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Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Queensland Rail's 2020 Draft Access Undertaking (DAU2)

17 October 2018

Dear Professor Menezes,

Aurizon Bulk welcomes the opportunity to respond to Queensland Rail's (QR's) 2020 Draft Amending Undertaking (DAU2).

Aurizon's above rail operations which will be impacted by the decision on DAU2 can broadly be characterised as relating either to coal or non-coal freight transport. This submission relates to the transport of non-coal products, and this submission is made by Aurizon Bulk – the non-coal related part of Aurizon's above rail coal transport business. Aurizon Coal – Aurizon's coal related above rail business – has made a separate submission. The majority of comments contained in this submission relate to Aurizon Bulk's operations on the Mt Isa line, given the scale and relative importance by revenue share to the Aurizon Bulk business operating on QR's rail networks. However, the comments relating to the Mt Isa line are generally applicable to QR's other systems unless stated otherwise.

Aurizon Bulk notes that in DAU2 QR have proposed a number of changes commensurate with conversations held between the parties in the leadup to their submission to the QCA. This document seeks to narrow the main issues that remain unaddressed by QR in DAU2, and changes to DAU2 sought by Aurizon Bulk and its customers.

Ceiling Revenue Limit

The methodology for calculating the Ceiling Revenue Limit has been carried forward from AU1 to DAU2. It is too generous to QR and irrelevant (refer 1.4 AU1 Pricing methodology – floor and ceiling limits) in its existing format as it contemplates below rail rates that are substantively above what the market can bear. A Floor and Ceiling approach to setting rates is reasonable but should consider market conditions for each of the rail systems that QR manages and reasonable rates of return (refer Pricing Certainty).

Price Differentiation

QR are correct in contending that the current Price Differentiation methodology is too restrictive and does not promote greater use of the network. The proposed changes by QR are reasonable, but there needs to be rules within DAU2 that create greater pricing certainty for users, despite the inference that this model will provide for greater flexibility in determining price. The risk of QR developing a process that supports only the largest or highest bidder is a natural eventuality under this model without protective structures that



prevent QR from pricing the best paths for those that can afford to pay the most. Given the latitude provided to QR under the DAU1 Ceiling Revenue Limit model, the value of this risk to users could be significant.

Fixed Charges issues; Relinquishment Fees; Extra Train Services

Aurizon Bulk contends that QR amend DAU2 to provide a fairer system for Access Holder's right to relinquish contract train paths. In its own submission, QR promotes the virtues of DAU2 in trying to develop efficiency for its rail networks, but the current methodology does not provide for an economic way for Access Holders to return paths they no longer require (refer Section 2.3 Pricing challenges not yet addressed). The provisions in AU1 have been carried forward in DAU2 which require Access Holders to pay the Fixed Charges until the end of the contract term for any paths they choose to relinquish (in present value terms). This leads to unnecessarily high costs to release paths that are no longer required and does not encourage the most efficient use of the network.

The Standard Access Agreement (SAA) should also be amended to consolidate the request for Additional Train Services and Ad Hoc Train Services under one request for extra train services, and for any extra train services to be counted towards the Access Holder's annual contracted paths consumed.

Other Concerns

For reasons outlined later in this document Aurizon Bulk, consistent with Aurizon Coal, objects to the following changes proposed by QR:

- Removal of QR's obligation to negotiate in good faith with Access Holders under Clause 1.3 of the SAA
- QR's removal of the Operating Requirements Manual from Schedule G of DAU2
- The addition of Ad Hoc Planned Possessions to the Network Management Principles
- The removal of Clause 2.4 (Disputes) in the Network Management Principles which restrains QR from commencing a new MTP where Access Holders have not agreed

Aurizon Bulk also propose improvements to the traffic management decision making matrix within the Network Management Principles as outlined in Section 2.7 of this paper. Aurizon Bulk has also provided commentary against QR's summary of changes under DAU2 in Section 2.8 of this document.

Aurizon Bulk looks forward to the commencement of the consultation process with the QCA and QR prior to the finalise of DAU2. If you would like to discuss any of the content in this submission, please feel free to contact me directly on (07) 4760 5127 or email at David.Wright@aurizon.com.au.

Kind regards,

A handwritten signature in blue ink, appearing to read "David Wright", with a large flourish underneath.

