a new schedule (Schedule H) in the undertaking, outlining the sorts of risks that will need to be considered during the IRA. Such an approach is consistent with the approach taken for environment. In addition to this schedule, we have also included a sample table of contents and template IRMP in Schedule I to the undertaking.</p>	Schedule H
	3. Following principle should be included in	QR accepts this recommendation, subject to the following comments:	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>Schedule E (summary of principles for inclusion in standard access agreement):</p> <p><i>QR may, acting reasonably, vary the agreed rollingstock interface standards at any time on safety grounds, after consultation with the third party. Otherwise, QR may, acting reasonably, negotiate any other changes with the third party. Where any changes in the standards necessitate modification of the third party's Rollingstock, the costs of such modification are to be borne in the manner agreed by the parties, or failing such agreement, as determined by an expert.</i></p>	<ul style="list-style-type: none"> • The discussion surrounding this recommendation in the QCA's Final Decision recognises QR's ability to require system-wide changes to meet a safety requirement, however the wording of the recommendation only refers to rollingstock interface standards and not Safe-Working Procedures and Safety Standards. QR's redraft of Schedule E picks up changes to all system-wide requirements; • The discussion surrounding this recommendation in the QCA's Final Decision recognises an obligation upon access holders not to unreasonably withhold their consent to a system-wide change for other than safety reasons, however the wording of the recommendation does not acknowledge this. Again, QR's redraft of Schedule E picks up this qualification upon access holders' rights; and • At a detailed level, the QCA's discussion accompanying this recommendation states that whilst QR has a right to make system-wide changes to meet safety requirements, such a right will be subject to (a) all access holders having a right to participate in QR Safety Committee meetings concerning variations to standards that affect their operations, and (b) the Rail Safety Accreditation Unit (RSAU) having the power to determine whether a 'safety' change is legitimately required by QR. Our legal advice is that QR has an obligation to review the sufficiency of its approach to managing its non-delegable obligations at common law and statute. As a result, a failure by QR to review, and thus to provide itself with a mechanism to review, could leave QR exposed to liability. As a result, consistent with its response to the QCA recommendation at point 1, the only restriction that QR can accept upon its right to require system-wide change on safety grounds, is that it not do so for the purpose of preventing or hindering access (in contravention of the ss.104 or 125 QCA Act) by the access seeker. 	
	<p>4. QR and third parties must agree on a party competent to provide certification of operator's rollingstock (in accordance with IRMP).</p>	<p>QR's legal advice on this issue is that in order to discharge its obligations, QR must have the right to satisfy itself that an access seeker's rollingstock and trains comply with the standards specified in the IRMP. In practice this means that QR will retain potential liability, as railway manager, for the conduct of the person providing certification, regardless of who determines that they are competent, or whether they certify relevant rollingstock. As a result, QR's approach to the authorisation of rollingstock and rollingstock configurations is based on the following course of action:</p> <ul style="list-style-type: none"> • Taking reasonable precautions to ensure that the person providing certification of the rollingstock and rollingstock configurations is competent; • Conducting a reasonable level of verification that the certification has been affected competently (see the discussion at point 5 below); and • Only permitting rollingstock and rollingstock configurations that have been 	<p>8.1.6(b) and 8.1.6(c)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>competently certified on the network.</p> <p>As QR's approach to the question of rollingstock and train authorisation is based on this process, the proposed response to this recommendation is linked to the response to the recommendations at points 5, 6 and 7 below. In order to move closer to this QCA recommendation, QR's redrafted undertaking has the affect that QR will attempt to agree with access seekers on the party competent to provide certification of rollingstock and consists.</p>	
	<p>5. QR has a right to view a certificate(s) of compliance and associated test results from a third party operator in order to confirm that the rollingstock and trains for its train services are as agreed by QR and the operator in the IRMP.</p>	<p>This QCA recommendation is consistent with QR's proposed approach to satisfying itself as to the compliance of an access seeker's rollingstock and trains with the standards specified in the Interface Risk Management Plan (IRMP). However, in addition to having a right to view such material, QR's position is that it wants the right to decline to authorise rollingstock if it is not satisfied with the material presented by the certifying party. Whilst QR recognises that the QCA has attempted to accommodate QR's concerns through the following two recommendations, our legal advice suggests that these recommendations do not alter the fact that QR faces exposure to liability if it allows a party to come onto its network without being satisfied that that party's rollingstock was in compliance with the IRMP. As a result, QR has redrafted its undertaking to provide that:</p> <ul style="list-style-type: none"> • QR may refuse to authorise rollingstock and/or rollingstock configurations where it is not satisfied, on the basis of the certification documentation, that the rollingstock and/or rollingstock configurations comply with the standards in the IRMP; and • the question to be resolved if a dispute arises in these circumstances, will be whether QR has engaged in conduct for the purpose of preventing or hindering access (in contravention of the ss.104 or 125 QCA Act) by the access seeker. 	8.1.6(e)
	<p>6. QR has a right to provide input to the RSAU regarding the authorisation of a third party operator's rollingstock.</p>	<p>QR's response to the recommendations at points 4 and 5 set out QR's approach to the authorisation of access holders' rollingstock and rollingstock configurations.</p>	
	<p>7. Any concerns QR may have about a third party operator's certification tests should be brought to the attention of the RSAU within 10 business days of it being provided with the relevant certification documentation.</p>	<p>QR's response to the recommendations at points 4 and 5 set out QR's approach to the authorisation of access holders' rollingstock and rollingstock configurations.</p>	
	<p>8. Schedule E to undertaking should include the following principle:</p> <p><i>The third party operator is responsible for the safe operation of its rollingstock on the nominated network and must ensure that at all</i></p>	<p>QR accepts this recommendation.</p>	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p><i>times its rollingstock and rollingstock configurations comply with all applicable laws, the rollingstock specification and the rollingstock interface standards specified in the agreement.</i></p>		
	<p>9. Schedule E to undertaking should include the following principle:</p> <p><i>QR may suspend operation of TPO rollingstock and trains for demonstrated non-compliance that has safety implications until non-compliance is rectified. If the source of the non-compliance doesn't have safety implications the third party operator should be required to rectify within reasonable time, and if it doesn't then QR can suspend the operation of the affected rollingstock and trains.</i></p>	<p>In response to this recommendation in the QCA's Draft Decision, QR suggested that it should be entitled to suspend where, in its reasonable opinion, an access holder's rollingstock and/or trains do not conform to the rollingstock interface standards and/or rollingstock specification in the access agreement. The QCA rejected this suggestion on the grounds that QR could misuse such a right to prevent or hinder access. However, in attempting to incorporate this recommendation into the undertaking, QR has identified a number of practical issues with the implementation of the suspension rights proposed by the QCA (at points 9 and 15). These practical issues are detailed below:</p> <ul style="list-style-type: none"> • Whilst it is not entirely clear what QR would have to establish 'demonstrated non-compliance' with, QR has assumed that the QCA is referring to the issues listed in the recommendation in point 8; • Demonstrated non-compliance is an uncertain and onerous test for QR to satisfy. QR acknowledges that it has mechanisms that will enable it to detect non-compliance by an access holder with some, but not all aspects of applicable laws, the rollingstock specification and the rollingstock interface standards specified in the agreement [eg. dragging equipment detectors, wheel impact detectors, hot box detectors, weighbridges, and rollingstock gauge detectors]. However, given that QR will not always be able to visibly or otherwise clarify that an access holder is failing to comply with the matters listed in point 8, how does it establish demonstrated non-compliance? Furthermore, to whom does it need to demonstrate this? The QCA's recommendation at point 20, that an access holder must advise QR of its non-compliance with the terms of its IRMP does not cover non-compliance with 'all applicable laws, and the rollingstock specification (the other issues listed by the QCA in its recommendation at point 8). In addition, in the absence of a deterrent, nothing prevents an access holder simply not telling QR about an event of non-compliance when it occurs; • The test of demonstrated non-compliance also has the effect of potentially preventing QR from suspending rollingstock or trains before something goes wrong. Although the QCA has recommended (in point 15 below) that QR should be entitled to suspend a train service from operating in the event of a breach or likely breach of "...any laws relating to rail safety, QR train control directions, safe-working procedures or safety standards", the QCA is not envisaging QR being entitled to suspend rollingstock or trains prior to non-compliance with the relevant issues listed in point 8. Either of these situations 	<p>Schedule E</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>could raise safety implications, and as a matter of principle, QR considers that the safety implications raised by suspected non-compliance with <i>all applicable laws, the rollingstock specification and the rollingstock interface standards specified in the agreement</i> are as worthy of preventative action as suspected non-compliance with <i>any laws relating to rail safety, QR train control directions, safe-working procedures or safety standards</i>;</p> <p>To take account of the above observations, the approach taken by QR in its undertaking is as follows:</p> <ul style="list-style-type: none"> • QR accepts the test proposed by the QCA for ‘safety implications’; • QR accepts a requirement for <u>actual or anticipated non-compliance</u> with the rollingstock interface standards, all applicable laws and the rollingstock specification in the access agreement, in respect of the right to suspend rollingstock and trains where that non-compliance creates a risk to the safety of a person or a material risk to property; • QR accepts a requirement for <u>actual non-compliance</u> with the rollingstock interface standards, all applicable laws and the rollingstock specification in the access agreement, in respect of the right to suspend rollingstock and trains where that non-compliance does not create a risk to the safety of a person or a material risk to property; • Access holders must advise QR immediately they become aware of any relevant non-compliance on their part (and the consequence for a failure to do so will be specified in the access agreement); • Where QR reasonably believes that an access holder’s rollingstock or trains are not complying with the relevant matters (rollingstock interface standards, all applicable laws and the rollingstock specification in the access agreement), and QR cannot otherwise determine whether this is the case, QR may either conduct an inspection or require the access holder to have an inspection conducted and the results to be reported to QR within a timeframe that reflects the potential risk; and • QR accepts that it will suspend the relevant rollingstock and trains only until the Access Holder demonstrates to QR that the circumstances that gave rise to QR’s right to suspend have ceased to exist (in other words, the non-compliance is rectified or in the event of anticipated non-compliance, the Access Holder has demonstrated that it is in compliance). <p>As indicated throughout QR’s response to this recommendation, similar issues to those raised here also exist in relation to the QCA’s recommendation at point 15 below.</p>	
	10. Schedule E to undertaking should include the	QR accepts that it has an obligation not to exercise its suspension power in relation	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>following principle:</p> <p><i>QR will not exercise its suspension power in relation to a third party's rollingstock and trains in such a manner as to hinder or prevent access to the declared service in any way contrary to s.104 and 125 QCAA.</i></p>	<p>to third parties' rollingstock and trains in a manner that contravenes s.104 and/or 125 of the QCA Act; however, it does not consider it necessary to include a provision in the undertaking to this effect. Further, QR considers that adding such a provision could lead to confusion in its application.</p> <p>As discussed in point 9, QR accepts an obligation to suspend in the circumstances outlined, with these circumstances to be specified in Schedule E. As acknowledged above, QR has a statutory obligation not to engage in any conduct for the purpose of preventing or hindering access under an access agreement, and in addition, QR has an obligation in Schedule E to comply with all legislation. As a result, adding this recommendation to Schedule E could be interpreted to mean that even if QR suspends rollingstock and trains in the circumstances outlined in point 9, it will not be safe from the accusation that it engaged in conduct for the purpose of preventing or hindering access. QR considers that such an approach lacks logic as the very purpose of setting out, in the undertaking, the circumstances in which suspension can occur is to specify situations in which it would be appropriate (as approved by the QCA) for such conduct to occur, given that it will affect an access holder's access under an access agreement. This logic is backed by the provisions of the QCA Act, in particular ss. 104(6) and 125(6), which provide that an access provider will not contravene the prohibition on preventing or hindering access if it acts in accordance with an approved access undertaking.</p>	
	<p>11. Schedule E to undertaking should include the following principle:</p> <p><i>A third party operator could reserve the right that if its rollingstock is suspended without reasonable justification, then QR would be liable for the loss thereby caused.</i></p>	<p>QR has interpreted this QCA recommendation as imposing on QR a contractual obligation, in addition to the obligation under the QCA Act, to comply with the undertaking obligation to only suspend in the circumstances outlined in point 9 above. QR has a principle objection to the QCA creating, through QR's undertaking, additional avenues for access holders to get redress against QR, to those that already exist under the QCA Act, however, on the understanding that QR will not made to compensate an access holder more than once for any loss suffered, QR is willing to incorporate this recommendation.</p> <p>In implementing this recommendation, QR has included an obligation in Schedule E noting in the event QR suspends an access holder's rollingstock otherwise than in accordance with the relevant suspension provisions, that the access agreement will specify the consequences. This approach is consistent with the QCA's comments in relation to Schedule E in that it considers the access agreement should specify the consequences of failure to comply with contractual obligations and that such consequences should be determined between the parties.</p>	Schedule E
	<p>12. QR's role in preparation of third party's safety risk assessment should not extend beyond preparation of the joint safety risk assessment.</p>	<p>QR's position on the IRA is encapsulated in its response to the QCA's recommendation at point 1. QR considers that the provisions included in the undertaking to reflect that response adequately deal with the process, and as a result,</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		QR has not included this recommendation in its undertaking.	
	<p>13. The undertaking should incorporate the following dispute resolution process for safety-related interface matters:</p> <ul style="list-style-type: none"> • Following written advice from either party notifying the other of a safety-related interface matter, the CEOs of the 2 organisations will meet and try to resolve the matter; • If CEOs cannot reach resolution within 14 days of receipt of written notice, matter will be referred to the RSAU for non-binding advice; • If RSAU's advice does not facilitate resolution, matter would be referred to QCA for arbitration under QCAA; and • RSAU can recover costs associated with its role in the dispute resolution process. 	QR accepts this recommendation, subject to the comments made above in relation to the resolution of specific disputes (see points 1 and 5).	8.1.8
	<p>14. QR and third party operator would agree any training requirements for third party's staff during the safety risk assessment process. The training requirements are restricted to those that are the responsibility of QR, as track manager, to provide under Australia's co-regulatory approach to rail safety.</p>	QR agrees to this recommendation in principle but considers that it need not be specifically recognised in the undertaking as it has reflected the recommendation at point 18 below in the undertaking.	
	<p>15. Schedule E to undertaking should include the following principle:</p> <p><i>QR reserves the right to temporarily suspend the right of third party's train services to operate on the nominated network in the event of breach or likely breach of any laws relating to rail safety, QR train control directions, safe-working procedures or safety standards.</i></p> <p><i>QR will not exercise this suspension power in such a manner as to hinder or restrict access to the declared service in any way contrary to s.104 or 125 QCAA.</i></p>	QR's response to the QCA's recommendations at points 9 and 10 also apply to this QCA recommendation.	Schedule E
	16. Schedule E to undertaking should include the	QR's response to the QCA's recommendation at point 11 also applies to this QCA	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>following principle:</p> <p><i>A third party operator could reserve the right, if its train service is suspended without reasonable justification, that QR is liable for the loss thereby caused.</i></p>	<p>recommendation.</p>	
	<p>17. Subclause 4.7.2 must commit QR to provide to third parties, on a timely basis, all information reasonably available to it that is relevant to the interface risk management process during the negotiation period.</p>	<p>QR agrees to this QCA recommendation and has incorporated it into the undertaking using similar wording to that which the QCA has accepted for the environment.</p>	<p>8.1.1(c)</p>
	<p>18. QR must provide a ‘reasonable endeavours’ commitment to assist third party operators meet any training requirements for its staff identified during the interface risk management process, where the operator cannot otherwise reasonably attain that training, and QR should be able to recover reasonable costs associated with such training.</p>	<p>QR agrees to this recommendation in principle, but considers that it is more appropriate for QR to be able to recover a ‘reasonable commercial charge’ rather than just the ‘reasonable costs’ of providing the training in question. As a result, the undertaking reflects this position.</p>	<p>8.1.5</p>
	<p>19. QR does not have a right to require annual or spot audit of third party operator’s compliance with it’s IRMP</p>	<p>QR’s response to this recommendation needs to be read in conjunction with its response to the QCA’s recommendations at points 20, 21 and 22 below.</p> <p>QR’s legal advice supports QR’s contention that responsibility for ensuring that an access holder is complying with its IRMP rests not only with the access holder and the RSAU, but also with QR insofar as QR’s non-delegable obligations extend. As a result, it is justifiable for QR to have a mechanism to satisfy itself that access seekers are managing their operations in accordance with the terms of their access agreement with QR.</p> <p>In an attempt to minimise the areas in which its undertaking conflicts with the QCA’s Final Decision, QR has taken the following approach on this recommendation:</p> <ul style="list-style-type: none"> QR’s response to this recommendation is made subject to the response to the QCA’s recommendations at points 9 and 15 above – in particular, the need for QR to have an ability to find out if an access holder’s rollingstock or trains are not complying with ‘the rollingstock interface standards, all applicable laws, and the rollingstock specification’ or whether an access holder is breaching ‘any laws relating to rail safety, QR train control directions, safe-working procedures or safety standards’. 	<p>8.1.7(e), (f) and (g)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		As a result, the undertaking leaves QR with a right to either conduct an inspection or require an inspection to be carried out by an access holder and the results to be reported to QR in these circumstances. Importantly, QR has given access holders reciprocal audit rights.	
	20. QR and third party operator should inform each other of non-compliance with IRMP including nature of breach and how breach will be rectified.	As discussed in response to the recommendation at point 19, QR accepts this recommendation.	8.1.7(b) and (c)
	21. RSAU is the body responsible for safety compliance audits under Qld's rail safety regulatory framework.	QR's legal advice is that notwithstanding any role of the RSAU or access holders under the TIA, QR has a non-delegable duty under the WPHSA to ensure safety and it would not meet that duty if it had no right to conduct audits or require the conduct of audits of access holder's compliance with their IRMP. As our legal advice is inconsistent with this QCA recommendation, QR is unable to accept it.	
	<p>22. QR has a right to audit within the following framework:</p> <ul style="list-style-type: none"> • QR is obliged to provide all relevant information on above rail rollingstock incidents (eg. incidences of dragging equipment and hot box detections, overloading and inaccurate train manifests) to a third party operator concerning its train services; • A party's access agreement will specify what aspects of that operator's compliance with agreed rollingstock interface standards QR can audit; • QR must provide reasonable grounds, as established in the access agreement, for the need for an audit prior to exercising its audit right; and • Provided that a third party operator must pay for audits of its rollingstock required by QR if the reasonable grounds for audit established in the access agreement are satisfied; and • For commercial matters identified and agreed during the interface risk management process, where QR wants to audit a third party operator's compliance with its contractual obligations it must provide reasonable grounds, as established in the 	<p>QR's legal advice supports the position that responsibility for ensuring that an access holder is complying with its IRMP rests not only with the RSAU and the access holder, but also with QR insofar as QR's non-delegable obligations under the common law and WPHSA, and obligation to act commercially under the GOCA, extend. As a result, it is justifiable for QR to have a mechanism to satisfy itself that access holders are managing their operations in accordance with the terms of their access agreements with QR.</p> <p>As a result:</p> <ul style="list-style-type: none"> ▪ QR accepts the first dot point of this QCA recommendation; ▪ QR has obligations, notwithstanding the obligations of the RSAU and the access holder under the TIA, in respect of safety on its network, and as a result, QR should have the ability to conduct or require the conduct of audits in relation to an access holder's compliance with its IRMP. Consequently, QR does not agree that it is only the commercial aspects of its agreement with an access holder that QR is entitled to seek audits in respect of; ▪ QR accepts the requirement for it to have 'reasonable grounds' to conduct an audit, but had not previously envisaged specifically listing in each access agreement what such 'reasonable grounds' would be. Such an approach seems to leave itself open to things falling through the cracks. In its Final Decision, the QCA rejected the idea of just requiring QR to have reasonable grounds because they consider that this provides too much scope for QR to exercise its discretion to the detriment of the access holder. QR does not consider this to be the case, particularly as: <ul style="list-style-type: none"> ○ QR has to provide those reasonable grounds to the relevant access holder prior to requiring an audit; ○ QR pay for the audit if reasonable grounds are not established; ○ QR will have an obligation under the undertaking to only audit where it 	8.1.7(d), (e), (f) and (g) and Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	access agreement, for the need to audit prior to exercising its audit right, and a third party is entitled to reciprocal audit rights along the same lines.	<p>has reasonable grounds, and as a result, if it was shown that it did not have reasonable grounds, QR could be sued, under the QCA Act provisions, for any loss caused to an access holder as a result of QR's non-compliance with its obligation; and</p> <ul style="list-style-type: none"> ○ QR has included an obligation in Schedule E, in exercising the audit right, not to interfere unreasonably with an access holder's trains or rollingstock and to use its reasonable endeavours to avoid damage or injury and to minimise any disruption to an access holder's business activities. <p>As a result, QR's undertaking does not require the parties to agree what 'reasonable grounds' will be in the access agreement; and</p> <ul style="list-style-type: none"> ▪ In respect of providing access holders with reciprocal rights of audit – this is something QR has previously indicated a willingness to do. 	
Environmental Interface Management	23. QR can legitimately seek information of the kind set out in Schedule I of the undertaking from a third party operator that will allow QR to assess the impact of that operator's proposed train services and hence any additional environmental risks posed, in order to assess the need to upgrade QR's own Environmental Management System (EMS).	QR agrees to this recommendation in principle and has reflected it in the undertaking.	8.2.1
	24. A third party operator can legitimately seek information from QR that will allow that operator to assess the environmental risks of its proposed train services given the particular features of the QR network, in order to develop an EMS for its Qld operations.	Whilst QR agrees with the intent behind this recommendation, QR still maintains that the information QR needs to provide to an access seeker should be that relevant to the EIRMR not the EMS. The EIRMR is then incorporated into the party's EMS, which may have a wider application than its services on QR's rail infrastructure.	8.2.1(b)
	25. An Environmental Investigation & Risk Management Report (EIRMR) must be prepared for the third party operator by a suitably qualified person reasonably acceptable to both parties.	QR accepts this recommendation.	8.2.1(a)
	26. QR must provide written reasons to a third party operator within 30 days of receipt (or a period otherwise agreed between the parties), if it has any problems with the adequacy of the EIRMR.	QR agrees to set a time limit on itself in these circumstances, but has proposed a slightly longer time frame - 45 days, which it considers to be more realistic.	8.2.1(h)
	27. Third party operator will have written right of reply to QR's concerns.	QR accepts this recommendation.	8.2.1(i)
	28. If the parties cannot agree on the adequacy of the EIRMR either party may have recourse to dispute resolution under dispute resolution provisions of undertaking (either to an expert or the QCA).	QR has agreed to this recommendation, save that it considers the parties will need to refer the dispute to an expert, and not the QCA. In addition, if an access agreement already exists then the dispute resolution process under the agreement should be used not that under the undertaking.	8.2.1(k)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	29. If third party operator doesn't comply with expert decision within reasonable period, QR may cease negotiations or terminate the access agreement (whichever is applicable).	QR agrees to this recommendation, but instead of leaving the timeframe open, the undertaking places the decision on how long an access seeker will have in the hands of the relevant expert.	8.2.1(o)
	30. Once finalised, EIRMR will be incorporated as schedule to third party operator's access agreement.	QR accepts this recommendation.	8.2.1(n)
	31. A third party operator's EMS need not be accredited under, or consistent with ISO 14000.	QR has accepted this recommendation and removed the reference to ISO 14000 from the undertaking.	
	32. The imposition of requirements in respect of QR's environmental authorities/licences on third party operators is only to the extent that these licence requirements are relevant to the third party operator's train services.	QR accepts this recommendation.	8.2.2(a)(iii)
	33. QR's audit entitlements are linked to the risks posed by a third party operator's train services and what is established in the operator's EMS. Auditing should be addressed in the EIRMR. Each party must provide each other with copies of relevant parts of internal audit reports.	<p>QR agrees to the first sentence of this recommendation, except to the extent that, as noted above, the primary document between QR and an access holder is the EIRMR not the EMS and as the second sentence provides, auditing will be addressed in that document. So, really the first sentence should refer to the EIRMR.</p> <p>QR agrees to the second sentence – both parties will provide the other with copies of those parts of internal audit reports relevant to the operation of the access holder's operation of train services on the rail infrastructure.</p>	8.2.3(a), (b) and (c)
	34. QR has a right to seek confirmation from a third party operator regarding the adequacy of the EIRMR and/or its compliance with the EIRMR. If QR becomes aware of any circumstances associated with the activities of the operator that cause or threaten <u>serious or material environmental harm</u> , it can require the operator to undertake a review of the adequacy of the EIRMR and/or their compliance with it.	<p>In relation to this recommendation, QR notes that in its Final Decision, the QCA also explicitly accepts that QR should be able to require a review to be conducted where there has been a change in environmental law.</p> <p>QR has accepted this recommendation and incorporated it into the undertaking, in combination with its response to the QCA's recommendations relating to termination and suspension.</p>	8.2.3(e)
	<p>35. Schedule E to undertaking should include the following principle:</p> <p><i>Environmental management must be approached on a risk identification and risk management basis with respect to operations on the nominated network and auditing requirements should be linked to the environmental risks posed by a third party operator's train services and be established</i></p>	QR accepts this recommendation, but notes that QR is concerned with the EIRMR more than the EMS, as indicated above in response to the recommendation at point 24.	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<i>in that party's EMS.</i>		
	<p>36. Schedule E to undertaking should include the following principle:</p> <p><i>The third party is required to inform QR of non-compliance with its EMS and provide details of how it intends to address the non-compliance. The third party is required to rectify the breach as soon as practicable having regard to the nature of the breach and any action required by the EPA.</i></p>	<p>QR agrees to the intent behind this recommendation, but for the reason given above in response to the recommendation at point 24, QR's undertaking refers to an access holder's non-compliance with its EIRMR, and not its EMS.</p>	Schedule E
	<p>37. Schedule E to undertaking should include the following principle:</p> <p><i>A third party operator should comply with its obligations under the EPA Act, including any notices or directions it received from EPA. If failure to comply with such causes or threatens <u>serious environmental harm</u>, it will establish grounds for a material event of default.</i></p>	<p>The QCA rejected QR's proposed termination right as too broad. QR agrees to the QCA's suggested replacement provision. However, in order to be effective, the provision should also reflect an obligation on an access holder to notify QR in the event that it does fail to comply with its obligations under the EPA Act, otherwise QR may not know until serious environmental harm has occurred, and this defeats the purpose of enabling QR to terminate in the event that serious environmental harm is threatened.</p>	Schedule E
	<p>38. Schedule E to undertaking should include the following principle:</p> <p><i>QR reserves the right to temporarily suspend the right of a third party operator to operate on the relevant network section in the event that, in QR's reasonable opinion, the operator's train services cause or threaten <u>material or serious environmental harm</u>.</i></p> <p><i>QR will not exercise this suspension power in such a manner as to hinder or restrict access to the declared service in any way contrary to s.104 or 125 QCAA.</i></p>	<p>QR accepts the first limb of this recommendation although QR has omitted the word 'temporarily' and more clearly set out how long the suspension may last for.</p> <p>For the same reasons given above in relation to QR's suspension power for the rollingstock and safety interface (see the recommendation at point 10), QR has not included the second limb of this recommendation in the undertaking.</p>	Schedule E
	<p>39. Schedule E to undertaking should include the following principle:</p> <p><i>A third party operator could reserve the right that if its train services are suspended on environmental grounds without reasonable</i></p>	<p>QR's response to the QCA recommendation at point 11 above, applies equally here. As a result, QR accepts this recommendation on the basis that the access agreement will specify the consequences for QR in such circumstances.</p>	Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<i>justification, then QR would be liable for the loss thereby caused.</i>		
	40. QR must commit to provide third party operators, on a timely basis during the negotiation period, all relevant information reasonably available to it, and necessary for the operator in question to address a real or potential environmental risk. The relevant information could include environmental reports, relevant licence conditions, currently applicable noise levels or building noise limits, particulars of noise complaints, any enforcement actions and a copy of QR's Code of Practice for Railway Noise Management.	QR accepts this recommendation given the QCA's recognition of minor issues of drafting that leave QR less exposed to disputes about what it will be obliged to provide access seekers during the negotiation period.	8.2.1(b)
Adjoining Infrastructure	41. QR's interest in the development of any adjoining infrastructure is limited to the connecting infrastructure, which is defined as follows: <ul style="list-style-type: none"> • Connection point or turn-out; • Safeworking system, including signalling; and • Electrical overhead system where relevant. 	<p>In defining the connecting infrastructure in the undertaking, QR has recognised that the connecting infrastructure can extend beyond the physical connection point. This is consistent with the Final Decision discussion, which stated, "<i>the respective interfaces extend to varying lengths from the actual point of connection with QR's network</i>". This point is further clarified by the QCA in its discussion, where it notes that: "<i>Unless otherwise agreed, where a Third Party Operator proposes to construct infrastructure which connects to the Rail Infrastructure but for which QR will not be Railway Manager, QR shall either design, or approve the design of, and supervise the construction of the connection and those elements of adjoining infrastructure essential to the operation of safeworking systems on the Rail Infrastructure including the connection itself</i>".</p> <p>In terms of QR's interest in the "<i>connecting infrastructure</i>", QR notes that the QCA's discussion surrounding this recommendation is clear that it relates to any element of the operation of the connecting infrastructure to the extent that it affects or interfaces with the operation of the QR infrastructure. Whilst the recommendation does not fully reflect this position, QR has taken this to be the QCA's intent and has reflected this in redrafting its undertaking.</p>	Part 10 – Connecting Infrastructure and 8.3(a)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>42. QR has right to design or approve the design of, and supervise construction of, any connecting infrastructure. If QR exercises its right to design and construct the connecting infrastructure, it should be within the following framework:</p> <ul style="list-style-type: none"> • Third party operator must be given a reasonable period within which to provide comments to QR on any design or construction matters; • QR is required to demonstrate reasonableness of costs associated with it performing those design and construction (and associated) tasks; • QR is required to pay the reasonable costs incurred by third parties as a result of unreasonable delays in any phase in development of connecting infrastructure; and • The draft decision’s clarification of design standards associated with the connection point and electrical power system and the risk-based nature of safe working standards is maintained. In addition, QR could be required to demonstrate that the design and construction of the connecting infrastructure is not in excess of that required to retain the functionality of QR’s existing infrastructure. 	<p>QR has interpreted this Final Decision recommendation as requiring QR to consult with relevant parties prior to construction of infrastructure; to build connecting infrastructure to an appropriate standard; to charge a reasonable price for work undertaken; and not to inappropriately delay construction. On the basis that this is consistent with current QR practice, accepts this recommendation and has drafted the undertaking accordingly.</p> <p>At a detailed level, in implementing this recommendation, the following factors were taken into account:</p> <ul style="list-style-type: none"> • The QCA has recommended that QR be required to compensate third parties for the reasonable costs incurred as a result of ‘unreasonable’ delays in any phase in the development of connecting infrastructure. QR considers that the appropriate determinant of whether compensation is payable is the applicable agreement for the development of the connecting infrastructure; as it will set out the relevant parties’ requirements, particularly in relation to timing. However, to give the QCA further comfort that QR will not misuse its position in these circumstances, QR has drafted a provision in the undertaking obliging it to pay the reasonable costs of the other party, where those costs are incurred as a result of QR conduct under the agreement governing the development of the connecting infrastructure that was engaged in for the purpose of preventing or hindering access contrary to s 104 and/or 125 of the QCA Act; • QR accepts an obligation not to design and construct connecting infrastructure to an unreasonably high standard and has included a provision in the undertaking linking the reasonableness of work to the nature of the traffic, and the current, planned or expected future service standards for the adjacent rail infrastructure; and • QR considers that the dispute resolution process in Part 4 of the undertaking provides an adequate mechanism for third parties to challenge the reasonableness of costs associated with the design and construction of connecting infrastructure as well as whether QR has gone beyond reasonable standards in its design requirements. If the costs proposed by QR were not considered reasonable, a third party could utilise this process to require QR to justify its costs (or the reasonableness of its design standards). 	<p>8.3(a)(i) and (ii), and 8.3(b)</p>

