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29 May 2015

Dear Charles

Response to the QCA's Supplementary Draft Decision on Aurizon Network's 2014 Draft Access Undertaking – Capacity Transfer Mechanism

Please find enclosed Aurizon Network's submission in response to the Queensland Competition Authority's (QCA's) Capacity Transfer Mechanism Supplementary Draft Decision (Draft Decision) issued on 30 April 2015 concerning Aurizon Network's 2014 Draft Access Undertaking (2014DAU). The Draft Decision addresses the Discussion Paper on potential short term transfer mechanism (Discussion Paper) issued by Aurizon Network to the QCA in December 2014.

In submitting this response, Aurizon Network seeks to provide information to address all matters contained within the QCA's Draft Decision. Aurizon Network has also sought to include further points of clarification to assist stakeholders in understanding Aurizon Network's proposed mechanism as outlined in its Discussion Paper.

Aurizon Network is committed to establishing a clear and timely engagement program with the QCA and stakeholders, which aims to address matters raised across all QCA Draft Decisions relevant to the finalisation of the 2014DAU to ultimately establish an approved undertaking.

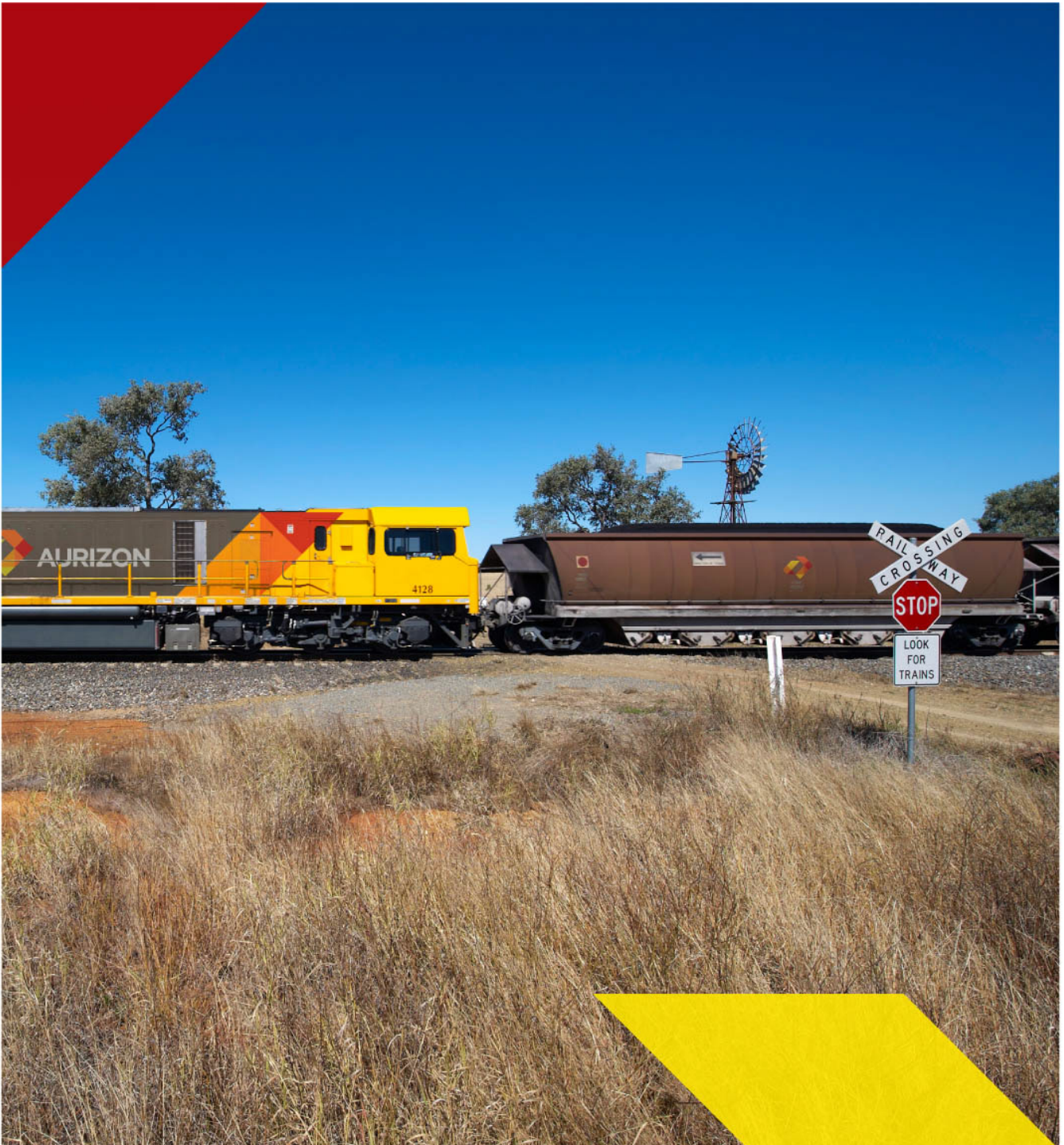
If you have any questions on this matter please contact Belinda Pryor on (07) 3019 5003.

Yours sincerely



Jon Windle
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Response to QCA Supplementary Draft Decision on 2014 Draft Access Undertaking – Capacity Transfer Mechanism



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1 Introduction

Aurizon Network provided to the Queensland Competition Authority (**QCA**) its 2014 Draft Access Undertaking (**2014 DAU**) in August 2014. In this submission, Aurizon Network committed to working with stakeholders to develop a mechanism to allow flexible use of access rights¹.

Aurizon Network submitted to the QCA a discussion paper on a short term transfer mechanism on 19 December 2014 (**Discussion Paper**). This Discussion Paper was prepared in response to requests from Aurizon Network's customers to develop a simple, functioning short term transfer mechanism to allow for more flexible use of access rights by access holders. Aurizon Network submitted the Discussion Paper to the QCA on a voluntary basis following intensive consultation with stakeholders, in particular the Queensland Resources Council (**QRC**), Asciano, Aurizon Operations and BHP Billiton Mitsubishi Alliance. The framework outlined in the Discussion Paper was substantially agreed with and supported by the QRC² whereas Asciano's response indicated that the current process contained within the Network Management Principles (**NMP**) is sufficient subject to managing take or pay matters.

The QCA issued a Supplementary Draft Decision (**Draft Decision**) in relation to the Discussion Paper on 30 April 2015. This Draft Decision recommends a number of amendments to Aurizon Network's proposed short term transfer mechanism and the existing transfer process contained in the 2014 Standard Access Agreements (**2014 SAA**).

