

Declaration of Queensland Rail Network

Submissions to the Queensland Competition Authority

Declaration Review in respect of the Queensland Rail network under the *Queensland Competition Authority Act 1997* (Qld)

30 May 2018

GLENCORE

1 Executive Summary – Each of the access criteria satisfied

1.1 The access criteria are satisfied and the declaration should be continued

Glencore considers it is clear for the reasons in this submission that the access criteria in section 76 of the *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**) are satisfied in relation to the Declared Service as defined in section 250(1) of the QCA Act, namely:

*the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager (the **Declared Service**),*

such that the declaration of that service should continue.

Alternatively, if the Queensland Competition Authority (**QCA**) is not satisfied that the access criteria are met in respect of the whole of the Declared Service, Glencore considers that the QCA ought to recommend that the declaration continue at least in respect of that portion of the Declared Service which makes up the Mount Isa network to the Port of Townsville (which itself satisfies the access criteria under section 76 of the QCA Act).

Glencore considers that in either case, the declaration should be recommended for a period of at least 15 years in accordance with section 87A and 87C QCA Act.

1.2 Criterion (a) – promotion of competition

Access (or increased access) to the Declared Service (or at least the use of the Mount Isa Line (**Mount Isa Rail Access Service**), on reasonable terms and conditions as a result of a declaration would promote a material increase in competition in at least one market, other than the market for the service.

That assessment requires only that the QCA be satisfied that continuation of declaration would give rise to a significant, finite probability of improved conditions or an enhanced environment for competition in a dependent market, thereby promoting competitive behaviour within that market in a non-trivial sense.

Glencore considers that the QCA should be satisfied of those matters on the basis that declaration promotes long-term certainty of access on reasonable terms as well as providing a right to have the QCA arbitrate access disputes (including as a manner of resolving access pricing), and the potential to have a reference tariff for the Mt Isa Rail Access Service introduced in the future. This issue result in promoting a material increase in competition in at least the following dependent markets:

- (a) the North West Queensland mineral tenements market;
- (b) the relevant rail haulage market; and
- (c) the North West Queensland mining inputs market.

1.3 Criterion (b) – foreseeable demand at least cost

The foreseeable demand for the Mount Isa Access Service can clearly be met within the existing capacity of the Mount Isa Line.

Given the very significant costs which would be required to develop an alternative rail line to service any or all of that demand, it is clear that foreseeable demand is met at least cost by the existing facility rather than 2 or more facilities.

1.4 Criterion (c) – facility is significant

The Mount Isa Line is highly significant both having regard to its size (being approximately 1032 kilometres in length) and in its significance to the Queensland economy (as a major freight route for the North West minerals province, and an import regional route for livestock, agricultural products and regional passenger services).

1.5 Criterion (d) – promotion of the public interest

Access (or increased access) to the Declared Service (or at least the Mount Isa Rail Access Service) on reasonable terms and conditions, as a result of declaration would promote the public interest by providing long term certainty as to rights of access, access being available on reasonable terms (through the standard access agreement and rights to arbitrate access disputes) and thereby facilitating investment in the North West region. The North West minerals industry and other industries that the declaration facilitates investment in have wider economic benefits – through employment, royalties to the State and other economic growth, particularly in regional Queensland.

2 Introduction and context for the review

2.1 Introduction

Glencore thanks the QCA for the opportunity to make submissions relating to the current declaration review process being undertaken in respect of assets listed in section 250(1) of the QCA Act particularly:

the use of rail transport infrastructure for providing transportation by rail if the infrastructure is used for operating a railway for which Queensland Rail Limited, or a successor, assign or subsidiary of Queensland Rail Limited, is the railway manager

Figure 1 below shows Queensland Rail Limited's (**QR**) rail network, the use of which is included within the scope of that declared service (the **QR Network**).

submission is a clear illustration of the section of infrastructure that makes up the Mount Isa Line (including the Phosphate Hill branch line).

2.2 Mount Isa Rail Access Service as a stand-alone service

As noted above and depicted in Figure 1 of this submission, the Declared Service, as it is currently defined, relates to the full QR Network.

Glencore considers that the QCA should be satisfied of the access criteria on the basis of that broader Declared Service – however, given the time available for submissions, this submission focuses on demonstrating that is the case at least in respect of the Mount Isa Rail Access Service.

That is important, as under section 87C(3) QCA Act:

the authority may make a recommendation [to declare part of a service] under section 87A (1)(b) if the authority is satisfied about all of the access criteria for the part of the service

Section 87(1)(b) QCA requires that for part of a service to be declared it must *'itself be a service'*.

Service is, in turn, widely defined in section 72(1)(a) of the QCA Act as:

A service provided, or to be provided, by means of a facility and includes, for example –

(a) *the use of a facility (including, for example, a road or railway line)*

The use of the Mount Isa Line is therefore clearly a service itself, so that if the QCA was minded to recommend not continuing the whole of the Declared Service, the QCA should then consider whether all of the access criteria were satisfied in respect of the Mount Isa Rail Access Service, such that that narrower service should be declared.

For the reasons noted in this submission, Glencore consider that following any such consideration it will be clearly appropriate to declare the Mount Isa Rail Access Service.

2.3 Context of the declaration

The Declared Service was first declared by virtue of the *Queensland Competition Authority Regulation 1997* (Qld) in 1997 and has remained as such (subject to changes in the makeup of the QR Network as a result of divestment of the central Queensland coal region network to Aurizon) in one way or another, since that time.

