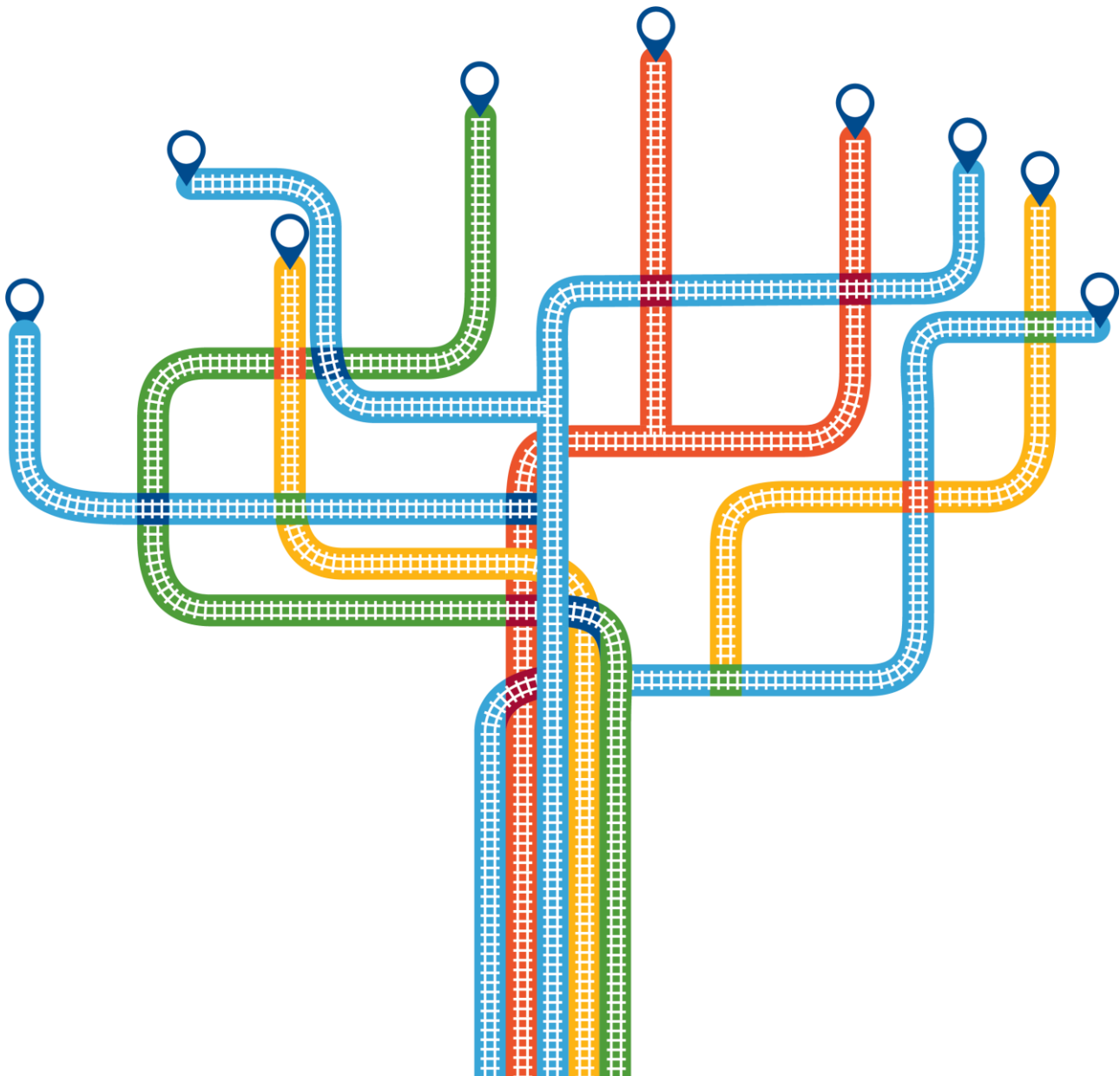


23 July 2024

## **Pacific National Submission to the QCA Draft Decision on Queensland Rail's 2025 Draft Access Undertaking**

This is a public submission



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Attention: **Mr Stephen Wisenthal**  
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## 1 Executive Summary

Pacific National welcomes the opportunity to provide a submission to the Queensland Competition Authority's (QCA) Draft Decision (**Draft Decision**) on Queensland Rail's (QR) 2025 Draft Access Undertaking (**2025 DAU**).