The QCA's Draft Decision on the Discussion Paper also states that the QCA intends "to refuse to approve the 2014 DAU on the basis that it does not include a suitable short-term capacity transfer mechanism".³

1.1 QCA Act requirements

The QCA has assessed Aurizon Network's Discussion Paper in line with s137(2)(da) of the *Queensland Competition Authority Act 1997 (QCA Act)*. Specifically,

137(2) *An access undertaking for a service may include details of the following –*
(da) *arrangements for the transfer of all or part of the interest of a user of the service under an access agreement"*

As a threshold issue, section 137(2)(da) provides that an access undertaking may include details of arrangements for the transfer of all or part of the interest of a user in an access agreement. The transfer referred to in section 137(2)(da) is a transfer of a legal right in an access agreement and analogous to an assignment or novation.

The short term transfer mechanism is not a QCA Act requirement and is therefore offered voluntarily by Aurizon Network (at the request and after detailed consultation with representatives of its customer base). It deals with something different to a transfer for the purposes of the QCA Act, namely a relinquishment of existing rights to free up capacity and the granting of new access rights. The mechanism proposed by Aurizon Network does not deal with the type of "transfer" to which the QCA Act refers. As it is voluntarily offered, a short term transfer process cannot be compelled by the QCA.

It is Aurizon Network's view that the majority of the decisions proposed by the QCA in the Draft Decision are not within its powers and/or are impractical, or otherwise contrary to the objectives promoted by Aurizon Network's customers for the reasons set out below.

Overall the QCA's Draft Decision was to refuse to approve the 2014 DAU, as it did not contain a flexible and timely transfer process as required by the QCA Act. The QCA does not have the power to refuse to approve the 2014 DAU on the stated basis as discussed above.

¹ Appendix A1: Summary of changes between 2013 Draft Access Undertaking and 2014 Draft Access Undertaking, August 2014, page 160

² QRC Submission, Main Submission 9 October 2014 p 33; QRC Submission, Aurizon Network's 2014 DAU Short term transfer mechanism

³ Page iii of Preface to the QCA's Supplementary Draft Decision.

In addition, the QCA cannot refuse to approve a DAU because it does not contain a short term capacity transfer mechanism that the QCA prefers over the Aurizon Network's proposal, particularly where the alternative mechanism proposed by the QCA contains elements that are inconsistent with the QCA Act and, in some cases, are unworkable.

The QCA's proposed changes to the mechanism volunteered by Aurizon Network include matters that:

- do not reflect the language or the requirements of the QCA Act and seek to hold Aurizon Network to a different standard than the one prescribed by the statute. For example, whilst the QCA Act prohibits unfair differentiation that results in a material adverse effect on the ability of one or more access seekers to compete, the QCA Act expressly permits differentiation in specified circumstances. The QCA has proposed changes to the short term transfer mechanism that would make it a breach of Aurizon Network's Access Undertaking for Aurizon Network to differentiate in any way and for any reason, even though this test is not applied in the QCA Act; and
- seek to invest the QCA with both a power to compel the production and submission of an amending access undertaking, and with the ability to draft the QCA's own amendments to Aurizon Network's access undertaking. This stands at odds with the QCA Act which clearly does not permit the QCA to do either of those things, save in limited circumstances which are not applicable to the mechanism volunteered by Aurizon Network.

1.2 2014 DAU application

A mechanism by which a short term transfer can be effected already exists in the 2014 DAU and is given life through the NMP. This process satisfies the requirements of s137 of the QCA Act.

Currently, access holders have the ability in the NMP to 'borrow and lend' Train Service Entitlements (**TSEs**) within its own portfolio of access rights. Working in conjunction with this process, in the 2014 DAU Aurizon Network proposed the introduction of "operator capping" which enables take or pay offset for services within the access holder's portfolio of rights.

Aurizon Network proposed a short term transfer process which would allow access holders to borrow and lend TSEs outside of its own portfolio. This provides greater commercial certainty in being able to identify "borrow and lend" opportunities. Aurizon Network considers it imperative that the key principle underpinning the ability to implement a transfer under the short term transfer mechanism is that no other access holder's rights would be adversely affected if it proceeded. It would also be necessary to confirm that all elements of the supply chain are able to accommodate the swap of access rights.

A key objective of introducing operator capping was to provide stronger performance incentives for operators by allowing the operator to attribute the consumption of access rights from over railed train services to mitigate its take or pay obligations of under railed train services (either through its direct contracted access rights or through end user nomination), prior to distributing those benefits to the broader system. Aurizon Network considers the value proposition in operator capping is associated with mine production variability, working in conjunction with the pooling of TSEs through the NMP. For example, the capping framework already operates contractually within a current individual access holder's access agreement, even where it includes only two loading points.

The QRC and other industry participants suggested operator capping would favour larger operators over operators with a smaller customer base, which could therefore create a barrier to entry and discourage competition. On this basis, the QCA in its Policy and Pricing draft decision⁴ rejected the inclusion of operator capping in the 2014 DAU. Aurizon Network accepted this decision in the response to the Policy and Pricing draft decision⁵ as Aurizon Network is indifferent given ultimately it is revenue capped. Regardless of this, Aurizon Network maintains the view that operator capping is innovative and adds a further competitive dimension in the downstream market.

Without a distinct short term transfer mechanism, access holders would continue to have the ability to manage variability through the NMP (as proposed by Aurizon Network in its 2014 DAU), simply ordering additional trains that would be treated as ad hoc services, without creating complexity around different pricing, exit requirements

⁴ QCA Draft Decision, Aurizon 2014 Draft Access Undertaking – Draft Decision Volume III – Pricing & Tariffs, page 425

⁵ Aurizon Network Response to QCA's Draft Decision on Policy and Pricing Principles, 17 April 2015, page 264

etc. In the absence of orders from other access holders in the supply chain, these ad hoc orders would likely be fulfilled. As such, the short term transfer mechanism offers relatively minor benefits around improved certainty of delivery. Given this, it does not warrant the additional complexity of process, pricing and reporting that is suggested by the QCA within its Draft Decision.

For these reasons, it follows that the QCA cannot refuse to approve the 2014 DAU on the grounds that it has no short term transfer process as there are existing mechanisms proposed by Aurizon Network to facilitate flexible use of access rights.

Overall, the QCA's proposal:

- reduces Aurizon Network's responsiveness to customers needs and hence the ability to create efficiency and innovation in the management of capacity;
- reduces the ability of access holders to manage their access rights and take or pay obligations and as a result will reduce the likelihood of access holders utilising the short term transfer mechanism; and
- contradicts matters specifically requested by customers that Aurizon Network was willing to provide.