The expiration of that declaration has not come about by virtue of a change in the State's position, rather the expiry of a transitional declaration made under section 250 QCA Act (which Glencore understands was required in order for the Queensland rail access regime to be certified as an effective access regime under the national access regime).

2.4 The access criteria

Accordingly, the QCA has commenced review of each of the declared services provided under the QCA Act, which are due to expire on 8 September 2020.

In order to make a recommendation to the Minister that a service should be declared (including for currently declared services, or parts of those services, as discussed in this submission),¹ the QCA must be satisfied of each of the four access criteria under section 76 of the QCA Act, as follows:

¹ *Queensland Competition Authority Act 1997* (Qld) section 87C(1).

- (a) *that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service;*
- (b) *that the facility for the service could meet the total foreseeable demand in the market –*
 - (i) *over the period for which the service would be declared; and*
 - (ii) *at the least cost compared to any 2 or more facilities (which could include the facility for the service);*
- (c) *that the facility for the service is significant, having regard to its size or its importance to the Queensland economy; and*
- (d) *that access (or increased access) to the service, on reasonable terms and conditions, as a result of declaration of the service would promote the public interest.*

Glencore acknowledges the staff issues paper released by the QCA in April 2018 (the **Staff Issues Paper**) which provides preliminary views on the interpretation and application of those access criteria, and will address that paper where relevant throughout this submission.

3 Approach to Market Definition

For the purposes of the QCA Act, a market will include a market for the relevant goods or services and any services that are '*able to be substituted for, or are otherwise competitive with*' the service provided by the facility (under section 71(2)(b) of the QCA Act) .

Glencore considers that this approach to market definition is correctly reflected in the Staff Issues Paper through reference to:

- (a) market definition being a matter of identifying the relevant service and any substitutable services;
- (b) substitutability involving determining whether other goods and services are close substitutes (and the '*otherwise competitive with*' wording in section 72(1) QCA Act) doing no more than confirming that close substitution not perfect substitution is required to be within the same market);
- (c) an important test in determining substitutability being how market participants respond to a small but significant non-transitory increase in price of the service (a **SSNIP**) (otherwise known as the hypothetical monopolist test or SSNIP test); and
- (d) defining the market involving considering the service/functional dimension of the market and the geographic dimension of the market.

4 Market Definition – Market in which the declared service is provided

4.1 The challenges presented by a management/operator based declaration

The market definition question

The relevant market for the purposes of criterion (b) will be the market in which the facility provides the Declared Service (or the relevant part of the Declared Service).

The Declared Service is currently defined by reference to railways for which QR (or successors, assigns or subsidiaries) is the railway manager. That is the scope of the declaration is currently defined by QR's operatorship/management, not by reference to the use of a particular identified facility.

The question is therefore whether, for the purposes of the declaration review, the relevant primary market should be defined as:

- (a) a wider market in which the entirety of the Declared Service is provided – i.e. a Queensland regional rail access market; or
- (b) a series of markets for narrower services for which the market definition is determined by substitutability for those services.

Approach required by the QCA Act

Glencore consider the access criteria would be satisfied on either basis.

However, in this scenario, Glencore consider the QCA is first required to determine whether it is satisfied about the access criteria on the basis of the wider Declared Service. That follows because section 80(1) QCA Act makes it mandatory for the QCA to recommend declaration of the Declared Service if the QCA is satisfied of the access criteria.

If the QCA is not satisfied about the access criteria in respect of the wider Declared Service, then the QCA should consider whether it is satisfied about the access criteria in respect of any narrower service which forms part of the Declared Service – mostly relevantly to this submission, such as the West Moreton corridor coal rail access service – and then exercise its power to declare any such narrow service about which it is so satisfied in accordance with section 80(5) QCA Act.

For the purposes of this submission, given the limited amounts of information Glencore has in respect of other parts of the Declared Service, Glencore has principally sought to analyse below how the market would be defined on basis of the Mount Isa Rail Access Service – but considers that the QCA should seek to inform itself (if QR or other stakeholders do not provide sufficient information) about how the access criteria would apply to the wider Declared Service.

4.2 Service/functional dimension

Glencore considers that the functional dimension of the market is either rail access services or bulk minerals and intermodal rail access services.

Consideration was given to whether any of the following services should be considered in the same market:

- (a) rail haulage; and
- (b) road haulage.

However, for the reasons set out below, Glencore have concluded that the appropriate 'functional' dimension is rail access services.

Rail haulage

Rail haulage and rail access are functionally distinct services, involve different suppliers (on the Mount Isa Line QR is the below rail provider, Pacific National and at least previously, Aurizon were the above rail providers) and using different assets (below rail infrastructure and above rail rolling stock).

That distinction has consistently been found to exist, including by the Australian Competition Tribunal's decision in *Re Fortescue Metals Group Limited* [2010] ACompT 2 (**FMG Tribunal Decision**), the National Competition Council and Minister in the declaration decisions regarding the Tasmanian railway network and the ACCC in its consideration of various proposed mergers (including the proposed GRail and Aurizon intermodal acquisitions, as per the ACCC Statement of Issues relating to both of those proposals).

They can now (under the new standard access agreement terms) also be contracted separately.

