

Explanatory Submission – Queensland Rail’s Draft Access Undertaking 1 (2015) Volume 1

May 2015



1 Introduction

Queensland Rail makes this submission in support of its 2015 Draft Access Undertaking (**2015 DAU**). The 2015 DAU has been submitted to the Queensland Competition Authority (**QCA**) for approval under section 138 of the Queensland Competition Authority Act 1997 (Qld) (**Act**).

The 2015 DAU will replace the 2008 Access Undertaking (**2008 AU**) which was applied to Queensland Rail on the privatisation of the Aurizon Group. Once approved, the 2015 DAU will be the first access undertaking prepared by Queensland Rail and the first that reflects its particular business circumstances.

The 2015 DAU relates to third party access to a declared service under the QCA Act. The declared service relates to the provision of below rail services on rail networks managed by Queensland Rail.

The 2015 DAU has been prepared in response to an initial undertaking notice issued by the QCA to Queensland Rail in February 2015 and follows:

- the withdrawal by Queensland Rail of an earlier draft access undertaking (**2013 DAU**); and
- a Draft Decision issued by the QCA in respect of the 2013 DAU.

While the 2015 DAU is a new draft access undertaking separate from the 2013 DAU, and while the QCA is required by the QCA Act to consider 2015 DAU for approval or rejection on its own merits, Queensland Rail has taken the QCA's Draft Decision on the 2013 DAU into account in preparing the 2015 DAU and this submission.

The 2015 DAU has also been the product of consultations with industry. Those consultations were significant in relation to the 2013 DAU. Those consultations have been taken into account in the preparation of the 2015 DAU. The extent of consultation possible in relation to the 2015 DAU has been impacted by the statutory time limit for the submission of a draft access undertaking in response to the initial undertaking notice.

In any case, Queensland Rail remains committed to on-going consultation with the QCA and industry stakeholders in relation to the 2015 DAU.

For the reasons articulated in this Volume 1 and in Volume 2 of the supporting submission, the 2015 DAU:

- adopts many of the positions suggested by the QCA in its Draft Decision on the 2013 DAU;
- does not adopt positions suggested by the QCA in respect of the 2013 DAU where those positions are not considered appropriate or are beyond the scope of the QCA Act;
- sets a ceiling price for the West Moreton Network of \$34.92/000gtk;
- sets a reference tariff for the West Moreton Network and for the Metropolitan Network of \$19.41/000gtk;
- accepts volume risk on Queensland Rail in respect of the reference tariffs at \$19.41/000gtk; and
- maintains floor and ceiling revenue limits and a negotiate/arbitrate model.

2 Structure of Submission

Queensland Rail's submission in support of the 2015 DAU is provided in two separate volumes.

Volume 1:

- (a) contains a brief discussion of the regulatory framework applicable to the role of the QCA in considering the 2015 DAU for approval;
- (b) sets out a summary of the matters relevant to the setting of the ceiling price and the reference tariff in the 2015 DAU for the West Moreton Network and the Metropolitan Network; and
- (c) contains a table setting out positions adopted by Queensland Rail in the 2015 DAU in respect of non-West Moreton Network reference tariff matters by reference to the QCA's Draft Decisions in respect of the 2013 DAU.

Volume 2 provides a detailed discussion on matters relevant to:

- (a) the setting of the ceiling price and the reference tariff in the 2015 DAU for the West Moreton Network and the Metropolitan Network;
- (b) all building block components for the West Moreton Network including an appropriate asset valuation methodology; and
- (c) an appropriate allocation of values, capital expenditure and costs as between coal and non-coal traffics.

Volume 2 includes supporting reports from PwC on the matters referred to in paragraphs (a) and (b).

3 Regulatory framework

3.1 Sections 133 and 134

The 2015 DAU has been submitted to the QCA for approval in response to an initial undertaking notice given to Queensland Rail by the QCA under section 133 of the QCA Act.

Section 133 is within Subdivision 1 of Division 7 of Part 5 of the QCA Act.

The QCA is required by section 134 of the QCA Act to consider a draft access undertaking given to it in response to an initial undertaking notice and to either to approve it, or refuse to approve it.¹

3.2 Section 138

Section 138 governs the QCA's role in approving or rejecting draft access undertakings given to, or prepared by the QCA, under Subdivision 1 of Division 7 of Part 5 of the QCA Act.

¹ A refusal will lead to a secondary undertaking notice and ultimately, if the access provider fails to comply with that notice, the QCA can prepare and approve its own draft access undertaking for the declared service – ss 134 and 135.

Section 138(2) constrains the circumstances in which the QCA may approve a draft access undertaking. The QCA may only do so if it considers it “*appropriate to do so having regard to each of*” a list of matters specified in that section.

The test

The statutory obligations in section 134, coupled with section 138(2), operate to require the QCA to assess whether the draft access undertaking is “appropriate” and to approve it if it is.

Subject to compliance with the requirement in section 138(3)², a failure to approve an undertaking that is “appropriate” having regard to the factors in section 138(2) would constitute a failure by the QCA in the performance of its statutory function.

In considering what is “appropriate” the QCA cannot reject a draft access undertaking because the QCA or stakeholders would prefer to address the factors in section 138(2) by a different means. The QCA must turn its mind to each of the factors in that section to see whether the draft undertaking deals with them adequately and consistently with the object of Part 5 of the QCA Act. If it does, the QCA must approve the draft access undertaking – the QCA cannot impose a different access undertaking to achieve the same objectives.

Nor can the QCA apply different standards to those specified in section 138.

The pricing principles

The factors in section 138(2) to which the QCA must have regard include the pricing principles in section 168A of the QCA Act. Section 168A(a) requires that the price for access should -

“generate expected revenue for the service that is at least enough to meet the efficient costs of providing access to the service and include a return on investment commensurate with the regulatory and commercial risks involved.”

The requirement in section 168A(a) is a cornerstone requirement in support of the object of Part 5 of the QCA Act –

“.....to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets.”³

Any decision by the QCA on reference tariffs and other pricing aspects of an undertaking that fails to meet the requirement in section 168A(a) would run contrary to the object of the QCA Act. That is because such a decision would or could result in an access provider being forced to operate at less than its efficient costs and/or without the return needed make operating and capital investments in the relevant infrastructure. Over time, that would affect the quality and utility of the service preventing effective competition in upstream and downstream markets.

² The requirements in section 138(3) are not relevant for present purposes..

³ Section 69E

It follows that the QCA cannot lightly refuse a reference tariff proposed by an access provider in its draft access undertaking. The QCA should not, for example, adopt asset valuation methodologies, exclude assets from a valuation or disallow forecast costs in order to achieve a reference tariff that the QCA thinks might be more affordable for users, if that results in a reference tariff that offends the pricing principle in section 168A(a).

The QCA must assess the reference tariff proposed by an access provider and the inputs used to arrive at it against commonly accepted standards that are consistent with regulatory precedent. That reference tariff must deliver to the access provider at least its efficient costs and a return as required by section 168A(a). Anything less should not be approved and cannot be imposed.

Requirement for reasonableness

An over-arching requirement applying to the QCA's decision-making role under the QCA Act is one that requires the QCA to act reasonably in the exercise of its discretions. If a decision made by a regulator is so unreasonable that no reasonable decision-maker could make it, the decision will be open to challenge.

In applying this standard, one of the factors that is relevant is to look to the evidence upon which the decision-maker based a decision. A lack of evidence in support of a conclusion on which a decision is based may invalidate the decision.

A decision which fails to take into account relevant facts and circumstances or which unreasonably rejects evidence may equally be invalid.

The QCA cannot seek to reject a position proposed by the access provider in favour of a different position adopted by another unrelated access provider without having proper regard to the differences in their respective business circumstances and interests.

The QCA cannot refuse a draft access undertaking or critical elements of it on the basis of unsupported assumptions or decisions.

3.3 Conclusion on regulatory framework

Each of the matters discussed above, that is:

- the test that applies under section 138(2);
- the need to give life to and not to offend against the pricing principle in section 168A(a); and
- the need to act reasonably in the exercise of statutory discretions,

are obviously relevant to the assessment of the 2015 DAU.

It is strongly arguable that the QCA's Draft Decision on the 2013 DAU failed to meet these requirements. For that reason, and because the 2015 DAU is a new draft access undertaking, in assessing the 2015 DAU the QCA must apply "a fresh set of eyes" and cannot simply re-run the positions it adopted in respect of the 2013 DAU.

In the following sections of this Volume 1 and in Volume 2 Queensland Rail explains the positions adopted in the 2015 DAU and contrasts them with the positions set out in the QCA's Draft Decision on the 2013 DAU.

Despite the issues with the Draft Decision on the 2013 DAU, in the interests of achieving a prompt and acceptable regulatory outcome, the 2015 DAU submitted by Queensland Rail adopts many of the positions proposed by the QCA in its Draft Decision on the 2013 DAU, including some positions that, in Queensland Rail's view, the QCA cannot impose within power.

Queensland Rail has also proposed a tariff structure that:

- decouples the reference tariff from the ceiling price;
- sets a reference tariff well below the (properly calculated) ceiling price; and
- delivers a reference tariff that is commercially-feasible for access holders and access seekers wishing to utilise the West Moreton and Metropolitan Networks for coal trains.