Pacific National is of the view that the 2025 DAU could do more to hold Queensland Rail to account on providing an efficient network that supports Queensland rail operators, customers, and road to rail modal shift. We agree with the QCA's observation that stakeholders remain concerned that Queensland Rail has not engaged in genuine consultation. We therefore welcome the proposed QCA Draft Decision not to approve the 2025 DAU.

Pacific National supports many of the recommendations and amendments suggested by the QCA in the Draft Decision on the Queensland Rail's 2025 DAU, including:

- Queuing Access Provisions – giving access holders the right to be placed at the start of the queue when renewing their access agreement within 120 days of it expiring.
- Ad Hoc Train Service – adding timeframes for Queensland Rail's response to an access holder's request for ad hoc train services.
- Path Resumption – modifying the resumption utilisation threshold and adding a new resumption trigger.
- Limitation of Claims - adding the term 'to the extent known' to clause 13.2(a).
- Insurance coverage and deductible levels – Pacific National welcomes the QCA's invitation for proposed amendments to the insurance coverage and deductible level provisions of clause 16.1. The requirements proposed by QR may not be reasonably achievable by most rail Operators without material amendment, as discussed in the body of our submission.
- We suggest removing from clause 16.1(a) all references to 'without limitation' and removing from clause 16.1(a)(ii) the words "including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement". We also suggest deleting clause 16.1(a)(iv)(D) which currently reads "has a maximum deductible for any one claim of \$500,000" and deleting clause 16.1(a)(v) which requires Operators to hold carriers liability insurance.
- Minimum Financial Strength Rating – inviting further discussion on clause 16.3 (that requires all access holders' and operators' insurers to have a minimum S&P financial strength rating of "A") to establish whether this should be amended to "A -". Within this submission we take the opportunity

to recommend other extensions to clause 16.3, including that it be extended to allow the use of captive insurance companies.

- Dispute Resolution Escalation – Queensland Rail and other stakeholders to consider Pacific National’s proposal that clause 19.2 in the Standard Access Agreement (**SAA**) mirror the escalation timeframes and processes outlined in section 6.1 of the 2025 DAU.
- Assignment of Queensland Rail’s Rights under the SAA – QCA decision not to approve Queensland Rail’s proposal to insert a new assignment clause if Queensland Rail ceases to have a right to operate all or part of the network.
- Performance Indicators - it may be appropriate to amend the list of performance indicators in Schedule 5 of the proposed SAA.
- Network Management Principles – reduced timeframes for Master Train Plan (MTP) changes to one month when it does not impact other access holders.
- Daily Train Plan Principles to Accommodate Longer Trains – further consideration of Pacific National’s suggestion to recognise maximum corridor lengths that trains can run to.

In addition to those recommended changes, however, Pacific National believes that there are a number of issues within the Draft Decision that require further review. This submission does not attempt to reopen decisions that, whilst Pacific National may not agree with the decision, are ones that are based on a clear rationale and do not have a substantial impact on the workability of the undertaking.

The key issues that Pacific National believes should be revisited in the Draft Decision are set out below:

- Insurance clause 16.4(b) – Pacific National requests that the QCA reconsider its draft decision to retain clause 16.4(b) that requires Access Holders and Operators to ensure their insurances do not contain any exclusions, endorsements or alterations that adversely amend the cover provided without the written consent of QR.

All standard issue policy wordings from any insurer contain such retractions of cover which are non-negotiable and common across the global insurance industry. This suggests Access Holders and Operators will need to seek QR’s written approval to include mandatory retractions of cover at each renewal or mid-year amendment which is an unnecessary administrative burden.

Insurance clause 16.9(a) – Pacific National seeks amendments to clause 16.9(a), including that the scope of clause 16.9(a) be limited to claims that will vitiate the insurance coverage to an extent that renders the Access Holder or Operator non-compliant with the insurance terms of this agreement.

- Differentiation for Premium Pathways – we question the suggestion that pricing rules should permit differentiation to reflect the different market value of non-premium paths compared to premium paths. It would be premature to attempt to classify premium versus non-premium paths. Defining what would constitute a premium path could be difficult, particularly on the North Coast Line which is in poor condition and suffers from reliability and annual flooding issues.

