

Part 2: Intent and Scope

[QRC Note: QRC does not accept Aurizon Network's response in relation to "Associated Services". The QRC's position in relation to "Associated Services" remains as set out in Section 3 of Part 2 of QRC's Main Submission on the 2013 draft undertaking and that amendments to implement those arrangements should be made to the Undertaking. Detailed amendments to implement the Associated Services arrangements have not been included in the mark up below.]

2.1 Duration

- (a) Subject to **clause 2.1(b)**, this Undertaking is effective from the Approval Date to the Terminating Date.
- (b) The Reference Tariffs, as approved in this Undertaking on the Approval Date, apply retrospectively and are effective from the Commencing Date.

2.2 Intent

The intent of this Undertaking is to:

- (a) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (b) apply the provisions of the Act through:
 - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, commercial and non-discriminatory;
 - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
 - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions.
- (c) provide an efficient, effective and binding Dispute resolution process;
- (d) provide that actions pursuant to this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such actions and this Undertaking are also consistent with the objectives and provisions of the Act;
- (e) ensure Aurizon Network acts in a manner that is consistent with the unfair differentiation obligations under sections 100(2) to (4) and section 168C of the Act;
- (f) ensure Aurizon Network applies the provisions of this Undertaking consistently to all Access Seekers, Access Holders, Train Operators, Access Applications and negotiations for Access, except where this Undertaking expressly provides otherwise; and
- (g) achieve an appropriate balance between:
 - (i) the legitimate business interests of Aurizon Network;
 - (ii) the public interest, including the public interest in having competition in markets;
 - (iii) the interests of Access Seekers, including in being:
 - (A) treated in a fair, consistent and non-discriminatory manner; and
 - (B) provided Access on reasonable commercial terms;
 - (iv) cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of

those supply chains; and

(v) to the extent applicable, the pricing principles set out in section 168A of the Act.

~~(v)~~

2.3 Scope

- (a) Except as provided for in this Undertaking, ~~t~~This Undertaking provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access.
- (b) Access Holders are responsible for:
- (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and
 - (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land. If Aurizon Network is not the owner of the land and does not have an existing legal right to authorise an Access Holder to access the land, Aurizon Network must promptly notify the Access Holder in writing. [QRC Note: QRC does not agree that this matter is already entirely covered in standard access agreements. The standard access agreement is an acknowledgement by the Access Holder of Aurizon Network's entitlement (not an obligation) to notify in relation to identified "Third Party Land" (and thereby suspend or cease Access Rights to that part of the network). It is not a general obligation to inform of changes in relation to any land, including land which Aurizon Network may have previously owned. QRC's position is that the amendment is still required.]
- (c) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.
- (d) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement or a Train Operations Agreement, executed before the Approval Date, to vary that Access Agreement or Train Operations Agreement or to act in a way that is inconsistent with the relevant Access Agreement or Train Operations Agreement.
- ~~(e) Nothing in this Undertaking affects the rights of Aurizon Network under the Act.~~
- ~~(f)~~(e) This Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Agreement.

2.4 Electricity supply and sale

[Note: AN should have an obligation to supply electricity. They do this now. They have a contract in place. It is not practical for Access Holders to procure their own electricity. This does not mean that the supply of electricity becomes part of the Access service, just an acknowledgement that for the term of the Undertaking Aurizon will supply electricity].

~~2.4~~

- ~~(a)~~ To the extent that Aurizon Network or an Aurizon Party (Supplier) will sell or supplies ~~supply a Related Operator with~~ electric energy in connection with Access, ~~Aurizon Network cannot refuse to~~

~~sell or supply electric energy to another Access Seeker or~~

Access Holders (or, if applicable, a Nominated Railway Operator).

~~(a) However, the sale or supply of electric energy is not part of Access and, except as expressly referred to in this Undertaking, is not subject to the provisions of this Undertaking.~~

(b) Despite any other provision of this Undertaking, Aurizon Network will not be obliged to sell or supply electric energy (or procure such sale or supply) to an Access Seeker or Access Holder (or, if applicable, a Nominated Railway Operator) or to agree to do so:

(i) if Aurizon Network or Aurizon Party (who is a Supplier) is not lawfully entitled to sell or supply electric energy to the relevant Access Seeker, Access Holder or, if applicable, Nominated Railway Operator under any Law including the Electricity Act 1994 (Qld) and the National Electricity Rules (as defined under the National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA)); or

(ii) on terms that would be unreasonable or uncommercial.

(c) If a Dispute arises under this clause 2.4 regarding a refusal by Aurizon Network to sell or supply electric energy (or procure such a sale from an Aurizon Party) or the proposed terms and conditions on which Aurizon Network (or an Aurizon Party) offers to sell or supply electric energy to the Access Seeker, Access Holder or, if applicable, Nominated Railway Operator, any party may refer the matter to an expert under clause [11.1.4] for resolution as a dispute.

(ii)