Road haulage

Road haulage is clearly a functionally different market to rail access, again involving different suppliers and different infrastructure, and with a significantly different cost profile for hauls that are one or both of bulk in volume or lengthy in distance.

That is consistent with the reasoning of the Tribunal about road haulage being in a separate market in the FMG Tribunal Decision.

In particular, Glencore considers that for a long haul (such as Townsville to Mount Isa or Cloncurry) for bulk products, as many of the products that Glencore transports are, road haulage is deeply uncompetitive with rail haulage – and therefore not substitutable for rail haulage or rail access.

That is not just about cost (although the difference in cost is more than a significant non transitory increase in price (**SSNIP**)), rather there are also numerous non-price constraints on utilising road haulage including government policy, environmental, safety and social licence to operate issues which would make a large volume of trucking practically impossible.

Types of rail access

For the purposes of this submission, Glencore has not considered it necessary to absolutely defined whether there is a separate market for access to the Mount Isa Line for different types of service (i.e. bulk minerals and intermodal). Given they are interconnected, and that Pacific National does run some services which effectively combine both bulk minerals haulage and intermodal services, this submission assumes there is a single rail access service market (but considers the access criteria would still definitely be met on any narrower definition).

4.3 Geographic dimension

Consideration was then given to whether any of the following should be considered in the same market:

- (a) access to other Queensland rail lines; and
- (b) access to proposed rail lines which theoretically could provide transportation to and from the Mount Isa region.

Access to other existing rail lines are clearly not close substitutes. The service is not just rail access – but rail access between the Port of Townsville (where Glencore leases berths) and the Mount Isa mining operations. Other users on the Mount Isa Line (such as Cannington and Incitec Pivot) similarly require access between the Port of Townsville and their operations on the Mount Isa Line.

While consideration was given to proposed rail lines, there is no realistic proposal to develop a new rail connection to the region (which is unsurprising given the foreseeable demand discussed below is within the scope of the existing Mount Isa Line).

Glencore acknowledges that a White Paper on developing Northern Australia from June 2015,² floated the idea of a rail link from the Mount Isa Line to the Tennant Creek Line in the Northern Territory, which could notionally result in the ability to rail minerals from Mount Isa to the Port of Darwin. However, that is clearly not a substitute given

- (a) whilst the origin remains Mount Isa, the destination is not the Port of Townsville where Glencore's leased berths are;

² Australian Government, [Our North, Our Future: White Paper on Developing Northern Australia](#).

- (b) the link between Mount Isa and Tennant Creek alone is 600 kilometres long, indicating that the incremental above and below rail costs (in addition to port costs at the Port of Darwin) would be astronomical in comparison to costs incurred through the existing supply chain to the Port of Townsville; and
- (c) the project does not appear to have been materially progressed since 2015.

5 Market definition – dependent markets

5.1 Dependent markets considered

Glencore considers that the functional dimension of the market is the Mount Isa Rail Access Service and that there are dependent markets for:

- (a) North West Queensland minerals tenements;
- (b) rail haulage services; and
- (c) mining inputs.

Whilst Glencore considers there are further dependent markets in addition to those listed above (including the market for processed mineral products (i.e. copper and zinc) and by-products and the regional employment market) in the limited time available for submissions, Glencore has focused on a few dependent markets where it considers criterion (a) is clearly satisfied.

5.2 North West Queensland mineral tenements market

The principle of there being a tenements market is well-accepted as a matter of law – as demonstrated by the previous decisions in relation to the Pilbara rail line access declarations (where a Pilbara iron ore tenements market was found to exist) and the Newcastle shipping channel proceedings (where a coal mining authorities market was found to exist), and the State of Queensland had also previously acknowledge in a certification application to the NCC the existence of a Queensland coal tenements market.³

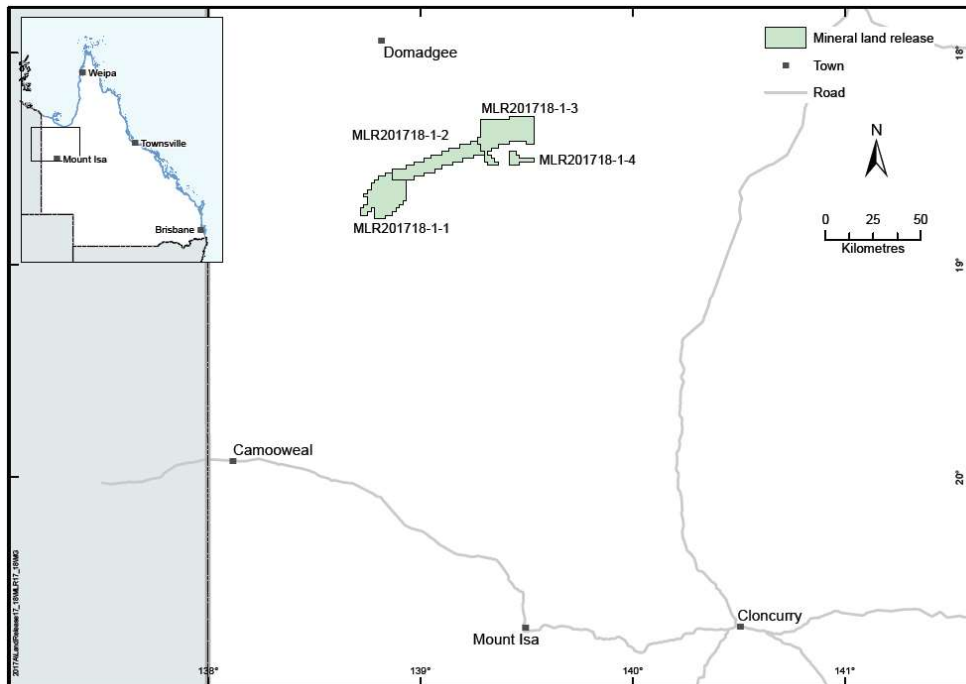
The suppliers in that market, are the Queensland government (through tender processes) and existing tenement holders who determine to sell their tenements, with the acquirers being explorers, developers and producers of minerals who seek to acquire such tenements.