David Wright
Commercial Manager
Aurizon Bulk



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1 Key Challenges of AU1

1.1 Pricing methodology

AU1 provides published tariffs for coal customers using the South-West System. Prices for non-coal services are determined using a Revenue Adequacy approach (Section 3.1.1 of AU1).

Figure 1 – DAU Clause 3.1

<p>3.1 Pricing objectives – non-coal carrying Train Services</p> <p>3.1.1 Revenue adequacy</p> <p>Access Charges and Transport Service Payments (if applicable) should:</p> <ul style="list-style-type: none">(a) generate expected revenue for Access that is at least enough to meet the efficient costs of providing Access; and(b) include a return on investment commensurate with the regulatory and commercial risks involved. <p>Where Queensland Rail is expected to earn excess revenue, then Queensland Rail may seek to reduce Transport Service Payments rather than Access Charges.</p>
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Aside from coal customers, a floor-ceiling approach, with limits that are generous to QR, is used to determine pricing based on key principles outlined later in this document. However, it is important to note, that other than the Mt Isa line, the other systems do not cover their costs of providing access and as a result are subsidised by the State Government.

The Mt Isa line is the only QR system not protected by a Transport Services Contribution (TSC) from the State Government, and as such user pricing is substantially higher than other QR systems. Mt Isa customers typically pay between \$14.00 to \$15.30 per ('000) GTK versus \$5.00 to \$5.40 per ('000) GTK for North Coast Line customers, inclusive of Aurizon Network charges. The Mt Isa line is also particularly expensive relative to similar non-coal regional rail networks in Australia e.g. NSW rail users pay between \$2.58 and \$7.64 per ('000) GTK.

1.2 Queensland Rail AU1 Financial Returns

The Regulated Asset Base (RAB) methodology only applies to the West Moreton coal system. Outside of the West Moreton coal system a fair value approach to valuing assets is used.

Table 1 - QR Statement of Earnings FY17 & FY16 - Below Rail

	STATEMENT OF EARNINGS BEFORE INTEREST AND TAX									
	FOR THE YEAR ENDED 30 JUNE 2017					FOR THE YEAR ENDED 30 JUNE 2016				
	West Moreton Region	Mount Isa Region	North Coast Region	Rest of Network	Total Below Rail	West Moreton Region	Mount Isa Region	North Coast Region	Rest of Network	Total Below Rail
\$000's	\$000's	\$000's	\$000's	\$000's	\$000's	\$000's	\$000's	\$000's	\$000's	\$000's
REVENUE										
Access charges - coal	28,674	-	-	7,173	35,847	45,442	-	29	22,759	68,230
Access charges - other	2,068	83,475	48,194	129,684	263,421	1,632	92,793	58,060	127,386	279,871
Transport Service Contracts	2,177	-	124,793	411,030	538,000	1,336	-	127,247	407,934	536,517
Contributions from developers	288	-	-	-	288	288	-	-	-	288
Other	1,004	1,360	3,984	6,007	12,355	1,281	1,379	3,951	4,418	11,029
Total Revenue	34,211	84,835	176,971	553,894	849,911	49,979	94,172	189,287	562,497	895,935
OPERATING EXPENSES										
Infrastructure maintenance	22,291	39,852	90,395	227,775	380,313	33,131	45,050	86,070	199,355	363,606
Derailment / collision / flood repairs	620	2,719	4,060	3,247	10,646	221	5,811	957	2,500	9,489
Train operations management	4,030	4,254	13,357	22,807	44,448	3,658	4,944	12,939	20,960	42,501
Other expenses	2,724	3,892	10,915	35,928	53,459	3,326	4,035	12,305	19,254	38,920
Corporate overhead	1,325	2,548	5,198	11,314	20,385	2,258	4,064	8,279	15,505	30,106
Depreciation and amortisation	7,953	6,560	25,254	102,145	141,912	8,349	6,417	29,226	106,963	150,955
Total Expenses	38,943	59,825	149,179	403,216	651,163	50,943	70,321	149,776	364,537	635,577
EARNINGS BEFORE INTEREST AND TAX	(4,732)	25,010	27,792	150,678	198,748	(964)	23,851	39,511	197,960	260,358

The above Statement of Earnings before Interest and Tax should be read in conjunction with the accompanying notes.