Before any classification of North Coast Line paths is considered we suggest that Queensland Rail first develop a North Coast Line action plan that takes a long-term view on investment, demand, capacity, and resilience to provide justification and holistically identify what may be considered current and/or future premium paths.

- Obligations Following a Dispute on a Planned Possession – it is critical to retain clause 2.4 of the network management principles that requires Queensland Rail to delay implementing any planned possession that is subject to a dispute.

Clause 2.4 in the 2020 Access Undertaking (**AU2**) puts accountability on Queensland Rail to maintain efficiency of the network and consult with operators. The fact that this clause is currently in place has meant that Queensland Rail have created a process to actively engage with industry to explore alternatives to highly impactful possessions. Along with Pacific National, most rail operators and stakeholders have called for this clause to remain in place.

We seek to engage constructively with the QCA, Queensland Rail and other stakeholders to refine the 2025 DAU, ensuring a framework that supports the vital interests of the Queensland rail freight sector, its users, end customers, and the broader community.

We appreciate the opportunity to submit our views and look forward to the QCA's consideration of our recommendations. If you would like to discuss any of the content in this submission, please contact Pacific National's Regulation Access and Policy Manager, Susan Furze at [susan\\_furze@pacificnational.com.au](mailto:susan_furze@pacificnational.com.au).

## 2 Background and Context

Pacific National welcomes the opportunity to provide further comment on the 2025 DAU and respond to the Draft Decision on Queensland Rail's 2025 DAU.

As with our submission of 2 February 2024 to the QCA and our 14 March 2024 responsive submission, Pacific National's focus remains on the 2025 DAU as it applies to the North Coast Line which Pacific National operates on.

Pacific National does not operate on the West Moreton System and is not intending to comment on issues or pricing that solely applies to that system.

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

## 3 Arrangements for Prioritising Access Applications

It has been proposed to put an existing access holder 'first in the queue' when the existing access holder notifies Queensland Rail 120 days prior to expiry of the access agreement, of its intent to renew.

The 120-day timeframe is reasonable and Pacific National supports the amendment to the renewal provisions (clause 2.9 of the 2025 DAU) that would provide for an access holder to be placed at the start of the queue, provided that the access holder provides notification that it wishes to renew its access agreement within 120 days of it expiring.

Rail operators need a level of certainty so they can invest with confidence and provide some assurance to end customers about continuity of service.

The Rail Operator Group (ROG) has also supported the amendment to the renewal provisions that would provide for a renewing access holder to be placed at the start of the queue. The ROG has developed updated draft wording for the queueing provisions and Pacific National supports the proposed drafting for clause 2.9 submitted by the ROG.

## **4 Standard Access Agreement (Schedule H)**

Pacific National agrees with the QCA's finding that it is appropriate for Queensland Rail to amend the proposed Standard Access Agreement (SAA) to provide a more balanced allocation of risks.

### **4.1 Ad Hoc Train Service**

Pacific National supports QCA's decision to recommend the amendment of clause 8.3(a) and add specified timeframes for Queensland Rail to respond to an access holder's request for ad hoc train services. This compels Queensland Rail to respond either within 48 hours or 7 days, depending on whether the request is for an ad hoc train service within 2 weeks or exceeding 2 weeks from the request date.

This amendment to the 2025 DAU will reduce the current variability of response times operators receive back from Queensland Rail and improve certainty and efficiency for rail operators.

### **4.2 Path Resumption**

Pacific National agrees with the QCA, subject to caveats, that it may be appropriate to modify the resumption utilisation threshold and add a new resumption trigger, in order to improve efficiency and address network underutilisation.

In amending the process, we request that the current provisions remain in place that enable an access holder to contest the resumption once the underutilisation trigger has been met.

There may be situations that require an access holder to dispute the resumption, for example if an operator was to lose rollingstock due to an unforeseen incident and could not run the full complement of trains for an extended period.

## **5 Insurance**

### **5.1 Limitation of Claims**

Pacific National supports the QCA's decision to add the term 'to the extent known' to clause 13.2(a) to improve the clarity and workability of the access agreement.