4 Proposed Reference Tariffs – Regulatory context

4.1 Outline

This section 4 contains a summary of the position adopted in respect of reference tariffs and compares it to the position adopted by the QCA in its Draft Decision on the 2013 DAU.

Section 4.4 discusses a number of material concerns with the approach taken by the QCA in its Draft Decision on the 2013 DAU that would, if repeated in respect of any final decision on the 2015 DAU, undermine the validity of any such decision.

A more detailed discussion of the reference tariff structure is set out in Volume 2, which also includes reports from PwC in support of the position proposed in the 2015 DAU.

4.2 General

While the declared service relates to the entirety of Queensland Rail's intra-state rail network, a reference tariff has only existed under the 2008 AU for coal carrying trains using the West Moreton Network and not the Metropolitan Network. The 2015 DAU proposes a reference tariff for the West Moreton Network and the Metropolitan Network.

4.3 The 2013 DAU and the QCA's response

In its 2013 DAU Queensland Rail proposed a reference tariff for the West Moreton System of **\$22.22/000gtk**.

Following stakeholder feedback on a Consultation Paper issued by the QCA in respect of the 2013 DAU, the QCA published a Draft Decision on the 2013 DAU. The Draft Decision published in October 2014 suggested a tariff of **\$14.29/000gtk**.

A reference tariff of \$14.29/000gtk would have the effect of reducing Queensland Rail's annual access charge revenue on current forecast volumes by approximately \$13.4m per annum from 1 July 2015, as compared to the revenue that would be earned on that demand at currently applicable access charges.

A reference tariff of \$14.29/000gtk would not allow Queensland Rail to recover its efficient costs and a return commensurate with its commercial and regulatory risks as required by the pricing principles in the QCA Act.

4.4 The regulatory issues with the QCA's approach

If the QCA were to apply the reasoning and positions articulated in its Draft Decision on the 2013 DAU to the 2015 DAU the QCA will not have exercised its statutory functions and discretions in accordance with the regulatory framework discussed in **section 3** of this Volume 1.

A summary of some of the reasons for this are discussed in the following paragraphs. A more detailed discussion of the regulatory issues with the QCA's approach and other issues are canvassed in Volume 2.

(a) No reasonable basis for change in valuation methodology

The QCA arrived at a \$14.29/000gtk reference tariff in its Draft Decision on the 2013 DAU by adopting an asset valuation methodology that differed from:

- the methodology proposed by Queensland Rail in the 2013 DAU;
- the methodologies discussed in the QCA's Consultation Paper on the 2013 DAU;
- the methodology used by the QCA's own expert consultants (B&H Consulting) in its original May 2014 report on the 2013 DAU – (which incidentally, delivered an asset valuation within 2% of the valuation submitted by Queensland Rail in the 2013 DAU);
- the methodology previously used by the QCA in respect of the relevant assets in the 2008 AU;
- the methodology adopted by the QCA in the performance of its regulatory functions in respect of other rail and non-rail assets. (See the PwC report on asset valuation in Volume 2 which discusses the QCA's past practice in this regard); and
- the methodologies utilised consistently across a range of industries by other Australian regulators performing a similar function to that of the QCA. (See Table 1 of the PwC report in Volume 2 on Asset Valuation for a list of Regulators using common DORC valuation methodology and the assets to which that methodology has been applied).

An important role regulation plays in competitive environments is to provide certainty to those providing and receiving access to declared services. The QCA cannot compromise regulatory certainty to achieve a particular outcome by adopting positions which vary suddenly and in very material ways from its own precedent and the commonly accepted methodologies used across the regulatory landscape by a range of regulators.

As indicated in Volume 2 and by the report from PwC annexed to Volume 2, a forward-looking DORC-based valuation methodology remains the most appropriate and overwhelmingly utilised valuation methodology by regulators in Australia when valuing assets for pricing purposes. However, the QCA has applied a backward looking approach that assumes a zero value for assets that clearly have remaining service potential.

Against the background set out above, a decision by the QCA to apply a methodology which materially differs from the commonly applied DORC methodology in assessing the value of assets in the context of the 2015 DAU would be unreasonable and unsustainable.

(b) No reasonable basis for exclusion of assets

Related to the matter discussed in paragraph (a) above, in arriving at its Draft Decision on the 2013 DAU the QCA decided to ascribe a zero value to nominally life expired assets – which has the practical effect of excluding those assets for pricing purposes.

The methodology adopted by the QCA had the effect of wiping 42% from Queensland Rail's opening asset value.

The approach taken by the QCA in respect of the 2013 DAU is not reasonable and is contrary to the requirements of the QCA Act given:

- (i) The QCA ascribed a zero value to certain assets because it considered them to be fully depreciated and therefore "life expired".

A DORC value (as commonly applied in regulatory settings) is forward-looking and should focus on the remaining service potential of the assets. The 'nominal life' of assets for regulatory purposes should not be based on the accounting treatment of those assets; it should seek a value that reflects the modern equivalent asset value for delivering the same service requirements.

- (ii) The QCA argued that as the assets in question were fully-depreciated, Queensland Rail should not be entitled to recover any further benefit from them as they had been fully paid for by users – the so-called 'double counting' issue.

Even if it was appropriate to consider 'double counting', the QCA cannot exclude assets on this basis without any evidence of the 'double counting'. Again, it is also necessary to consider the distinction between previous cost recovery attributable to any asset and its actual, remaining service potential.

- (iii) The QCA's approach was also flawed because many of the assets to which the QCA ascribed a zero value have been renewed since original construction. The QCA's approach lacked any investigation of the assets in question and therefore lacked integrity.

Queensland Rail's concerns with the approach evidenced by the QCA's Draft Decision on the 2013 DAU in respect of this issue are heightened by the action taken by the QCA in respect of the valuations prepared by the QCA's own expert consultant.

The methodology originally utilised by the QCA's independent expert consultants was consistent with the methodology used by Queensland Rail (and regulatory precedent) and resulted in a valuation within 2% of the valuation proposed by Queensland Rail.

The original valuation conducted by the QCA's independent expert consultant expressly took into account the current state of the assets comprising the rail infrastructure and their remaining service potential.

Subsequently the same consultants were apparently instructed by the QCA to adopt a non-standard methodology that applied nominal lives to all assets (without taking account of their remaining service potential) resulting in many assets being treated as life expired. This was instrumental in the QCA's justification of the much lower reference tariff suggested by the Draft Decision. The second report by the expert consultant makes clear that consultancy firm was acting on the instructions of the QCA as to how it was to prepare the second non-standard valuation.

For all these reasons, the QCA should not apply a zero-value to nominal life expired assets when it considers the 2015 DAU.

(c) The issue of affordability

In its Draft Decision on the 2013 DAU and its Consultation Paper on the 2013 DAU the QCA made numerous mentions of the impact that stakeholders (in this case coal miners) claimed the existing tariffs were having on their economic viability and ability to grow. For instance, at page 153 of the Draft Decision the QCA states:

“The QCA notes the comments from coal miners that a high price for coal haulage on the western system will stifle growth or cause the industry to shrink.”

The QCA's Consultation Paper contains references to a number of mine closures which it implicitly links to reference tariffs.

The QCA Act does not oblige an access provider to underwrite the business of access seekers and access holders. By contrast, the QCA Act does require that the access provider receives by way of the price for access at least its efficient costs and a return.

The issue of affordability:

- is not one that the QCA should rely on to trump the factors it must consider under section 138(2) of the QCA Act;
- cannot be assessed in the absence of actual evidence before the QCA about the impact of the reference tariff on stakeholder viability as compared to the very significant number of other factors likely to affect a mine's viability. Unsubstantiated assertions from stakeholders seeking to reduce their operating costs is not evidence;
- cannot be assumed to be a factor equally relevant to all current and future users of the declared service or a matter that will remain constant throughout the regulatory period; and
- to the extent that it is relevant, does not permit the QCA to set a reference tariff applicable to all users by reference to the access price that the least efficient access seeker or access holder can afford to pay.

Further, Queensland Rail has an incentive to set a reference tariff at a level that supports a sustainable level of demand for its service. In the case of the 2015 DAU Queensland Rail is proposing a Reference Tariff at which it is currently receiving access inquiries and access applications. It is the current price being paid by access users.

Queensland Rail has therefore set its proposed reference tariff at a level that, having regard to a range of factors, will deliver sustainable demand for its service. (Volume 2 of this submission contains details of the additional demand at the current reference tariff).

(d) Train path allocation

In its 2013 DAU Queensland Rail had proposed a train path allocator based on the coal traffic share of contracted paths. In its Draft Decision on the 2013 DAU the QCA accepted that the forecast of coal use should be based on contracted services but suggested that the forecast total paths should be based on available, not contracted paths.

Queensland Rail estimates that after allocating costs to coal and non-coal services, the QCA's approach would result in 41% of costs being unallocated to any user and therefore being unable to be recovered by Queensland Rail.

The QCA's approach would offend against the pricing principles because it would not allow Queensland Rail to recover at least its efficient costs. It also ignores the natural incentive Queensland Rail has to maximise coal path traffic.

In any case, Queensland Rail is now proposing in 2015 DAU to set prices based on forecast paths, which are significantly higher than contracted paths. This should address any concern the QCA and users may have that Queensland Rail will be incentivised to 'under contract' coal paths to manipulate tariffs.