Mt Isa Line Financial Performance

In FY17 QR earned a 10% Return on Assets (ROA) and Operating Ratio (OR) of 71% in their audited financial statements for the Mt Isa line, based on a holding value of \$250.1m (QR values its assets using a 'fair' value approach on an annual basis). This represented an improvement in EBIT, despite the drop in revenue due to the cessation of Aurizon Bulk's Mt Isa freighter service.

While FY17 returns on the Mount Isa Line for the FY17 would appear to be strong, QR have indicated "it is not correct to compare the 10% ROA in the Below Rail Financial Statements for the Mount Isa Line with a regulated return set by the QCA¹". This statement is made on the premise that the Below Rail Financial Statements for the Mt Isa Line value the Mt Isa

¹

<https://www.queenslandrail.com.au/business/access/Compliance%20and%20reporting/Mount%20Isa%20Line%20-%20Questions%20and%20Answers.pdf>



Line using a fair value approach instead using Depreciated Optimisation Replacement Cost (DORC).

DORC is used by the QCA to value other regulated assets. The DORC methodology determines the RAB through the following steps:

- Replacement Cost: based on current cost of replacement
- Optimisation: reduction of the replacement cost if required, to reflect the cost of an asset that matches the standard required, giving an optimised replacement cost
- Depreciation: the ORC is depreciated to reflect the actual remaining service potential of the existing assets

QR note that if they were entitled to use the same DORC approach used by the QCA for the West Moreton System to calculate the RAB, the value of the Mt Isa line would be \$1.34b as at 1 October 2016, which would result in a much lower ROA.

This statement is somewhat irrelevant as unlike other regulated assets where high utilisation and customer demand supports the use of DORC in determining the RAB, use of DORC as a basis for comparison in the context of the Mt Isa Line appears commercially unjustified. DORC represents “the unconsumed portion of an asset (i.e. that value which reflects its remaining service life)”² and, amongst other things, includes the “optimised replacement cost of the asset base; and asset depreciation”². However, DORC is not the only feasible or valid approach to asset valuations for pricing purposes. Other approaches such as Line in the Sand and Depreciated Actual Cost (DAC) have been applied by regulators and may also be appropriate for the determination of the revenue ceiling limit depending on the relevant circumstances for which the valuation applies. In this regard, DAC would be proportional to the current accounting values and may be appropriate given the relevant market conditions, capital contributions, utilisation rates and asset replacement/improvement expenditure requirements applicable to the Mt Isa Line.

The Mt Isa Line achieved EBIT of \$25m in FY17 with a fair value asset value of \$250m. Despite accounting returns in this instance being higher than regulated returns using a DORC asset valuation, the nominal payback period based on a per annum EBIT of \$25m (using the accounting evaluation) and an asset valuation of \$1.343B (DORC valuation) would be 54 years. On this basis, use of DORC as a basis for comparison appears unjustified with no apparent commercial incentive to replace the Mt Isa Line based on current utilisation levels or to invest in service quality and asset resilience enhancements to improve the efficiency and competitiveness of the supply chain. This theoretical value derived by QR is not representative of the present value of the below rail revenue streams capable of being generated by the Mt Isa Line and therefore is incompatible with the theoretical underpinnings for the use of DORC in regulatory price setting. In reality QR are enjoying a

² Queensland Rail – Draft Undertaking Asset Valuation, Depreciation and Rate of Return (1999) (Accessed 5 October 2018)

<http://www.qca.org.au/getattachment/536e5b5a-68c5-474d-9bfd-fb64afd124de/Asset-Valuation-Depreciation-and-Rate-of-Return.aspx>



10% return on their assets which would be at the higher end of similar rail infrastructure assets.

1.3 Current Market – Mt Isa line

Utilisation of the Mt Isa Line declined from 5.8mtpa³ in 2012 to 4.1mtpa⁴ in FY17, representing a 1.7mtpa or 29% reduction in freight volumes over a five (5) year period. While part of the decrease in rail volumes for this period can be attributed to end-user operations ceasing (e.g. magnetite), a number of ongoing hauls which previously utilised rail have transitioned to road (e.g. sulphur, fuel and cement). Despite QR claiming they price closer to the Floor Revenue Limit than the Ceiling Revenue Limit (Figure 2 - QR Mt Isa Line Estimated Floor & Ceiling Revenue Capacity Based on Forecast Volumes) the Mt Isa line remains proportionately more expensive than its other networks, and in some cases unattractive relative to road. From the commencement of AU1 on 11 October 2016, road has continued to be viewed by end-users as a viable alternative to rail with multiple rail hauls transitioning to road during this period.