As Pacific National noted in its February 2024 submission in response to Queensland Rail's 2025 Draft Access Undertaking, the term "full details" of the Claim is vague. We explained that within the requirement to provide full details of the claim within one year, the final amount may actually take longer to determine than one year for some incidents.

We therefore appreciate the QCA proposal to add the term 'to the extent known' so clause 13.2(a) then reads 'notice and full details, to the extent known, of the Claim have been given to the other Party...'

## 5.2 Coverage of Operator's Associates, Agents and Other Parties

The new insurance clause 16.1(b) that Queensland Rail has proposed places an onerous and unreasonable burden on rail operators. It is not within the logical remit of a rail operator to judge whether the insurances held by these parties (that could be subcontractors of consultants, for example) are "sufficient to protect the interests" of such parties.

In addition, the word "ensure" is not defined and can be interpreted as obligating the rail operator to go beyond the globally accepted practice of contractually requiring such parties to maintain certain insurances and requesting certificates of currency.

Pacific National therefore agrees with the QCA finding that it may not be appropriate to approve Queensland Rail's proposal and welcome the QCA suggestion that Queensland Rail amend the proposed drafting to address the concerns raised by Pacific National and other stakeholders.

One option for the QCA's consideration is the combination and improvement of the previous and proposed requirement such that 16.1(a)(iv)(A) reads 'that covers the Operator and each of the Operator's Associates agents, consultants, contractors and their subcontractors (each an Insured Party) or the Operator otherwise requires each of the Operator's Associates, agents, consultants, contractors and their subcontractors take out and maintain insurance referred to in this clause 16, sufficient to protect their respective interests (as the case may be) arising under this agreement'.

## 5.3 Coverage and deductible levels

Pacific National shares the concerns raised by other stakeholders and welcomes the QCA's invitation for proposed amendments to the insurance coverage and deductible level provisions of clause 16.1. Of particular note is that the requirements proposed by QR may not be reasonably achievable by most rail Operators without material amendment as outlined below.

Pacific National's suggestions for the QCA's consideration are:

- Remove from clause 16.1(a) all references to 'without limitation'.
  - References to 'limitations' in the context of insurance coverage can be interpreted in multiple ways, not least of which could include the Operator holding insurance with no conditions and/or sub-limits which is unobtainable.

- Remove from clause 16.1(a)(ii) the words “including insurances covering all risks of an insurable nature in respect of which the Operator is obliged to indemnify Queensland Rail under this agreement”.
  - Insurances held by Operators are likely to be subject to insurer-imposed terms, conditions, sub-limits and other factors that may reduce cover for such indemnities below the full policy limit which may render the Operator in technical breach of this requirement, particularly when subject to the ‘without limitation’ requirement. Further, there is no threshold, monetary or otherwise, to clarify what an “insurable nature” refers to and could include insurance procurable at unreasonable cost.
- Delete clause 16.1(a)(iv)(D) which currently reads “has a maximum deductible for any one claim of \$500,000”.
  - Pacific National maintains that large rail operators have access to a restricted number of viable insurers which limits the extent to which they can reasonably negotiate terms such as deductibles. Often, insurers will impose a deductible higher than the proposed \$500,000 for any one claim. Also, the current drafting is unclear whether an annual aggregate deductible of, for example, \$1,000,000 with a non-contributing deductible of, for example, \$500,000 is compliant. It is also unclear whether the use of any self-insured retention or captive insurance arrangements are compliant. Rather than try to accommodate the wide range of potential insurance arrangements maintained by Operators, Pacific National believes the most reasonable option is to remove this requirement.
- Delete clause 16.1(a)(v) which requires Operators to hold carriers liability insurance. Whilst some rail operators may hold such insurance, it is a matter to be agreed between the Operator and its customers, and is not a reasonable concern of the access provider that is neither an insured nor a potential beneficiary of such insurance.

## 5.4 Insurer

Pacific National appreciates the QCA’s consideration of clause 16.3 that requires all insurers used to have a minimum S&P financial strength rating of “A”. Rail operators typically need large amounts of insurance capacity which may not be reasonably procurable if limited to “A” rated insurers, given the constricted appetite insurers have for the rail industry generally.

We reiterate the request from our February 2024 submission in response to Queensland Rail’s 2025 Draft Access Undertaking that clause 16.3 be amended to “A-”, per common industry practice as this would promote a more economically efficient operation. We understand that the ROG has also supported a change to “A-” in its submission.