Aurizon Network remains committed to working with its customers and the QCA to address the request for a simple, functioning short term transfer mechanism, which allows for more flexible use of access rights. Aurizon Network is not prepared to agree to the QCA's proposed changes where they create unnecessary complexity, are unworkable, adversely impact on matters customers have expressly requested of Aurizon Network, or where they are beyond the power of the QCA to require.

Notwithstanding all of this, Aurizon Network is willing to volunteer a short term transfer mechanism and, where appropriate, to adopt aspects of the mechanism proposed by the QCA in its Draft Decision. Nevertheless, there are aspects of the QCA's proposal that cannot be accepted as outlined in this submission.

2 Capacity Transfer Provisions

2.1 QCA's Draft Decision

Draft Decision	Reference	Aurizon Network Position
<p>Our draft decision is to refuse to approve the existing 2014 DAU as it does not incorporate a flexible and timely transfer process in Part 7 of the 2014 DAU. We consider it appropriate that the existing 2014 DAU should be amended to include such a process in the manner indicated in our proposed drafting attached to this Decision.</p>	3.1	<p>Disagree Aurizon Network believes the short term transfer mechanism outlined in the Discussion Paper should remain in addition to the existing mechanism contained in the proposed 2014 SAA</p>
<p>Our draft decision is that Aurizon Network's proposal, in respect of the scope of participation in transfers, is not an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU to:</p> <p>(a) give all coal and non-coal users of the network the opportunity to access flexible and timely transfer provisions in the 2014 DAU.</p> <p>(b) where a transferee is not an access holder, the transferee must execute an access agreement, including all relevant approvals, before the transfer can be scheduled by Aurizon Network.</p>	3.2	<p>(a) Disagree Aurizon Network considers there is limited benefit for non-coal users from participation in the short term transfer mechanism (as distinct from the existing transfer mechanism)</p> <p>(b) Agree subject to amendment</p>
<p>Our draft decision is that Aurizon Network's proposal in respect of the transfer criteria to underpin 'as of right' transfers would not be an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) Access holders can transfer 'as of right' if the transfer meets access criteria A:</p> <ul style="list-style-type: none"> (i) transferred TSEs utilise the same mainline path (ii) transferred TSEs exit at the same destination (iii) transferee does not require additional access rights to complete the train path from the transferee's origin (iv) transferee can confirm a rail operator will operate the transferred capacity (v) transferee train service is operated on a like-for-like basis compared to the transferor's train service. <p>(b) Schedule 2 of the SAA includes a reference to the maximum number of daily TSEs which are able to be accommodated at the nominated loading and unloading facilities.</p>	3.3	<p>(a) Agree subject to reinstatement of criteria as discussed in this response</p> <p>(b) Disagree Aurizon Network does not believe an amendment to the SAA provides the benefit suggested by the QCA, as the process will significantly increase administrative complexity and may cause confidentiality concerns for access holders</p>
<p>Our draft decision is that Aurizon Network's proposal, in respect of the transfer criteria for access holders wishing to access a transfer which is subject to a rapid capacity assessment, is not an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) access criteria B differ from access criteria A in the</p>	3.4	<p>(a) Agree</p> <p>(b) Agree</p> <p>(c) Agree</p>

<p>following way: while transferred TSEs use the same mainline path as the transferor, ancillary access rights required at the point of origin and/or at the destination port precinct are to be identified and subject to capacity assessment.</p> <p>(b) Aurizon Network will undertake a rapid capacity assessment on transfer notices which meet access criteria B.</p> <p>(c) Aurizon Network will refuse an access criteria B transfer request if the rapid capacity assessment shows that existing access holders' access to the network will be adversely affected by the transfer.</p>		
<p>Our draft decision is that Aurizon Network's proposal, in respect of the capacity transfer timeframes, is not an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend clause 7.4.2 of the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) all transfer notices must be lodged with Aurizon Network not fewer than 48 hours prior to the transfer date</p> <p>(b) Aurizon Network must respond to the transfer notice not more than two business days after the transfer notice is lodged and</p> <p>(i) schedule transfers under access criteria A</p> <p>(ii) either advise access criteria B transfers that a rapid capacity assessment is required, or</p> <p>(iii) advise access criteria B transfers that a detailed capacity assessment is required and outline the scope and timing before a response to the notice can be provided</p> <p>(c) where Aurizon Network has to undertake a rapid capacity assessment to respond to a transfer notice, Aurizon Network must approve or refuse the transfer within four business days of the notice being lodged</p> <p>(d) where Aurizon Network has to undertake a detailed capacity assessment in order to respond to a transfer notice, Aurizon Network must approve or refuse the transfer within three months of the notice being lodged</p> <p>(e) the information that should be included in an Aurizon Network transfer response contains</p> <p>(i) the result of the capacity assessment</p> <p>(ii) an indication of whether the transfer can be approved or refused</p> <p>(iii) reasons for refusing the transfer request.</p>	3.5	<p>(a) Disagree Aurizon Network believes the original timeframe for notice of a short term transfer should remain</p> <p>(b) Agree with amendment</p> <p>(i) Agree</p> <p>(ii) Agree</p> <p>(iii) Disagree Aurizon Network believes these should be subject to a separate process</p> <p>(c) Agree with amendment</p> <p>(d) Disagree Aurizon Network believes the process and timeframes as set out in the Part 4 of the Access Undertaking should apply</p> <p>(e) Agree with amendment</p> <p>(i) Disagree Aurizon Network has concerns regarding provision of confidential information</p> <p>(ii) Agree</p> <p>(iii) Agree</p>
<p>Our draft decision is that Aurizon Network's proposal, in respect of the transfer criteria for access holders wishing to access a transfer which is subject to a rapid capacity assessment, is not an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) Aurizon Network will keep a register of all transfer notices, its responses and the timeframes taken to respond.</p> <p>(b) Aurizon Network will provide a quarterly update of the transfer register to the QCA as part of its regulatory reporting obligations under the 2014 DAU.</p> <p>(c) Aurizon Network will annually review, in consultation with stakeholders, the transfer provisions in the undertaking</p>	3.6	<p>(a) Agree with amendment</p> <p>(b) Agree</p> <p>(c) Agree with amendment</p>

and submit the results of the annual review, and any proposed amendments to the transfer provisions in the undertaking, to the QCA for approval.		
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2.2 Appropriateness of the capacity transfer mechanism

Aurizon Network believes that the short term transfer mechanism proposed in the Discussion Paper is an appropriate basis on which to introduce flexibility in management of access rights. In addition, this mechanism was supported by stakeholders, whose submissions on the Discussion Paper did not raise any major concerns with the proposal. As such, Aurizon Network believes its mechanism should be adopted. Aurizon Network is willing to work with stakeholders to make minor amendments as necessary to deal with those matters raised by stakeholders in their submissions to the QCA.