4.5 Conclusion on summary of regulatory issues

The matters raised in **section 4.4** are not intended to be exhaustive. Other issues of concern with the QCA's approach in the 2013 DAU Draft Decision if applied in respect of the 2015 DAU and more detail on the issues discussed above are contained in Volume 2 of this explanatory submission.

Importantly, the QCA must apply "a fresh set of eyes" in considering Queensland Rail's 2015 DAU and must ensure that the issues of concern identified in respect of the Draft Decision on the 2013 DAU do not carry over to the QCA's decisions in respect of the 2015 DAU.

The approach taken by Queensland Rail to the setting of Reference Tariffs and its position on the non-reference tariff provisions of the 2015 DAU will in any case address many of the issues identified by the QCA in respect of the 2013 DAU.

5 2015 DAU Reference Tariff

5.1 Overview

There have been significant changes in the business environment since submission of the 2013 DAU and even in the intervening period between the withdrawal of the 2013 DAU in December 2014 and the development of the 2015 DAU.

The Queensland thermal coal market has, for example, seen a decline in market conditions. At the same time, long-term prospects are improving and there has been

recent interest from users wishing to secure additional train paths at the current access charges.

Taking this and the QCA's views on the 2013 DAU into account, Queensland Rail is proposing to:

- (a) set a ceiling price of \$34.92/000gtk for the West Moreton Network based on sound economic principles, consistent with precedent and following generally-accepted regulatory principles. Those economic and regulatory principles utilise:
 - a building block approach to the calculation of the ceiling revenue limit;
 - a standard forward-looking DORC valuation of existing assets;
 - current forecasts of expected usage; and
 - an appropriate allocation of costs between coal and non-coal services.

(For detail of the factors making up the difference between the \$14.29/000gtk tariff proposed in the QCA's Draft Decision on the 2013 DAU and the \$34.92/000gtk now being proposed in the 2015 DAU see Figure 5 in Volume 2 of this submission).

- (b) decouple the ceiling price from the Reference Tariff to apply in respect of the West Moreton Network during the regulatory period of the 2015 DAU. (For regulatory precedent of decoupling see the PwC Reference Tariff report in Volume 2 of this submission);
- (c) set a Reference Tariff for both the West Moreton and Metropolitan Networks of \$19.41/000gtk based on the following factors:
 - the Reference Tariff should not exceed the ceiling price and should have regard to the requirement for Queensland Rail to receive at least its efficient costs of providing the service and a return commensurate with its regulatory and commercial risks;
 - the current market conditions, acknowledging the benefits of providing users in those market conditions with a degree of price stability during this regulatory period; and
 - a desire by Queensland Rail to maximise traffics on the West Moreton Network.

Access charges may vary from the Reference Tariff if a Train Service varies from the Reference Train and that results in a change to cost or risk for Queensland Rail. The Reference Tariff will not itself be subject to change during the term of the 2015 DAU other than:

- in accordance with the access undertaking – e.g. CPI escalation and QCA approved Endorsed Variation Events and Review Events; or
- by a Draft Amending Access Undertaking approved by the QCA.

This approach gives regulatory certainty to users and allows Queensland Rail to help ensure consistency of traffic on the West Moreton Network.

It should be noted that the 2015 DAU does not retrospectively apply the Reference Tariff. However, it should also be noted that by setting the Reference Tariff at the current rate retrospectivity is not an issue.

6 Non-West Moreton Reference Tariff issues

Set out in the Table attached as an **Appendix** to this Volume 1 of the submission is a summary of Queensland Rail's treatment in the 2015 DAU of the matters raised by the QCA in its Draft Decision on the 2013 DAU.

7 Conclusion

Queensland Rail has developed the 2015 DAU accepting as many of the suggestions from the QCA and stakeholders on the 2013 DAU as it considers appropriate.

In setting the Reference Tariff, Queensland Rail has taken independent expert advice from PwC to confirm that the most appropriate valuation methodology is a common DORC method and that decoupling the Reference Tariff from the ceiling price is an appropriate approach and in keeping with regulatory precedent.

On the Reference Tariff issues, Queensland Rail has sought to ensure that the Reference Tariff is set at a level that promotes use of coal traffic on the West Moreton and Metropolitan Networks, having regard to the price for access currently being paid and at which Queensland Rail is confident additional demand exists.

Appendix to Queensland Rail's Volume 1 Submission in Support of the 2015 DAU
Summary of Queensland Rail's treatment in the 2015 DAU of the matters raised by the QCA in its Draft Decision on the 2013 DAU

		QCA Draft Decision	Queensland Rail's Position	Reasons
Part 1: Application and Scope				
1		The QCA considers that Queensland Rail's proposed undertaking termination date of 30 June 2017 is in the interests of access seekers and in the public interest (ss. 138(2)(d) and (e) of the QCA Act). On this basis, the QCA proposes to accept Queensland Rail's proposal.	No longer applicable.	Queensland Rail proposes a terminating date of 30 June 2020.
2	1.1	The QCA requires Queensland Rail to amend its proposal to align the definition of access with the definition of rail transport infrastructure in the TI Act and with the definition in Part 10 of the 2008 undertaking.	Accepted	
3	1.2	The QCA requires Queensland Rail to amend its proposal to: <ul style="list-style-type: none"> (a) warrant the accuracy of the online line diagrams; (b) consult all existing access holders and access seekers of any proposed amendments to the line diagrams; (c) follow the Part 6 dispute resolution processes in the event an access holder or access seeker raises a dispute about the accuracy of the line diagrams; (d) update the online line diagrams, subject to the outcome of any dispute resolution process, and notify all access holders and seekers as soon as 	Partially accepted	<p>Line diagrams are a means of providing information only and in contrast to the 2008 AU, do not define the rail infrastructure subject to access rights.</p> <p>The QCA's proposals create an unwarranted administrative burden given the role now played by the line diagrams.</p> <p>However, in the 2015 DAU, Queensland Rail undertakes to:</p> <ul style="list-style-type: none"> • publish the line diagrams on its website • use reasonable endeavours

		QCA Draft Decision	Queensland Rail's Position	Reasons
		<p>the line diagrams have been updated; and</p> <p>(e) update the online line diagrams if the QCA identifies any inaccuracy in them (either due to its own investigations or in response to complaints from access holders and access seekers).</p>		<p>to keep the line diagrams up to date and accurate in all material respects</p> <ul style="list-style-type: none"> • review, and if applicable, amend the line diagrams at intervals of no more than 6 months • review them if requested by the QCA or an Access Seeker or Access Holders • notify the QCA at intervals of no more than 6 months of any amendments to the line diagrams.
4	1.3	<p>The QCA requires Queensland Rail to amend its proposal so that the 2013 DAU is consistent with s. 250 of the QCA Act, such that the 2013 DAU applies to all rail transport infrastructure for which Queensland Rail is the railway manager.</p>	Partially accepted	<p>The 2015 DAU applies to Queensland Rail where it is a railway manager except in the circumstance where it is providing railway manager services to the owner of the infrastructure and the terms of its contract with the owner do not allow Queensland Rail to comply with aspects of the 2015 DAU.</p> <p>The exception referred to above will not apply where the owner of the infrastructure is a related body corporate of Queensland Rail.</p> <p>Even where the exception applies</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
				access to the relevant services using that infrastructure will be subject to the QCA Act.
5	1.4	<p>The QCA requires Queensland Rail to amend its proposal so that it clearly sets out how it will be prevented from unfairly differentiating between access seekers and holders, by:</p> <ul style="list-style-type: none"> (a) removing the reference to 'in the same circumstances' from cl. 1.3(a); and (b) amending cl. 1.3(b) to specify that, consistent with s. 100 and s. 168C of the QCA Act, Queensland Rail will: <ul style="list-style-type: none"> (i) not engage in conduct for the purposes of preventing or hindering an access seeker's or access holder's access; (ii) not provide access to related operators on more favourable terms than the terms on which it provides access to competitors of related operators; and (iii) ensure all access seekers, irrespective of whether they are a Queensland Rail party or a third party, are provided with a consistent level of service and given an equal opportunity to obtain access rights, subject to the express provisions of the QCA Act, the TI Act and this undertaking. 	Accepted	