Pacific National supports Aurizon Coal and Bulk’s earlier submission that clause 16.3 should be extended to allow the use of captive insurance companies. Pacific National notes the QCA’s concerns regarding an insurer’s financial capability to cover claims and that liabilities are not inappropriately externalised. It is important to also note that insurance captives are a regulated vehicle used to formally transfer and/or finance a company’s risk and are subject to capital adequacy and other insurance regulations in accordance with their country of domicile. Further, an insurance captive is often used to access reinsurance markets that would not otherwise transact with an Operator or Access Holder and



should be accepted as a compliant source of insurance. An insurance captive typically carries the rating of its parent company, although not all parent companies are rated hence the use of a captive in any capacity, even where the risk is entirely reinsured with A rated reinsurers, could render the insured in breach of the agreement as currently proposed.

Pacific National would also like to submit for the QCA's consideration the further extension of clause 16.3 to recognise that:

- some insurances, i.e. workers' compensation, can be covered through a government scheme or valid self-insurance license, of which neither are likely to be rated by S&P or similar and therefore could technically be considered non-compliant with the agreement, and
- not all otherwise acceptable and viable insurers are rated by S&P as some carry an equivalent rating from similar rating houses however clause 16.3 does not consider this as currently drafted, and
- some entities are afforded the ability under Part 2 of the Insurance Regulations 2024 (Cth) to utilise unauthorised foreign insurers, which may not be rated by S&P.

One option to address all of the above considerations could be a clause that reads:

- Except where:
  - Insurance is provided under a government scheme, and/or
  - Part 2 of the Insurance Regulations 2024 (Cth) applies, and/or
  - a party self-insures its workers' compensation under a valid licence,the Access Holder and the Operator must ensure that their respective Insurance, is effected and maintained in accordance with clause 16.1 or 16.2 with insurers that:
  - are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia, and
  - are supervised by the Australian Prudential Regulation Authority, and
  - maintain an insurer financial strength rating of at least A- from Standard & Poor's or an equivalent rating from another internationally recognised rating agency.

## 5.5 Essential terms and conditions of insurance

Pacific National requests that the QCA reconsider its draft decision to retain clause 16.4(b) that requires Access Holders and Operators to ensure their insurances do not contain any exclusions, endorsements or alterations that adversely amend the cover provided without the written consent of QR.

All standard issue policy wordings from any insurer contain such retractions of cover which are non-negotiable and common across the global insurance industry. This suggests Access Holders and Operators will need to seek QR's written approval to include mandatory retractions of cover at each renewal or mid-year amendment which is an unnecessary administrative burden.

The requirement under 16.4(b) is also not limited to exclusions, endorsements or alterations that directly affect the activities under the proposed agreement which suggests that Access Holders and

Operators will need to seek QR's written approval for such retractions in cover that may be related to other business activities not within the scope of this agreement.

Further, the clause as it is currently proposed is not clear regarding what information is required to be provided to QR for its consideration. As this is open to interpretation, QR could request full copies of policy documents which may require policyholders to share sensitive information.

Pacific National therefore maintains Access Holders and Operators cannot reasonably be expected to seek the written approval of QR each time an insurance policy is renewed or amended. Pacific National suggests that this clause ideally be deleted, or amended such that it only refers to exclusions, endorsements or alternations that retract cover beyond that which is specified under clause 16.1 of the agreement.

## 5.6 Claims

Pacific National appreciates the QCA's acknowledgement that notifying QR of certain details surrounding active insurance claims may be inappropriate and harmful to the insured's interests in certain instances and also highlighting some of the protections already available in the proposed agreement. The QCA's response appears to suggest that notification under clause 16.9(a) is generally limited to insurance claims related to the agreement. Pacific National's interpretation of clause 16.9(a)(i) is that notification is required for "any claim under their respective Insurance", it is then only the clarification in brackets that limits the notification of "reasonable details of the claim relevant to or arising out of the subject matter of this agreement" but importantly this does not limit notification of the occurrence of a claim to such instances. Clause 16.9(a)(ii) is also not limited to claims related to the agreement and could require Access Holders and Operators to "keep Queensland Rail informed of subsequent developments concerning *any claim*". [emphasis added]

