



5 February 2025

Mr Charles Millsted
Queensland Competition Authority
Level 27, 145 Ann Street
BRISBANE QLD 4000
www.qca.org.au/submissions/

Dear Mr Millsted

Rail Operators Group submission on QCA Discussion Paper on the Queensland Rail 2025 Draft Access Undertaking

The Rail Operators Group (**ROG**) welcomes the opportunity to make a further submission in response to the Queensland Competition Authority (**QCA**) Discussion Paper on the Queensland Rail 2025 Draft Access Undertaking (**DAU3**).

Members of the ROG operate rail freight haulage services across Australia, including on QR Networks. Some ROG members also provide integrated supply chain services, including rail and road transportation, port services and material handling for a range of mining, metal, industrial and agricultural customers.

This submission is made on behalf of the following ROG members: Aurizon, Pacific National, Qube, One Rail Australia, and Watco Australia. Qube Logistics (Rail) Pty Ltd (Qube), Pacific National Pty Ltd (PN) and Aurizon Operations Limited (AO) operate services or have access rights across rail networks from Queensland (Qld) to NSW, Victoria (Vic), South Australia (SA), and Western Australia (WA); One Rail Australia operates in Qld and NSW, including the Hunter Valley; and Watco Australia operates services and has access rights in Qld, NSW and WA.

This submission does not contain confidential information and is a public submission.

We acknowledge that the Discussion Paper does not represent the QCA's final views but will, along with submissions on the paper, inform the QCA's Final Decision. The ROG has chosen a narrow range of issues on which to comment as we consider the most substantive matters remaining unresolved directly impact Queensland Rail and the West Moreton coal producers. As such we've limited our feedback to critical matters that are either not expressly addressed in the Discussion Paper, or that we believe deserve further consideration.

QCA proposed drafting amendments

The ROG appreciates the QCA's in principle acceptance of amendments supported by the ROG, including:

- Consensus amendments to 2025 DAU in relation to the definitions of planned possessions and recognition of rollingstock operators in the Network Management Plan consultation processes; and
- Amendments to the Quarterly Reports to make the reports more useful.

However, we have several comments on the QCA’s specific drafting recommendations for these amendments. One observation is that the suggested drafting of individual provisions doesn’t reflect the consolidated amendments recommended. For instance, the drafting of cl.5.1.2(a) in Table 9 still includes references to Regular Planned Possessions and Ad Hoc Planned Possessions, although the subsequent recommendation to remove Ad Hoc Planned Possessions from the 2025 DAU and only reference Planned Possessions will mean that the final drafting in 2025 DAU will alter from Table 9.

Our specific comments on the QCA’s recommended drafting are provided in Attachment A.

Network Management Principles – application of passenger priority

The QCA has:

- recommended that passenger peak periods in the Metropolitan system be published on Queensland Rail’s website¹, and
- encouraged Queensland Rail to work with users to enable the Metropolitan system, to the extent possible, to support delivery of the full capacity of the West Moreton system and minimise the risk that capacity is not delivered²,

but otherwise has not responded to the concerns raised by stakeholders, including the ROG, regarding how passenger priority is implemented by Queensland Rail.

As explained in Aurizon’s and Pacific National’s submissions³ and the ROG November 2024 submission, while having clarity over the passenger peak periods improves transparency, an equal concern in terms of operational losses, is the discretion Queensland Rail exercises in the name of “passenger priority” in the day of operation. This concern applies to all freight types (not just coal services), particularly those services that operate over the Metropolitan System and the North Coast Line.