Table 7 – Principles for Standard Access Agreement – Schedule E

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Background			
	<p>1. An access agreement must, unless otherwise agreed between QR and the access seeker, be consistent with:</p> <ul style="list-style-type: none"> • The principles outlined in Schedule E; or • Where the QCA has approved the terms of a standard access agreement for a particular service or services as being consistent with those principles (in Sched. E), the terms of the standard access agreement as approved. 	<p>QR has reflected the first dot point in this recommendation in the revised paragraph 5.1(d) of the undertaking. QR expects that a similar provision (in line with the QCA’s recommendation at the second dot point) would be developed and included at a future point if the undertaking were varied to incorporate a standard access agreement.</p>	5.1(d)
	<p>2. Undertaking should recognise that there will be more than one detailed form of words that would be consistent with the principles set out in Sched. E, and where a dispute arises about whether an agreement, which purports to give detail to, the broad principles contained in Sched. E is fair and reasonable; the parties may seek arbitration under the QCAA.</p>	<p>Whilst QR does not disagree with the intent of this recommendation, the inclusion of the paragraph in Schedule E is considered unnecessary insofar as the negotiation of the agreement is concerned. Effectively, disputes arising during the negotiation period are catered for in Part 4 of the undertaking.</p> <p>In addition, once an Access Agreement has been executed the dispute resolution provisions of the Agreement apply and it would be inappropriate to also have recourse to a second dispute process..</p>	4.5.1(e) and 4.7
Schedule E Principles	<p>1. Access Rights</p> <p>The 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.</p>	<p>QR accepts this recommendation</p>	Schedule E - 1
	<p>Long-term train service entitlements can be varied only in accordance with agreed scheduling procedures specified in the agreement or as otherwise agreed between the parties. The Scheduling Principles should guide the performance of the scheduling function by QR</p>	<p>QR accepts this recommendation in principle. The Scheduling Principles form part of the Network Management Principles (see discussion in Table 6). References should be to the Network Management Principles for consistency.</p>	Schedule E -1
	<p>It is the responsibility of the Third Party entering into an Access Agreement with QR to ensure that the</p>	<p>QR accepts this recommendation.</p>	Schedule E - 1