	QCA Draft Decision		Queensland Rail's Position	Reasons
6	1.5	The QCA requires Queensland Rail to amend its proposal so that it is required to implement arrangements for ring-fencing information from its related party above-rail operator, if it enters a market in competition with third parties.	Accepted in principle	See new clause 2.2.3.
Part 2: Negotiation and Capacity Management				
7	2.1	<p>The QCA requires Queensland Rail to amend its proposal so that:</p> <p>(a) for the access application form and operating plan template:</p> <p>(i) the undertaking provides that the operating plan template will be published on Queensland Rail's website;</p> <p>(ii) the QCA approves the first version of the access application and operating plan templates published on Queensland Rail's website;</p> <p>(iii) any amendment to a template is undertaken after Queensland Rail reasonably justifies the need for amending it and consults its customers;</p> <p>(iv) any dispute about an amendment is resolved through the dispute resolution process in the undertaking;</p> <p>(v) if an amendment takes effect, Queensland Rail publishes a marked up version of the template on its website and notifies its customers about the</p>	<p>Draft Decision 2.1(a)</p> <p>No longer applicable.</p> <p>Draft Decision 2.1(b)</p> <p>Accepted in principle.</p>	<p>Draft Decision 2.1(a)</p> <p>The approach in respect of the requirements for an Access Application and an Operating Plan have reverted to the approach taken under the 2008AU. The requirements for an access application and an Operating Plan template have been included as Schedules to the 2015 DAU.</p> <p>Draft Decision 2.1(b)</p> <p>Queensland Rail can only request additional information if it acts reasonably and the information is needed for the purpose of preparing an Indicative Access Proposal.</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		<p>amendment; and</p> <p>(vi) Queensland Rail reports separately the yearly number of disputes arising in relation to the access application form and the operating plan template; and</p> <p>(b) Queensland Rail can seek additional information from an access seeker if it can reasonably demonstrate the need.</p>		
8	2.2	<p>The QCA requires Queensland Rail to amend its proposal so that:</p> <p>(a) for rail corridors where no reference tariffs apply, the undertaking specifies the cost and pricing information that Queensland Rail will provide for each corridor to an access seeker consistent with s. 101(2) of the QCA Act and Schedule D of the 2008 undertaking;</p> <p>(b) the undertaking specifies the capacity, technical and operating information that Queensland Rail will provide to an access seeker for each rail corridor it manages consistent with s. 101(2) of the QCA Act and Schedule D of the 2008 undertaking;</p> <p>(c) the undertaking specifies that Queensland Rail will provide additional information to access seekers that it can reasonably provide consistent with s. 101(1) of the QCA Act and Schedule D of the 2008 undertaking, subject to its confidentiality obligations; and</p>	Accepted	<p>New Schedule A lists the proposed “Preliminary” Information” and “Capacity Information” to be made available, whether or not a reference tariff applies.</p> <p>Clause 2.7.2(a)(i) has been included based on sections 101(1) and (2) of the QCA Act and equivalent provisions previously approved by the QCA.</p> <p>Clause 2.4.2 is also relevant in addressing the QCA’s draft decision.</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		(d) Queensland Rail's indicative access proposal (IAP) to an access seeker includes information on the price at which Queensland Rail will provide the service (including the pricing methodology), the rolling stock and other relevant operating characteristics used to develop that IAP consistent with cl. 4.3 of the 2008 undertaking.		
9	2.3(a)	<p>The QCA requires Queensland Rail to amend its proposal so that for Preliminary information related to an access application:</p> <p>(a) Queensland Rail provides that information to an access seeker within 10 business days if previously compiled, otherwise 20 business days;</p> <p>(b) Queensland Rail can extend the time for providing preliminary information to an access seeker if it can reasonably justify that extension and the access seeker agrees;</p> <p>(c) Queensland Rail's annual report on compliance with the undertaking includes the time taken to provide preliminary information to access seekers, broken down into less than 10 business days, 10 to 20 days, 21 to 40 days, and more than 40 days.</p>	No longer applicable.	<p>Preliminary Information will be made available on Queensland Rail's website. Timeframes are therefore not relevant.</p> <p>Prior to the Negotiation Period commencing, Capacity Information will be provided within 10 Business Days after being requested.</p> <p>During the Negotiation Period, Capacity Information will be provided on request.</p> <p>Clause 5.2.2 requires Queensland Rail's annual report to include the average time taken to provide Capacity Information.</p>
10	2.3(b)	<p>The QCA requires Queensland Rail to amend its proposal so that for an IAP and intent to negotiate:</p> <p>(a) Queensland Rail can extend the time for providing the IAP to an access seeker beyond 20 days and an access seeker can extend the time for notifying Queensland Rail of its intent to</p>	Not accepted – addressed by a different means.	<p>Similar to, but improving on the position in the 2008 AU, the 2015 DAU provides that:</p> <ul style="list-style-type: none"> Queensland Rail will use reasonable endeavours to provide the IAP within 20

	QCA Draft Decision	Queensland Rail's Position	Reasons
	<p>negotiate, if each party can reasonably justify its decision and the other party agrees to the extended time;</p> <p>(b) Queensland Rail's annual report includes the time taken by Queensland Rail to provide the IAP to an access seeker and by an access seeker to notify its intent to negotiate, broken down into less than 10 business days, 10 to 20 days, 21 to 40 days, and more than 40 days.</p>		<p>business days or such longer period as specified in the acknowledgement notice.</p> <ul style="list-style-type: none"> • A longer period than 20 business days may be proposed by Queensland Rail only in specified circumstances; • The access seeker may dispute before the QCA any proposal by Queensland Rail to provide the IAP in period longer than 20 business days. <p>The 2015 DAU provides the access seeker with a specified reasonable timeframe following the provision of an IAP within which to provide a notice of intent to negotiate..</p> <p>The 2015 DAU includes an obligation to annually report on the:</p> <ul style="list-style-type: none"> • number and percentage of IAPs provided within the applicable timeframe; • average delay in providing IAPs by the applicable timeframe.

	QCA Draft Decision		Queensland Rail's Position	Reasons
11	2.3(c)	The QCA requires Queensland Rail to amend its proposal so that for Execution of access agreement: Queensland Rail and an access seeker can agree to a different timeframe within which to execute an access agreement if the party seeking the extension can reasonably justify it.	Accepted in principle	Agreement of the parties alone should be enough given that both parties will be subject to their good faith obligations under the QCA Act.
12	2.3(d)	Consequences for non-compliance with negotiation timeframes: Queensland Rail must replace 'absolute discretion' in determining the consequence of access seeker's non-compliance with timeframes with the term 'reasonable discretion'.	Accepted in principle	The discretion around consequences for the Access Seeker failing to execute on time has been removed. In accordance with normal contractual principles, if execution does not occur on time, then Queensland Rail's offer will lapse. However, in those circumstances Queensland Rail would remain subject to negotiation obligations in accordance with the Undertaking.
13	2.4	<p>The QCA requires Queensland Rail to amend its proposal so that:</p> <ul style="list-style-type: none"> (a) the 2013 DAU deletes the clauses for the purpose of ceasing negotiations: <ul style="list-style-type: none"> (i) passenger safety and passenger operations (cl. 2.6.5); and (ii) frivolous application (cls. 2.6.3(a)(ii)(C) and 2.6.4). (b) for the purpose of ceasing negotiations the circumstance 'unlikely to comply materially with an access agreement' includes the assessment of prudential requirements (cls. 2.6.3(a)(ii)(A)) and 	<p>Draft Decision 2.4(a)(i) Not accepted</p> <p>Draft Decision 2.4(a)(ii) Accepted</p> <p>Draft Decision 2.4(b) Accepted – see clause 2.8.1(b)</p>	<p>Draft Decision 2.4(a)(i)</p> <p>While Queensland Rail has a variety of safety responsibilities, the safety of persons using or intending to use passenger Train Services is paramount to Queensland Rail. Passenger safety is not a matter of choice.</p> <p>The 2015 DAU has removed the right to cease negotiations on the basis of passenger operational issues.</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
		2.6.3(a)(iii)).		The drafting has also been simplified.
14	2.5	The QCA requires Queensland Rail to amend its proposal to reinstate the mechanism for allocating capacity in the cases of competition for mutually exclusive paths and competitive tendering as contained in cl. 7.4.1 and related clauses of the 2008 undertaking.	Accepted in principle	See clauses 2.6 and 2.9.2.
15	2.6	<p>The QCA requires Queensland Rail to amend its proposal for renewal of access rights so that it places access holders for western system coal train services and Mount Isa bulk mineral train services in front of a queue, provided the relevant access holder (and its customer):</p> <ul style="list-style-type: none"> (a) retains access rights for an existing mine or a replacement mine as long as the renewed access rights use substantially the same train paths; (b) matches the contract period of the competing access seeker up to 10 years or alternatively the remaining life of its existing mine if less than 10 years (in which case it gets a 'one-off' renewal right); (c) executes an access agreement on terms that are consistent with the standard access agreement (in case of reference train services) or access agreement principles (in case of non-reference train services); (d) in the case of Mount Isa bulk mineral train services, accepts a price consistent with the renewal pricing rule recommended in Section 3.8; 	Partially accepted	<p>See amended clauses 2.9.3(b) and (c) and clause 2.9.2(m). These clauses give a window of time during which the relevant Renewal Access Seekers have priority regardless of any queue. However, after that window closes it would still be possible for a Renewal Application to move to the top of the queue through the normal application of the queuing rules.</p> <p>Queensland Rail accepts that special rights for renewals are appropriate where the origin and destination for the Train Service (and other characteristics) remain the same – particularly having regard to the substantial long term investments associated with mining operations. However, it is not appropriate for a renewals process to effectively allow an Access Holder to leapfrog access rights to</p>