Aurizon Network's position is that, unless it can be found that the mechanism Aurizon Network proffered is inappropriate having regard to the requirements of the QCA Act, it should be accepted. Aurizon Network provides the following comments on the QCA's proposed mechanism for completeness.

Draft Decision 3.1

The QCA has created one capacity transfer mechanism to deal with any type of transfer request.

Aurizon Network created the short term transfer mechanism in consultation with stakeholders. The purpose of this process is to "fill the gap" for customers to enable flexible contractual alignment in the planning environment. Aurizon Network and customers specifically designed the short term transfer process to be a completely new and separate process. Having a separate process to the existing transfer mechanism serves to:

- ensure Aurizon Network could manage requests for a short term transfer in a timely and efficient manner and
- test the proposed short term transfer process for practicality, independent of and without impacting the existing transfer mechanism.

The proposed drafting by the QCA results in confusion for access seekers and access holders regarding which relevant processes under the Access Undertaking would apply when seeking a transfer of access rights. The QCA has included separate provisions, with different timeframes, in Part 7 compared to those which apply in the negotiation processes contained in Part 4.

Merging the transfer processes, and making this available to access seekers and access holders, will create additional administration and complexity for customers and Aurizon Network, increase the potential for misinterpretation of the provisions of the Access Undertaking and an increase in administrative time to ensure customers follow the correct process and timeframes. It could also result in an unintended and inefficient increase in disputes from customers regarding the progress of their access applications.

Aurizon Network finds it difficult to see how the QCA's proposed process is beneficial for customers. For example:

- there could be confusion about the applicable timeframes for processing a transfer request, resulting in additional requirements to educate customers, and also to ensure Aurizon Network personnel are managing requests in the same manner; and
- it is highly unlikely that an access seeker will be able to avail of the short term transfer provisions as, given the short timeframes involved in the process, it is unlikely that an access seeker will have an access agreement executed within 48 hours (see response to Draft Decision 3.2(b)).

In addition, Aurizon Network would have no choice but to recover additional costs associated with the application of the QCA's process to access seekers, further impacting customers.

The QCA's proposal to create one transfer mechanism reduces the flexibility of the new process, including being able to apply a "trial and error" approach to agreeing improvements to the process without changing the existing contractual mechanisms for transfers of access rights. The ability to further refine the short term transfer process, once it has been implemented and tested, is something that both Aurizon Network and stakeholders are eager to maintain, while ensuring an alternative mechanism for processing transfers remains on foot.

Having two distinct transfer processes allows customers to clearly understand the process involved when seeking the transfer of access rights.

2.3 Scope of participation

Draft Decision 3.2(a)

The QCA has proposed that the short term transfer provisions should apply to non-coal traffic.

Aurizon Network did not include non-coal traffic in the short term transfer process as it is designed to deal with coal supply chain dynamics, for example cargo assembly operation of coal export terminals.

Most non-coal traffic runs on paths allocated due to legislative requirements e.g. passenger priority or preserved paths. Given the nature of these paths, these cannot be transferred for a short term without causing major disruptions to the timetable.

While Aurizon Network could in principle make this mechanism available to non-coal traffic, non-coal traffic generally requires access to both the Aurizon Network and Queensland Rail infrastructure for a complete service. Hence, unless Queensland Rail has a similar short term transfer process, non-coal traffic is unlikely to be able to satisfy the obligations in relation to the demonstration of supply chain rights.

In order to ensure no cross-subsidisation between coal and non-coal traffic, Aurizon Network would need to expand the provisions to apply to non-coal traffic on the basis that the transfers are only within the non-coal group of services. Alternatively, if a non-coal service wished to receive a transfer from a coal service, it would need to be subject to the relevant coal reference tariff for pricing of that service.

Given the concerns outlined above, Aurizon Network believes the inclusion of non-coal traffic in the short term transfer process is not appropriate.

Draft Decision 3.2(b)

The QCA proposes that the short term transfer provisions should apply to access seekers, subject to the relevant access seeker executing an access agreement.

The purpose of having a completely separate process for existing access holders was to ensure Aurizon Network could manage requests for a short term transfer in a timely and efficient manner. This concept was supported by customers. By applying this process to access seekers, the simplicity and efficient nature of the short term transfer process is lost.

As discussed above, given the short timeframes involved in the short term transfer process, it is unlikely that an access seeker will have an access agreement executed in time to use these provisions. Even if the access seeker agreed to sign the standard form of access agreement, parties require time to comply with internal governance processes prior to execution of an agreement. These processes will generally take more than 48 hours to complete. Once the access agreement is signed, the access holder will also have to provide an operating plan to Aurizon Network for approval, undertake and approve an interface risk management plan, and provide evidence of a number of matters to Aurizon Network prior to commencing operation e.g. insurance, accreditation etc. Aurizon Network does not believe that 48 hours is sufficient for these documents and approvals to be finalised.

Where an access holder has reached an agreement to transfer access rights to an access seeker that does not have an access agreement to seamlessly take over those access rights as and when the transfer is due to take effect, the access holder would maintain responsibility for take or pay on those access rights until such time as the

access seeker has executed its access agreement. Given that under the short term transfer process it is envisaged that only 48 hours' notice is required of the transfer taking effect, the access holder is likely to be disadvantaged or subject to unfair differentiation, as by the time the negotiation of an access agreement is complete, the opportunity for the short term transfer of rights is likely to have expired. This is counter to the objective of efficient utilisation of access rights.

The likely result of this is that access holders will only seek to transfer access rights with existing access holders so they can have certainty that the transfer can occur and the associated liability in respect of those access rights is transferred to the transferee.

Consistent with Aurizon Network's response to Draft Decision 3.1(a), there should continue to be separate distinct processes for short term transfers and existing transfers which are for a longer duration.

2.4 Access criteria

Draft Decision 3.3(a)

The QCA proposes that the criteria for pre-approved transfers (**Criteria A Transfers**) should include:

- Utilisation of the same mainline path
- a requirement to exit at the same destination
- no requirement for additional access rights to complete the train path from the transferee's origin
- confirmation that a rail operator will operate the transferred capacity
- confirmation that it will be operated on a like-for-like basis (cyclic or timetables) compared to the transferor's train service.