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	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.	QR accepts this recommendation.	Schedule E - 1
	<p>2. Access Charges Access Charges are to be agreed between the parties and payable in accordance with reasonable payment terms set out in the Agreement. Late payments or credits by either party will bear interest at an agreed default rate.</p>	QR accepts the amendment to include the words “reasonable payment terms”	Schedule E -2
	The Agreement will provide for a fair and reasonable mechanism for dealing with bona fide disputed invoices.	QR accepts this recommendation.	Schedule E - 2
	The Agreement may provide for periodic review of Access Charges.	QR accepts this recommendation.	Schedule E - 2
	Unless otherwise stated, all amounts payable under the Agreement are exclusive of GST.	QR accepts this recommendation.	Schedule E - 2
	In appropriate cases, QR may require lodgement of a security to secure performance by the Third Party of its obligations under the Agreement having regard to QR’s reasonable assessment of the creditworthiness of the Third Party. An established rail entity’s ability to demonstrate a track record of timely payment of similar obligations in other rail jurisdictions should be a relevant factor in assessing creditworthiness. Any required security should reflect the revenue risk that QR has taken on.	<p>QR agrees that it is feasible to consider a track record of payment in other jurisdictions however this is only one of many factors to be considered in establishing creditworthiness – on its own it is not a principle that should be included in Schedule E, therefore QR has omitted this sentence from Schedule E. There are also issues of confidentiality and whether another jurisdiction will pass on such information.</p> <p>QR has also replaced the words “revenue risk” with the words “cash flow risk” to more accurately reflect the risk to QR</p>	Schedule E -2
	Where there are no security arrangements in place and a user defaults on its payments, QR is entitled to require some form of security equivalent to its financial exposure, where the default was not attributable to a legitimate dispute.	QR accepts the insertion of this principle	Schedule E -2
	A Third Party paying a security deposit should be credited with interest on the security at a market-based rate for as long as it is held by QR.	QR accepts the insertion of this principle save that QR should not have to pay interest on a bank guarantee or similar lodged as a security deposit. It should only have to pay interest where a <u>cash</u> security deposit is lodged. QR has clarified this point in Schedule E.	Schedule E - 2
	3. Train Service Entitlements		

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	The Third Party shall not be entitled to commence Train Services unless and until all provisions of the 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 Agreement. QR will use all reasonable endeavours to cooperate with the Third Party to facilitate the Third Party's completion or compliance with such requirements.	QR accepts the amendment of "all reasonable endeavours" rather than "to the extent reasonably necessary" as this is consistent with the current QR position	Schedule E -3
	The Third Party must only operate Trains of the nominated specification for the transport of the nominated product type over the nominated network.	QR accepts this recommendation.	Schedule E - 3
	The 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 and a tailored dispute resolution process conducted by an independent expert. Appropriate adjustments will be made to the Access Charges payable following a reduction in train service entitlements.	QR accepts this amended principle with the proviso that: consistent with the discussion in Table 9 – Volume Management, in response to the QCA recommendation at point 2: the "test for alternative demand" applies only to non-coal traffics.	Schedule E - 3
	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 accepts this recommendation.	Schedule E -4
	QR and Third Parties shall ensure that the operation of train services is in accordance with entry and exit times on the relevant Daily Train Plan, which may be varied in the circumstances specified in the Agreement (which normally include safety considerations, force majeure, incidents or emergencies, track possessions in accordance with the Agreement or as otherwise agreed between the parties, such agreement not to be unreasonably withheld).	QR accepts the amendments to this principle however in order to be consistent with Part 7 of the undertaking, a reference to the Network Management Principles (NMP) is also required as the NMP will set out the circumstances in which the Daily Train Plan can be varied.	Schedule E -4
	The Network Management Principles establish the procedures QR must follow in varying the Daily Train Plan.	QR accepts the insertion of this principle	Schedule E -4
	The Third Party is required to comply with all QR		

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	train control directions and ensure all Trains and Rollingstock are equipped with appropriate communication systems to comply with the agreed Rollingstock Interface Standards.	QR has previously concurred with the Rollingstock Interface Standards being agreed during the Risk Assessment process and accepts this amendment.	Schedule E -4
	5. Train Operations The Agreement will specify all reasonable operational, communication and procedural requirements for Train Services.	QR accepts this recommendation.	Schedule E - 5
	The Third Party is to comply with all laws, Safeworking Procedures and Safety Standards and all other train operations requirements in the Agreement. QR will comply with its Safeworking Procedures and Safety Standards and may, acting reasonably, vary the Safeworking Procedures and Safety Standards at any time following consultation with, and reasonable notice to, the Third Party. Subject to such variations being on safety grounds, each party is responsible for its costs (including the costs of additional or modified equipment) in complying with the Safeworking Procedures and Safety Standards. Safeworking Procedures and Safety Standards will as far as practicable be consistent for all railway operators on the nominated network.	<p>The QCA has only referred to variations to Safeworking Procedures and Safety Standards and to the Rollingstock Interface Standards in its recommendations although there are more circumstances of changes to System-wide Requirements that should be included and dealt with consistently. QR has redrafted this principle of Schedule E to pick up all changes to System-wide Requirements.</p> <p>QR has also redrafted this principle to reflect that QR should be able to make a change for a System-wide Requirement on safety grounds provided that it does not act in a manner which prevents or hinders access – see discussion in Table 6 – Interface Considerations in regard to QR’s non-delegable obligations and system-wide requirements.</p> <p>QR has also redrafted this principle to provide that a Third Party’s consent to a change for a System-wide Requirement on other than safety grounds should not be unreasonably withheld. This reflects the QCA’s discussion surrounding this recommendation in the Final Decision.</p>	Schedule E - 5
	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.	QR accepts this recommendation.	Schedule E - 5
	The Agreement will specify relevant Rollingstock Interface Standards. QR and the Third Party must agree upon a party competent to provide certification for the Third Party’s Rollingstock and Rollingstock configurations. QR has a right to view a certificate of compliance and associated test results from a Third Party in order to confirm that the Rollingstock and Rollingstock configurations are as agreed by the two parties in the Interface Risk Management Plan. QR	<p>Refer to discussion Table 6 – Interface Considerations (recommendations at points 4 and 5) for QR’s approach to authorisation of Rollingstock and Rollingstock configurations that has been reflected in Schedule E.</p> <p>QR does not disagree in principle with the third sentence of this recommended</p>	Schedule E - 5

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	has a right to provide input to the safety regulator regarding the authorisation of the Third Party's Rollingstock. Rollingstock and Rollingstock configurations that are certified will be included in the Rollingstock Specification as being authorised to operate on the nominated network subject to continuing compliance with the Rollingstock Interface Standards and the Rollingstock Specification.	principle however it is inconsistent with QR's process for authorisation of Rollingstock and Rollingstock configurations and should not therefore be inserted. Refer 8.1.6. Consistent with the Interface Risk Management process QR has replaced the words "Rollingstock Interface Standards" in the last sentence of this recommended principle with "Interface Risk Management Plan".	
	The Third Party 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 Agreement.	QR accepts this recommendation.	Schedule E - 5
	QR may suspend the operation of Rollingstock and Trains for demonstrated non-compliance that has safety implications until such non-compliance is rectified. If the source of non-compliance does not have safety implications, the Third Party should be required to rectify the non-compliance within a reasonable period of time, but not be suspended. If the non-compliance is not rectified within a reasonable period, QR may suspend the operation of the affected Rollingstock and Trains.	QR's concern with the QCA's recommended inspection and audit rights is that it will be difficult for QR to ascertain when a Third Party is complying or not (despite the requirement for QR and Third Party to advise each other of non-compliance with IRMP). Refer to discussion in Table 6 - Interface Considerations (recommendation 9). QR accepts this recommendation in principle but for the sake of clarification has used slightly different wording to ensure that: (i) the circumstances of non-compliance are clear (ii) what may be considered a "safety implication" is clear; and (iii) when the suspension may be lifted is clear	Schedule E - 5
	The Third Party must ensure all loadings of Rollingstock are secure.	QR accepts this recommendation.	Schedule E - 5
	QR may, acting reasonably, vary the agreed Rollingstock Interface Standards at any time on safety grounds, after consultation with the Third Party. Otherwise, QR may, acting reasonably, negotiate any other changes with the Third Party. Where any changes in the standards necessitate modification of the Third Party's Rollingstock, the costs of such modifications are to be borne in the manner agreed by the parties or, failing agreement, as determined by an	This recommendation is inseparable from the recommendation regarding variations to Safeworking Procedures and Safety Standards. QR's view is that both should be regarded as a change to a System-wide Requirement. See earlier discussion in this Table on changes to System-wide Requirements and the discussion in Table 6 – Interface Considerations.	Schedule E - 5

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	expert.		
	QR will not exercise its suspension power in relation to a Third Party's Rollingstock and Trains in such a manner as to hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act.	QR does not accept the inclusion of this principle since Schedule E and the resultant Access Agreement will clearly specify the circumstances in which QR can suspend a Third Party's Rollingstock or Trains as well as the consequences (as agreed between the parties) of failure to comply with such contractual obligations. In addition the Access Agreement already contains a provision to comply with all laws (including the QCA Act). See also the discussion in Table 6 – Interface Considerations (recommendation 10).	Schedule E - 5
	A Third Party Operator could reserve the right that if its Rollingstock is suspended without reasonable justification, then QR would be liable for the loss thereby caused.	While QR accepts this recommendation in principle, QR has used different wording in its drafting to achieve the same result for the same reasons outlined in the response above in Table 6 – Interface Considerations (recommendation 11).	Schedule E - 5
	6. Infrastructure Management QR is responsible for the management and control of the nominated network.	QR accepts this recommendation.	Schedule E - 6
	QR will carry out maintenance work on the nominated network such that, subject to any agreed criteria, the infrastructure is consistent with the agreed Rollingstock Interface Standards and the Third Party can operate Train Services in accordance with its Train Service entitlements.	While QR accepts the deletion of the words “subject to applicable operational constraints”, the Network Management Principles have regard to the scheduling of track possessions amongst other things and should be specifically referred to.	Schedule E -6
	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 Third Party can operate Train Services in accordance with its Train Service entitlements.	QR accepts this recommendation.	Schedule E -6
	The Agreement will contain principles for consultation with the Third Party regarding maintenance which will impact on the Third Party's schedule.	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA after consultation with Operators and incorporated in the Draft Decision.	Schedule E -6
	The Agreement will contain provisions requiring the parties to provide advice to each other in relation to	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA after	Schedule E -6

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	factors that could affect the Third Party's operation of Train Services or the integrity of the nominated network.	consultation with Operators and incorporated in the Draft Decision.	
	The Third Party may 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 crossing protection. 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, it is consistent with the agreed Rollingstock Interface Standards and the Third Party can operate Train Services in accordance with its Train Service entitlements.	<p>For the purposes of consistency with the QCA's position on inspections and the fact that Principle 12 of Schedule E now deals with the parties' mutual rights of inspection, the first sentence of this principle has been deleted.</p> <p>QR accepts the recommended amendments to the second sentence of this principle but for the same reasons stated in the response to the second dot point of 6, the Network Management Principles should be specifically referred to.</p>	Schedule E -6
	The Agreement will specify the reasonable terms and conditions on which the Third Party will have access to the nominated network for the purpose of inspecting the standard of the infrastructure comprising the nominated network.	For the purposes of consistency with the QCA's position on inspections and the fact that Principle 12 of Schedule E now deals with the parties' mutual rights of inspection, this principle has been deleted.	
	Once developed, Network Management Principles should be incorporated by reference in the Agreement.	QR accepts the inclusion of this principle as the Network Management Principles will be part of QR's Undertaking and the Access Agreement provides for QR to comply with the terms of that Undertaking in effect from time to time – refer to Principle 21 of Schedule E. However, QR has deleted the words “once developed” given the intention to finalise the NMP in conjunction with the undertaking.	Schedule E -6
	<p>7. Incident Management</p> <p>Prior to the commencement of Train Services the Third Party is required to develop an Emergency Response Plan containing procedures for dealing with incidents that must be compatible with QR's emergency procedures.</p>	QR is prepared to accept the amendment to this principle.	Schedule E -7
	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 Third Party, take any action it considers reasonably necessary to recommence services as soon as possible. The Third Party is to	<p>It is QR's understanding that the QCA accepts that the Third Party is responsible for the recovery of its Rollingstock in accordance with its Emergency Response Plan and QR has clarified this in Schedule E.</p> <p>QR has also made two other minor wording changes to the QCA's recommended</p>	Schedule E -7

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	<p>cooperate and assist with the restoration of train movements in accordance with directions from train controllers seeking to coordinate the clearance of network blockages. Any Third Party so directed and not involved in the blockage, should be adequately compensated for doing so and is entitled to expect that all rail operators be subject to the same obligation. QR has the right to pass through the cost of clearing the blockage to the party that has broken down.</p>	<p>amendment to this principle to clarify that restoration of the network is the primary objective of clearance of blockages and to reflect that the costs of clearing a blockage should be met by the party that “caused the damage” rather than “broken down” in order to cover all types of incidents</p>	
	<p>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 Agreement. The parties must cooperate in any investigation and consult in good faith in relation to the implementation of any recommendations.</p>	<p>QR accepts this recommendation.</p>	<p>Schedule E - 7</p>
	<p>8. Environmental Protection and Other Issues All environmental laws, regulations and relevant guidelines must be complied with.</p>	<p>QR accepts this recommendation.</p>	<p>Schedule E - 8</p>
	<p>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 a Third Party’s operations and be established in that Third Party’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.</p>	<p>QR accepts the recommended amendment to this principle as being consistent with the latest QR position put to the QCA.</p>	<p>Schedule E - 8</p>
	<p>The Third Party 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 Third Party 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.</p>	<p>QR accepts the insertion of this principle as being consistent with the latest QR position put to the QCA.</p>	<p>Schedule E - 8</p>
	<p>A Third Party operator should comply with its obligations under the EPA Act, including any notices</p>	<p>QR accepts the insertion of this principle</p>	<p>Schedule E - 8</p>

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	or directions it received from the EPA. Failure to comply with such an obligation and for that failure to cause or threaten serious environmental harm establishes grounds for a material event of default.		
	QR reserves the right to temporarily suspend the right of a Third Party operator to operate on the relevant network section in the event that, in QR's reasonable opinion, the operator's Train Services cause or threaten material or serious environmental harm. QR will not exercise this suspension power in such a manner as to hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act.	QR is prepared to accept the insertion of the first sentence of this principle save that the reference should be to the "nominated network" rather than the "relevant network section". For the same reasons as stated in 5 above QR has not included the second sentence of this principle.	Schedule E - 8
	A Third Party Operator could reserve the right that if its Train Services are suspended on environmental grounds without reasonable justification, then QR would be liable for the loss thereby caused.	For the same reasons as stated in 5 above QR has redrafted this principle to achieve the same result	Schedule E - 8
	9. Accreditation QR must have and maintain Accreditation as a Railway Manager under the <i>Transport Infrastructure Act 1994</i> to the extent required to perform its obligations under the Agreement.	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA after consultation with Operators and incorporated in the Draft Decision.	Schedule E - 9
	An operator Accredited as a Railway Operator under the <i>Transport Infrastructure Act 1994</i> must operate Train Services and the operator must maintain such Accreditation to the extent required to perform its obligations under the Agreement.	QR accepts the recommended amendment to this principle	Schedule E - 9
	10. Third Party's Staff and associated Train Services The Third Party is responsible for demonstrating to the Rail Safety Accreditation Unit through the joint Safety Risk Assessment process, the competence of its staff performing safety related work.	As the QCA's recommended amendment implies demonstration of competence of staff to the <u>Rail Safety Accreditation Unit</u> , it is inconsistent with the Interface Risk Assessment process. See Principle 11 below and the discussion on Table 6 – Interface Considerations. In addition the correct terminology is "Interface Risk Assessment" rather than "Safety Risk Assessment".	Schedule E -10
	QR reserves the right to temporarily suspend the right of the Third Party's Train Services to operate on the nominated network in the event of breach or likely breach of any laws relating to rail safety, QR train control directions, Safeworking Procedures or Safety	QR accepts the recommended amendment to this principle.	Schedule E -10