For example, the below mineral tenements were recently put out to tender by the Queensland government in its Annual Exploration Program for 2017-18.⁴

³ See *Re Fortescue Metals Group Limited* [2010] ACompT 2; Application for declaration of shipping channel services at the Port of Newcastle; Application for certification of the Queensland access regime in respect of the Dalrymple Bay Coal Terminal.

⁴ Queensland Department of Natural Resources and Mines, [Annual Exploration Program](#) (2017-18).

Figure 3: Recent government tendered tenements



In relation to understanding the geographic boundaries of the tenements market, it is important to understand that potential acquirers will conduct their valuation modelling for those tenements with regard to:

- (a) anticipated revenue;
- (b) mine operating costs; and
- (c) infrastructure and logistics costs.

The substantial distance from Mount Isa to the Port of Townsville (and resulting high freight costs) mean that a tenement in the North West minerals province is not substitutable for a tenement for similar minerals elsewhere in Australia, thereby confining the tenements market to the North West Queensland region .

In addition, the geology of the Mount Isa region is unique in terms of the quality of mineral resources – particularly in respect of copper, zinc and lead.

5.3 Rail haulage

For the reasons discussed in section 4 above, Glencore considers that there is a separate market for rail haulage (which is distinct from both rail access and road haulage).

Glencore would encourage the QCA to seek information from rail haulage providers to determine the geographic scope of the relevant rail haulage markets. However, it considers it is possible that there is a separate Mount Isa Line haulage market, given the need for operators to invest in specific adjustments to rolling stock in order to service some of the demand on the Mount Isa Line.

5.4 North West Queensland Mining Inputs

Mount Isa's remote location, which involves very significant freight costs such that there is a geographically distinct market for the provision of mining inputs in North West Queensland such as explosives, chemicals, gas and thermal coal (for power generation at mining facilities).

5.5 Further regional markets

As a result of significant operations in the North Queensland region, the resources industry (inclusive of minerals operations specifically) make substantial contributions to the regional employment and local business markets through business expenditure for sourcing operations (such as catering and food supply services) and through employees' expenditure within the regions.

The impact of mineral operations on employment within the region has arguably been amplified recently due to new legislative restrictions relating to the employment of fly-in fly-out workers. This legislative intervention indicates that regional employment markets (such as that in North West Queensland) are closely bounded to their locations suggesting that employees will not readily relocate to pursue alternative employment. Accordingly, there is a clear correlation between the future success of mineral operations and the employment market within North West Queensland.

In addition, Glencore notes the existence of a number of downstream markets dependent on mining in the North West minerals province – i.e. Glencore operates both a copper smelter and refinery in the region in addition to significant zinc assets.

If the QCA is not convinced that criterion (a) would be satisfied on the basis of those markets, Glencore would appreciate the opportunity to provide submissions on further dependent markets in which it considers declaration would promote a material increase in competition (particularly in North West Queensland regional areas).

6 Criterion (a) – Promotion of competition in dependent markets

6.1 Interpretation of criterion (a)

Under section 76 QCA Act, criterion (a) requires:

that access (or increased access) to the service, on reasonable terms and conditions, as a result of a declaration of the service would promote a material increase in competition in at least 1 market (whether or not in Australia), other than the market for the service

As described in section 4 above the relevant market for the service is the market for Mount Isa Rail Access Service.

Glencore notes that this is not a high threshold – with:

- (a) 'material' in this context being interpreted to mean 'not trivial' (see [1.38] of the explanatory memorandum to the *Trade Practices Amendment (National Access Regime) Bill 2006* (Cth)); and
- (b) promotion of competition being interpreted to mean '*there would be a significant, finite probability that an enhanced environment for competition and greater opportunities for competitive behaviour ... would arise in the dependent market* (see *Re Virgin Blue Airlines Pty Ltd* [2005] ACompT 5 at [162]).

This interpretation is consistent with discussion in the Staff Issues Paper (at [4.2]) which correctly describes the threshold.

6.2 Likely outcomes with declaration

Glencore considers that the likely state of the relevant markets with declaration is best estimated using the status quo (where declaration exists).

In that regard, declaration has resulted in all of the following important protections for competition:

- (a) obligations in the QCA Act to:
 - (i) negotiate access requests in good faith;
 - (ii) try to meet the reasonable requirements of users; and
- (b) the prohibition in the QCA Act against preventing or hindering access or use of the services;
- (c) a standard access agreement which provides minimum terms on which access can be obtained;
- (d) a right to seek QCA arbitration of access disputes (under the QCA Act and/or the undertaking)
- (e) a potential right to seek for the QCA to impose a future reference tariff in respect of the Mount Isa Rail Access Service;
- (f) a transparent queuing process which provides an even playing field for all access seekers;
- (g) a more transparent operating regime – including through the operating requirements manual;
- (h) improved transparency as to the costs of services; and
- (i) the disclosure and reporting regime – which provides transparency and accountability and should assist in improving performance and informing access negotiations.