	QCA Draft Decision	Queensland Rail's Position	Reasons
	<p>and</p> <p>(e) applies for renewal negotiations to begin no less than two years and no more than three years before the expiry of its access agreement, regardless of a competing access application.</p>		<p>new origins under the guise of a renewal. These circumstances would not commonly be considered a 'renewal' – they relate to different access rights.</p> <p>Treating the circumstances described above as a renewal would operate to potentially unfairly advantage the “renewing” access seeker over other access seekers in a queue.</p> <p>The pricing rule proposed by the QCA for Mt Isa bulk mineral train services pre-determines an access charge under a contract and does so without regard to the pricing principles in section 168A. This is beyond the QCA’s power to require.</p> <p>However, Queensland Rail has included clause 3.3(c) in response to the QCA’s concern. That clause limits Queensland Rail’s discretion to price for renewals by modifying the effect of clauses 3.3(a) and (b) so that, subject to those clauses, the price differentiation principles will be applied as between the existing agreement and the proposed renewed access</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
				agreement.
16	2.7	<p>The QCA requires Queensland Rail to amend its proposal to:</p> <ul style="list-style-type: none"> (a) include reference to commercial damage in the definition of confidential information as contained in clause 3.3(a) of the 2008 undertaking; and (b) delete clause 2.7.4 that does not oblige Queensland Rail to enter into an access agreement if there was insufficient capacity. 	Accepted.	While Queensland Rail has agreed to delete clause 2.7.4, it cannot be compelled to execute an Access Agreement where there is insufficient capacity in the Network to provide the relevant Train Service and no agreement or requirement to extend the facility exists.
Part 3: Pricing Principles				
17	3.1	The QCA requires Queensland Rail to amend its proposal to reinstate the hierarchy of pricing principles for developing access charges as contained in cl. 6.1 of the 2008 undertaking.	Partially accepted	If there is to be a hierarchy, the hierarchy proposed by the QCA in the draft decision is not consistent with the QCA Act. Revenue adequacy must be paramount as contemplated by section 168A. Without revenue adequacy, an access provider will not have the ability to provide access, maintain the facility or invest in the facility.
18	3.2	<p>The QCA requires Queensland Rail to amend its proposal so that the pricing principles in the undertaking for developing access charges specify that Queensland Rail can only seek to differentiate access charges between access seekers/holders:</p> <ul style="list-style-type: none"> (a) where a reference tariff is applicable, to reflect differences in cost or risk to Queensland Rail of 	Partially accepted	<p>The 2015 DAU satisfies the QCA's proposal in paragraph 3.2(a).</p> <p>In respect of draft decision 3.2(b), consistent with the 2008 AU, the restriction applies in relation to differentiation between access</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		<p>providing access for the train service compared to the reference train service; and</p> <p>(b) where there is no reference tariff applicable for the relevant train service type, subject to requirements reinstated from cl. 6.1.1(c) of the 2008 undertaking.</p>		<p>seekers.</p> <p>Where no reference tariff applies, the list of circumstances in which price differentiation can occur, includes a circumstance where the access can no longer be commercially provided at the current access charge. This broadens the equivalent circumstance in the 2008 AU which concentrated on Transport Service Payments.</p>
19	3.3	<p>The QCA requires Queensland Rail to amend its proposal so that it is required to act reasonably when seeking to increase an access charge to offset a reduction in a transport service contract (TSC) payment.</p>	Not accepted	<p>Queensland Rail should not be exposed to a dispute process over whether it is acting reasonably where it is seeking to set an access charge for a service that would previously have been subsidised by a Transport Service Payment. Queensland Rail has an existing obligation under the QCA Act to act in good faith and its right to recover at least its efficient costs of providing the service.</p> <p>If an Access Charge is effectively being subsidised and made commercial by means of a Transport Service Payment and the Transport Service Payment is</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
				reduced or eliminated, Queensland Rail should be entitled to set a new access charge taking into account the loss of the Transport Service Payment.
20	3.4 – Vol 2	<p>The QCA requires Queensland Rail to amend its proposal so that:</p> <ul style="list-style-type: none"> (a) It can only require take or pay on the western system up to the amount required to lift its annual revenue to 100% of the target revenue used in developing the western system reference tariffs; and (b) the annual target revenue relating to this take or pay limit is published with the western system reference tariff in schedule A. 	Not accepted	<p>Take or pay is included in access agreements to achieve a number of outcomes. As the QCA has indicated, the most important are to support revenue certainty for the infrastructure provider and to encourage customers to accurately contract for the capacity. Queensland Rail considers that the QCA's proposal undermines the effectiveness of the take or pay arrangements in achieving both of these objectives.</p> <p>In its 2015 DAU Queensland Rail is proposing a Reference Tariff well below the price ceiling. In those circumstances there is no justification to limit the revenue that Queensland Rail should be entitled to recover through take or pay and access charges.</p> <p>For a more detailed discussion on this issue see section 2.2.3 of Volume 2 of Queensland Rail's submission on 2015 DAU.</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
21	3.5	The QCA requires Queensland Rail to amend its proposal to remove the requirement that the asset value for determining a ceiling revenue limit be set through a depreciated optimised replacement cost methodology, by deleting cl. 3.2.3(c) and cl. 1.2(a)(ii) in Schedule AA.	Not accepted.	See Volume 2 of Queensland Rail's submission on 2015 DAU.
22	3.6	The QCA requires Queensland Rail to amend its proposal so that the QCA can require it to submit a proposed reference tariff if the QCA considers it is warranted.	Not accepted.	The QCA's proposal is effectively seeking a right to require an amendment to the access undertaking. The QCA Act does not empower the QCA to force an amendment to an access undertaking in these circumstances.
23	3.7	<p>The QCA requires Queensland Rail to amend its proposal so that the price for a renewing access holder on the Mount Isa line is limited to no more than:</p> <ul style="list-style-type: none"> (a) the tariff agreed between Queensland Rail and its access holder in the expiring access agreement, increased annually by CPI plus 2 percentage points per year of the expiring agreement; plus (b) the normal regulatory return (consistent with cl. 3.2.3) on incremental capital expenditure incurred to increase capacity on the network, including: <ul style="list-style-type: none"> (i) spending on infrastructure specifically built for the access holder's service; and (ii) a reasonable allocation of incremental spending for all services with the accumulation of the maximum renewal price for an existing access contract 	Not accepted – addressed by a different means.	<p>2015 DAU addresses the QCA's concerns in a different way. For a renewing access seeker on the Mt Isa line, Queensland Rail has included clause 3.3(c) which limits Queensland Rail's discretion to price for renewals by modifying the effect of clauses 3.3(a) and (b) so that, subject to those clauses, the price differentiation principles will be applied as between the existing and the proposed renewed access agreement.</p> <p>This effectively means that a price increase can only be applied to a renewing access seeker's access charge where there is an increase</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		starting on the approval date of this undertaking.		<p>in risk or cost as between the existing access agreement and the renewing access agreement.</p> <p>Where there is more than one access seeker for the same commodity in the same geographical area, the normal price differentiation principles would apply.</p> <p>The QCA's proposal would in any case be beyond the QCA's powers under the QCA Act. It is, for example, inconsistent with the application of section 168A of the QCA Act.</p>
Part 4: Network Management Principles and Operating Requirements Manual				
24	4.1	<p>The QCA requires Queensland Rail to amend its proposal so that the network management principles:</p> <ul style="list-style-type: none"> (a) require Queensland Rail to promptly notify access holders, affected infrastructure service providers and supply chain participants including, where relevant, ports and other below-rail operators, of proposed or implemented changes to the master train plan (MTP) or daily train plan (DTP); (b) only allow Queensland Rail to impose operational constraints without consulting access holders in cases of urgent and emergency possessions; (c) require Queensland Rail use best endeavours to 	Partially accepted.	<p>In relation to draft decision 4.1(a), Queensland Rail is not performing supply chain coordination services for access holders. Coordination services are not part of the declared service.</p> <p>The MTP will be published on the website and any changes will be advised to access holders within a specified timeframe, well before the change takes effect.</p> <p>The DTP will be advised to all access holders at least one day</p>

	QCA Draft Decision	Queensland Rail's Position	Reasons
	<p>mitigate the impact of possessions and other operating constraints on access holders;</p> <p>(d) require that Queensland Rail secure agreement from access holders where changes to planned possessions in the MTP affect their train service entitlements (TSEs);</p> <p>(e) provide that, where an MTP amendment other than an urgent or emergency possession is disputed by an access holder, the change to the MTP should take effect after the dispute is resolved;</p> <p>(f) require in Schedule B, cl. 1.1(g)(iv) that 'in Queensland Rail's reasonable opinion no access holders are adversely affected by the modification, and any access holders that may be affected have been notified and consulted'; and</p> <p>(g) amend the definition of 'Infrastructure Service Providers' to include ports and other below-rail operators that are affected by the availability of Queensland Rail's Network.</p>		<p>before the relevant train service runs. Once scheduled, Queensland Rail cannot vary the DTP so as to adversely affect the access holder except where an Emergency Possession is required.</p> <p>In relation to draft decision 4.1(b), an obligation to consult as proposed by the QCA is not practical. Not all operational constraints involve a "possession". For instance, there may be an urgent need to impose a speed restriction for safety reasons.</p> <p>In relation to draft decision 4.1(c), Queensland Rail has agreed in 2015 DAU to use reasonable endeavours to minimise any material adverse effects arising from an unscheduled possession.</p> <p>In relation to draft decision 4.1(d), Queensland Rail agrees to consult with access holders whose train service entitlements will be adversely affected by a change.</p> <p>The change in draft decision 4.1(e) is not agreed. A dispute raised by one access holder should not hold up changes to the MTP.</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
				<p>The change proposed in draft decision 4.1(f) is unnecessary as under 2015 DAU Queensland Rail is obliged to act reasonably.</p> <p>In relation to draft decision 4.1(g), Queensland Rail is not providing a supply chain coordination service.</p>
25	4.2	<p>The QCA requires Queensland Rail to amend its proposal so that it is required to:</p> <ul style="list-style-type: none"> (a) publish a complete MTP for each system, either in train graph or tabular form, consistent with those published by ARTC, and update it every six months, or more often at an access holder's request, if the MTP is modified; and (b) provide a complete DTP, showing all services, to an access holder on request. 	Partially accepted.	<p>The 2015 DAU obliges Queensland Rail to publish every six months the current MTPs on its website, and to provide MTPs to access holders on request.</p> <p>The DTP will be provided in a complete, un-redacted form to all access holders within one day prior to operation relevant to that DTP. A request for the provision of the DTP is therefore not required.</p>
26	4.3	<p>The QCA requires Queensland Rail to amend its proposal so that it is required to submit a DAAU, if requested by the QCA, to reinstate provisions for cyclic traffic equivalent to those in the 2008 undertaking, if necessary to accommodate an access request, or to address any scheduling and train control issues arising from the integration of its operations with a port or other supply chain entity.</p>	Not accepted.	<p>An access seeker for cyclic traffic is not precluded from submitting an access application. The 2015 DAU applies appropriately to accommodate cyclic traffic.</p> <p>In any case, the QCA's proposal is effectively seeking a right to require an amendment to the access undertaking. The QCA Act does not empower the QCA to force an amendment to an access</p>