Pacific National therefore maintains its request for the scope of clause 16.9(a) to be limited to claims that will vitiate the insurance coverage to an extent that renders the Access Holder or Operator non-compliant with the insurance terms of this agreement. The recommended approach is to delete clause 16.9(a)(ii) and amend 16.9(a)(i) to read:

### 16.9 Claims

*(a) In addition to any other obligation on the Access Holder or the Operator, the Access Holder and the Operator respectively must:*

*(i) notify Queensland Rail of the existence of a claim under their respective Insurance that is likely to vitiate such Insurance to an extent that renders them non-compliant with their respective Insurance obligations under this agreement, except where such notification could prejudice the outcome of the insurance claim and/or may result in the distribution of commercially sensitive information and/or may result in the breach of any confidentiality terms a party may be subject to.*

Another concern is the requirement under 16.9(b) that "Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail commensurate with

the amount to be paid out by Queensland Rail in relation to the damage unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail...”.

The insurance of the Access Holders and Operators that cover damage to the Network is limited to covering the insured’s legal liability for causing or contributing to such damage and is otherwise subject to the loss adjustment process. Pacific National therefore cannot agree on behalf of its insurers to an amount that QR agrees to pay out “in relation to the damage” until the claim has been finalised. Pacific National requests this clause be amended to read “Upon settlement of a claim under any Insurance covering damage to the Network, if Queensland Rail is entitled to payment in respect of such damage, the Insurance monies received must be paid to Queensland Rail unless the Access Holder or the Operator has already partially or totally indemnified Queensland Rail...”.

## 6 Dispute Resolution Escalation

Pacific National welcomes the QCA support for our proposal that clause 19.2 in the SAA mirror the escalation timeframes and processes outlined in section 6.1 of the 2025 DAU – “Dispute and complaint resolution process”. We also appreciate the QCA suggestion that Queensland Rail and other stakeholders consider whether Pacific National’s proposal is appropriate. As noted in our February 2024 submission in response to Queensland Rail’s 2025 Draft Access Undertaking, we believe it would improve clarity and understanding of requirements.

## 7 Assignment of Queensland Rail’s Rights Under SAA

Pacific National supports the QCA decision not to approve Queensland Rail’s proposal to amend clause 22.1 of the SAA by inserting a new assignment clause (22.1(a)) if Queensland Rail ceases to have a right to operate all or part of the Network:

*if Queensland Rail no longer has or expects to no longer have a right to operate the Network or any part of the Network, it may Assign all or part of its rights or obligations under this agreement to an Assignee who has the expertise, the financial resources and other relevant resources to enable it to provide the relevant Access Rights **without the prior consent of the other Parties**<sup>1</sup> provided that Queensland Rail procures the Assignee to covenant by deed with the other Parties to provide the Access Rights to the extent of the rights and obligations Assigned to the Assignee.*

Terms and conditions should be fair and reasonable, and parties should be given the opportunity to comment on changes that may significantly impact their operations. Given the monopoly position of the network operator and the light-handed regulatory framework used to negotiate access prices, this clause would leave rail operators exposed.

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<sup>1</sup> Pacific National bolding and emphasis

We agree with the QCA decision not to approve the proposal in its current form and would welcome the opportunity to work with Queensland Rail should they wish to propose an amended clause.

## 8 Performance Indicators

Regular provision of data and KPI reporting can be an effective and transparent way to monitor the condition of the network and the service provided. However, data needs to be relevant and timely in order to drive improved efficiency and support modal shift.

Pacific National appreciates the QCA view that it may be appropriate to amend the list of performance indicators in Schedule 5, clause 1. Pacific National will work within the ROG to engage Queensland Rail on revisions to reporting and KPIs.

## 9 Differentiation for Premium Pathways

Pacific National questions the suggestion that the pricing rules should permit differentiation to reflect the different market value of non-premium paths compared to premium paths within a given market. As the QCA noted, implementing price differentiation to reflect the different market value of non-premium paths is likely to require revisions to current contractual arrangements between Queensland Rail and access holders and Queensland Rail may need to renegotiate access charges to reflect the extent to which the relevant train services are considered to be either premium or non-premium.

Pacific National submits that it would be premature at this juncture for paths to be classified as premium or non-premium, particularly on the North Coast Line which remains in a poor condition<sup>2</sup> with short passing loops along the length of the track and many northern sections prone to annual flooding.