It would be anticipated that each of those protections would continue in materially the same form in future regulatory periods were the declaration continued.

6.3 Likely outcomes without declaration

Glencore considers that without declaration, all of those protections will be removed. Glencore and other users of the Mount Isa Rail Access Service will be left to negotiate with a monopoly service provider with no constraints.

As noted previously, road haulage is not cost competitive such that it will not constrain QR's pricing and other behaviour if the declaration was to be removed.

In the absence of declaration and competitive constraint, QR would be incentivised to increase prices to realise monopoly profits, reduce service levels and seek more favourable terms (i.e. charge more and give less).

While Glencore does not currently have the benefit of a reference tariff, it values highly the right to potentially arbitrate an access dispute, as this does provide some constraint on QR pricing behaviour.

With that in mind, it is important to then consider how the removal of the existing protections will impact on competition in the identified dependent markets.

6.4 North West Queensland mineral tenements market

Potential future investors in the North West Queensland minerals tenement market would, in the absence of declaration, be faced with:

- (a) uncertain terms of access; and
- (b) no protections in respect of pricing for access,

both of which are to be negotiated with a monopolist. In that environment it is hard to conduct discounted cash flow modelling to determine the value of the tenement, and hard to satisfy financiers of the prudence of such an investment. As a result, it is hard to see how such an investor could place significant value on tenements in the North West Queensland minerals tenement market.

In addition, for existing tenement holders, a removal of the declaration would create a disincentive to explore for resources on those tenements, and thereby reduce the supply (either in quality or quantity) of tenements in this market.

In other words, the absence of declaration would result in a material reduction in demand for, and supply of tenements in the market, such that the QCA should be satisfied that access (or increased access) to the Declared Service (or at least the Mount Isa Rail Access Service), on reasonable terms and conditions, as a result of a declaration would promote a material increase in competition in the North Queensland minerals tenement market.

6.5 Rail haulage market

It is acknowledged that Pacific National is currently the only above rail haulage provider on the Mount Isa Line. However, Aurizon Operations is operating train on others parts of the QR Network which could be utilised to provide services on the Mount Isa line (such that it is at least a potential competitor). Glencore acknowledges that Aurizon Operations is seeking to sell its intermodal rail business – but considers that it is likely that someone other than Pacific National will acquire that business, so that the presence of at least a credible potential competition should be retained. Even if that was not the case, Glencore considers there are sufficient rail haulage providers in Australia with the capability of running such services, that there will be potential competition provided the environment in the rail access market is conducive to such competition existing and the North West minerals operations are sustainably profitable.

In order for such a second supplier to be incentivised to invest in providing services on the Mount Isa Line they will need certainty of the terms on which access will be provided (noting rolling stock has a useful life of approximately 20-25 years) – which is what the declaration provides.

That issue is obviously exacerbated by the fact that the impact in the North West minerals tenements market, would be to remove future demand (both for haulage of mineral products and mining inputs) – making it even harder to justify investment in long life rolling stock, when there is real questions about the future demand for haulage services.

Glencore is therefore concerned that in the absence of declaration, no rail haulage provider will be incentivised to invest in providing rail haulage on the Mount Isa Line, such that customers on that line will effectively face a monopoly for haulage services.

Keeping in mind that, in order to be satisfied of criterion (a), the QCA only needs to be satisfied that the continuation of declaration would give rise to a significant, finite probability of an enhanced environment for competition and greater opportunities for competitive behaviour – in a non-trivial sense – in a dependent market (compared to the likely state of the market without declaration), the above issues in respect of potential for new entry and reduced demand are clearly sufficient for criterion (a) to be satisfied in respect of the haulage market.

6.6 North West Queensland mining inputs market

Glencore's Mount Isa operations involve an extensive array of mining inputs – including xanthate, coke, grinding media, thermal coal, cement, and other consumables such as diesel fuel.

If QR was to increase price (as is considered highly likely in the absence of declaration), it will significantly reduce demand for this type of input – which is also relevant for other mining operators on the Mount Isa Line (such as Cannington, South32 and Dugald River, MMG).

Glencore considers there are in fact likely to be separate product markets for each separate mining input (as obviously cement is not substitutable for diesel fuel).

However, Glencore considers that the QCA can be satisfied or criterion (a) without having to absolutely determine the boundaries of those markets – as the same point applies to all of them. That is, all it would take is for QR's likely price increases (as a result of the absence of declaration) to result in any of the existing mining operators closing or ceasing to invest in future growth for demand for those inputs to be materially reduced.

6.7 Other regional markets

As noted in section 5.5 above, Glencore considers it is likely that there will be other (particularly regional) dependent markets in which the declaration promotes a material increase in competition – which may be the subject of future submissions.

7 Criterion (b) – Foreseeable demand at least cost

7.1 Interpretation of criterion (b)

Criterion (b) requires that the facility for the service can meet the total foreseeable demand in the market:

- (a) over the period for which the service would be declared; and
- (b) at the least cost compared to any 2 or more facilities.