On this point, we have raised three key objections that have not been expressly addressed by the QCA to date:

1. Queensland Rail’s Network Control Principles extend its right to prioritise passenger services in circumstances that go well beyond the requirements of s.265 of the Transport Infrastructure Act (TIA) and cannot be justified on the grounds of regulatory obligation.
2. Other rail managers control mixed commodity networks in ways that maintain the primacy of passenger commuter services while simultaneously recognising the contractual entitlements of freight services by limiting how long a healthy freight service may be delayed (whether by the inclusion of a reasonableness constraint or specific time constraints).
3. The Network Control Principles provide Queensland Rail with the ability to deviate from the Network Management Principles in Schedule F to *avoid potential congestion* (cl.3(i)(i)(B)). This is not required by the TIA and the rail managers of passenger networks in New South Wales and

¹ QCA discussion paper December 2024 – pg.16, 17

² QCA discussion paper December 2024 – pg.41

³ Most comprehensively in Aurizon’s Response to QCA Draft Decision, July 2024, pg. 15-21 and Pacific National Submission to the QCA in Response to Queensland Rail’s 2025 Draft Access Undertaking, February 2024, pg. 12-13

Victoria do not have a similar excusal from following the decision criteria set down for train control.

The ROG provided two options for suggested re-drafting of the Network Control Principles in the appendix to the ROG July 2024 submission on the QCA's Draft Decision. The suggested amendments would improve the clarity of guidance given to train controllers in managing deviations from the Daily Train Plan (DTP). They would also provide operators with a clearer description of their entitlement when train controllers want to deviate from the DTP.

While rail operators did not have an opportunity to progress these issues directly with Queensland Rail during the collaborative submission phase, the ROG believes that they are serious enough to warrant a response from the QCA. The ROG is disappointed that the QCA has not considered this issue in its Discussion Paper, with the apparent result that it will accept Queensland Rail's proposed drafting, without considering the concerns raised by the ROG.

The ROG requests express acknowledgement in the Final Decision of the disparity that exists between Queensland Rail's rights to prioritise passenger services and both Queensland Rail's obligations under the TIA and the rights that the rail managers of the Sydney and Melbourne metropolitan rail networks have in similar circumstances. We are not suggesting that a financial penalty attach to a failure, for instance, to keep a healthy freight train delay to a prescribed time, but if that parameter existed, it would provide more certainty for both train controllers and freight operators. Monitoring of the delay times would also provide useful information about network reliability that Queensland Rail could use to promote the efficiency of its network.

The ROG urges the QCA to explicitly address this issue in its final decision, including consideration of the drafting options proposed in the July 2024 ROG submission. Ideally, these issues would be addressed during the time remaining prior to finalisation of the 2025 DAU but failing this we request the QCA require a joint review of the traffic management arrangements, to be completed within the first 6 months of AU3, noting that any changes to these arrangements may require a DAAU. If the QCA chooses not to support amendments to the traffic management arrangements, it should include in its final decision an explanation of its reasons for doing so.

Network Management Principles - disputes on planned possessions

Rail operators and end customer access holders have consistently highlighted their concern over Queensland Rail's proposed change to the 2025 DAU to remove the provisions around disputes on planned possessions, which provided that a disputed possession could not proceed until the dispute was resolved. Fundamentally, rail operators and end customers considered that the current provision creates a strong incentive on Queensland Rail to address legitimate concerns in the planning process, and its removal will lessen this incentive.

Recognising that, in its Draft Decision, the QCA supported Queensland Rail's view that scheduled possessions should not be held up as a result of a dispute⁴, the ROG proposed a compromise position of an accelerated dispute resolution process, to provide an opportunity for a dispute to be resolved before a planned possession is scheduled to occur⁵. The ROG considered that this would maintain the incentive to effectively address concerns raised by operators and access holders, without creating a risk that reasonably scheduled possessions would be inefficiently delayed.

The ROG is disappointed that the QCA has not considered this issue in its Discussion Paper, with the apparent result that it will accept Queensland Rail's proposed drafting, without considering the merits of the ROG proposal. We urge the QCA to consider this proposed compromise approach in its Final Decision, with suggested drafting provided in Attachment A. If the QCA chooses not to accept the

⁴ QCA Draft Decision on Queensland Rail's 2025 Draft Access Undertaking, June 2024, pg 60-61.

⁵ ROG Collaborative Submission to the QCA on Queensland Rail's 2025 Draft Access Undertaking, 8 November 2024, pg.18

ROG's proposed compromise position, it should include in its Final Decision an explanation of its reasons for doing so.