	QCA Draft Decision		Queensland Rail's Position	Reasons
				undertaking in these circumstances.
27	4.4	The QCA requires Queensland Rail to amend its proposal so that the NMPs in the undertaking clearly specify that they will apply to all services including Queensland Rail's own passenger services.	Accepted.	
28	4.5	The QCA requires Queensland Rail to amend its proposal so that the NMPs and SAA restrict its ability to take pre-emptive action to avoid passenger trains being delayed to peak periods in the metropolitan region.	Accepted.	
29	4.6	<p>The QCA requires Queensland Rail to amend its proposal so that its NMPs:</p> <ul style="list-style-type: none"> (a) require it to coordinate its maintenance activities with adjoining network managers so trains operating across both networks face minimal disruption; (b) require Queensland Rail to take into consideration through-running trains to and from adjoining rail infrastructure when developing its MTP; (c) provide for Queensland Rail's amendments to system-wide requirements to have regard to those of Aurizon Network, including its NMPs, the approved Capricornia system rules and any other approved system rules, where relevant; and (d) allow access holders to withhold consent to MTP/DTP amendments (with the exception of possession-related changes) by Queensland Rail 	Partially accepted.	<p>In relation to draft decision 4.6(a) – (c), Queensland Rail agrees to use reasonable endeavours to consult with other railway managers in respect of those matters. (See clause 4.2 of the 2015 DAU.)</p> <p>In respect of draft decision 4(d), to the extent that the consent of an access holder is needed, no change is needed to the drafting proposed by the 2015 DAU as it would be reasonable for an access holder to withhold consent where the adjoining network manager cannot accommodate the change.</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		that cannot be accommodated by the adjoining network manager.		
30	4.7	The QCA requires Queensland Rail to amend its proposal so that the risk allocation matrix applied to Aurizon Network's 2010 undertaking underpins the principles of the Operational Requirements Manual.	Not accepted.	<p>Queensland Rail is not aware of the risk matrix to which the QCA is referring. Queensland Rail is also not aware of how a risk matrix for a completely different type of business will be applicable to Queensland Rail.</p> <p>Queensland Rail considers that the Operating Requirements Manual reflects an appropriate allocation of risk for its business.</p>
31	4.8	<p>The QCA requires Queensland Rail to amend its proposal so that the risk allocation between Queensland Rail and the operator is balanced. In this respect, the QCA requires Queensland Rail to implement the following amendments to its ORM:</p> <ul style="list-style-type: none"> (a) Queensland Rail should notify all operators and their major customers of any proposed amendments to the ORM. (b) Queensland Rail should compensate the operator if a proposed amendment causes significant net material financial impacts of 1 % or greater. (c) Queensland Rail should make all amendments disputable, not only if a proposed amendment 'unfairly differentiates' between operators. (d) Queensland Rail should narrow its liability clause 	Partially accepted.	<p>The matters listed are not appropriate for an access undertaking and have been addressed in the Standard Access Agreement (SAA).</p> <p>2015 DAU includes clause 4.3 which sets the ORM that applies as at the approval date, obliges Queensland Rail to:</p> <ul style="list-style-type: none"> • make the then current version of the ORM applicable from time to time available to access seekers and access holders, • include an equivalent of

		QCA Draft Decision	Queensland Rail's Position	Reasons
		and limit the 'good faith' clause to urgent safety-related amendments.		<p>clause 8 of the SAA (amendments and compensation rights) in all access agreements entered into after the approval date of the 2015 DAU.</p> <p>Clause 8 of the SAA sets out the rights and obligations of the parties in relation to amendments to the ORM and compensation rights in respect of amendments.</p> <p>Queensland Rail has taken into account the QCA's draft decision and the position in the 2008 AU in formulating clause 8.</p>
Part 5: Reporting				
32	5.1	<p>The QCA requires Queensland Rail to amend its proposal so that its quarterly performance reports include information on:</p> <ul style="list-style-type: none"> (a) the causes of significant changes in operating performance; and (b) the number of operational complaints by access holders, including those about: <ul style="list-style-type: none"> (i) Queensland Rail's operating requirements manual and related documents, and other documents Queensland Rail posts on its website; and 	Accepted.	

		QCA Draft Decision	Queensland Rail's Position	Reasons
		(ii) the application of the network management principles.		
33	5.2	<p>The QCA requires Queensland Rail to amend its proposal so that its annual report on the negotiation process includes:</p> <ul style="list-style-type: none"> (a) the time taken by Queensland Rail to provide preliminary information and issue IAPs to access seekers, and by access seekers to provide their intent to negotiate, broken down into less than 10 business days, 10 to 20 days, 21 to 40 days and more than 40 days; and (b) the yearly number of disputes arising in relation to the access application form and the operating plan template. 	<p>Draft decision 5.2(a) – See items 9 and 10 above.</p> <p>Draft decision 5.2(b) – See item 7 above.</p>	
34	5.3	<p>The QCA requires Queensland Rail to amend its proposal so that for systems with reference tariffs it reports annually for the relevant financial year on:</p> <ul style="list-style-type: none"> (a) maintenance costs of its system and scope of maintenance, compared with the maintenance forecasts used to develop the tariff ; (b) operating expenditure, compared with the forecasts used to develop the tariff; (c) capital investment and a roll-forward of its regulatory asset base; and (d) system volumes (broken down by type of traffic). 	Partially accepted.	<p>The maintenance costs, scope of maintenance and operating expenditure are reported on under 2015 DAU but without a comparison to forecasts. The QCA will be able to carry out the comparison as it holds the forecast information.</p> <p>The 2105DAU satisfies the requirements in draft decisions 5.3(c).</p> <p>Where a reference tariff applies the requirement in draft decision 5.3 (d) for a breakdown by type of traffic is not applicable. Queensland Rail will</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
				report on volumes where reference tariffs apply.
35	5.4	<p>The QCA requires Queensland Rail to amend its proposal so that for systems without reference tariffs it reports annually for the relevant financial year on:</p> <ul style="list-style-type: none"> (a) maintenance costs of its system and scope of maintenance performed; (b) operating costs of its system; (c) the capital investment in the previous financial year and expected capital investment over one and five years; (d) volumes, in train paths, net tonnes and gross tonne kilometres (broken down by commodity, where appropriate), <p>provided that, where a system includes multiple corridors, the reporting should include a breakdown by corridor, for all of the above categories of information.</p>	Partially accepted.	<p>Queensland Rail will report on the matters listed in draft decisions 5.4(a), (b) and (d) on a regional network basis. (Obviously in respect of (d) only train paths will be reported on in respect of passenger services).</p> <p>In respect of draft decision 5.4(c), Queensland Rail will report on capital investment in the relevant year. Expected capex in a non-reference tariff based network is not relevant to the provision of access.</p> <p>It is not clear from the QCA's draft decision what "corridors" are being referred to or whether it is practically possible to keep records on that basis.</p>
36	5.5	<p>The QCA requires Queensland Rail to amend its proposal so that the regulatory audit requirements:</p> <ul style="list-style-type: none"> (a) allow the QCA, acting reasonably, to require an audit of compliance with any aspect of the undertaking or QCA Act; and (b) allow the QCA to publish a report from an auditor that includes not just the auditor's opinion, but also enough information on the audit process and 	Partially accepted.	<p>Queensland Rail has included in 2015AU clause 5.3.3 which expressly acknowledges Queensland Rail's obligations under section 150AA of the QCA Act and that the QCA has power under that section to require Queensland Rail to provide information regarding Queensland</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		conclusions for access holders and seekers and other interested parties to understand how that conclusion was reached.		<p>Rail's compliance with the undertaking.</p> <p>A third party audit right is not prescribed by the QCA Act and is not necessary given section 150AA.</p> <p>Clause 5.3.4(d) of 2015 DAU addresses draft decision 5.5(b).</p>
Part 6: Administrative Provisions				
37	6.1	The QCA requires Queensland Rail to amend its proposal so that if Queensland Rail and an access seeker or holder select a particular dispute resolution option under the undertaking, that decision is binding, and the parties cannot subsequently elect to change the nature or outcome of the dispute resolution process, unless they appeal to the QCA on the grounds there has been a manifest error.	Accepted.	
38	6.2	The QCA requires Queensland Rail to amend its proposal so that it will provide tariff-related reports for the western system to access seekers, as set out in the 2013 undertaking, backdated to the start of the undertaking period, once the undertaking has been approved.	No longer applicable.	Queensland Rail is not proposing to backdate the application of the reference tariff and therefore the backdating of reports is not relevant.
39	6.3	The QCA requires Queensland Rail to amend its proposal so that the provisions on QCA decision-making apply to both Queensland Rail and other relevant parties (cl. 6.2).	Accepted.	
Part 7: Standard Access Agreements				
40	7.1	The QCA requires Queensland Rail to amend its proposed access agreement principles to restore the	No longer applicable – addressed	The SAA addresses this issue - see clauses 1.1, 1.2(b), 2, 4, 6.3(e),