Aurizon Network understands there is uncertainty from stakeholders in regard to the concept of mainline path as the definition in the 2014 DAU is ambiguous. For illustrative purposes, Aurizon Network has included as Appendix 1 the proposed map which specifies the mainline path sections for each coal system.

The criteria proposed by the QCA in the Draft Decision differs from that suggested by Aurizon Network in the Discussion Paper as follows:

1. they do not include an assessment of ability for the transferee's mine to actually load the train which will use the access rights;
2. they do not contain a requirement to demonstrate resource availability for the rail operator;
3. they interpret the proposed like-for-like criteria as the nature or type of access rights, being either cyclical or timetabled; and
4. they allow for transfers to occur across reference tariffs (e.g. system tariffs vs expansion tariffs).

Aurizon Network has addressed each of these matters below.

1. Ability to load a train

The QCA proposes that instead of the access holder being required to demonstrate its ability to load a train, Aurizon Network should have an alternative if the transfer is processed and the access holder does not operate the service due to load out issues. The QCA states that this "out" is provided through the exclusions included in the revised definition of Aurizon Network Cause proposed in the SAA and hence would not result in a reduction in take or pay liability for the access holder.

In developing the short term transfer mechanism, Aurizon Network and stakeholders were seeking to ensure the mechanism results in more efficient utilisation of the existing below rail capacity to align with the requirements of the supply chain. Having the ability to load the train is a key aspect for ensuring utilisation of the infrastructure. Facilitating a transfer for an access holder who cannot actually load a train does not increase utilisation of the network, as there is no way to physically operate the service.

Aurizon Network appreciates the QCA's view that Aurizon Network should not be considered liable for the train not operating in these circumstances.

In addition to ensuring increased utilisation of the network, another purpose of including this restriction is to stop access holders from being able to game the system, for example by transferring paths to a mine closer to the port and not actually using the paths. This would result in a lower take or pay liability for the customer but higher costs for other users in the relevant coal system. This is because the difference between what Aurizon Network would have recovered in take or pay if the paths had not been transferred, and the take or pay actually recovered, would be socialised among other users in that coal system. Customers, as represented by the QRC, specifically requested this criterion be included as a protection to avoid this situation occurring.

Aurizon Network notes that the QCA proposes an alternative pricing mechanism to manage potential gaming by its Draft Decision 4.1(a) which Aurizon Network has addressed below in section 3.2.

The requirement to demonstrate load-out should be reinstated.

2. Rail operator resource availability

Aurizon Network accepts the QCA's position on rail operator availability.

3. Like-for-like train services

The like-for-like concept was intended to relate to the actual times for operation of the train service. Schedule 2 of the proposed 2014 SAA contains the Train Description for a contracted service, and includes:

- time allocated to load and unload a train;
- sectional running times for the service;
- time allocated for provisioning a train service or undertaking other above rail dwells; and
- dwell times and locations.

The rationale for the like-for-like train service is to improve the timeliness of the process by reducing the requirement for Aurizon Network to undertake a capacity assessment in order to be comfortable that the proposed transfer will not negatively impact existing access holders. Without this like-for-like concept, Aurizon Network would not be comfortable approving transfers as it would not know if the transfer will unfairly affect the use of access rights by any other access holder.

The QCA's proposal to consider the type of service as either cyclical or timetabled does not adequately capture this information.

As such, Aurizon Network proposes that the requirement for like-for-like Train Descriptions be retained.

4. Same reference tariff

Aurizon Network proposed that short term transfers can only occur between train services which are subject to the same reference tariff (effectively within a coal system, with the exception of any future expansion tariffs). This provides simplicity for the effective and timely assessment of capacity impacts and administration of these short term transfers.

By permitting transfers across different coal systems or reference tariffs, unnecessary complexity is introduced including issues with allocation of revenue from the transferred services from one reference tariff (either system or expansion) to another. This could have implications for future reference tariffs, in particular if the revenue is allocated to a different reference tariff than it was originally allocated to. This is entirely contrary to the objective of the short term transfer mechanism.

Aurizon Network included this requirement to avoid unnecessary additional administration and complexity, which ultimately results in higher costs for access holders. For example, Aurizon Network would have to put in place additional processes and rules with respect to allocation of revenue between reference tariffs, which would increase the complexity of managing the allowable revenues for each tariff (either system or expansion tariffs).

Given the concerns outlined above Aurizon Network considers the QCA's proposal does not meet the objectives of the short term transfer mechanism and is therefore inappropriate to be included in this process.

Draft Decision 3.3(b)

The QCA proposes that the 2014 SAA be amended to include in Schedule 2 a reference to a specified maximum number of daily TSEs which are able to be operated for a particular loading and unloading facility.

Aurizon Network understands the QCA's reasoning for the inclusion of these new measures. As discussed above, Aurizon Network's rationale for including requirements in relation to load out capability was at the request of customers.

There are practical issues with implementing the QCA's proposed approach. For example, where multiple operators hold access rights for the same load out, or where multiple customers have mines which utilise the same load out, specifying a maximum number under each of these different agreements becomes complex. If one of the access holders wished to amend its contractual access rights for this location, and this would result in other access holders having a different maximum number of services, Aurizon Network would have to seek to amend all access agreements and obtain the approval of all access holders prior to being able to finalise the change requested. This would lead to an inadvertent breach of the ringfencing provisions in the Access Undertaking as this would provide one access holder with information regarding what access rights another access holder has contracted. This concern also applies to the unloading facility.

The issues associated with including this additional information in the access agreements would make it impossible to implement in practice. Consequently, Aurizon Network does not believe that this additional information is required.

Draft Decision 3.4

The QCA proposes that, where an access holder requires ancillary access rights in order to be able to utilise the access rights which are proposed to be transferred, or wishes to unload at a different terminal within the same port precinct, Aurizon Network should undertake a rapid capacity assessment.

Aurizon Network accepts the QCA's proposals in regard to the criteria and process for undertaking a rapid capacity assessment. The methodology for completing the rapid capacity assessment will be determined on a case by case basis to align with the complexity of the requested transfer.

In addition to the criteria proposed by the QCA, Aurizon Network considers the rapid capacity assessment process would be used for transfers where the train services do not have a like-for-like Train Description as there is a need to assess the capacity impact of these requests.

Aligned with the response to Draft Decision 3.2(b), Aurizon Network considers that where the rapid capacity assessment is undertaken, the transferee should have an existing access agreement for the access rights sought to ensure that we can process the transfer of rights from one party to another within the timeframes required.

2.5 Capacity transfer timeframes

Draft Decision 3.5(a)

The QCA proposes that access holders have the ability to provide a short term transfer request to Aurizon Network up to 48 hours prior to the transfer date.