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	Standards.		
	QR will not exercise this suspension power in such a manner as to hinder or restrict access to the declared service in any way contrary to s104 and s125 of the QCA Act.	For the same reasons stated in 5 above, QR has not included this principle.	
	A Third Party Operator could reserve the right that if its Train Service is suspended without reasonable justification, then QR would be liable for the loss thereby caused.	For the same reasons stated in 5 above QR has redrafted this principle to achieve the same result	Schedule E -10
	<p>11. Safety Risk Management Safety risk management must be addressed by risk identification through an interface risk management process and the formulation of an Interface Risk Management Plan. The parties will be required to comply with the Interface Risk Management Plan.</p>	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA after consultation with Operators and incorporated in the Draft Decision. Only the titles of the process and the Plan have been changed to be consistent with Part 8 – Interface Considerations.	Schedule E - 11
	<p>12. Inspection and Audit Rights Rights of inspection and audit in relation to the Third Party’s compliance with the Agreement and inspection of Trains and Rollingstock shall be included in the Agreement.</p>	For the purposes of consistency with the QCA’s position on inspections this principle should now reflect <u>mutual</u> rights.	Schedule E - 12
	The Agreement will specify the terms and conditions on which QR can carry out such inspections and audits.	QR accepts this recommendation.	Schedule E - 12
	QR will, in carrying out any inspection or audit, give the Third Party reasonable notice and use reasonable endeavours to minimise disruption to the Third Party’s Train Services.	QR accepts this recommendation, as a result QR is prepared to accept the amendment to this principle to delete the words “except in emergencies”.	Schedule E - 12
	<p>13. Insurance The Agreement will provide for insurances to be effected by the parties to appropriately provide for the relevant insurance risks.</p>	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA after consultation with Operators and included in the Draft Decision.	Schedule E -13
	<p>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</p>	QR accepts this recommendation.	Schedule E - 14

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	the wilful default or negligent act or omission of that party or its staff.		
	The Third Party 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 an act or omission by QR, its servants or agents, caused or contributed to the damage or harm.	QR objects to the exclusion recommended to be inserted into this principle as it is inapplicable for all types of traffics. QR maintains that in respect of general freight the Third Party or its customer is in the best position to know what is being carried and how it has been loaded therefore is better able to manage the risk. QR has compromised on its position by stipulating the exception should only not apply to intermodal and any other traffics where the commodity carried is not specified in the Access Agreement. In addition, QR sees no reason why the exception should be couched in different terms to that in the preceding principle.	Schedule E -14
	15. Limitation of Liability The liabilities of the parties for default shall be limited as agreed in the Agreement.	QR accepts the amendment to this principle.	Schedule E - 15
	Neither party has any liability for consequential loss or damage or loss of profits in any circumstances.	QR accepts this recommendation	Schedule E - 15
	Claims by either party must be lodged within twelve months of the occurrence of the event or circumstance giving rise to the claim.	QR accepts this recommendation. The amendment is consistent with the principle in the later Schedule E provided to the QCA and incorporated in the Draft Decision	Schedule E - 15
	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 Agreement.	QR accepts this recommendation	Schedule E - 16
	A material change shall be limited to changes in taxes, laws or funding from QR's government infrastructure payments. The effect of material changes should be assessed on a case-by-case basis and in consultation with the Third Party. There should be no assumption of automatic flow-on effect of material changes.	The three dot points of this principle clearly set out what a material change is and the process by which the net impact on QR can be determined on a case by case basis i.e. consultation and dispute resolution. The addition of the last sentence is confusing and has not been included.	Schedule E -16
	Any dispute regarding the impact on Access Charges as a result of a material change will be determined by an independent expert.	QR accepts this recommendation	Schedule E - 16
	17. Disputes Any dispute between the parties is to be firstly	QR accepts this recommendation, however, the later Schedule E provided to the QCA and incorporated in the Draft Decision provided for the referral to the	Schedule E -17

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	referred 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.	respective chief executives to be “in writing”. This appears to be an oversight in the Final Decision.	
	<p>18. Default, Suspension and Termination The Agreement will specify reasonable events of default and mutual rights of suspension and termination having regard to the commercial interests of both parties.</p>	QR is prepared to accept the recommended amendments to this principle.	Schedule E -18
	<p>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 Agreement.</p>	<p>The later Schedule E provided to the QCA after consultation with Operators and incorporated in the Draft Decision included a second sentence as follows: “The 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.” This appears to be an oversight in the Final Decision and the omitted sentence should be retained.</p>	Schedule E -19
	In the event that infrastructure on specified corridors of the nominated network is damaged or destroyed 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.	Again this principle varies slightly from the later Schedule E provided to the QCA and incorporated in the Draft Decision wherein the words “lightly trafficked” were inserted before “corridors of the nominated network” in the first line and the words “or destroyed” after “damaged” in the second line were deleted. These amendments should be retained.	Schedule E -19
	In the event of a force majeure, which prevents performance for a period of six months, the other non-affected party may terminate the Agreement.	<p>Note again that this principle is not consistent with the later Schedule E provided to the QCA and incorporated in the Draft Decision which provided as follows: “The Access Agreement will provide for a process that might result in termination of the Agreement in the event that circumstances of prolonged force majeure prevents the performance by a party of its obligations.” This appears to be an oversight in the Final Decision and the latter version should be retained.</p>	Schedule E -19
	<p>20. Assignment The Third Party may assign the whole of its rights and obligations under the Agreement to a related body</p>	QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA and incorporated in the Draft Decision.	Schedule E -20

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	<p>corporate, provided that the assignor remains liable for the performance of obligations under the Agreement or to a non-related body corporate, with the prior written consent of QR (such consent not to be unreasonably withheld).</p>		
	<p>A change in control of a Third Party not a publicly listed corporation will be deemed to be an assignment of the Agreement.</p>	<p>QR accepts this recommendation. This principle is consistent with the later Schedule E provided to the QCA and incorporated in the Draft Decision.</p>	<p>Schedule E - 20</p>
	<p>21. QR's Undertaking QR will comply with all applicable laws and the terms of QR's Access Undertaking in effect from time to time.</p>	<p>This principle is consistent with the later Schedule E provided to the QCA and incorporated in the Draft Decision however if the words "including the ring fencing obligations" are inserted after "QR's Access Undertaking" then the following two principles inserted by the QCA are unnecessary.</p>	<p>Schedule E -21</p>
	<p>The Agreement will contain provisions which require information provided to Network Access by the Third Party to only be used for the purposes of the Agreement and to be kept confidential in that it not be provided to any other person (including other employees or agents of QR) without the consent of the Third Party.</p>	<p>See comment to 21 above. This recommendation is inconsistent with specific recommendations of the QCA in relation to Part 3 of the Undertaking – Ring Fencing Arrangements where the QCA acknowledged that there are situations where confidential information may be provided by Network Access to other parties without the consent of the information owner. QR has dealt with this issue in detail in Table 2 - Ringfencing Arrangements</p>	
	<p>The obligation to keep such information confidential will continue to bind the parties for a reasonable period of time following the expiry of the Agreement.</p>	<p>In addition, since QR has accepted an obligation in Part 3 of the Undertaking to enter into a confidentiality deed with an Access Seeker and for that deed to continue to have application unless otherwise agreed by the parties through the life of the Access Agreement, this recommendation is unnecessary. Refer to QR response in Table 2 - Ringfencing Arrangements.</p>	

Table 8 – Reference Train Service – Schedule F

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
<p>Specification Of The Reference Train Service</p>	<p>QCA does not automatically accept that the predominant service operating on the corridor should be the reference train service. Instead, those elements of QR’s reference tariffs that are necessary will be adopted, having regard to the cost-reflective tariff structure and the efficient utilisation of the infrastructure</p> <p>In future reviews, the reference train service will be judged on the basis of providing the cost efficient outcome for end customers.</p>	<p>The QCA in the Final Decision discussion accepts the use of the predominant train for the first regulatory period (p320). This is consistent with QR’s comments in its response to the draft undertaking.</p>	
<p>Reference Tariff Structure</p>	<p>Reference Tariffs are to be structured as follows:</p> <ol style="list-style-type: none"> 1. A usage based charge which reflects the incremental operating and maintenance cost expressed on a per GTK basis 	<p>Despite its reservation in regard to the four part tariff approach as outlined in QR’s previous submissions to the QCA, QR is prepared to accept that the proposed Final Decision four part reference tariff structure be applied in relation to coal carrying service. It is QR’s view that the appropriate tariff structure for non-coal carrying services should be determined at a future time after considering the issues specific to that service.</p> <p>QR is prepared to accept a usage charge as proposed and also intends to accept the value of the QCA’s proposed gtk charge for all systems.</p>	<p>Schedule F – Section 1 Part A (3.1)</p>
	<ol style="list-style-type: none"> 2. A capacity charge that covers the incremental cost to the network owner of the provision of capacity expressed per train path 	<p>Despite its reservation in regard to the four part tariff approach as outlined in QR’s previous submissions to the QCA, QR is prepared to support the inclusion of a capacity charge as part of the four-part tariff.</p> <p>The issue that has arisen is how this charge is to be quantified. In the Draft Decision the QCA put forward a position with regard to the quantification of capacity for the purpose of calculating access charges. The QCA recommended a cost per train path of \$500 for the Blackwater System. QR outlined its concerns with the QCA’s approach in a capacity paper as part of QR’s response to the Draft Decision. QR supports a higher rate than that proposed by the Authority. QR therefore does not agree with the Draft Decision’s quantification of incremental costs nor with the methodology proposed by the QCA for analysing the capacity consumption of the train service.</p> <p>The QCA is yet to comment on QR’s concerns outlined in QR’s response to the Draft Decision. The QCA advised that the Authority intends to produce a paper addressing relevant capacity matters subsequent to the release of the Final Decision. Until the QCA releases this paper QR’s position must necessarily remain unaltered, but QR would welcome the opportunity to discuss this issue further once the QCA has firmed</p>	<p>Schedule F – Section 1 Part A (3.1)</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		its position on this issue.	
	3. A charge for the use of electric overhead network only if an above-rail operator uses it.	Despite its reservation in regard to the QCA's four part tariff approach as outlined in QR's previous submissions to the QCA, QR is prepared to support this recommendation.	Schedule F – Section 1 Part A (3.1)
	4. An allocative charge for the remainder of QR's revenue which is based, for each cluster, on equal amounts being collected on: <ul style="list-style-type: none"> • a per tonne basis; and • a per net tonne kilometre basis. 	Despite its reservation in regard to the QCA's four part tariff approach as outlined in QR's previous submissions to the QCA, QR is prepared to support the per tonne basis and per net tonne basis as a general principle, although QR does not necessarily accept that there is any persuasive logic for these charges to be collected in equal amounts. For instance the issues that arise due to the unique characteristics of the Coppabella/Burngrove Corridor warrant an alternative to be considered.	Schedule F – Section 1 Part A (3.1)
	5. QCA accepts future changes to the reference tariff structure (components) where evidence emerges that changes are appropriate through the provision of further information in future reviews.	QR accepts this recommendation.	
Specification of Reference Train Service	6. The reference train service is not to specify gross tonnages	QR accepts this recommendation.	
	7. Capacity consumption to be determined by reference to the standard train path for the corridor rather than the dominant train.	<p>QR and the QCA are not far apart on this issue. The QCA recommends that the standard train path (STP) be adopted as a form of 'currency' for assessing capacity utilisation. This approach is consistent with QR's approach. However, in QR's response to the Draft Decision QR considered that the complexities associated with this approach had not been fully taken into account by the QCA.</p> <p>The QCA has identified, among others, the following complexities associated with the manner in which trains are actually expected to operate on the system:</p> <ul style="list-style-type: none"> • variability in sectional running times; • the practicality of loading a system to saturation point; and • train delays that can be expected to occur. <p>In terms of the standard train path these complexities can be ignored. However, QR considers they should not be ignored in the context of assessing the transit time that a train service is actually likely to achieve and therefore the capacity utilisation of the train service. Therefore, the use of STPs simply transfers these issues to the assessment of how many STPs a train service uses.</p> <p>Additionally, the characteristics of a STP will change over time (eg in the event of an infrastructure enhancement the location of the system bottleneck is likely to change. The resulting transit time of the STP is also likely to change).</p> <p>QR is developing a transit time for the reference train service that will reflect QR's</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>commitment to what, on average, can be achieved by the reference train service and will apply as a maximum average irrespective of future variations to the rail infrastructure, unless otherwise agreed with operators as part of above-below rail trade offs.</p> <p>Therefore from a reference viewpoint, QR believes that the "benchmark" utilisation of capacity should be established by the reference train service. That is the reference train service should use 1 reference train path. However, it is true to say that, when QR analyses the capacity utilisation of a new train service that differs from the reference train service, the STP will be used as a form of "currency" in analysing capacity implications of the new train service. Therefore, the QCA and QR's approaches are not divergent in the outcomes they seek. (It should be noted that the QCA has supported the development of this transit time for the reference train service).</p> <p>Therefore, in order to satisfy this approach, QR has adjusted its cost/path so that it is reflective of the value of a reference train path.</p>	
	8. Allowance to be made for acceptable variations as itemised in the QCA's consideration in Chapter 10 of the Draft Decision.	QR accepts this recommendation.	
Reference Tariff Clusters	9. The QCA remains of the view that mines on the Gregory branch should be subject to the South Goonyella reference tariff.	<p>With regard to this recommendation QR's view has been as outlined in its response to the Draft Decision, that where the reference tariff proposed by QR for the Gregory branch is within the scope of the QCA approved pricing limits set out in the undertaking, then there should be no objection to that reference tariff. QR's concerns stem from the potential that the QCA proposed tariffs for the Gregory branch and the South Goonyella system would provide a significant incentive for mines to transfer tonnages from the Blackwater system (where they currently operate) to the Goonyella system. The consequence of this transfer would be under-utilised QR infrastructure assets and the potential stranding of those assets.</p> <p>In the Final Decision the QCA argues that if the Goonyella and Blackwater systems were competing, it may be expected that market forces would ensure that mines having a genuine choice would attract the lowest prices from both systems.</p> <p>However, in a 'real world' competitive environment a company may 'reasonably' be able to use pricing to direct the actions of their clients to preferred infrastructure utilisation. This is no more than what banks do with their fee structure to encourage internet and phone banking. The banking environment is clearly competitive with both banks and other financial institutions competing for customers.</p> <p>Despite QR's view as to the inappropriateness of the proposed limitations on QR's legitimate commercial prerogative within approved pricing methodologies QR has</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>prepared an alternate tariff structure that provides recognition of the QCA’s concerns regarding the variances in reference access charges between Gregory branch and the South Goonyella system. The altered structure has resulted in a compromise where the difference between the South Goonyella reference tariff and the Gregory branch tariff is significantly reduced from that originally proposed by QR and, importantly from QR’s perspective, where there is also a material lessening of the risk of asset stranding to that under the QCA proposal. This alternate approach also avoids the real risk of future access charge increases for Blackwater area mines hauling to Gladstone. (For details of the revised reference tariff structure refer Table 16).</p>	
	<p>10. In assessing QR’s reference tariffs, the QCA accepts QR’s proposed clusters except that the take-or-pay component of the reference tariff should operate on the basis of system-wide activity levels.</p>	<p>QR accepts the recommendation regarding the proposed clusters. Whilst QR does not agree with the QCA’s approach to take or pay, particularly in terms of the effectiveness of the take or pay, in the interests of progressing the finalisation of the undertaking process QR has effectively adopted the QCA recommendation regarding take-or-pay. (For comment on take or pay provisions refer Table 9 – Volume Management)</p>	<p>Schedule F - Section 1 Part B</p>
<p>Assigning New Mines to Clusters</p>	<p>11. In assessing reference tariffs the QCA considers that access charges for new mines (other than the Gregory branch):</p> <ul style="list-style-type: none"> • should be subject to a test that a mine further away than existing mines on a system cannot be arranged in a cluster such that, in absolute terms, it pays less per tonne than those other mines, based on the reference train service; and • should not cause new mines to pay a higher ϕ/ntk component of the reference tariff than mines closer to their destination so long as this meets the first test and does not increase existing users’ access charges. 	<p>The QCA’s recommendations present a presumption that, provided application of the nearest reference tariff would meet the incremental cost for a new mine, then that is the rate that should be applied. Effectively, QR would be obliged, in such a situation to charge that mine no more than the incremental cost it imposes on the network. QR, on the other hand, considers that the reference access price should be determined after balancing the interests of the new mine and the existing users on the system. Where it is determined that an existing reference tariff should not apply, the new mine should form a new cluster and a new reference tariff presented to the QCA for endorsement.</p> <p>The QCA states in the Final Decision that it “<i>recognises that there is no ‘correct’ or definitive formula that can be applied for adding new mines to clusters.</i>” This statement -would appear to support QR’s view that the issue of adding new mines to clusters should be undertaken on a case-by-case basis. The QCA goes on to state that it considers its approach appropriate because existing mines would be no worse off under its incremental cost methodology. The Authority considers its approach to be consistent with the public interest because it does not distort the development of new resources and the QCA considers that it is ‘<i>likely</i>’ to be consistent with maximising the output of Queensland’s coal mining industry.</p> <p>QR considers that the QCA recommendation may not fully balance the interests of new and existing mines. Whilst QR is strongly supportive of new mine development it has great difficulty with an approach that has the clear potential for distorting competition between mines. A potential consequence over time could be to support marginal use of existing infrastructure by new mines, resulting in the potential decline in tonnages from existing mines that make positive contributions to fixed costs and hence the risk of long</p>	<p>6.3.4</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		term under-recovery of costs by QR.	