It would be prudent for Queensland Rail to first develop an action plan that, in consultation with stakeholders, takes a long-term view on investment, demand, capacity, and resilience and clearly identifies what may be considered current and/or future premium paths. There would also need to be industry consultation to understand what defines 'premium'.

In recent years there has disappointingly been minimal focus on long-term planning for the North Coast Line. Longer-term planning has been undertaken for the North Coast Line previously, by way of the North Coast Rail Line Capacity Improvement (NCLCI) Project. However, this is no longer current and was developed back in 2015 when issues such as infrastructure resilience were not such a key focus.

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<sup>2</sup> This is detailed in DTMR's North Coast Line Capacity Improvement Study – Final Report, February 2015

Given the increasing impacts of extreme climate and weather events in recent years, there is a need to revisit the NCLCI Project to identify actions which improve resilience and reduce service disruptions along the corridor. The process must include genuine consultation with all stakeholders to consider the infrastructure and service initiatives required to address deficiencies and:

- improve the reliability and resilience of the track;
- increase rail capacity; and
- improve the overall efficiency of rail operations.

This would support the future running of longer, more efficient trains to ensure sustainable rail freight transportation in Queensland.

## 10 Network Management Principles

### 10.1 Master Train Plan

Pacific National welcomes the QCA decision supporting an amendment to clause 2.1 of the Network Management Principles to reduce timeframes for Master Train Plan (MTP) changes to one month when it does not impact other access holders. This would facilitate more responsive outcomes for end customers and incentivise more freight on rail.

As we highlighted in our February 2024 submission in response to Queensland Rail's 2025 Draft Access Undertaking, often when an Access Holder submits a request it will not impact the schedule of other operators. For example, the request could be simply to move a service time by 30 minutes. In these instances, it is reasonable to reduce the MTP modification timeframe from the current three-month period to one month.

### 10.2 Daily Train Plan Principles to Accommodate Longer Trains

Pacific National previously suggested amending clause 2.2 in Schedule F – Network Management Principles to recognise maximum corridor lengths that trains can run to. This amendment would improve responsiveness for customers and align with processes on other networks. Pacific National appreciates the QCA decision to give this proposal further consideration.

Other networks specify maximum corridor lengths that trains can run, with the ability to run trains less than the maximum length, and Pacific National proposed a similar process for the Queensland Rail network. This would mean that when a network corridor is confirmed as having the capacity to run to that longer train length, that length train is available to any path or service on that track.

Currently only some paths on the Queensland Rail network are certified at the longer length. This means rail operators must place a request for other services if they are needed for the longer run, which in turn is required to be in the MTP i.e. the identified service that runs to that length, and that train only, is requested and required to be in the MTP.

Pacific National proposed that once a track assessment has been made and suitability for longer trains has been confirmed, then requests to run longer trains are addressed in the Daily Train Plan. This

would improve the flexibility of Queensland Rail processes and allow rail operators to be more responsive for customers.

## 11 Obligations Following a Dispute on a Planned Possession

Pacific National strongly urges the QCA to reconsider its decision not to support a requirement for Queensland Rail to delay implementing any planned possession that is subject to a dispute.

In the 2020 Access Undertaking clause 2.4 of the Network Management Principles restrains Queensland Rail from commencing a new MTP where access holders have not agreed and states that Possession (other than an Emergency or Urgent Possession) cannot proceed if an affected third party makes a bona fide Dispute.

Along with Pacific National, several other operators and stakeholders disagree with Queensland Rail's removal of clause 2.4 of the Network Management Principles, including Aurizon Coal and Bulk, Glencore, GrainCorp, New Hope, the ROG and Yancoal.