The NCC's Guide to Declaration of Services and the Staff Issues Paper (at [3.4]) acknowledge this criterion as requiring consideration of the 'natural monopoly test' which is market-based, focusing on the presence of economies of scale and/or scope in the production of the service or services provided by the facility.⁵

7.2 The facility for the service

The facility for the service is very clearly delineated by the Mount Isa Line, including branch lines such as that at Cloncurry and Phosphate Hill.

7.3 The market in which foreseeable demand is assessed

As specified in section 4 of this submission, the market in which foreseeable demand should be assessed is the market for Mount Isa Rail Access Services.

7.4 The period over which foreseeable demand is assessed

Because the Declared Service has been declared (through one measure or another) since 1997, and because the period over which foreseeable demand is assessed is a matter for consideration by the QCA for its recommendation and ultimately for the Minister to make, Glencore considers that the relevant period for the purpose of this review will be any reasonable period in which the test of foreseeable demand at least cost is met.

Glencore considers that the explanatory memorandum to the Competition Policy Amendment Act supports this view insofar as it provides that the Minister may need to consider multiple potential

⁵ National Competition Council, [Guide to Declaration of Services under Part IIIA of the Competition and Consumer Act 2010 \(Cth\)](#) April 2018 [4.3].

declaration periods to determine if there is a relevant period during which foreseeable demand at least cost is met.

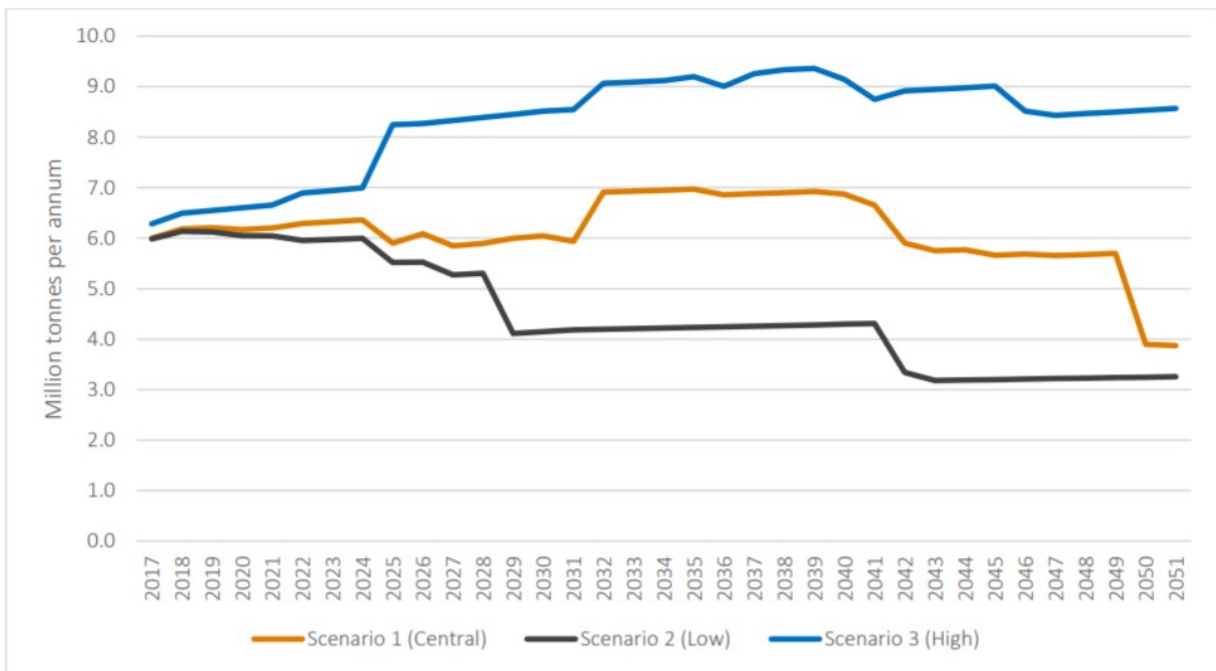
In consideration of the duration of mining operations from exploration to rehabilitation being in the vicinity of 10 – 30 years depending upon the operation, Glencore considers the reasonable period over which foreseeable demand should be assessed – and for which the service should be declared, is a period of 15 years. In that regard, Glencore notes the decisions to declare the Goldsworthy rail line for 20 years and the recent decision to declare the Newcastle shipping channel for 15 years.

7.5 Foreseeable demand in the market

The recent Building Queensland report (published in November 2017) (the **Building Queensland Report**) provides a detailed business case regarding the TEARC project, which takes into account a forecast of the total rail demand on the Mount Isa Line.

It contains the following recent projects of foreseeable demand on the line as shown in Figure 4 ,

Figure 4: Total rail demand forecast on the Mount Isa Line



The Scenario 3 (High) case investigates the same mining projects as the Central case (which includes existing production for life of the current Joint Ore Reserves Committee (**JORC**) reserve base plus known projects that are 'giant' or 'large', well advanced and have good prospectively) with the addition of 100% possible projects based on an assessment of other assets within the region and the likelihood of future discoveries of assets of high prospectively.⁶

Importantly the Building Queensland Report confirmed that all of the projections could be met by the existing capacity of the Mount Isa Line, specifically noting that 'the Mount Isa line has sufficient capacity to meet the high demand forecast' (see page 12).

Glencore notes the central case in the Building Queensland Report is also relatively similar to the base case demand projection in the 2012 Mount Isa Rail Infrastructure Master Plan.