	QCA Draft Decision		Queensland Rail's Position	Reasons
		access rights provisions (cl. 1) contained in Schedule E of the Aurizon Network 2010 access undertaking.	by a different means.	7.3(a)(v) and 7.4(a)(v).
41	7.2	The QCA requires Queensland Rail to amend its proposed access agreement principles and restore the infrastructure management (cl. 6) and maintenance risk allocation provisions contained in Schedule E of the Aurizon Network 2010 access undertaking.	Partially accepted.	The SAA includes a provision obliging Queensland Rail to maintain the network to allow contracted train services to run in accordance with the access agreement. Queensland Rail is also obliged to comply with the IRMP. The combination of these two obligations provide appropriate protection for access holders and addresses the QCA's proposal.
42	7.3	The QCA requires Queensland Rail to amend its proposal so that it deletes the risk and indemnity provisions in its access agreement principles and restore the risk and indemnity provisions (cl. 14) contained in Schedule E of the Aurizon Network 2010 access undertaking.	Partially accepted.	Queensland Rail has proposed a revised set of risk and indemnity provisions in its SAA taking into account the QCA's proposal – see clause 12 of the SAA.
43	7.4	The QCA requires Queensland Rail to amend its proposal so that it deletes the limitation of liability provisions in its access agreement principles and restores the liability provisions (cl. 15) contained in Schedule E of the Aurizon Network 2010 access undertaking.	Partially accepted.	Queensland Rail has proposed revised limitation of liability provisions in its SAA taking into account the QCA's proposal – see clause 13 of the SAA.
44	7.5	The QCA requires Queensland Rail to amend its proposal so that it restores the operational, maintenance, inspection and liability provisions in the same way they apply to dangerous goods (cl. 5, 6, 12, 14 and 15) contained in Schedule E of Aurizon Network's 2010 access undertaking.	Not accepted.	The clauses referred to in the QCA's draft decision from Aurizon Network's undertaking do not deal with dangerous goods. It is not clear what is being referred to. In any case, Queensland Rail has

	QCA Draft Decision		Queensland Rail's Position	Reasons
				proposed new indemnity and liability provisions in its SAA.
45	7.6	<p>The QCA requires Queensland Rail to amend its proposal and restore the dangerous goods and liability provisions for train services (cl. 14 and 15) contained in Schedule E of Aurizon Network's 2010 access undertaking.</p> <p>The QCA invites Queensland Rail to propose a different liability regime for mixed goods train services and to provide supporting evidence to substantiate any proposed amendments based on cost and risk differences when compared to the liability regime for unit trains.</p>	Partially accepted.	The SAA submitted as part of 2015 DAU proposes a different liability regime – see clauses 12 and 13.
46	7.7	<p>The QCA requires Queensland Rail to amend its proposal so that it removes any specific reference to noise mitigation provisions and restores the environmental protection provisions (cl. 8) contained in Schedule E of Aurizon Network's 2010 access undertaking.</p>	Not accepted.	The 2008 AU, upon which the current SAA drafting on this issue is based, dealt with noise mitigation. Queensland Rail has proposed changes to the SAA (e.g. by removing the limitation tied to 'prudent practices'). However, the currently proposed drafting is appropriate to deal with the noise mitigation issue. It is inappropriate to simply default to Aurizon Network's position on any given issue – Queensland Rail is entitled to adopt an access undertaking that is appropriate to its own circumstances and legitimate business interests.

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47	7.8	The QCA requires Queensland Rail to amend its proposal so that it restores the entirety of the access agreement principles contained in Schedule E of Aurizon Network's 2010 access undertaking.	No longer applicable.	The 2015 DAU no longer has an equivalent schedule.
48	7.9	The QCA requires Queensland Rail to amend its SAA so that it is consistent with: <ul style="list-style-type: none"> (a) Aurizon Network's Operator Access Agreement; and (b) the QCA's recommendations on other aspects of the 2013 DAU. 	No longer applicable.	The SAA is now a tri-partite agreement and addresses the relevant issues. In any case the SAA reflects the matters that are relevant to Queensland Rail's business, not Aurizon Network's business.
49	7.10	The QCA requires Queensland Rail to amend its proposal so that it retains the dangerous goods provisions in Aurizon Network's Operator Access Agreement (cl. 8.3) in Queensland Rail's SAA to apply to non-coal traffics on its network.	Not accepted.	The SAA provisions on dangerous goods are appropriate for Queensland Rail's business.
50	7.11	The QCA requires Queensland Rail to amend its proposal so that it uses an amended cl. 13.1 to enable rail operators to obtain insurance from an insurance company with an insurance financial rating of A or better by Standard and Poor's or, a rating which most closely corresponds to that rating by an agency or person which is recognised in global financial markets as a major ratings agency.	No change required.	Clause 15.2 (now 16.2) of the SAA does exactly what the QCA requires in draft decision 7.11.
51	7.12	The QCA requires Queensland Rail to amend its proposal so that it adopts schedule D of the ARTC 2011 access undertaking for the KPIs for inclusion in schedule 5 of the SAA.	Not accepted.	ARTC's KPIs are a matter for it. KPIs attaching to contractual performance issues should be addressed contractually. They need to be symmetrical and

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				<p>therefore the subject of negotiation on a case-by-case basis.</p> <p>It is also necessary to consider the impact of the recent High Court decision in <i>ANZ v Andrews</i> on any regime which imposes adverse financial outcomes based on performance. It is not appropriate to adopt a KPI regime based on adverse financial outcomes without proper consideration of the outcome of that case.</p>
52	7.13	The QCA requires Queensland Rail to amend its proposal to identify what clauses in the revised SAA do not apply to non-coal traffics.	No longer applicable.	The proposed SAA applies to all train services.
53	7.14	<p>The QCA requires Queensland Rail to amend its proposal so that it:</p> <ul style="list-style-type: none"> (a) includes a new section in its access agreement principles (Schedule C) to mirror the connecting infrastructure principles outlined in cl. 8.3 of Aurizon Network's 2010 access undertaking; and (b) amends cl. 2.8 of the 2013 DAU to provide scope for the QCA to give Queensland Rail a notice requiring it to develop a SAA and/or proposed standard connection agreement that is consistent with the 2013 DAU. 	Not accepted.	<p>The connection of private infrastructure is not part of the declared service. There is no legal requirement to have provisions in the undertaking dealing with it so as to enliven a dispute process that would not otherwise apply.</p> <p>The requirement to include a right for the QCA to require development of a SAA is not needed because one is submitted as part of 2015 DAU. In any case, the QCA does not have power to require an amendment to an access undertaking in the proposed</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
				circumstances.
Part 8: Western System Tariff				
54	8.1	The QCA requires Queensland Rail to amend its proposal to make Schedule AA in the 2013 DAU that relates to the maintenance of regulatory asset base, consistent with Schedule A in Aurizon Network's 2010 undertaking.	Partially accepted.	Schedule E of 2015 DAU responds to the specific issues raised in the QCA's draft decision. It is not appropriate for Queensland Rail to simply adopt the schedule of another below rail provider as its own.
55	8.2	<p>The QCA requires Queensland Rail to amend its proposal to include a western system coal tariff of \$14.29/'000gtk, based on the assumptions and inputs set out in this Chapter 8. The tariff will be levied on the basis of:</p> <p>(a) for trains originating in the western system:</p> <ul style="list-style-type: none"> (i) an AT1 tariff component of \$7.15/'000gtk; and (ii) an AT2 tariff component of \$2,518.89 per train path for the western system and \$1,089.42 per train path for the metropolitan system (including the \$98.18 metropolitan asset tariff); and <p>(b) for trains originating in the metropolitan system:</p> <ul style="list-style-type: none"> (i) an AT1 tariff component of \$14.29/'000gtk; and (ii) an AT2 tariff component of \$98.18/train path (the metropolitan asset tariff). <p>For the purposes of the take or pay mechanism</p>	Not accepted.	See the discussion on the Reference Tariff in Volume 1 and Volume 2 of Queensland Rail's submission in support of 2015 DAU.