Table 9 – Volume Management – Part 7 of Undertaking

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Resumption of capacity rights			
Threshold Triggers for Resumption	<p>1. A threshold trigger for resumption of access rights is established where a railway operator, for any reason other than a failure of QR to make the railway operator’s access rights available, does not operate:</p> <ul style="list-style-type: none"> - a train service on a scheduled train path 7 or more times out of any 12 consecutive times on which that particular scheduled train path exists; or - all of its nominated weekly train services for 7 or more weeks out of any 12 consecutive weeks. 	QR has previously agreed to this recommendation.	7.4.2(a)
	<p>2. QR is allowed to issue a notice in writing which reduces the railway operator’s access rights, either by:</p> <ul style="list-style-type: none"> - deleting the relevant scheduled train path from the railway operator’s access agreement; or - reducing the railway operator’s relevant nominated weekly train services, provided that the number of remaining nominated weekly train services is no less than the railway operator’s average weekly usage during the relevant 12 weeks <p>once the threshold trigger has been satisfied and provided:</p> <ul style="list-style-type: none"> - the railway operator is not able to demonstrate, to QR’s reasonable satisfaction, a sustained requirement for the access rights; and - QR is satisfied that it can demonstrate that it has a reasonable expectation of alternative demand to justify a resumption of capacity 	<p>QR accepts this recommendation for general application, however continues to have concerns about the requirement for QR to have alternate demand prior to instigation of a resumption in the context of volume management in the central Queensland coal region.</p> <p>As discussed in QR’s response to the QCA’s Draft Decision, QR believes that the QCA’s recommendation could provide unintended and undesirable incentives in those areas of QR’s network covered by a reference tariff. For instance, it could encourage an operator to overstate its capacity requirement in order to support a lower reference tariff, and subsequently prevent QR from taking that capacity back off the operator notwithstanding it is not being used and QR is unable to recover its fixed costs of providing access from the tonnages likely to be railed. It appears illogical for QR to be able to review reference tariffs because of significant variations in tonnage from that forecast, but not be able to reduce an operators capacity entitlement so that it is in line with the volume assumed in the development of reference tariffs, simply because QR cannot demonstrate an alternate demand for the capacity in question.</p> <p>While this concern was raised in QR’s response to the QCA’s Draft Decision, the QCA did not address or acknowledge this concern in any way in its Final Decision, therefore the QCA’s views on the issues raised by QR are unclear.</p> <p>On this basis, QR has accepted the QCA’s recommendation that it only be able to resume capacity if it has alternate demand for that capacity, with the exception of in relation to coal carrying train services operating in central Queensland. It is important to recognise that there are other constraints on QR exercising its resumption power and, critically, QR will still not be able to resume capacity if the access holder can demonstrate a future</p>	7.4.2(a)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>3. Network Access is required to notify all relevant parties on the Register of Interested Parties when a resumption test is triggered.</p>	<p>requirement for that capacity.</p> <p>In its response to the QCA's Draft Decision, QR had proposed that, as an alternate to providing train control diagrams, if an access seeker wanted QR to resume capacity, it would submit a request, and QR would consider if it could trigger a resumption and, if not, would continue to consider resumption for 3 months – QR suggested that inclusion on the register of interested parties may be a means to achieve this. The QCA has supported the approach of notifying interested parties when the resumption test is triggered, rather than requiring the public availability of train control diagrams for this purpose.</p> <p>In implementing this recommendation, QR has identified that providing this advice to all parties on the register of interested parties results in substantially broader dissemination of information than is required in order to achieve the intent of this recommendation, with the potential for perverse consequences. QR believes that information about an access holder's performance under its access agreement is fundamentally confidential between QR and that access holder. As such, advising other stakeholders about an access holder's performance under its access agreement (such as when the triggers for resumption occur) is providing information that would normally be considered confidential, and should therefore only be disclosed in limited circumstances where it is necessary for this information to be given to another party in order to achieve the QCA's policy intent. For example, a stakeholder may request to be advised of when a resumption test trigger occurs in order to obtain otherwise confidential market information about its competitor, rather than because it has an interest in acquiring the additional capacity. QR does not believe that this provision should be able to be used in this manner.</p> <p>Therefore, in implementation, QR has provided certain criteria that must be met for this information to be provided, in order to ensure that it is given to parties that have an interest in acquiring the capacity. These include:</p> <ul style="list-style-type: none"> • The separation of the register of interested parties into a committed capacity register and a capacity resumption register. This reflects the different purposes for which parties may seek inclusion on a register. • The committed capacity register will serve the same purpose as the previous register of interested parties. It should be recognised that not all parties on the committed capacity register will be interested in seeking a resumption of capacity if the opportunity occurs (eg the committed capacity register will include parties that have an interest in ensuring that, at the end of their contract term, the capacity underlying their existing access rights is not sold to another party before they have an opportunity to seek access to that capacity). • The capacity resumption register will be limited to access seekers that are seeking access rights that can only be provided if capacity is resumed from an 	7.5.2

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>existing access holder (i.e. the circumstances in which the access seeker has a legitimate right to require QR to resume capacity).</p> <p>QR remains of the view that there should be a sunset provision on an access seekers right to receive information about when the triggers for resumption of capacity from an access holder have occurred. As the information being provided would normally be considered confidential between QR and the existing access holder, QR should only be providing the information to stakeholders where they have a continuing interest in triggering the resumption of capacity. As such, QR has proposed that an access seeker only remain on the capacity resumption register for six months, unless otherwise agreed between QR and the access seeker.</p>	
	<p>4. The life of a particular transgression of the capacity resumption trigger is one month.</p>	<p>QR had agreed to this recommendation in its response to the QCA's Draft Decision. The primary reason for including this restriction was that QR's opportunity to commence the resumption process after the triggering of the test for capacity resumption should not be open ended. However, when considering the logistics of monitoring capacity usage and collecting and collating this information, QR is concerned that a 30 day timeframe will not allow sufficient opportunity to consider whether to act on the trigger, particularly if such action is to be sought by an access seeker. As a result, QR has proposed to extend this period to 60 days, as this will provide more time for the necessary exchanges of information and decisions, while still providing a reasonably short sunset on QR acting upon a resumption trigger.</p>	7.4.2(a)
	<p>5. Where QR reduces a railway operator's access rights, the access charge payable will be varied in accordance with the terms of its access agreement.</p>	<p>QR has previously agreed with this recommendation.</p>	7.4.2(c)
Resumption Disputes	<p>6. Where QR makes a decision to reduce a railway operator's access rights in accordance with the stated procedure, and the railway operator believes that QR's decision is not justified in the circumstances, the railway operator may challenge the decision through the dispute resolution procedure for capacity resumption disputes.</p>	<p>QR has previously agreed with this recommendation.</p>	7.4.2(d)
	<p>7. QR will not implement the reduction unless and until the dispute resolution procedure has been exhausted in favour of its decision, provided it is not otherwise required to do so by law.</p>	<p>QR has previously agreed with this recommendation.</p>	7.4.2(d)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>8. The following procedure to apply with respect to capacity resumption disputes is incorporated. A party (either QR, a railway operator or an access seeker) instigates the process by giving notice to the QCA and the other relevant parties indicating the capacity sought and detailing the circumstances which have led to the satisfaction of the trigger. The QCA would then substantiate the information and appoint an expert to hear the matter:</p> <ul style="list-style-type: none"> - The expert must decide which party is more likely to utilise the capacity subject to resumption. Once an expert has been appointed, parties would be allowed 10 business days to make submissions. Sensitive commercial information could be provided to the expert in confidence; - The expert could award costs if any party to a resumption dispute is found to have acted unreasonably. <p>The expert would be allowed 10 business days in which to deliver a decision, which would become effective at the expert's discretion.</p>	<p>A dispute in relation to capacity resumption will only arise under an access agreement (i.e. the circumstances giving rise to the dispute can only occur in relation to an existing access holder not fully utilising its access rights). QR agrees to a dispute resolution procedure being specified in the access agreements in relation to this. However, the efficacy of having a different dispute resolution procedure for this issue compared to other issues under the agreement is unclear. QR prefers to include this in the standard dispute resolution process, however, and to include in the undertaking that the access agreement must include the key additional elements proposed by the QCA in relation to such disputes.</p> <p>As such, QR proposes that such disputes be referred to the dispute resolution procedure under the agreement, provided that:</p> <ul style="list-style-type: none"> • the dispute goes directly to expert resolution, which will be binding on the parties (i.e. no recourse to dispute courts); • each party must submit all submissions and supporting documentation to the expert 14 days after appointment of the expert; and • the expert must make its determination not later than 14 days after the expiry period for submissions. <p>In the interests of promoting the streamlined dispute resolution process that the QCA is envisaging, QR has not included the first step of the QCA's proposed process, i.e. review by QCA prior to referral to an expert. QR has excluded this for the following reasons:</p> <ul style="list-style-type: none"> • The purpose of the QCA review is unclear. It appears that the QCA intends to review and validate the positions of both parties before accepting that it is a legitimate dispute and referring it to an expert for resolution. QR believes that, in practice, this would result in the QCA duplicating much of the process that the expert will undergo in considering the dispute; and • It adds an additional step in the process, therefore adding to the timeframe for resolution of the dispute. <p>QR remains concerned that the specification of these timeframes will not guarantee a timely resolution of any relevant dispute, as it may not be possible to find an expert willing to accept such time constraints, and even if accepted, there is no consequence for the expert subsequently not meeting that timeframe. As a result, QR recommends that this process be reviewed at the next regulatory review to determine if it has been an effective means of providing a streamlined dispute resolution process.</p>	7.4.2(d) & (f)
	<p>9. An end user is permitted to change its rail operator by serving notice on Network Access where a rail operator can demonstrate that it has an unconditional contractual entitlement with an end-user for capacity entitlements in preference to an incumbent rail operator. The contractual</p>	<p>QR remains concerned that this recommendation weakens the certainty afforded to an operator through its rail haulage agreement. However, QR is prepared to accept this recommendation in principle.</p> <p>QR proposes to incorporate this recommendation into the undertaking by treating it as a mandatory secondary trade. As a result, all of the requirements of a secondary trade (discussed in relation to recommendations 17 to 20 below) will need to be satisfied. QR</p>	7.4.4(f) & (g)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>commitment would be unconditional other than as to resumption of any incumbent's capacity entitlement (if any) necessary to allow the operator to operate train services under its contract with the end user on notice from the end user to QR;</p> <ul style="list-style-type: none"> - This right would be subject to the satisfaction of capacity transfer conditions. 	<p>(discussed in relation to recommendations 17 to 20 below) will need to be satisfied. By incorporating this into the undertaking in this manner, QR will address the issues raised in the QCA's recommendations regarding the conditions under which such a transfer may occur (i.e. an contractual commitment that is unconditional with limited exceptions, and the requirement to satisfy capacity transfer conditions).</p>	
	<p>10. The threshold triggers, resumption dispute process and an end user's right to change its rail operator, as outlined above, will be included in access agreements.</p>	<p>QR agrees that this is necessary in order to give effect to the provisions in the undertaking. However, where QR already has an obligation under the undertaking, it is not considered necessary to restate that the access agreement will reflect that obligation. Rather, QR has only explicitly included obligations for matters to be incorporated into an access agreement where a matter will only be raised in the context of an access agreement and the undertaking does not otherwise place such an obligation upon QR.</p>	7.4.2
Instigation of Capacity Resumption	<p>11. Network Access has a right to resume capacity.</p>	<p>QR has previously agreed with this recommendation.</p>	7.4.2
	<p>12. Access seekers have the right to apply for a resumption of an incumbent's capacity, subject to providing Network Access with a commitment to use the capacity subject to resumption. Any failure to do so would be relevant in the context of the expert's assessment of QR's cost of resuming capacity.</p>	<p>QR has agreed in principle to this recommendation in its response to the QCA's Draft Decision. However, QR considered that it was necessary to add further detail to ensure that QR bears no net cost associated with this right. While not directly incorporating this in its recommendation, the QCA accepted this in its accompanying discussion.</p> <p>As a result, QR has included in the undertaking provisions such that, if an access seeker is advised that a resumption trigger has occurred, it may request that QR serve a notice upon the existing access holder commencing the resumption process. QR will be obliged to serve such notice provided that the following conditions have been met:</p> <ul style="list-style-type: none"> • The access seeker must provide a legally enforceable undertaking that it will reimburse QR for all QR's costs associated with seeking the resumption, including any dispute resolution; • The access seeker must provide a legally enforceable undertaking that it will take up the access rights should they be resumed, with the timing of resumption and takeup to be concurrent; • The access seeker must provide a legally enforceable undertaking that it will indemnify QR if it incurs a net loss as a result of the resumption and reallocation of the access rights; and • QR may require security in respect of the above, to reflect its revenue risk associated with the agreement. <p>QR has not included in the undertaking that any failure to provide such guarantees will be relevant in the context of the expert's assessment of QR's cost of resuming capacity, as, from a legal perspective, this implies that QR may still be obliged to resume such capacity in the absence of such guarantees, which is inconsistent with the intent of the</p>	7.4.2(e)

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		above requirements.	
Capacity Relinquishment and Secondary Trading			
Surrendering Access Rights	<p>13. A rail operator has a right to relinquish its capacity entitlement if it cannot effect a “trade” in accordance with the secondary trading arrangements, subject to a relinquishment fee:</p> <ul style="list-style-type: none"> - For coal traffics, the fee for relinquishment will be equivalent to 2 years payment of the take or pay component of the operator’s access charge; and - For non-coal traffics, the relinquishment fee will be the amount that would be achieved over 2 years from the contribution the traffic makes to the fixed costs of operating the rail infrastructure. 	<p>This recommendation is consistent with the proposal put forward by QR and, as such, is acceptable to QR. QR is concerned, however, with the limited nature of the consequences for operators for failure to meet their contractual commitments. When this is combined with other limitations on volume management, QR considers that there is a lack of balance in the resulting commercial outcome. This issue is discussed further in Table 4 – Pricing Principles (recommendations 6, 7 and 8).</p>	7.4.3(a) and definition of ‘relinquishment fee’ in Part 10
	<p>14. The capacity entitlement may be reassigned at the same time that it is relinquished in order for the incumbent party’s relinquishment fee to be mitigated.</p>	<p>This recommendation is consistent with the proposal put forward by QR and, as such, is acceptable to QR.</p>	7.4.3(b)
	<p>15. QR is obliged to assign surrendered access rights to the next access seeker that seeks rights consistent with those that have been surrendered.</p>	<p>This recommendation is acceptable to QR subject to the negotiation of an acceptable access agreement</p>	7.4.3(b) and 7.4.1(a)
	<p>16. If QR could not have supplied a train path to the next access seeker without using some part of the surrendered capacity, then the access rights are considered consistent and the surrendered party’s obligation to QR would then be terminated.</p>	<p>This recommendation is generally acceptable to QR.</p>	7.4.3(b)
Secondary Trading in Access Rights	<p>17. The transfer of unwanted capacity rights between participants, including partial transfer, is allowed, by bilateral negotiation, subject of the establishment of adequate notification procedures between QR and capacity holders:</p> <ul style="list-style-type: none"> - Secondary trading can occur within each system on the central Qld coal network and between mines in the Stanwell cluster; - Secondary trading can occur across different non-coal traffics. 	<p>QR had proposed that secondary trading can occur for consistent train service entitlements, where consistent was considered in terms of:</p> <ul style="list-style-type: none"> • definition of capacity (i.e. scheduled or cyclic service); and • origin and destination. <p>QR argued that to trade a service, it had to have the same origin and destination, as it is not possible to trade a path that you don’t have (i.e. to a different location). The QCA’s recommendation provides for a broader interpretation of consistency. While QR still considers that, philosophically, it is not possible to trade a service that is of a fundamentally different nature (such as to a different origin or destination), given QR’s approach to allowing access seekers to relinquish access rights, and the ability to reduce the relinquishment fee if the resulting capacity is used to provide access to another access seeker, QR considers that there is little difference in the practical application of QR’s approach compared to the QCA’s recommendation.</p>	7.4.4