Aurizon Network proposed that transfer requests should be received at least 48 hours prior to the close of train orders for the next period in which the Intermediate Train Plan (**ITP**) is to be scheduled. This is to ensure there is sufficient time to assess and, if appropriate, include the contractual change from a transfer for the purpose of undertaking a contested train path process (within Schedule G of the Access Undertaking) when compiling the ITP.

The change proposed by the QCA introduces inefficiencies in the planning and scheduling process and is more likely to have an adverse impact on other access holders. Effectively, the QCA's proposal will mean that there will be a need to modify the ITP when it has already been settled. Where paths are already scheduled in the ITP, it may become more difficult to accommodate a transfer request without an impact on another access holder's

scheduled path. For that reason, inclusion of such a requirement may result in a higher likelihood of a short term transfer request being rejected. Additionally, if transferred paths are given priority (e.g. over ad hoc paths already scheduled in the ITP), it may result in the removal of another access holder's anticipated paths from the ITP at short notice.

The QCA's Draft Decision to allow transfer notices to be issued 48 hours prior to the transfer date will require a significant increase in resources, as Aurizon Network would be required to have staff available to work outside of normal business hours to ensure they can respond to these requests. This would result in additional costs which would be recoverable from access holders.

One of the key objectives of the short term transfer mechanism is to ensure that there are no adverse impacts on existing access holders. The deadline for receipt of Criteria A transfer requests should therefore remain at 48 hours prior to close of train orders for the ITP. This should enhance the efficiency of the proposed transfer process by ensuring an efficient train scheduling process, while still allowing transfers to occur within a very short timeframe (as little as 48 hours).

Draft Decision 3.5(b)

The QCA's Draft Decision requires that, no more than two (2) Business Days after the receipt of a transfer notice, Aurizon Network will:

1. Schedule transfers which are consistent with Criteria A;
2. Notify the access holder that the request falls into Criteria B and requires a rapid capacity assessment; or
3. Advise that a detailed capacity assessment is required and provide the timing for completing this

Aurizon Network agrees with items 1 and 2, subject to the comments above in response to Draft Decision 3.3 on the relevant criteria to assess transfers and clarification around process for these transfers. For example, Aurizon Network would only schedule services for a transfer consistent with Criteria A where the transferee has placed train orders for those services consistent with the scheduling process in the NMP.

With regard to item 3 and consistent with our response to Draft Decision 3.1, Aurizon Network believes that transfers which require a detailed capacity assessment should be assessed under the separate existing process for access requests contained in the Negotiation Process (Part 4) of the Access Undertaking. This must include those timeframes applying for processing transfer requests and negotiating changes to an access agreement.

Draft Decision 3.5(c)

The QCA proposes that where a rapid capacity assessment is required to be undertaken by Aurizon Network, it will have four (4) Business Days to complete this process and advise the access holder of the outcome.

Aurizon Network appreciates the QCA providing additional time to complete the rapid capacity assessment. Nevertheless, assuming the request for transfer is provided at least 48 hours prior to placement of train orders for the following planning period (refer to Aurizon Network's response to Draft Decision 3.5(a)), this would result in the outcome of a capacity assessment not being provided to the customer until after the completion of the ITP. This would be an inefficient outcome, and could result in the access holder being unable to complete the requested transfer as it would impact other access holders.

If the timeframe for completion of the rapid capacity assessment is extended to four (4) Business Days, Aurizon Network considers that requests for Criteria B transfers should be provided by the access holder four (4) Business Days prior to the close of train orders.

Draft Decision 3.5(d)

The QCA has provided a period of no more than three (3) months for Aurizon Network to undertake a detailed capacity assessment where it is required.

As indicated in our response to Draft Decision 3.1, Aurizon Network believes that transfers which require a detailed capacity assessment should be managed under the separate existing process for access requests, with the timeframes identified in the Negotiation Process under Part 4 of the Access Undertaking applying.

Draft Decision 3.5(e)

The QCA proposes that Aurizon Network should include in a response to an access holder in relation to a transfer request:

- the results of the capacity assessment;
- an indication of whether the transfer can be approved or refused; and
- reasons for refusing the transfer request.

The results of the capacity assessment contain confidential information with respect to access rights held by other access holders. The provision of this information to access holders by Aurizon Network would be inconsistent with Aurizon Network's ringfencing and confidentiality obligations within the Access Undertaking. It is only in circumstances where access seekers and holders permit Aurizon Network to be relieved from these obligations that Aurizon Network could provide the capacity assessment results to access holders. The QCA Policy and Pricing draft decision does not allow for ringfencing waivers from third parties.

Aurizon Network is willing to provide an indication of whether the transfer can be approved or refused and reasons for refusing the transfer request to access holders, as long as this complies with the Access Undertaking obligations.

2.6 Transfer governance process

Draft Decision 3.6(a) and 3.6(b)

The QCA proposes that Aurizon Network be required to maintain a register of transfer notices, responses and timeframes and provide this register to the QCA quarterly, as part of its regulatory reporting obligations.

Aurizon Network has no significant concerns with this additional obligation, subject to the costs for systems and associated resources to perform this obligation being allowed for through an adjustment to allowable revenue. This additional cost must be reflected within the operating allowance of the Maximum Allowable Revenue Final Decision. This will result in additional costs for access holders as additional personnel and changes to reporting systems will be required to facilitate the provision of this information.

Draft Decision 3.6(c)

The QCA proposes that Aurizon Network be required to undertake an annual review of the capacity transfer provisions, granting Aurizon Network three months to complete this review in consultation with access holders. Following the review:

- Aurizon Network will submit amendments to the QCA for consideration, or provide reasons why changes are not required; and
- the QCA must assess Aurizon Network's submission, seek comments from stakeholders and if approved, give a notice to Aurizon Network.

The QCA has stipulated that a new provision be included whereby, if the QCA does not approve Aurizon Network's submission, the QCA may develop its own amendments to be implemented.

Aurizon Network agrees to complete a review of the provisions in consultation with access holders once the provisions have been in use for a reasonable trial period to see if any improvements can be made. The proposed 12 month period is reasonable.

Aurizon Network does not agree to provide the QCA with complete discretion to amend the transfer provisions as it sees fit. It is beyond the QCA's power to invest itself with the ability to:

- compel the production and submission of an amending access undertaking⁶; or
- draft the QCA's own amendments to Aurizon Network's Access Undertaking⁷,

save in limited circumstances, none of which apply to the short term transfer mechanism voluntarily proposed by Aurizon Network as discussed previously.