Standard Access Agreement Amendments

QCA Proposed Drafting Amendments

The ROG appreciates the QCA's in principle acceptance of amendments to the Standard Access Agreement (SAA) supported by the Rail Operator Group, including insurance, assignment and dispute resolution clauses. We have no further comment on the QCA's recommended drafting on these issues.

Network Utilisation and Performance

In its Draft Decision, the QCA expressed its support for amended processes for train scheduling and management aimed at improving Queensland Rail's opportunity to maximise efficient network utilisation, including in relation to:⁶

- Opportunity for train path rescheduling in response to consistent poor reliability performance;
- Increased flexibility in the definition of train service levels;
- Timeframes for Queensland Rail to respond to requests for ad hoc services; and
- Path resumption provisions aimed at limiting opportunity for path hoarding.

The QCA encouraged stakeholders to collaborate on drafting to address these proposals. In the collaborative submissions phase, the ROG worked with Queensland Rail on drafting options to address each of these points in the SAA. While full agreement on drafting was not achieved in the timeframe, substantial progress was made. The QCA states that it understands that parties are engaging further on this issue with details and drafting under discussion. However, the ROG can confirm that there has been no further engagement between operators and Queensland Rail on these issues since the finalisation of the collaborative submission phase. The ROG would be pleased to re-engage with Queensland Rail on these issues prior to finalisation of the 2025 DAU.

While the Draft Decision was clear in its expectation that improved capacity management provisions were desirable, with drafting to be developed, it is unclear from the Discussion Paper whether the QCA has changed this position and, if so, the reasons why.

In the event that full consensus drafting is not able to be agreed by Queensland Rail and stakeholders, (particularly having regard to the range of issues that Queensland Rail will need to consider in the available time), the ROG would be disappointed if the QCA did not build upon the 'in principle' agreement between Queensland Rail and operators on the issues and determine the specific drafting amendments to be included. This should have regard to the discussion on the remaining outstanding issues included in the ROG's November 2024 submission.⁷

We note the QCA's view in the Discussion Paper that principles and processes that outline how Queensland Rail is to schedule and manage services are best placed in an access undertaking, rather than being specified in individual access agreements. The ROG supports this approach and notes that it is consistent with the way these issues are dealt with in Aurizon Network's access undertaking. We consider that drafting discussed between the ROG and Queensland Rail could readily be incorporated

⁶ QCA Draft Decision on Queensland Rail's 2025 Draft Access Undertaking, June 2024, pg 32-35.

⁷ ROG Collaborative Submission to the QCA on Queensland Rail's 2025 Draft Access Undertaking, 8 November 2024, pg.8-12.

into the 2025 DAU in lieu of being included in the SAA, however we consider that amendment to the SAA would be required to 'call in' these elements of the undertaking.

The ROG acknowledges that such provisions are unlikely to be able to be called into existing access agreements, and that it is not possible for the access undertaking to compel parties to amend an existing access agreement. Accordingly, there will necessarily be a transition period before the provisions are applicable to all services on Queensland Rail's network, with the length of this transition period reflecting the remaining term of existing access agreements. While the remaining term of existing access agreements is confidential, we note that Queensland Rail has often commented on the short access terms regularly sought by access seekers, so it is likely that the revised scheduling and train management provisions would be consistently applied to most train services on Queensland Rail's network within a handful of years. Even where there are some existing access agreements that continue over a longer time frame, the ROG does not consider this to be a sufficient reason to not commence the process of introducing amended arrangements to promote more efficient network utilisation, consistent with the objectives of the QCA Act.

Other issues

During collaborative negotiations, Queensland Rail and operators discussed the public liability coverage requirements in the SAA. There was acknowledgement of the disparity between the limit on the Queensland Rail network (\$350m) and the limit applied in New South Wales (\$250m) by Transport for NSW and ARTC. The parties agreed to further discussions on setting the limit and multiple attempts were made to schedule a meeting, but this didn't eventuate. The most significant issue for rail operators is the limited market, and whether they are actually able to secure this insurance coverage. A lower required insurance value will expand the market in which operators can seek insurance. Maintaining a \$350m required insurance coverage, if not essential given the likely scenarios around the likelihood and value of events on the network, will create a barrier to entry for operators to enter the Queensland market. Accordingly, this remains an issue that the ROG wishes to pursue. We request the QCA's support for a joint review of the public liability coverage limit. If this is not able to be completed by the finalisation of AU3, it should be required to be undertaken within the first 6 months of AU3.