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		<p>As such, QR has included provisions in the undertaking to reflect the QCA's recommendation, however QR has needed to modify the way it deals with secondary trading to provide for circumstances in which paths with a different origin and/or destination are traded, while still meeting the other criteria for secondary trading (such that QR not be financially disadvantaged as a result of the trade). These modifications include:</p> <ul style="list-style-type: none"> • Where a service is traded for another with a different origin and/or destination, the transfer fee is determined in a manner consistent with the way in which the relinquishment fee is determined, i.e. two years of take or pay (or for non coal traffics two years contribution to common costs) reduced to reflect the extent to which the access rights are being taken up by another access seeker. In relation to non-coal services, the extent of paths taken up by an access seeker will be assessed in relation to the number of train paths used over a common section of corridor. However, in relation to coal carrying services in central Queensland, within an individual system, the extent of paths taken up by an access seeker will be assessed in relation to the number of train paths used and the kilometres travelled per train service. This provides for the QCA's recommendation that access holders and access seekers be able to trade paths within an individual coal system, while still ensuring that QR will not be financially disadvantaged from the trade. • Trades will only be permitted where the access seeker is seeking capacity for <i>new or additional</i> access rights (where, for central Queensland coal services, new or additional access rights will be related to traffic volumes not already included in the forecast traffic volume used to determine reference tariffs). This requirement has been incorporated to ensure that QR is not financially disadvantaged from a trade. In this context, if the new access was already incorporated into QR's forecast volumes, then QR has already determined the access charge for all access holders on the assumption that the traffic will operate. To reduce the relinquishment fee for an access holder due to a transfer of capacity for such access rights to an access seeker will result in QR being financially worse off, as QR is not gaining any volume in addition to that it had assumed for the purpose of developing the access charge. • In the event that there are two access holders wishing to trade a path to a given access seeker, QR has provided for priority to be given to the trade that reflects a closer match with the existing access holder's entitlement. 	
	18. The overriding requirement of any secondary trade is that QR is made no worse off financially.	<p>QR agrees with this recommendation. In implementing this, QR has set out specifically what the costs (if any) associated with a secondary trade will be by identifying a transfer fee and specifying how it will be calculated.</p> <p>For transfers involving the same origin/destination, the transfer fee will be equivalent to</p>	7.4.4(d) & (e)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>the present value of any future expected reductions in contributions to QR's common costs, including a return on assets used for the provision of the service over the life of the original access holder's access agreement, due to the net effect of the transfer. The transfer fee applicable for trades with a different origin and/or destination is discussed in relation to recommendation 17.</p> <p>QR considers that its approach to establishing the amount of the transfer fee will meet the objective of this recommendation. QR's approach also has the benefit of allowing access holders and access seekers to understand how the transfer fee is calculated and themselves estimate the likely cost involved. As such, it provides a more transparent approach to the determination of the transfer fee.</p>	
	<p>19. The following factors are adequately recognised in secondary trades:</p> <ul style="list-style-type: none"> - Products carried and the nature of other arrangements; - Rollingstock used; and - Safety and environmental controls adopted. 	<p>Agreed. QR will implement this by requiring that the trade can only occur if the access rights are incorporated in a new or varied access agreement developed in accordance with the requirements of the undertaking.</p>	7.4.4(d) & (e)
	<p>20. Access agreements are allowed to make appropriate adjustments to access rights so that transferability can be accommodated.</p>	<p>QR accepts this recommendation. As noted in QR's response to the QCA's Draft Decision, the simplest way to accommodate secondary trading (given the expected lack of homogeneity of train services) is through renegotiation of the relevant agreements. In the discussion included in the Final Decision, the QCA has accepted this approach. Therefore, QR will implement this recommendation by providing a mechanism for relinquishment of access rights in an access holder's access agreement and incorporating the transferred access rights in a new or varied access agreement with the access seeker.</p>	7.4.4(c)
	<p>21. Subject to a commerciality test, QR is not allowed to unreasonably withhold consent for the transfer of capacity.</p>	<p>QR accepts this recommendation. For the purpose of clarification, QR intends that the 'commerciality test' be that the trade satisfies all of the requirements of the undertaking for a secondary trade to occur, which are outlined in QR's response to the QCA's recommendations 17 to 20 above.</p>	
Take or Pay			
	<p>22. Take or pay arrangements for even railings which are only triggered for a mine where:</p> <ul style="list-style-type: none"> - The system in which the mine belongs fails to rail 90% of the monthly average requirement for that cluster (adjusted for the number of days in the month); - The mine fails to rail 90% of its monthly average requirement (adjusted for the number of days in the month); and - Over the preceding 3 months, the operator and the mine fail to rail 90% of their average requirement over that period; 	<p>This take or pay provision is essentially as the QCA had recommended in its Draft Decision. QR had objected strongly to the QCA's proposed take or pay arrangement in its response to the QCA's Draft Decision, as being ineffective in either encouraging operators to forecast accurately, giving operators an incentive to rail evenly, or providing any mitigation for QR's revenue exposure. QR proposed an alternate take or pay provision that used much of the structure of the QCA's proposal, but had smaller "grace" periods and fewer hurdles prior to the implementation of the take or pay.</p> <p>The QCA has responded identifying that there is merit to QR's concern about not encouraging operators to forecast and contract accurately, hence the inclusion of recommendation 23. However, the QCA believes that there are costs for other elements of the coal chain for even railing, and that it is not appropriate for QR to drive behaviour</p>	Schedule F – 3.2

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>requirement over that period;</p> <p>with the charge being calculated on the basis of 20% of the difference between the actual access charges paid and the access charges that would have been paid if 90% of the commitment had been hauled.</p>	<p>that is to the detriment of the coal chain through imposing high take or pay arrangements for even raiiling. It should be noted that while QR accepts that it is inappropriate for QR to drive behaviour that is to the detriment of the coal chain, QR disagrees that the take or pay provisions that it had proposed would have the undesirable effect raised by the QCA.</p> <p>However, while QR disagrees strongly with the QCA’s recommendation, QR is prepared to utilise the QCA’s recommended take or pay provisions in order to progress finalisation of the undertaking. In implementing this take or pay provision, QR has clarified and, in some cases, modified the recommendation, in the following manner:</p> <ul style="list-style-type: none"> • The first limb of the QCA’s recommendation refers to take or pay only being triggered where the system in which the mine belongs fail to rail 90% of the monthly average requirement. The QCA’s intent in incorporating the system wide trigger is to provide that access holders only pay take or pay when total system railings are down, and therefore QR is not achieving its required contribution to common costs. In this context, QR has interpreted “average requirement” for the system as volume forecast that has been used for the determination of reference tariffs, as it is only when the forecast volume is railed that QR will achieve full contribution to its common costs. • In relation to the other limbs of the take or pay recommendation, QR has assumed that the QCA intended that the take or pay only be triggered where the mine and/or the operator fail to rail 90% of their average requirement. In this context, QR has interpreted “average requirement” for the individual mine/operator as their contracted volume, as this reflects the mine/operator’s individual commitment; • For ease of application, QR would prefer to only apply the take or pay to the allocative components of the reference charge. Therefore, QR has converted the take or pay amount of 20% of the access charge to the equivalent amount expressed as 30% of the allocative components of the reference tariff. 	
	<p>23. Take or pay arrangements for mines failing to rail committed tonnages only where:</p> <ul style="list-style-type: none"> - The corridor in which the mine belongs fails to rail 100% of the total annual commitment for that corridor; and - The mine fails to rail 100% of its annual commitment; <p>with the charge being calculated on the basis of 20% of the difference between the actual access charges paid by the mine over the course of the year and the access charges that would have been paid if 100% of that mine’s commitment had been hauled.</p>	<p>QR recognises that the QCA had added this take or pay provision to deal with QR’s concerns about the lack of ability to ensure that mines contract to tonnages that they reasonably expect to haul.</p> <p>However, QR is concerned that by adding the first provision, the QCA has effectively allowed mines to average their performance over the 12 month period and over the system. As a result, once again the take or pay provision has become quite ineffective in providing a direct consequence to an operator or mine that is failing to meet its contractual commitment.</p> <p>However, again in order to facilitate a finalisation of the undertaking, QR will utilise a take or pay provision generally in accordance with the QCA’s recommendations. In implementing this take or pay provision, QR has clarified and, in some cases, modified the recommendation, in the following manner:</p>	Schedule F – 3.2

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<ul style="list-style-type: none"> • Once again, the QCA has added an overarching requirement that, for take or pay to trigger, total system railings must be down. Consistent with QR’s comments in relation to recommendation 22, QR understands that the purpose of this is that take or pay only apply where QR is not achieving its required contribution to common costs. In order to more effectively achieve this outcome, QR has altered the recommendation such that take or pay only apply where the system fails to rail 100% of the volume forecast that has been used for the determination of reference tariffs, as it is only when the forecast volume is railed that QR will achieve full contribution to its common costs. • This take or pay component will be applied progressively through a financial year, rather than as a single payment at the end of the financial year; and • As discussed in relation to recommendation 22, for ease of application, QR would prefer to only apply the take or pay to the allocative components of the reference charge. Therefore, QR has converted the take or pay amount of 20% of the access charge to the equivalent amount expressed as 30% of the allocative components of the reference tariff. 	
	<p>24. Where a mine is abandoned, maximum liability of the mine be limited to a 2 year take or pay requirement, based on 20% of the annual commitment as contained in the contract.</p>	<p>This is similar to the arrangements discussed at recommendation 13, which provides that an access holder can voluntarily relinquish capacity for a relinquishment fee equal to two years worth of take or pay. However, in the specific circumstances where relinquishment is due to the abandonment of a mine, the QCA has effectively stated that the relinquishment fee will be halved (by only applying the second component of take or pay to determine the fee).</p> <p>QR is concerned with the QCA’s approach of halving the relinquishment fee in this circumstance. Simply from the point of view of the validity of QR’s contractual relationship, and the incentive to be placed on the mine to not contract for longer than it believes it has adequate reserves to support, “just in case”, it is considered inappropriate to have such a small consequence associated with relinquishment, even where this is the result of a mine’s abandonment.</p> <p>As such, QR proposes to not distinguish between the circumstances resulting in a relinquishment, and in all cases will apply the relinquishment fee discussed in relation to recommendation 13.</p>	

Table 10 – Demand Forecast

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Volume forecast in net tonnes	1. In assessing QR's reference tariffs, the QCA has adopted Asia Pacific Coal Services conservative traffic task forecasts for the purposes of assessing forecast costs and unit rates of references tariffs.	<p>QR has reviewed its tonnage forecasts in light of the QCA's recommendation as well as its own current expectations of volume. After careful consideration, QR has decided to accept the QCA's recommended volume forecast for the total central Queensland coal region, as follows:</p> <ul style="list-style-type: none"> • 2001/02 – 130.0 million tonnes • 2002/03 – 132.6 million tonnes • 2003/04 – 135.2 million tonnes • 2004/05 – 134.2 million tonnes <p>The mine by mine forecasts that QR has assumed to make up this total volume is provided as a confidential attachment to this submission.</p>	<p>The volume forecasts are an input to the reference tariffs. The volume forecasts are not incorporated in the undertaking.</p> <p>Attachment A</p>
Volume forecast in parameters for reference tariffs	2. The remaining parameters have been calculated by using individual mine-by-mine trip lengths and assuming the operation of the reference train service.	Agreed.	<p>The volume forecasts are an input to the reference tariffs. The volume forecasts are not incorporated in the undertaking.</p>

Table 11 – Stand Alone Costs

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Stand Alone Assets	<p>1. In assessing reference tariffs, the QCA has assigned to non-coal traffics the incremental capacity costs associated with the paths those trains consume.</p>	<p>QR has two concerns with the approach that the QCA has adopted in relation to the application of the incremental capacity costs of non-coal traffics for the purposes of determining stand alone costs for coal traffics.</p> <p>First, as discussed in its response to the QCA’s Draft Decision, QR remains of the belief that the QCA is effectively ‘double counting’ the effect of non-coal traffics, as it has both optimised the configuration of assets in the Blackwater system (on the north coast line section) and deducted the forward looking incremental capacity cost associated with non-coal traffic on the central line of the Blackwater system. The QCA’s view of this issue appears to be that the north coast line and central line sections of the Blackwater system should be treated as separate systems. In this context, the QCA argues that it is inappropriate to use a forward looking assessment of incremental capacity cost on the north coast line section as, in the absence of non coal services, the configuration of the system would be substantially different (i.e. would be half single line with passing loops). Therefore, the north coast line section had to be addressed through an asset optimisation process. However, the QCA then appears to be stating that although the configuration of the central line is broadly the same as it would be in the absence of the non coal traffic, it is appropriate to deduct the forward looking incremental cost of capacity for non coal traffics as a proxy for the effect of optimising the asset value.</p> <p>On this basis, it appears that the QCA is agreeing that the two approaches (optimisation of the asset value and deducting incremental cost of capacity from allowable revenue) are intended to address the same issue. Therefore, by applying the second approach as well as the first, the QCA appears to be stating that its recommendation on optimisation of the asset value of the Blackwater system (in order to only reflect the requirements of coal traffics) has been insufficient to achieve its objective.</p> <p>In this context, it is worth revisiting the analysis that QR undertook to assess the extent of asset value optimisation that would be required to reflect the requirements of a coal only Blackwater system. It is important to recognise that additional passing loops and duplication may be installed in a system for a number of reasons – while the most obvious of these is to create additional train paths and increase the capacity of the infrastructure, a second important reason for additional infrastructure is to reduce the transit time of trains using that system, therefore increasing the capacity of the rollingstock. Therefore, the analysis that QR performed on the Blackwater system was to identify how much infrastructure could be removed from the system if coal trains were the only trains operating on the system, <i>and they operated to their current performance levels, the most critical of which is transit time</i>. The result of this analysis is that in the absence of all non-coal traffic using the Blackwater system (both on the central line and north coast line segments), the same transit time could be maintained if approximately 50km of the north coast line segment was single line track with passing loops. If the performance of the trains were to be separated between the two segments, under the optimised scenario, the transit time of trains on the north coast line section would be slower than at present (as they would experience crossing delays that are currently not incurred), but would be faster on the central line section (as there would be</p>	<p>The estimate of stand alone assets is used to determine reference tariffs. It is not specified in the draft undertaking.</p>