Pacific National believes it is critical to retain clause 2.4 of the Network Management Principles given the increasing trend of possessions we are facing. In 2023 we experienced a 44% increase in possessions and full system closures on the North Coast Line compared to the previous year. In addition to the increase in possessions and full system closures, the closure durations on the North Coast Line are also getting longer, which heightens the need for more consultation with rail operators on the impacts and frequency of closures.<sup>3</sup>

We note the QCA observation that to date there have been no disputes in relation to the way that Queensland Rail has scheduled planned possessions. We respectfully contest that the absence of disputes does not imply that clause 2.4 is unnecessary. This would be a circular argument because the current process under the 2020 Access Undertaking - that includes clause 2.4 - requires Queensland Rail to consult and reach agreement with access holders, thus avoiding the need to engage in a formal dispute. For example, as a direct result of clause 2.4 Queensland Rail actively engage with industry on a monthly basis to discuss alternatives to possessions that are likely to have a significant impact to the industry. Through this forum, Queensland Rail have reviewed many of their possession proposals and on occasion found the means to reduce impacts to rail operations - thereby avoiding formal disputes. Pacific National does not believe Queensland Rail will be obligated to continue this consultative and inclusive process without the clause remaining in the 2025 Undertaking.

We also note the QCA's conclusion that in the absence of clause 2.4 access holders can still raise a dispute through the proposed formal dispute resolution mechanism in the 2025 DAU, and that the proposed dispute resolution mechanism is sufficient to hold Queensland Rail accountable for its

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<sup>3</sup> For example, the 2 week closure in January 2024 due to Cross River Rail.

conduct. Although the formal dispute resolution mechanism does provide protection to access seekers, it is an expensive and often cost and time-prohibitive alternative for access seekers. It is therefore prudent to retain clause 2.4 and have the formal dispute resolution mechanism remain as a last resort.

## 12 Reporting on Ad Hoc Planned Possessions

Pacific National welcomes the QCA decision that the 2025 DAU should compel Queensland Rail to report on ad hoc possessions as part of its quarterly report. Pacific National did not agree with Queensland Rail's proposal to remove the requirement to report on Ad Hoc Planned Possessions and start and end times for these Possessions.

Rail operators must have visibility and receive reporting on Ad Hoc Planned Possessions, because any trend towards increased Ad Hoc Planned Possessions raises concerns about Queensland Rail's maintenance planning process. In addition, Ad Hoc Planned Possessions can have a significant effect on delays for rail operators. A delay of an hour or two can cause a rail operator to miss a return path, which exacerbates delays on subsequent cycles and can require a train cancellation to reset the operator's cycle. It can also have labour impacts because if crew go out of time, even for a few hours, it means the rail operator must bring the next crew on. This can potentially cause a cancellation in subsequent services in instances where the rail operator has exhausted all available crew.

Downstream impacts of any delay can be significant in terms of supply chain management and ultimately the end customer suffers the consequences of such repercussions.

It is likely that greater future network maintenance demands will see Ad Hoc Planned Possessions increase and operators and access holders need continued visibility over Ad Hoc Planned Possessions to understand how many Ad Hoc Planned Possessions are occurring compared to planned maintenance events.

## 13 Other Issues

### 13.1 Facilitating the Negotiation of Access Terms

Pacific National notes the QCA decision to approve Queensland Rail's proposed negotiation process in the 2025 DAU and QCA's conclusion that it adequately facilitates access seekers and Queensland Rail's negotiation of the terms and conditions for access to Queensland Rail's network.

Pacific National does not oppose the QCA decision but does respectfully challenge one of Queensland Rail's statements on this issue.

It was observed that there have not been any disputes lodged in relation to the negotiation process since the same framework was included in the 2020 Access Undertaking. Queensland Rail interpreted this to mean that access seekers are satisfied with Queensland Rail performance and processes:

*Queensland Rail submitted that no disputes have been lodged in relation to the negotiation process. This indicates to Queensland Rail that the majority of access seekers are reasonably*

*satisfied with the information and process that Queensland Rail provides.<sup>4</sup>*

Pacific National disagrees with the assumption being made by Queensland Rail and suggests there may be an element of confirmation bias if Queensland Rail is interpreting a lack of formal dispute lodgement to mean that access seekers are satisfied with Queensland Rail performance and processes. Another (more likely) interpretation of the lack of formal disputes is that access seekers, including Pacific National, first use escalations and influence to resolve issues, rather than opting for official dispute mechanisms. Access seekers appreciate having the formal dispute process as an option, however it is ultimately a more expensive choice given it requires access seeker organisations like Pacific National to obtain external legal advice for any disputes. As a result, it is often the last alternative utilised by access seekers.

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<sup>4</sup> QCA, Queensland Rail 2025 Draft Access Undertaking Draft decision, June 2024 p24