Proposed Annual Forum

In the ROG's collaborative submission to the QCA, it was requested that 2025 AU include a commitment by Queensland Rail to convene an annual stakeholder forum, to be attended by the QCA.⁸ The benefits of this measure would include a regular commitment from Queensland Rail to meet with access holders, rail operators and end customers, as well as the QCA to progress issues that may not otherwise get dealt with until the next undertaking process. The QCA's attendance will assist its understanding of rail operator, access holder, access seeker and Queensland Rail interests, and the QCA's understanding of public and community interests.

We have already suggested the following topics:

1. The Network Utilisation and Performance provisions
2. The Network Control Principles
3. Implementation of National Rail Action Plan interoperability and harmonisation objectives

The current regulatory process for 2025 DAU3 has demonstrated that communication can be improved. Queensland Rail was surprised by the issues that stakeholders raised, expecting to be able to adjust the building blocks for the West Moreton reference tariffs and sail smoothly through the


⁸ ROG Collaborative Submission to the QCA on Queensland Rail's 2025 Draft Access Undertaking, 8 November 2024, pg 6.

process. Stakeholders felt blindsided by the rate changes proposed by Queensland Rail, while their concerns on other issues were ignored or opinions not sought. This isn't an environment in which a consensus was likely to emerge.

It may be more realistic to expect that to happen if there is a greater effort made to establish consistent dialogue and to include the QCA as an observer in discussions on contested matters before drafting and submitting a voluntary DAU. The planned annual ARTC Interstate stakeholder forum provides an example of this process. The ACCC attended ARTC's stakeholder forums during its assessment of the Interstate Access Undertaking, and ACCC was also in attendance at ARTC's initial Hunter Valley Access Undertaking Stakeholder Engagement Forum in December 2024. ACCC has explained that its attendance at consultation forums assists its understanding of rail operator, access seeker and ARTC interests, as well as ACCC understanding of public and community interests.

The ROG would welcome an opportunity to discuss these issues with the QCA and requests a meeting following this submission to further explain and provide additional context around these concerns.

Yours sincerely



JOHN McARTHUR
Chairman, Rail Operators Group

Attachment A – Comments on QCA Proposed Drafting

2025 DAU
Clause

Comment on QCA Proposed Amendment

ROG Proposed Amendment (showing marked changes to QCA proposed draft)

5.1.2(a)(ii)(C)-(F)

The QCA has supported the ROG's proposed amendments to Queensland Rail's Quarterly Reports, for the purpose of enabling end users to be better informed around on-time performance of services, and the reasons for delayed services.

However, in preparing its proposed drafting, the QCA has replaced the ROG's proposed references to 'healthy Train Services' with 'On-time Train Services', and varied a number of the proposed indicators. The QCA's definition of On-time Train Services focuses on whether the service presents to the network on time. However, a Train Service may meet this definition even where the operator has caused delays to that train service en-route. The ROG considers that these changes diminish the usefulness of the indicators in providing information on the party responsible for delays on the network. To be considered 'on-time', any aggregate delays to the train service (whether at network entry or en-route) should be for reasons that are outside the operator's control.

In order to avoid confusion between "On-time Train Services" and those that reach their destination within their Allotted Time Threshold, we propose to refer to these services as "Operator On-time Train Services".

A quarterly report published under clause 5.1.1 will contain the following information:

...

(ii) for Train Services that operated in the subject Quarter:

- (A) the number and percentage of Train Services that reached their destination within the Allotted Time Threshold;
- (B) the total number of Train Services;
- (C) the number and percentage of Operator On-time Train Services;
- (D) of those Operator On-time Train Services, the number and percentage of Train Services that reach their destination within the Allotted Time Threshold;
- ~~(E) the number and percentage of Train Services that are not On-time Train Services, which are running late only due to causes within the Network (but only where the root cause is outside the Access Holder or Rolling Stock Operator's control);~~
- ~~(EF) of those Train Services that are not Operator On-time Train Services, the number and percentage of Train Services that do not deteriorate further;~~

...