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>less crossing delays than at present due to the absence of non-coal traffics). The QCA has accepted this analysis as reasonable.</p> <p>It is important to then recognise the relationship between the asset value optimisation process and ‘optimisation’ that occurs through the application of this recommendation. In the context of the Blackwater system, QR believes that there should be a check applied to the extent of ‘optimisation’ on the central line that occurs through the application of the forward looking incremental capacity cost. From a principle point of view, it is illogical that a ‘forward looking’ optimisation approach be used if it would give a significantly different answer to the ‘backward looking’ approach of optimising the asset value of the system. Therefore, even if it were considered that QR could still accommodate coal services at current service standards with no duplication on the Blackwater system (an assumption that QR believes is unrealistic), it would be inappropriate if the forward looking approach optimised more track km from the central line than the total duplicated track km on that sector. If the forward looking approach were to give such a result, it doesn’t necessarily mean it is incorrect, but rather that the system is now at a different stage in its development to what it would be in the absence of the non – coal traffic (i.e. the same argument the QCA has used in relation to the north coast line section of the Blackwater system).</p> <p>In the event that the effect of a forward looking optimisation approach based on the incremental cost of capacity is used, it is also important to consider how this methodology is applied. In this context, there are two important issues:</p> <ul style="list-style-type: none"> • Should non-coal traffics be charged the long run incremental cost of capacity? From an economic point of view, only long run users of the network should be charged the long run incremental cost. Short run users, such as ad hoc trains should be charged at minimum a short run incremental cost of capacity, which is likely to be much lower than the long run incremental cost, if not zero. Medium run users, such as marginal traffics with fairly short term access agreements, should be charged a price that reflects the opportunity cost of that capacity over the term of their contract. • How many reference train paths do non coal traffics use? The path utilisation of non-coal trains that, in the long term, run to a different section running time or different priority to coal trains should be assessed using the methodology determined by QR for assessing capacity utilisation of non-standard trains. However, before applying this cost to non-coal traffics, they should be given the opportunity to respond to a pricing incentive to minimise their impact on the system, therefore their path utilisation. It may be more cost effective for these trains to run to the same section run times as the coal trains, therefore only using one reference train path. This is consistent with the approach that the QCA has used in respect to developing reference tariffs for coal carrying services, where in the absence of better information, it established the price of a reference train path as equal to one standard train path. <p>In summary, QR continues to believe that further thought needs to be given to the application of this recommendation. In applying a forward looking optimisation via the incremental cost of capacity for non coal trains, it is important that the long run incremental cost of capacity only be applied to</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		<p>committed long run users of capacity. Further, it is inappropriate to use this approach if the result of its application is inconsistent with the result of an asset optimisation process, which looks at how much less infrastructure can be used to provide access only for coal traffics, while retaining the current standard of service. This principle has already been endorsed by the QCA.</p> <p>As noted earlier, QR is of the view that if it were to provide access only to coal services on the Blackwater system, in order to maintain existing transit times, it would require approximately 50km of the duplication on the north coast line segment, as well as all existing infrastructure on the central line segment. On this basis, QR has not applied any further optimisation to its asset valuation on the Blackwater system.</p>	
Efficient stand alone maintenance costs	2. The QCA has assessed stand alone maintenance costs on the basis of the costs that would be incurred by the railway assuming it only carried coal traffic	QR accepts this recommendation.	Part 10 - definition of stand alone costs.
	3. The QCA has assessed the current level of inefficiency in the maintenance of QR's coal corridors at approximately 15%.	<p>The QCA stated that its assessment is based on the potential for QR to improve its unit cost of maintenance, rather than considering the scope for reducing the maintenance task. In its response to the QCA's Draft Decision, QR argued strongly that the QCA's anticipated cost reductions could not be achieved through improvements in efficiency (evidenced by reductions in the unit rate of maintenance activities). QR estimated that it could achieve the following gains in efficiency:</p> <ul style="list-style-type: none"> • Major maintenance (including the associated management fee) – 0% • Routine maintenance (including the associated management fee) - 15% <p>QR estimated that this would broadly equate to an average achievable efficiency gain of 7.5%, as major and routine maintenance contribute broadly equally to the total maintenance cost.</p> <p>A close review of the QCA's analysis of achievable efficiency gains identifies that the QCA anticipates that QR can achieve an improvement in the efficiency of major maintenance tasks (including the associated management fee) of 7.3%, with the remainder of the efficiency gains being expected to be achieved from routine maintenance activities (including the associated management fee).</p> <p>QR remains strongly of the view that its cost of performing major maintenance tasks is comparable, or even cheaper, than able to be sourced elsewhere. QR believes that the information put forward by the QCA on benchmark unit rates for major maintenance tasks reflects inappropriate assumptions and as a result does not result in realistically achievable unit rates. Therefore, QR does not accept that it should be able to achieve, on average, a 7.3% improvement in the unit cost of major track maintenance.</p> <p>Having said this, QR has chosen to accept the 15% targeted reduction in maintenance costs in order to progress finalisation of the undertaking and associated reference tariffs. However, in the event that this targeted cost reduction can be achieved, it must be emphasised that this will only occur through a combination of improvements in efficiency and a reduction in maintenance tasks performed.</p>	The required cost reduction is used to determine reference tariffs. The required cost reduction is not specified in the draft undertaking.

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Other Costs	<p>4. The QCA has estimated the system wide and regional cost components of stand alone cost on the basis of an allocation of QR's costs as set out in Table 12.5 of the Draft Decision.</p>	<p>The primary purpose of the QCA's allocations of QR's costs as set out in Table 12.5 of the Draft Decision is to determine an estimate of stand alone regional and system wide costs, which is then used in the determination of reference tariffs for coal carrying services.</p> <p>Prior to the QCA's Draft Decision, QR developed an allocation methodology for regional and system wide costs in a format specifically for the QCA's purposes. This allocation methodology was used to derive a total regional and system wide cost for the coal system that QR would accept as a reasonable proxy for stand alone costs. However QR considered that there were pluses and minuses on individual items and therefore the allocations were not intended to reflect QR's assessment of the stand alone costs for each individual item within the regional and system wide costs.</p> <p>As highlighted in its response to the QCA's Draft Decision, QR is concerned that the adjustments that the QCA has made to QR's proposed allocation methodology result in the total allowed regional and system wide costs that can be recovered from coal services being less than that which will be reasonably incurred in providing these services. QR's concerns focused on the costs associated with scheduling and train control (given that QR has agreed to move the below rail aspects of train control to Network Access, thereby removing some of the existing economies of scope in the provision of scheduling and train control) and regulatory compliance costs.</p> <p>Notwithstanding this concern, QR has decided to accept the total allowance for regional and system wide costs recommended by the QCA for incorporation in reference tariffs for coal carrying services in central Queensland, in order to progress finalisation of the undertaking and associated reference tariffs.</p> <p>As noted above, the allocation methodology put forward by QR and adopted by the QCA was developed in a format specifically for the QCA's purposes. QR does not normally collect and collate information in this format. Therefore, for the purposes of future allocations of system wide costs to the central Queensland coal region, QR will derive a simple allocation methodology that provides a consistent allocation of costs to the central Queensland region as has been accepted by the QCA. This simple allocation methodology will be incorporated into QR's Costing Manual.</p>	<p>The allowable regional and system wide costs are used to determine reference tariffs. These costs are not specified in the draft undertaking.</p>

Table 12 – Asset Valuation and Depreciation

Issue	QCA Recommendation	QR Position	Amendment to Undertaking
Asset Valuation Approach	1. In assessing QR's reference tariffs, the QCA has valued all assets in the coal network, including land, on a DORC basis.	QR agrees with this approach.	6.1.1(b); 6.2.4(a); Part 10
	2. In relation to land, the QCA has recommended: <ul style="list-style-type: none"> - A market rent on the raw land value is imputed through applying the real cost of capital to the raw land value, and indexing over time; and - Corridor assemblage costs are recognised, but amortised over the period from the time the corridor was originally acquired to the end of QR's current sublease. 	QR is prepared to accept this recommendation.	QR's asset base and operating expenses used in the assessment of reference tariffs amended accordingly.
Determination of the Replacement Cost of Assets	3. In assessing QR's reference tariffs, the QCA has calculated the current replacement cost of the network by: <ul style="list-style-type: none"> - Allowing for costs associated with financing construction; and - Recognising costs of altering infrastructure from the original track construction. <p>The resulting valuation was less than 1% different from QR's proposed gross replacement value of \$2.847 billion, therefore the QCA has accepted QR's gross replacement value.</p>	On this basis, QR has made no further adjustments to the gross replacement value used in the development of its reference tariffs.	
	4. In assessing QR's reference tariffs, the QCA accepts that the unit rates developed by GHD are appropriate to use for asset valuation purposes.	QR understands that, in considering whether or not it will accept QR's gross asset value (discussed at recommendation 3 above), the QCA assessed that value by reference to unit rates developed by GHD. QR agrees that this is an appropriate way in which to assess QR's nominated gross replacement value of assets.	
Depreciation Methodology	5. In assessing QR's reference tariffs, the QCA has recognised asset consumption through depreciation charges and adopted a straight line pattern of depreciation.	QR has previously accepted this recommendation.	Part 10 – definition of Depreciated Optimised Replacement Cost.

Issue	QCA Recommendation	QR Position	Amendment to Undertaking
	<p>6. In those instances where an asset's condition is inconsistent with its age, the asset valuation should be adjusted accordingly.</p> <p>In relation to this point, the QCA has deducted an additional \$34 million from the depreciated value of the Goonyella system to reflect the fouled state of the ballast.</p>	<p>As stated in QR's response to the QCA's Draft Decision, QR agrees that, where the condition of an asset is inconsistent with its age and where this will result in a reduction in the useful life of the asset, it is appropriate to adjust the value of that asset. However, in the case of the Goonyella system ballast, the ballast is a component of the asset that is maintained over the life of the asset. Poor condition of the ballast does not reduce the life of the track (which will be replaced when the sleepers and rail become excessively worn), but does result in a higher than otherwise expected maintenance cost in the short term. As such, QR disagrees that the condition of the ballast warrants a reduction in the valuation of the Goonyella track asset.</p> <p>QR expects that there will be a number of minor variations between QR's assumptions in developing reference tariffs and the QCA's assumptions in assessing those reference tariffs, and the overall effect of a difference in QR's and the QCA's assumptions on this matter may not be material.</p>	
Determination of Asset Lives	<p>7. In assessing QR's reference tariffs, the QCA has measured asset lives in terms of their physical lives.</p>	<p>QR believes that asset lives should be assessed as the shorter of their physical lives or their economic lives (e.g. as determined by the life of the mines that the infrastructure is supporting), i.e. the <i>useful</i> life of the asset. In the discussion accompanying this recommendation, the QCA has agreed with this view.</p> <p>QR has previously accepted that there is insufficient information available at present to support an assessment of economic life of the infrastructure being shorter than its physical life. On this basis, QR is prepared to accept that, the asset valuation for the purpose of developing reference tariffs, reflects the physical lives of QR's assets. However, as highlighted in QR's response to the QCA's Draft Decision, in future reviews, it should not be automatically presumed that the useful life of the assets will not be constrained by their economic life, and the economic life of the mines should be monitored to identify if it is necessary to accelerate the depreciation of QR's assets.</p>	Part 10 – definition of Depreciated Optimised Replacement Cost.
Optimisation of Below Rail Infrastructure	<p>8. In assessing QR's reference tariffs, the QCA has undertaken a limited brownfields optimisation which resulted in \$33.6 million of track, comprising approximately 50 km between Rocklands and Callemondah, being excised from QR's asset valuation.</p>	<p>This is as proposed by QR, therefore QR accepts the QCA's recommendation, however notes the interrelationship of this recommendation with the QCA's recommendation 1 in Table 11 dealing with stand alone cost.</p>	Part 10 – definition of Depreciated Optimised Replacement Cost. Reduction to asset value is included in reference tariff calculation.

Table 13 – Past Contributed Assets

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Extent of Recognition by QR of past contributed assets.	<p>1. In assessing QR's Reference Tariffs, the QCA has taken the following position on contributed assets:</p> <ul style="list-style-type: none"> • Elements of contributed assets will not influence the process that establishes reference tariffs. • QR may have contractual obligations to honour past user-funded contributions, and will be dealt with through the respective rail haulage agreements. • Past contributions should only be recognised where a claimant can demonstrate that recognition beyond the existing haulage contract is justified by way of documentary evidence presented, in which case specific adjustments would be made to access charges. 	<p>QR does not object to the intent of these recommendations. QR considers that these recommendations are designed to clarify the treatment of contributed assets in terms of the assessment of reference tariffs and do not require a specific amendment to the undertaking. The recommendations merely reflect QR's existing legal obligations with regard to contributed assets and, as such, QR is supportive of them.</p>	
Quantification of past contributed assets.	<p>2. In assessing QR's reference tariffs, the QCA considers that where further recognition of past contributed assets is warranted:</p> <ul style="list-style-type: none"> • The approach applied in quantifying the extent of this recognition should be dependent upon the nature of this commitment that the mine is able to produce • The inclusion of recognition through adjustments to reference tariffs is the most effective means of ensuring equity between users • There should be no minimum threshold on the value of contributed assets to be included in that recognition • Credits should be independent of the identity of the contributor • Taxation effects should not be considered unless they are specifically identified in supporting documentary evidence 	<p>QR's response to the recommendation at point 1 applies equally here.</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	3. All of the recognition should be deemed to relate to below-rail assets.	In making this recommendation, QR is of the understanding that the QCA is not seeking specific amendment to the undertaking, but is providing its views as to the treatment of contributed assets in the event of disputation. QR believes that this is a matter that should be best dealt with in light of the particular circumstances on a case-by-case basis.	

Table 14 - Rate of Return

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Method to Estimate Allowed Rate of Return	1. In assessing QR's reference tariffs, the QCA will apply the Capital Asset Pricing Model (CAPM) to estimate QR's rate of return, which will be presented as the weighted average cost of capital (WACC).	QR accepts this recommendation. The rate of return is used to determine reference tariffs. The detail of the methodology used to determine the rate of return is not specified in the draft undertaking.	
Segment Specific or QR Wide Rate of Return	2. In assessing QR's reference tariffs, the QCA will estimate the rate of return on a segment specific basis, that is on the undiversifiable risks faced by Network Access in the provision of access for coal traffics.	QR accepts this recommendation. The rate of return is used to determine reference tariffs. The detail of the methodology used to determine the rate of return is not specified in the draft undertaking.	
Key Parameters in WACC/CAPM Derivation	3. QCA estimated the risk free rate as 5.97% based upon the 10 year Commonwealth Government bond yield averaged over the 20 trading days commencing 22 May 2001.	<p>QR agrees with the methodology that the QCA has adopted in determining the risk free rate, including the following key elements:</p> <ul style="list-style-type: none"> • the use of the average 10 year Commonwealth Government bond yield over 20 trading days; and • agreement between QR and the QCA of the commencement date for the measurement of the bond yield, with other stakeholders being advised of the commencement date following the completion of the 20 trading days. <p>As noted in its response to the QCA's Draft Decision, the Final Decision does not provide for a formal approval of reference tariffs – this can only be achieved as part of the approval of QR's access undertaking. QR has adopted a risk free rate of 5.97% in developing its revised reference tariffs (as incorporated in the revised draft undertaking).</p> <p>The risk free rate is incorporated in the rate of return used to determine reference tariffs. The risk free rate is not specified in the draft undertaking.</p>	
	4. QCA estimated the market risk premium as being 6%.	<p>In both its original submission to the QCA on Asset Valuation, Depreciation and Rate of Return, and its response to the QCA's Draft Decision, QR has identified that it believes that a market risk premium of 7% is reasonable. QR has argued against the QCA's assumption of 6%, on the basis that the empirical evidence is not conclusive about a recent decline in the market risk premium. QR's position on this issue is supported by Green Edwell Consultants and Education Management and Consulting Services.</p> <p>The QCA has not accepted QR's arguments on this matter. QR remains firmly of the view that the QCA has not demonstrated conclusive evidence of a recent reduction in the <i>long term</i> market risk premium. However, in order to facilitate a finalisation of the access undertaking and reference tariffs for coal carrying services, QR will accept the QCA's recommendation of a 6% market risk premium.</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
		The market risk premium is incorporated in the rate of return used to determine reference tariffs. The market risk premium is not specified in the draft undertaking.	
	5. QCA adopted a gearing level of 55%.	QR accepts this recommendation. The gearing level is incorporated in the rate of return used to determine reference tariffs. The gearing level is not specified in the draft undertaking.	
	6. QCA accepted that the cost of debt should equal the risk free rate plus a premium of 120 basis points.	<p>As noted in QR's response to the QCA's Draft Decision, it is coincidental that QR and the QCA have agreed on a debt margin of 120 basis points, given the different assumptions on the credit rating that would be applied to a below rail coal business. QR has adopted a debt margin of 120 basis points in developing its revised reference tariffs (as incorporated in the revised draft undertaking).</p> <p>The debt premium is incorporated in the rate of return used to determine reference tariffs. The debt premium is not specified in the draft undertaking.</p>	
	7. QCA estimated the asset beta at 0.45 that translates into an equity beta of 0.76.	<p>In its response to the QCA's Draft Decision, QR has argued for an asset beta of 0.5 on the basis that the QCA has chosen an asset beta at the lower end of the reasonable range. QR's position on this issue is supported by Green Edwell Consultants and Education Management and Consulting Services.</p> <p>The QCA has not accepted QR's arguments on this matter. QR remains firmly of the view that the QCA has adopted an asset beta at the lower end of the reasonable range. However, in order to facilitate a finalisation of the access undertaking and reference tariffs for coal carrying services, QR will accept the QCA's recommendation of an asset beta of 0.45.</p> <p>The asset beta is incorporated in the rate of return used to determine reference tariffs. The asset beta is not specified in the draft undertaking.</p>	
	8. QCA estimated gamma (reflecting the value of imputation credits) at 0.5.	<p>QR had argued for a review of the value of gamma on the basis of recent research indicating a value of between 0 and 0.25. QR had provided research from Cannavan, Finn and Gray to support this view. The QCA has not accepted these arguments. While QR does not have any additional evidence to support its position, QR does not agree with the QCA recommendation. However, in order to facilitate finalisation of the undertaking and reference tariffs, QR is prepared to accept the QCA's recommendation. The issue should be reconsidered at the next full review of reference tariffs in light of emerging research.</p> <p>The undertaking specifies that the value of gamma is to be agreed between QR and the QCA, therefore the value of gamma has not itself been incorporated in the draft undertaking.</p>	
	9. QCA applied a post tax nominal framework with tax	QR had argued for the statutory tax rate to be applied to QR's accounting	6.2.4(a)