⁶ Ibid, 55.

7.6 Does the existing remote North West Queensland mineral rail access service meet foreseeable demand at least cost

Given that there is clearly surplus capacity on the Mount Isa Line which is sufficient to meet even the highest credible forecast of foreseeable demand, it will be clear that that demand will be met at least cost by the existing facility.

That is the case because:

- (a) Meeting that demand from the existing facility will involve minimal capital investment (really just sustaining capital expenditure);
- (b) Whereas developing a new rail line will involve very extensive costs for items such as land acquisition for the rail corridor, construction and development costs, engineering and design costs.

In relation to the costs of an alternative rail line, Glencore notes that purely given the distance involved, the costs are dramatically increased compared to what they might be for a new rail line to service demand more proximate to a port. An indication of the possible order of magnitude of costs involved is QR's stated replacement value for the Mount Isa line of \$12.8 billion.

Accordingly, it is very clear that criterion (b) will be satisfied.

8 Criterion (c) – the facility is significant

8.1 Interpretation of criterion (c)

Criterion (c) requires that the facility for the service is significant, having regard to the size of the facility or its importance to the Queensland Economy.

The NCC has considered that rail track and its associated infrastructure can be significant in terms of the physical size of the facility, and the significance of the quantity or value of goods transported on the rail infrastructure.

8.2 Criterion (c) is satisfied

The whole of the QR Network is clearly significant when regard is had to the 7,000 kilometres of rail track and associated infrastructure that it includes, as well as the significant area of the state of Queensland that the network covers

Glencore does however, consider it is also clear that the QCA should be satisfied that the Mount Isa Line is highly significant even when considered alone when having regard to its size and/or the economic benefits it makes to the Queensland economy.

8.3 Significant in size

The Mount Isa Line is clearly significant with regard to its size. The Mount Isa Line is made up of 1,032 kilometres of rail track, navigating from Stuart (near Townsville) to Mount Isa, including the Phosphate Hill branch line (the full line is illustrated in Figure 2 earlier in this submission). Train lengths up to 1000 metres are accommodated on the line, as compared to other sections of the QR Network such as the North Coast Line, which accommodates a maximum train length of 650 metres.

The area covered by the Mount Isa Line is also of particular national significance due to its positioning across some of the most dense deposits of copper, lead, zinc, silver and phosphate rock in the world. The mineral deposits in the North West region are brought to market by miners

such as Glencore using the Mount Isa Line as a critical supply chain – with the production brought to market making up 75% of Queensland's non-coal mineral output.⁷

8.4 Significance in economic contribution to State

(a) Key freight route

The National Transport and Infrastructure Council – which is responsible for driving national transport and infrastructure related reforms, has categorised the Mount Isa Line as a national key freight route.

That significance was assessed and determined with regard to a set of guiding principles, which were prepared and agreed through interstate consultation in accordance with relevant state legislative and strategic policy regimes. Those principles require that, in order to be categorised as a national key freight route, regard be had to:

- the significance of the connection between nationally significant places for freight (such as intermodal terminals, industrial, mining and agricultural precincts and their export/supply paths, and significant freight destinations for regional centres or interstate freight); and
- the types of commodities, as well as the value and volume of those commodities, that the route carries.⁸

An example of this significance is that in 2016, the Mount Isa Line railed approximately 2.25 million tonnes of copper, lead, zinc, silver and phosphate rock alone (in addition to other general freight, livestock, agricultural and passenger services) from Mount Isa to the Port of Townsville (or return, as required for passenger services).

(b) Economic contributions

In the 2016-17 financial year, the resources sector in the North West Queensland region made substantial economic contributions to Queensland, including through:

- \$1.3 billion in Gross Regional Product (19% of North West Queensland's total GRP);
- \$397 million in wages paid to 2,709 full time employees;
- \$544 million in royalties; and
- \$354 million spent to the benefit of local businesses and community organisations.

These contributions resulted in the flow-on of benefits of economic growth, including the employment of a further 4,991 full time employees and \$516 million spent through local business sourcing and local spending by employees.⁹