⁶ The QCA has an existing power to do so under section 139(2) of the QCA Act *only* where it considers it is necessary to do so to make the undertaking consistent with a provision of the QCA Act or an access code. This is clearly not the case here.

⁷ The QCA is only allowed to do so only where a person has failed to comply with an initial or secondary amendment notice, in accordance with section 139 and 140 of the QCA Act). This is clearly not the case here.

3 Pricing Arrangements to Apply to Capacity Transfers

3.1 QCA’s Draft Decision

Draft Decision	Reference	Aurizon Network Position
<p>Our draft decision is that Aurizon Network’s proposal, in respect of the pricing arrangements to underpin the capacity transfer provisions (including the short-term transfer mechanism), is not an acceptable basis for an amendment to the 2014 DAU following our refusal to approve the 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) the access charges applying to transferred TSEs will be the higher of the access charges set for the origin of the TSEs in the transferor’s access agreement and the access charges set for the origin of the TSEs in the transferee’s access agreement.</p> <p>(b) the differential treatment of the generation of access agreements in a capacity transfer will be retained.</p>	4.1	<p>(a) Disagree</p> <p>Aurizon Network believes this pricing approach will lead to access holders choosing not to undergo transfers</p> <p>(b) Agree</p>

3.2 Transfer costs

Draft Decision 4.1(a)

The QCA proposes to remove payment of transfer fees for all categories of transfers, instead applying to the transferee the higher of the price either it or the transferor would pay for access.

Aurizon Network proposed that there would be no transfer fee payable for short term transfers and, as is the case in existing 2010 Access Agreements, for transfers under 2 years in length as this provides efficiency and flexibility in processing the requests from customers. Aurizon Network expects transfer fees to still be relevant for longer term transfers (i.e. greater than 2 years in length).

The QCA’s proposal to merge all transfer processes together effectively means there are no up-front transfer fees for any length of transfer. This conflicts with existing access agreements which require the payment of a transfer fee for longer term transfers, hence would result in differential treatment between access holders.

The proposal of applying an access charge to the transferee comparative to what the transferor would have paid is likely to reduce the use short term transfer mechanism and derogate the economic benefits the mechanism proposed by Aurizon Network provides. It may also result in cost inequality between access holders. In addition, this approach may disadvantage access holders who would seek to transfer access rights to another user where their rights are for a longer haul, as transferees are more likely to take a transfer of rights from a closer location to minimise the amount they have to pay.

In Aurizon Network’s negotiations with customers, the customers supported a degree of socialisation due to transfers, the tradeoff being having a responsive and efficient mechanism to manage short term variability in demand for rail access.

Aurizon Network considers the actual amount of socialisation between access holders will be minimal. Having the criteria proposed by Aurizon Network in place (refer also to response to Draft Decision 3.3) effectively ensures that where a transfer occurs, the transferee will operate the service, hence will pay Aurizon Network the relevant access

charges due. If not for the transfer, Aurizon Network may only receive the take or pay amount due (based only on AT2, AT3 and AT4 portions of the access charge) from the transferor, as one would assume that if it is seeking to transfer the access rights to another party, it would not be using the rights itself. Ultimately, if the transfer takes effect, Aurizon Network may actually receive more revenue from the transferee for operating the service than it would have recovered from the transferor through take or pay. The outcome of this is that all other users would actually benefit from the fact that the transfer has been effected as the overall revenue collected by Aurizon Network may be greater.

The QCA's proposed pricing mechanism gives limited consideration to efficient use of access rights. For example, a transferee is less likely to take on a transfer of access rights if it will have to pay more than its normal access charge for operating the service. The impact will be on transferors having fewer options to relieve themselves of liability for these access rights. This would not improve the utilisation of the below rail infrastructure. Aurizon Network believes its approach to short term transfers (zero fee, subject to having appropriate anti-gaming protections as discussed in response to Draft Decision 3.3) is more likely to result in access holders seeking to facilitate transfers of its access rights. Aurizon Network's approach was supported by the QRC.

Aurizon Network perceives there are a number of practical issues associated with implementing the QCA's proposal. For example, Aurizon Network's existing systems and processes would require material changes to enable this to occur. Access holders would potentially have to undertake system changes also, for example to be able to identify whether a train service operated an existing TSE or a transferred TSE to identify which access charge would apply. This is not a practical solution for Aurizon Network or access holders, and would result in unnecessary additional administration, complexity and costs for all parties.

Aurizon Network disagrees with the QCA's proposed pricing framework for transfers, and believes Aurizon Network's original proposal should be reinstated.

3.3 Different generations of access agreements

Draft Decision 4.1(b)

The QCA proposes to retain Aurizon Network's proposed differential treatment of the generation of access agreements in a capacity transfer.

Aurizon Network agrees with this position.

4 Implementation of Capacity Transfer Provisions

4.1 QCA’s Draft Decision

Draft Decision	Reference	Aurizon Network Position
<p>Our draft decision is that Aurizon Network’s proposal in respect of the implementation of the short-term transfer mechanism is not an acceptable basis for an amendment to 2014 DAU following our refusal to approve 2014 DAU. Instead we consider it appropriate for Aurizon Network to amend the 2014 DAU in the manner indicated in our proposed draft so that:</p> <p>(a) Clause 7.4.2 is amended to include specified access criteria, timeframes and governance processes in which Aurizon Network should administer transfers</p> <p>(b) if agreed by both parties, Aurizon Network will amend existing access agreements to incorporate the new transfer provisions</p> <p>(c) the SAA is amended to permit Aurizon Network to address any increased or decreased credit risk arising from a transfer.</p>	5.1	<p>(a) Disagree</p> <p>Aurizon Network believes transfer arrangements should be contained within an access agreement</p> <p>(b) Agree</p> <p>(c) Agree with amendment</p>

4.2 Implementation via the undertaking

Draft Decision 5.1(a)

The QCA proposes that all capacity transfer provisions should be contained in the access undertaking.

As per Aurizon Network’s response to the Policy and Pricing draft decision⁸, Aurizon Network believes that matters relating to the management of access rights which have been provided to access holders should be through the relevant access agreement. This is because the access agreement contains the contractual entitlements for the TSEs that are proposed to be transferred.

Having transfer provisions in the access undertaking rather than the access agreement results in additional administration costs and increases complexity for both Aurizon Network and the access holder. For example, if systems or processes are required to facilitate the operation of provisions, these would have to change each time the access undertaking changes. This would not have been contemplated at the time of executing the access agreement. Having amendments made to the access undertaking which are, by default, applied to an agreed and approved access agreement may have the impact of substantially changing the risk/reward profile that was originally agreed by the parties. It also increases regulatory risk and reduces contractual certainty due to the potential for provisions relating to transferring access rights to change during the life of an access agreement.