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	liabilities on forecast taxable income assessed at the prevailing statutory tax rate.	profit for the services (adjusted for permanent tax differences) in order to promote price stability over time. The QCA has not accepted these arguments and QR does not have any additional evidence to support its position. While QR does not agree with the QCA on this issue, in order to facilitate finalisation of the undertaking and reference tariffs, QR is prepared to utilise the recommended framework.	
	10.QCA estimated inflation (2.52%) using the level implied from the 10 year Commonwealth bond data from nominal and Commonwealth capital indexed bonds	<p>QR agrees with the methodology that the QCA has adopted in determining the risk free rate, including the following key elements:</p> <ul style="list-style-type: none"> • the inflation rate is implied from the difference between the 10 year Commonwealth Government bond yield and the Commonwealth capital indexed bond yield; and • the difference is measured over the same period as for the assessment of the risk free rate. <p>QR has adopted an inflation rate of 2.52% in developing its revised reference tariffs (as incorporated in the revised draft undertaking).</p> <p>The inflation rate is incorporated in the modelling for the determination of reference tariffs. The inflation rate is not specified in the draft undertaking.</p>	
	11. The estimated WACC for the purpose of determining reference tariffs for coal carrying services is 9.52% nominal pre tax.	<p>As highlighted above, QR has adopted the QCA's recommended WACC of 9.52% nominal pre tax for assessing the reference tariffs incorporated in the revised draft undertaking notwithstanding the fact that there are a number of inputs with which QR has taken issue.</p> <p>The undertaking specifies that the rate of return is to be agreed between QR and the QCA, therefore the rate of return has not itself been incorporated in the draft undertaking.</p>	

Table 15 – Incentive Regulation – Schedule F

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Regulatory Framework	1. In assessing QR's reference tariffs the QCA has proposed that QR be given an option of a revenue cap (initially based on QR's demand forecasts) or a price cap (based on the QCA's demand forecasts).	<p>As discussed in relation to Table 10 – Demand Forecast, QR will accept the QCA's total forecast demand for the central Queensland coal region as the assumed volume over the regulatory period. In this context, QR has retained the price cap approach to setting and reviewing reference tariffs.</p> <p>In the discussion accompanying this recommendation, the QCA identified that, in applying the price cap approach, the QCA intends that returns in excess of the stand alone cost from the specified charges will be aggregated in net present value terms over the regulatory period, with that amount deducted from QR's opening asset value at the beginning of the next regulatory review. In principle, QR does not object to this approach, however, makes the following comment on the specific charges identified by the QCA:</p> <ul style="list-style-type: none"> • In the reference tariffs incorporated into the revised undertaking, QR has developed a transit time for the reference train service. This then allows the capacity utilisation of the reference train service to be assessed, and the incremental capacity charge incorporated in QR's reference tariffs reflects the capacity consumed by those services. Therefore, there will be no requirement to adjust the reference tariffs in the next regulatory period to reflect additional capacity charges for paths attributable to the number of train paths actually consumed by the reference train service. • On the basis that legal advice has shown that the use of Kwik Drop doors form part of the declared service, QR has incorporated the use of Kwik Drop doors into the reference train service. Therefore, the revised reference tariffs include the use of this facility. • QR does not object to the recommended treatment of the other charges identified by the QCA. 	Schedule F
	2. The regulatory period (for which reference tariffs apply) will run from 1 July 2001 to 1 July 2005.	<p>QR will accept the regulatory period extending until 30 June 2005, on the understanding that it has the following implications:</p> <ul style="list-style-type: none"> • The transition period to apply in relation to QR's maintenance costs in the central Queensland coal region will run from 1 July 2001 to 30 June 2005; and • The reference tariffs for coal carrying services will apply from the commencing date of the undertaking until 30 June 2005. 	Schedule F - Part B - Section 1
Passing on Efficiency Gains	3. In assessing QR's reference tariffs, the QCA has adapted the Consumer Price Index, Brisbane, published by the Australian Bureau of Statistics as the inflator, adjusted by available information to account for any GST-related CPI spikes.	<p>QR agrees with the use of the CPI – Brisbane as the inflator.</p> <p>The subject of how to adjust the CPI index to account for any GST related spikes has been considered by QR's GST Pricing Committee. For pricing purposes, QR has accepted the results of an independent study by EconTech for the Business Coalition for Tax Reform, which has analysed the GST impact on the CPI index. EconTech has concluded that the GST impact has effectively been isolated to the September 2000 quarter, and no adjustment is required to the CPI index for subsequent quarters. Given that the CPI escalation of the reference tariffs will commence from 1 July 2001 (with a six month lag CPI figure), there should be no requirement for adjustments to the CPI index to reflect any GST impact. QR would be pleased to provide the QCA with further information in relation to this study, if required.</p>	Schedule F - Part A - Section 4.1

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
	<p>4. In assessing QR's reference tariffs, the QCA considers that the escalation factor should be derived using a CPI-X framework, with an X factor of 1.5% to be applied for each year of the regulatory period.</p>	<p>As discussed in relation to Table 11 – Stand Alone Costs, QR will accept the QCA's proposed 15% required efficiency gain. However, the relationship between the proposed 15% required efficiency gain and the CPI-X escalation is unclear.</p> <p>QR is prepared to include a CPI-X escalation of reference tariffs to mirror the transition to efficient cost over the regulatory period. In developing this escalation approach, there are a number of assumptions that QR has used:</p> <ul style="list-style-type: none"> • the X factor applies for the four years from 1 July 2001 to 30 June 2005; • a different X factor has been determined for each of the four systems in the coal region, to reflect the efficient cost target assessed for each system; and • the effect of the transition in relation to the electric overhead system has been separated from the effect of the transition in relation to track access, and separately applied to the electric access charge. <p>As a result, QR has applied the escalation to its proposed reference tariffs as follows:</p> <ul style="list-style-type: none"> • the incremental maintenance charge and incremental capacity charge escalate fully with CPI; • the ntk and nt components escalate in accordance with CPI-X, for the term of the regulatory period, on a quarterly basis with different values of X specified for each system; • the electric access charge escalates in accordance with CPI – X for the term of the regulatory period, for each of the Goonyella and Blackwater systems on a quarterly basis. <p>Note, the electric access charge determined from this approach reflects the maximum that QR can charge for this service. QR is continuing to review the level of the electric access charge with a view to ensuring the competitiveness of electric traction with diesel traction is maintained.</p>	<p>Schedule F - Part A - Section 4.1 and Part B</p>
	<p>5. In assessing QR's reference tariffs, the QCA proposes to apply a gains maintenance approach, so that QR retains the benefit of out-performance of the X-factor for a 5-year period after it is secured.</p>	<p>QR does not object to the application of a gains maintenance approach, in accordance with the QCA's recommendation.</p>	

Issue	QCA Recommendation	QR Response	Amendment to Undertaking
Review of Reference Tariffs	6. In assessing QR's proposed reference tariffs, the QCA has limited material change events to a change in taxes or laws or a departure in actual traffic volumes greater than 10% from the forecasts adopted in the QCA's analysis of QR's reference tariffs; and	<p>QR agrees that the reference tariff should be adjusted (within the regulatory period) for:</p> <ul style="list-style-type: none"> • a material change event, broadly defined as a change in taxes or a change in law (including a change in the interpretation of law); or • a change in traffic volumes of greater than 10% from the forecasts adopted in the development of the reference tariffs. <p>Although not clear from the face of the QCA's recommendation, it appears from the discussion associated with this recommendation, that the QCA intends a 10% materiality threshold to apply in relation to a changes in taxes or laws. However, the final decision is unclear in relation to the manner in which such a threshold would be applied, however it is implied that the threshold is intended to relate to an event that would result in a change in operating expenses of greater than 10%. QR does not object to such a materiality threshold on the variation of reference tariffs.</p> <p>QR believes that a simpler way of describing such a materiality threshold relates to its resulting impact on the value of the reference tariff. At a general level, a 10% change in QR's operating expenses in the coal region is likely to result in a corresponding change in the allowable revenue from reference tariffs of around 2.5%. Therefore, it is recommended that one or more material change events (i.e. a change in taxes or a change in law as discussed above) be reflected in a variation to the reference tariffs in the event that there is an impact of at least 2.5% on the relevant reference tariff(s). QR has incorporated a quarterly traffic volume range for each reference tariff to provide a direct reference point for volume changes. For volume changes to result in a review of the reference tariff a sustained change in volume is required.</p>	Schedule F - Part A - Section 4.2
	7. The QCA considers any review would have to take account of the totality of departures from forecasts that underpinned the QCA's original assessment of reference tariffs.	<p>In the discussion contained in the Final Decision relating to this recommendation, the QCA explains that it considers that a trigger of reference tariffs as a result of a material change or volume trigger would be a substantial change requiring review of all <i>relevant</i> departures from assumptions or forecasts that underpinned its original assessment of reference tariffs. However, the QCA has not gone on to explain what it considers relevant departures to include.</p> <p>In order to better understand how the QCA intends such a review to apply, QR has reviewed other decisions recently made by the QCA. In its decision on access arrangements for gas, the QCA has also provided for reviews within the regulatory period upon the occurrence of certain events. In such cases, the review takes account of all relevant departures from assumptions or forecasts underpinning the original decision, where a relevant departure is one that is linked to the trigger event. QR considers that this approach to assessing relevant departures is reasonable.</p> <p>Therefore, QR is prepared to accept this recommendation, on the understanding that the QCA will assess relevant departures in the same way as it intends to do in relation to gas. QR has clarified this in the drafting of the reference tariff schedule to the draft undertaking.</p>	Schedule F - Part A - Section 4.2

Table 16 – Calculation of Reference Tariffs – Schedule F of Undertaking

Issue	QR Response	Amendment to Undertaking
Evaluation period	<p>The QCA has assessed QR’s reference tariffs through the use of a ten year financial model. In principle QR agrees with the use of a long term financial model to assess prices, in order to avoid price fluctuations associated with short term changes in cost. However, the use of a long term model creates its own difficulties when applied in the context of developing reference tariffs that will be applied for only a three or four year period, after which they will be reviewed.</p> <p>The primary difficulty with the use of a long term model for the calculation of a short term price is that the calculated price is only “correct” if applied over the full term of the model. Applying that price over a shorter period of time will result in a mismatch of costs and revenues. In the context of the QCA’s model, the application of the calculated reference tariffs would result in QR earning its allowable revenue over the term of the model. However, if applied only for the first four year, QR would “under recover” to the extent of \$30 million (in 1 July 2005 terms). QR would then need to “over recover” by this same amount in the next regulatory period in order to ensure that it is not being disadvantaged by this modelling approach. The QCA has recognised this by noting that, in the calculation of reference tariffs for the next regulatory period, an amount of \$30 million will need to be added to QR’s asset value to reflect the “under recovery” in the first regulatory period. However, in the absence of this being locked into the undertaking, QR is faced with significant regulatory risk in relation to future reviews of reference tariffs, if a decision is subsequently made to not recognise this value. As a result, the major complexity arising from the use of a long term model arises from reviews of the reference tariffs within the term of the model. While it is possible to deal with this if the reviews are at scheduled intervals, the potential for “mid term” reviews as a result of a volume trigger or material change event further add to the complexity.</p> <p>As a result, the reference tariffs that QR has developed have been assessed over the regulatory period of four years, i.e. the period of time over which the reference tariffs will apply. This will substantially simplify the process for conducting reviews of the reference tariffs.</p>	6.2.4(a) Part 10: Evaluation Period
Additional capital expenditure	QR has revised its capital expenditure forecast to ensure that they remain current, particularly to ensure that the forecast capital expenditure includes all works required to accommodate the revised tonnage forecasts. This review has identified some additional capital expenditure that will be required, and this is detailed in a confidential attachment to this submission.	Attachment B
Reference Tariff Structure	<p>The following comments are made to compliment those made in the response to the QCA’s recommendations on reference tariff clusters in Table 8 and to further elaborate on QR’s proposed structure for reference tariff components which vary slightly from that proposed by the QCA.</p> <ul style="list-style-type: none"> • QR has accepted the reference tariff structure proposed by the QCA for use on the Gregory Branch via Blackwater cluster. This structure provides for all of the allocative component to be recouped by way of the \$/net tonne charge (i.e. the \$/,000 ntk charge is zero). This structure results in a strong distance taper for mines further up the Gregory branch. QR considers that this is a reasonable approach to apply for those mines on the Gregory/Oaky Creek branch railing or potentially railing to Gladstone and, as a result, has extended the Gregory Branch via Blackwater cluster to include Oaky Creek and German Creek, both of which have angles to the south. • A major concern of QR’s in relation to applying the QCA’s proposed South Goonyella reference tariff to mines south of Oaky Creek is the extent of the distance taper inherent in that tariff. In effect, the QCA’s proposal increases QR’s asset stranding risk beyond that previously considered likely by QR, as the distance taper results in mines in the Central Blackwater cluster facing a comparable rate to rail to Hay Point/Dalrymple Bay as to Gladstone. Therefore, QR has altered the reference tariff structure for the South Goonyella cluster to reduce the extent of the distance taper and therefore reduce the inherent incentive for Blackwater system mines to divert their tonnages to the Goonyella system. As a result, the reference tariff structure for the South Goonyella cluster provides for all of the allocative component to be recouped by way of the \$/,000 ntk charge (i.e. the \$/net tonne charge is zero). As this is a similar approach as the QCA adopted for the Gregory Branch via Blackwater cluster, QR assumes that this will be acceptable to the QCA. • In response to the QCA’s concerns regarding the significant differential in price between the South Goonyella cluster and the Gregory 	Schedule F - Part B

Issue	QR Response	Amendment to Undertaking
	<p>Branch via Goonyella cluster that was inherent in QR's previously proposed reference tariffs, QR has proposed to apply the structure proposed for the South Goonyella cluster to the Gregory Branch via Goonyella cluster but with a much reduced differential between Oaky Creek and Gregory than proposed previously by QR. This approach is put forward as a compromise having regard to the concerns of QR outlined earlier in Table 8 and those of the QCA put forward in the Final Decision. Additionally it is argued that given the low volume of cross system tonnages, the revenue that QR would receive from cross system tonnages using the South Goonyella rate potentially does not cover the incremental cost that they impose on the Goonyella system, if they were to have to fund the operating and capital costs associated with the assets beyond the Goonyella system that are required for their transport. Looking at it another way, the inclusion of the cross system traffic from the Gregory branch in the South Goonyella cluster would result in little contribution to common costs in the Goonyella system and arguably could increase the reference tariff for the South Goonyella cluster otherwise payable. QR does not believe that it can be claimed that the now much reduced increase in the tariff for the Gregory Branch mines is unfairly penalising those mines for having an opportunity to divert traffic to the Goonyella system, as the QR proposed reference tariff recognises that these cross system traffics would impose a higher cost upon the Goonyella system than do the existing South Goonyella traffics. Additionally, the QR proposal serves to mitigate somewhat the asset stranding risk and the risk of consequential tariff increases for the Gladstone bound traffics.</p> <ul style="list-style-type: none"> • QR's original approach to the three Goonyella clusters involved each of the clusters paying the same average \$/Gtk. The QCA approach to developing the two allocative components has resulted in a degree of distortion away from the initial QR relativities between clusters. In particular QR considers that there is no compelling logic to having a rigid approach to the split between these two components and the proposals by the QCA and QR for the Gregory Branch via Goonyella and South Goonyella clusters respectively represent appropriate deviations from the rigid application of any defined split. QR believes that where single mines on long spurs are involved there should be some moderation of the distance taper to have some regard to the proportionally larger costs brought to the system by that mine. In the case of the West Goonyella cluster the QR approach of the same average \$/Gtk for all Goonyella clusters provided greater contribution to the common corridor. Although it would not be unreasonable to increase the West Goonyella cluster reference tariff further. The QR proposed referernce tariffs provide for a similar average access charge for each of the three Goonyella clusters. 	