Operator On-time Train Service means a Train Service that:

- (i) presents to the Network within the Allotted Time Threshold and operated in a manner consistent with the Train Service Description detailed in its Access Agreement; and

	<p>(ii) is running late only due to causes within the network (but only where the root cause is outside the Access Holder or Rolling Stock Operator's control); or</p> <p>(iii) is running within tolerance, regardless of previous delays.</p> <p>(x) the number of Regular Planned Possessions for the subject Quarter, and the number of Train Services that have been cancelled or rescheduled for the purpose of accommodating those types of Possession;</p> <p>...</p> <p>(xii) the percentage of maintenance work (hours) delivered in Regular Planned Possessions and Ad-Hoc Planned Possessions.</p>	<p>(ii) is running late only due to causes within the network (but only where the root cause is outside the Access Holder or Rolling Stock Operator's control); or</p> <p>(iii) is running within tolerance, regardless of previous delays.</p> <p>(x) the number of Regular Planned Possessions for the subject Quarter, and the number of Train Services that have been cancelled or rescheduled for the purpose of accommodating those types of Possession;</p> <p>...</p> <p>(xii) the percentage of maintenance work (hours) delivered in Regular Planned Possessions and Ad-Hoc Planned Possessions.</p>
<p>5.1.2(x)-(xii)</p> <p>The QCA's proposed drafting should be updated to reflect the changed definitions for Planned Possessions.</p>		
<p>Schedule F Cl 2.1</p>	<p>It is unclear why the QCA's proposed amendments do not incorporate the removal of all references to Ad Hoc Planned Possessions</p>	<p>(a) Queensland Rail will:</p> <p>(i) indicate in a MTP the Capacity necessary to satisfy all relevant Train Service Entitlements, all of Queensland Rail's passenger Train Services, and time allocated for Regular Planned Possessions;</p> <p>(ii) in addition to the MTP, indicate the timing of any proposed Ad-Hoc Planned Possessions or Urgent Possessions (to the extent known), as well as Regular Planned Possessions, in the Supply Chain Calendar; and</p> <p>(l) Subject to clause 2.1(m), Queensland Rail may from time to time modify a MTP or update the <u>Supply Chain Calendar</u> or schedule an Ad-Hoc Planned Possession.</p> <p>(m) Queensland Rail will not modify the MTP or schedule an Ad-Hoc Planned Possession, where to do so would result in an Access Holder's scheduled Train Services not being met in accordance with the Access Holder's Train Service Entitlement, unless:</p> <p>(i) Queensland Rail has consulted with that Access Holder and given the notice required under clause 2.1(d) of this schedule F; and</p> <p>(n) to the extent that the modification of Ad-Hoc Planned Possession is not an Emergency Possession or an Urgent Possession, the Access</p>

Holder has agreed to the modifications ~~or scheduled~~ ~~Ad Hoc~~ ~~Planned Possession~~ (such agreement not to be unreasonably withheld).

Schedule F Cl 2.4 The ROG propose retention of an amended Clause 2.4 governing disputes on planned possessions, which maintains an effective incentive on Queensland Rail to address legitimate concerns of operators and access holders, while ensuring that any dispute will not inefficiently disrupt scheduled possessions.

- (a) In the event of a dispute in relation to a Planned Possession:
- (i) the dispute must be commenced in accordance with the dispute resolution provisions of the Undertaking within 30 days of the date of notification of the Possession in accordance with clause 2.1(a) of this schedule F;
 - (ii) for the purpose of resolution by escalation in accordance with clause 6.1.3, the parties must accelerate the processes so as to use reasonable endeavours to resolve the Dispute within five Business Days of provision of the Dispute Notice; and
 - (iii) if the Dispute is not resolved within five Business days of provision of the Dispute Notice, then:
 - (A) either party may refer the dispute to the QCA under clause 6.1.4 of the Undertaking; and
 - (B) the parties and the QCA must accelerate the processes so as to use reasonable endeavours to resolve the Dispute within 30 days of the Dispute Notice.