Draft Decision 5.1(b)

The QCA proposes that, where agreed by Aurizon Network and the access seeker, amendments will be made to existing access agreements to incorporate the new transfer provisions.

⁸ Aurizon Network Response to QCA’s Draft Decision on Policy and Pricing Principles, 17 April 2015, page109-111

Aurizon Network agrees with this position.

Draft Decision 5.1(c)

The QCA proposes to include an ability for Aurizon Network to address any change in credit risk of an access holder arising from a transfer through the security provisions.

Aurizon Network, in developing the Discussion Paper became comfortable with any potential change in credit risk due to short term transfers as it considers the length of these transfers (e.g. only 25% of access rights for the year) and the criteria which must be met by the access holder as proposed by Aurizon Network are sufficient to manage this. With the changes to the process proposed by the QCA in its Draft Decision, Aurizon Network could potentially have greater credit risk exposure.

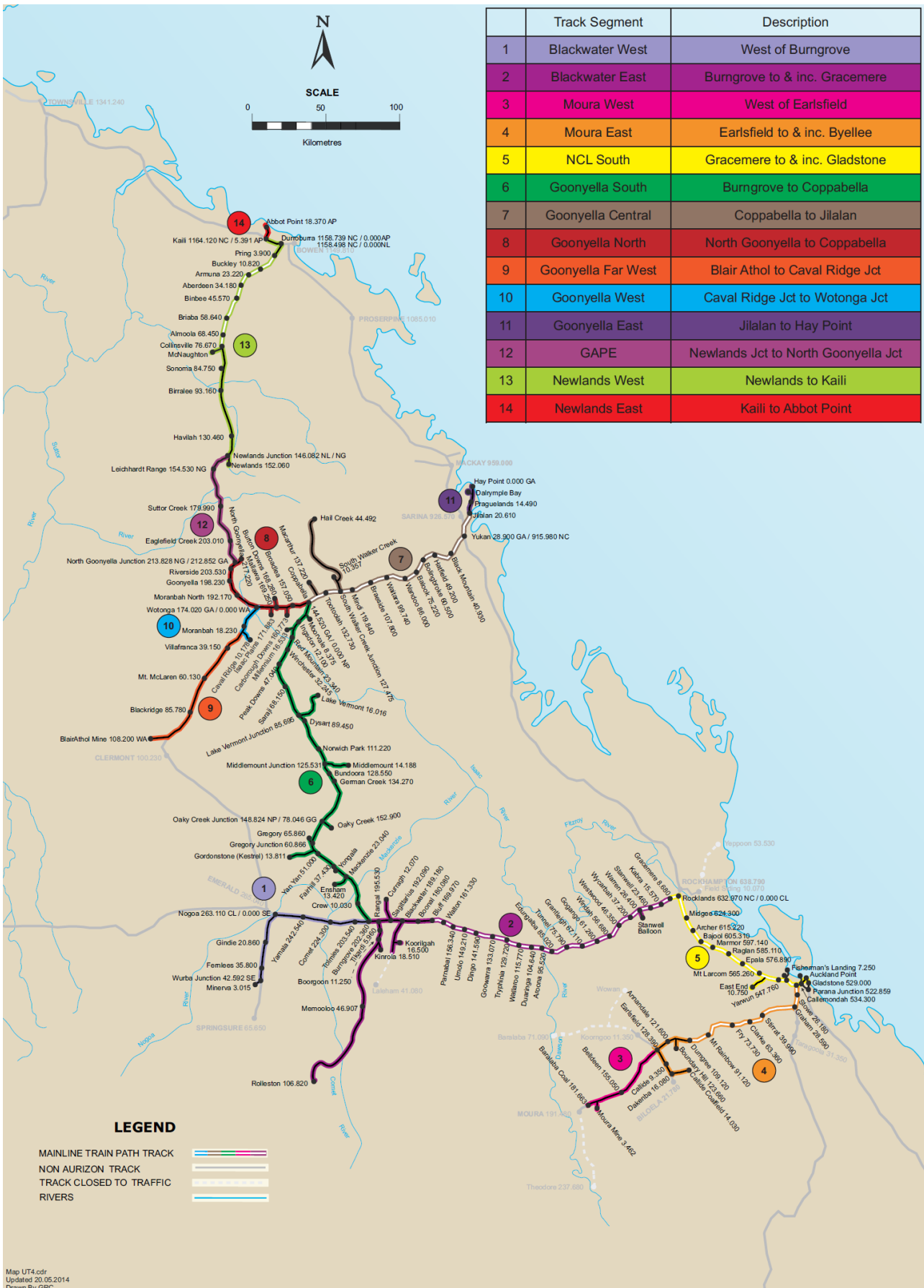
Aurizon Network appreciates the QCA's attempt to address security concerns. The practical effect of this proposal, however, is that this will have implications for the ability to quickly process proposed transfers for the access holder as there may be delays in the provision of additional security. This could result in customers forgoing the acceptance of transfers as they are not able to arrange security requirements within the timeframe (e.g. as little as 48 hours). Aurizon Network considers this is a barrier to the efficient utilisation of access rights.

Two alternative options to consider which would ensure the timeframes for processing transfers are met are:

- the original access holder to continue to provide the relevant security for the access rights which are transferred, effectively taking on liability itself to underwrite the creditworthiness of the transferee for those rights; or
- no change in security for either the transferor or transferee, however if the transferee has greater credit risk and fails to make payment, the revenue lost would be recovered via a revenue cap adjustment.

Overall, Aurizon Network continues to be comfortable regarding security requirements if the QCA was to revert to the mechanism proposed by Aurizon Network in its Discussion Paper, which was supported by the QRC.

Appendix 1: Mainline Paths



Appendix 2: Glossary

2010 Access Agreements	An access agreement entered into under Aurizon Network's 2010 Access Undertaking
2014 DAU	2014 Draft Access Undertaking
2014 SAA	2014 Standard Access Agreement
Discussion Paper	Aurizon Network 2014 Draft Access Undertaking Discussion Paper on potential short term transfer mechanism, December 2014
Draft Decision	Supplementary Draft Decision Aurizon Network 2014 Draft Access Undertaking: Capacity Transfer Mechanism, April 2015
ITP	Intermediate Train Plan
NMP	Network Management Principles
QCA	Queensland Competition Authority
QCA Act	Queensland Competition Authority Act 1997
QRC	Queensland Resources Council
SAA	Standard Access Agreement
TSE	Train Service Entitlements