		QCA Draft Decision	Queensland Rail's Position	Reasons
		discussed in Section 3.5 of this draft decision, the annual target revenue for 2013–14 for the western system is \$38.8 million and for the metropolitan system it is \$17.2 million.		
Part 9: Investment Framework, Planning and Coordination				
56	9.1	<p>The QCA requires Queensland Rail to amend the extensions provisions in its proposal (cl. 1.4.1) to:</p> <ul style="list-style-type: none"> (a) remove all discretionary references in Queensland Rail's decision to extend; and (b) include an obligation on Queensland Rail to extend the network regardless of which party funds the extension. 	Not accepted.	<p>In 2015 DAU Queensland Rail has reduced the number of instances in which Queensland Rail can exercise a discretion in relation to extensions.</p> <p>2015 DAU obliges Queensland Rail to apply the undertaking consistently to all access seekers. Queensland Rail is also subject to the prohibitions on unfair differentiation in the QCA Act.</p>
57	9.2	<p>The QCA requires Queensland Rail to amend the extension provisions in its proposal (cl. 1.4.1) to:</p> <ul style="list-style-type: none"> (a) provide for third-party funding of an extension to the network; and (b) have regard to, as far as it is relevant to Queensland Rail, the SUFA developed, or which is being developed, by Aurizon Network. 	Partially accepted.	<p>Queensland Rail will negotiate with access seekers and their customers who wish to fund an extension but cannot be compelled to negotiate funding arrangements under a regulated regime with a third party.</p> <p>It is not appropriate to adopt a third party's SUFA documents, particularly in circumstances where it is not clear which version of SUFA the QCA is referring to.</p>

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58	9.3	The QCA requires Queensland Rail to amend its proposed extensions provisions so that its proposal (cl. 1.4.1) includes clear, objective and transparent financial tests to be applied to investors in user funded extension projects.	Accepted.	
59	9.4	<p>The QCA requires Queensland Rail to amend the extensions provisions in its proposal (cl. 1.4.1) to:</p> <ul style="list-style-type: none"> (a) remove Queensland Rail's discretion to decide if an Access Agreement's terms and conditions are satisfactory to Queensland Rail where an extension is being funded by an access seeker or access seeker's customer or nominee; (b) acknowledge that an access seeker or an access seeker's customer or nominee can fund the design, development and construction of an extension with the execution of a funding agreement; (c) acknowledge that an access seeker or an access seeker's customer will fund the management, maintenance and operation of the network (inclusive of the extension) with the execution of an access agreement; and (d) oblige Queensland Rail to extend the network if funding and access agreements have been executed. 	Partially accepted.	<p>The 2015 DAU removes the discretion referred to in draft decision 9.4(a).</p> <p>The 2015 DAU obliges Queensland Rail to negotiate funding arrangements with the access seeker or its customer where Queensland Rail is unwilling to fund an extension itself. For the reasons set out in item 57 it is not appropriate to extend this obligation to the access seeker's nominee.</p> <p>Under the 2015 DAU the access charges will cover the costs of managing, maintaining and operating a funded extension.</p> <p>The draft decision 9.4(d) is inappropriate. The finding agreement may be subject to conditions precedent and in any case, this is a contractual matter, not a matter for the undertaking.</p>
60	9.5	The QCA requires Queensland Rail to amend the	Partially accepted.	In relation to draft decision 9.5(a)

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		<p>extensions provisions in its proposal (cl. 1.4.1) to:</p> <ul style="list-style-type: none"> (a) remove all discretionary language applied in decisions on whether an extension complies with the extension preconditions; (b) give Queensland Rail and an access seeker joint responsibility for complying with all the preconditions set for an extension; and (c) oblige the access seeker to reimburse all of Queensland Rail's reasonable costs expended in assisting (sic) the extension project complies with the extension preconditions. 		<p>the discretions that appeared in 2013 DAU have either been removed or made subject to a requirement for Queensland Rail to act reasonably in the exercise of that discretion.</p> <p>In respect of draft decision 9(b), 2015 DAU expressly contemplates that either the access seeker or Queensland Rail is to satisfy the relevant pre-condition.</p> <p>Draft decision 9.5(c) has the potential effect of imposing an extension cost on Queensland Rail. An access provider cannot be obliged by the QCA to accept any costs associated with extending the facility.</p>
61	9.6	<p>The QCA requires Queensland Rail to amend its proposal so that it inserts a new clause in the access undertaking (potentially in Part 4 of the access undertaking) to oblige Queensland Rail to maintain the operational integrity of its network consistent with the:</p> <ul style="list-style-type: none"> (a) Network Management Principles; (b) Operating Requirements Manual; and (c) access rights contracted with access holders. 	Partially accepted.	<p>The SAA proposed by Queensland Rail obliges it to:</p> <ul style="list-style-type: none"> • maintain the network so as to allow contracted services to run; • comply with the NMP, the ORM and IRMP. <p>The most appropriate place for these types of obligations is the access agreements.</p>

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62	9.7	<p>The QCA requires Queensland Rail to amend the extension provisions in its proposal to:</p> <ul style="list-style-type: none"> (a) include a new schedule which is similar to Schedule J of Aurizon Network's 2010 access undertaking; and (b) require any funding agreement negotiated between Queensland Rail and an access seeker or an access seeker's customer or nominee to be consistent with this new schedule. 	Not accepted.	<p>Clause 1.4 of 2015 DAU addresses the majority of the QCA's requirements and the inclusion of a "Schedule J" from Aurizon Network's 2010 Undertaking is not warranted.</p> <p>Queensland Rail's business, is not the same as Aurizon Network's coal centric business. It is disproportionate to require Queensland Rail to adopt the prescriptive regime that applies to Aurizon Network.</p> <p>For example, having regard to the differences between Queensland Rail and Aurizon Network in terms of the nature of their respective rail infrastructure, customer bases and the likely mid-term need for extensions , a requirement for Queensland Rail to incur the cost and time needed to develop a standard funding agreement in accordance with a "Schedule J" is simply not justified.</p> <p>In any case, many of the matters contained in Schedule J of the Aurizon Network undertaking are already expressly dealt with in the main body of the 2015 DAU. There</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
				is no need to include them again in a "Schedule J" equivalent in the 2015 DAU.
63	9.8	<p>The QCA requires Queensland Rail to amend its proposal so that the funding agreement provisions in its proposal (cls. 1.4.2 and 1.4.3):</p> <ul style="list-style-type: none"> (a) remove all discretionary language; (b) establish the methodology for the rental stream from an investment, with mandatory distribution of rental returns to investors; (c) enable an investor to obtain an independent audit of the rental methodology and the returns paid over the economic life of the asset; (d) includes clauses consistent with cl. 6.5.2 and related clauses of the 2010 Aurizon Network undertaking to enable Queensland Rail and investors acting reasonably to include Access Conditions to an extension to mitigate the financial risks associated with an extension and (e) enable third-party investors in the rail network to trigger the regulatory pre-approval processes to be included in Schedule AA to gain certainty over their investment returns. 	Partially accepted.	<p>2015DUA's drafting of clause 1.4.3 accepts the QCA's draft decisions 9.8(a) to (c).</p> <p>In relation to draft decision 9.8(d), there are no access condition provisions in 2015 DAU.</p> <p>2015 DAU does not regulate any third party investor relationships.</p>
64	9.9	<p>The QCA requires Queensland Rail to amend its proposal so that it inserts a new section in the extension provisions (following cl. 1.4.3) which outlines the capacity and investment process Queensland Rail will follow to facilitate extensions to the network. This new section</p>	Partially accepted.	<p>Clause 1.4.6 of the 2015 DAU sets out requirements for master planning and extension coordination. Any approved plan will be made available on the</p>

		QCA Draft Decision	Queensland Rail's Position	Reasons
		<p>must include the following elements:</p> <ul style="list-style-type: none"> (a) an annual master planning process for each of the major corridors in Queensland Rail's network in consultation with relevant stakeholders; (b) a reasonable staged pathway through which an access seeker or an access seeker's customer or nominee can require Queensland Rail to undertake/oversight the concept, prefeasibility and feasibility stages of an extension project; (c) study funding principles for access seekers to fund all of Queensland Rail's reasonable costs in managing/conducting each study stage of an extension project leading up to the execution of a SUFA and an access agreement; and (d) a regulatory pre-approval process through which Queensland Rail, an access seeker or an access seeker's customer or nominee can obtain QCA pre-approval to an extension to the network. 		<p>Queensland Rail website and any feedback from stakeholders will be considered.</p> <p>Master planning is not a matter which the QCA Act regulates.</p> <p>Clauses 1.4.7 to 1.4.8 of the 2015 DAU deal with the subject matter of draft decisions 9.9(b) and (c).</p> <p>Clause 1.4.9 provides an obligation on Queensland Rail to seek pre-approval of the cost of a proposed extension for inclusion in the RAB at the request of an access seeker or its customer.</p>
65	9.10	<p>The QCA requires Queensland Rail to amend its proposal so that the funding agreement provisions (cl. 1.4.2) include a review trigger to allow the QCA to:</p> <ul style="list-style-type: none"> (a) reconsider the capacity and investment framework during the term of the undertaking and require Queensland Rail to submit an amended capacity and investment framework; (b) require Queensland Rail submit a SUFA and Standard Study Funding Agreement to the QCA for approval; and 	Not accepted.	See the comments in item 62. It is also beyond the QCA's power to require an amendment of the access undertaking in the circumstances detailed in draft decision 9.10.

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	(c) to prepare an amended capacity and investment framework and SUFA (the framework documents) if Queensland Rail fails to submit these framework documents or the framework documents submitted by Queensland Rail are not approved by the QCA.		