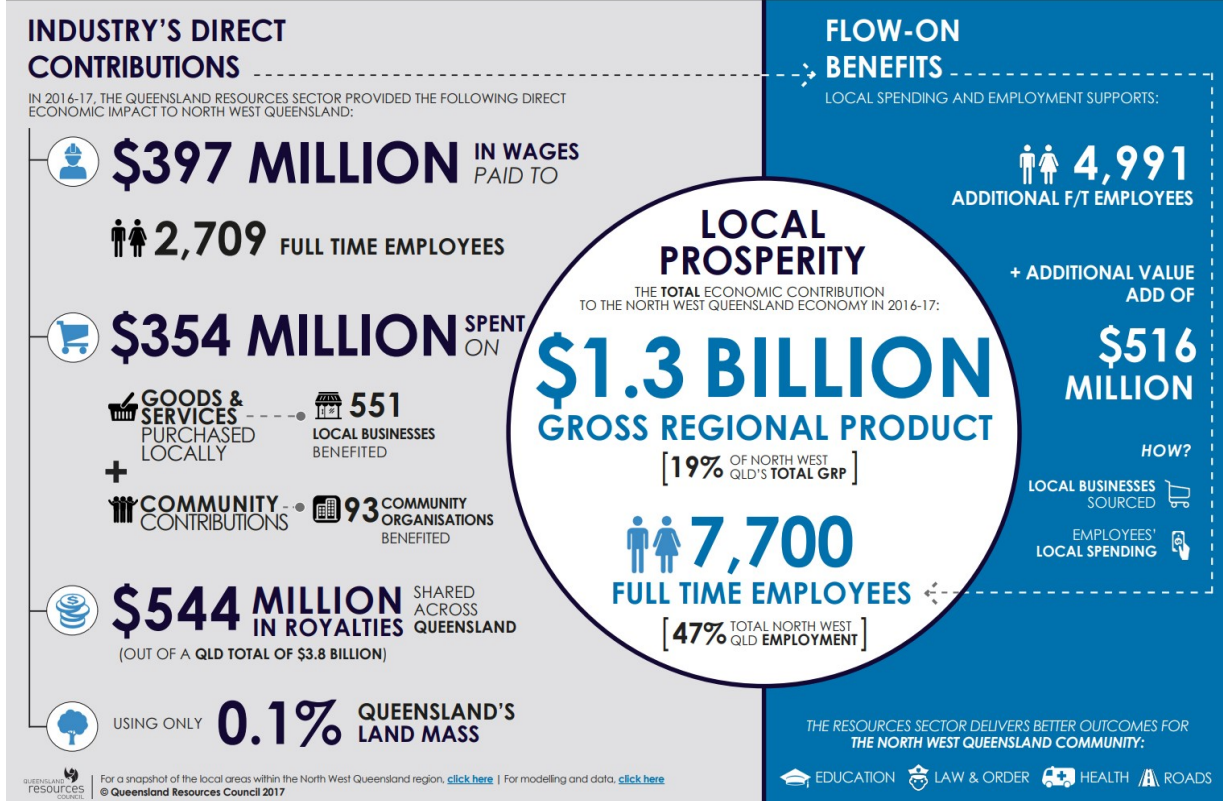
As noted earlier in this submission, the Mount Isa Line also contribute to economic growth through supporting other sectors (i.e. livestock, grain, passenger services).

⁷ Queensland Rail, [Mount Isa Line Rail Infrastructure Master Plan](#) (2012).

⁸ Transport Infrastructure Council website, [National Key Freight Routes](#).

⁹ Queensland Resources Council [website](#).

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9 Criterion (d) – Promotion of the public interest

9.1 Interpretation of criterion (d)

Criterion (d), as recently amended, requires that *access (or increased access) on reasonable terms and conditions as a result of declaration of the service would promote the public interest.*

The assessment of that criterion is made with regard to:

- (a) the effect that declaring the service would have on investment in:
 - (i) facilities; and
 - (ii) markets that depend on access to the service;
- (b) the administrative and compliance costs that would be incurred by the provider of the service if the service were declared; and
- (c) any other matter the QCA or Minister considers relevant,

in addition to the public interest factors previously included under the former section 76(3) of the QCA Act (prior to amendment), which were endorsed as relevant by the government when the current drafting of the QCA Act was proposed.¹⁰

9.2 Criterion (d) is satisfied

Glencore considers that criterion (d) is clearly satisfied in respect of the Mount Isa Rail Access Service when regard is had to:

¹⁰ Explanatory Memorandum, *Queensland Competition Authority Amendment Bill 2018* (now the *Queensland Competition Authority Amendment Act 2018* (Qld)).

- (a) the effect declaration has had upon mining investment in the North West Queensland region as a result of the long-term certainty of access (including assurance of access on reasonable terms and conditions) and fair pricing; and
- (b) the effect investment in the North West Queensland mining industry has had upon dependent markets both as a direct result (through tenement purchases, rail haulage services and procurement of mining inputs) and indirect result (through the benefits of regional economic growth).
- (c) The broader benefits of the North West Queensland minerals province (as detailed in the QRC information provided in relation to criterion (c) above) including:
 - (i) substantial employment in regional areas;
 - (ii) substantial government royalties;
 - (iii) underwriting the continued operations of the Mount Isa Line (which would otherwise require significant government subsidisation to continue to operate passenger, livestock and grain services).

As the network will always need to be a multi-user system, Glencore submits that the coordination costs will be no greater with declaration than they would be without it.

Consequently it is clear that criterion (d) would be satisfied.

9.3 Access (or increased access) as a result of declaration facilitates investment

The submissions above in respect of criterion (a) illustrate that access to the Mount Isa Line as a result of declaration has a material effect on continued investment in the North West Queensland mining industry by:

- minimising barriers to entry – especially for new and junior investors that would be far less likely to negotiate reasonable terms of access (or gain access at all) to the service when compared to larger incumbents due to a power imbalance during the negotiation process;
- providing long-term assurance for access – the certainty of which supports the significant sunk costs required in the exploration, establishment (in the case of facilities required in the remote Mount Isa location) and development phases; and
- making it more likely that pricing is set at closer to an efficient and reasonable level than would be the case absent declaration.

10 Next steps and time provided for submissions

Glencore looks forward to providing further and more specific submissions in relation to the review of the Declared Service once it has had an opportunity to consider QR's submissions, but given it will be the first time that it has had the benefit of seeing QR's position, would request that an extended time period be provided for those submissions to be made.

If the QCA has any further questions on this submission please do not hesitate to contact John Hedge of Allens on (07) 3334 3171 or Jason MacIntosh of Glencore on (02) 8247 6312.