1.4 AU1 Pricing methodology – floor and ceiling limits

Under AU1 QR is not allowed to price above a Ceiling Revenue Limit, and a formula exists for the determination of this limit. It is based on the value of assets, plus capital over an evaluation period of no more than ten years, and the efficient cost of operating the system. In practice it is irrelevant due to the underutilisation of all QR non-coal systems. As is illustrated in Figure 2 - QR Mt Isa Line Estimated Floor & Ceiling Revenue Capacity Based on Forecast Volumes, the Ceiling Revenue Limit for the Mt Isa line is >\$175m, more than 208% higher than their revenue earned in FY17.

There is also a Floor Revenue Limit which is defined as “the level of revenue that will recover the expected Incremental Cost of providing Access to the individual Train Service or combination of Train Services, as applicable”. QR have often reflected when providing below rail pricing that they are pricing close to their Floor Revenue Limit based on their forecast.

Figure 2 - QR Mt Isa Line Estimated Floor & Ceiling Revenue Capacity Based on Forecast Volumes represents QR’s estimated system floor costs, access revenue and ceiling revenue for the Mount Isa Line. When comparing 2016/17 figures against QR’s audited financial statements for the same period (Table 1), the system floor costs reflect QR’s Total Expenses for the Mount Isa system (\$59.8m) and the forecasted revenue reflects Total Revenue (\$83.5m) for the Mount Isa system. The difference between QR’s Total Revenue and Total

³ Mount Isa Line Rail Infrastructure Master Plan 2012 (accessed 5 October 2018)

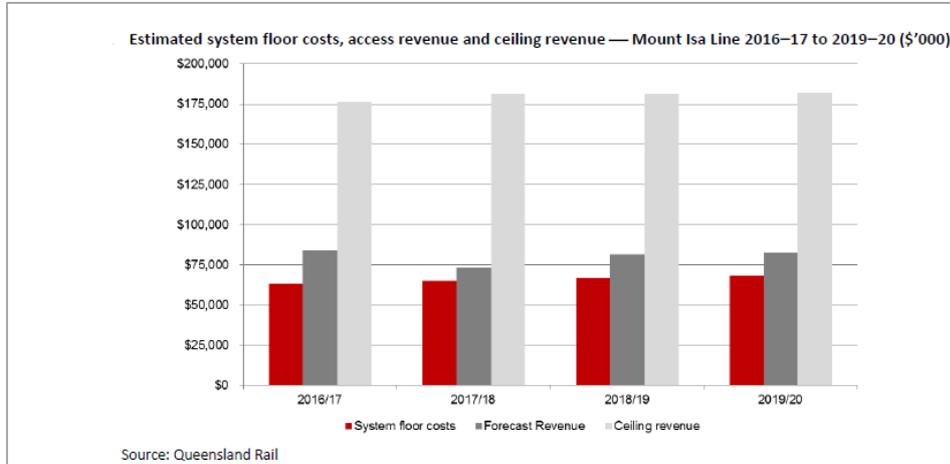
https://www.queenslandrail.com.au/business/access/Documents/Maps/QR4159.1%20Infrastructure%20Master%20Plan%202012_Updated_LR.pdf

⁴ 2016-17 Annual Performance Report (accessed 5 October 2018)

<https://www.queenslandrail.com.au/business/access/Compliance%20and%20reporting/Queensland%20Rail%20-%20Annual%20Performance%20Report%202016-17.pdf>

Expenses for the 2016/17 period equated to Earnings Before Income Tax (EBIT) of \$25.0m for the Mount Isa Line.

Figure 2 - QR Mt Isa Line Estimated Floor & Ceiling Revenue Capacity Based on Forecast Volumes



Relevance of the AU1 Ceiling Revenue Limit

The principle behind the Ceiling Revenue Limit is that once the revenue cap has been reached, there is a net adjustment (reduction) to prices for all users of the network. The Ceiling Revenue Limit based on the AU1’s methodology is \$175m, more than 200% higher than the current revenue base earned by QR. Using this methodology and QR’s own capacity analysis (2012), only minor volume increases can be absorbed by the line in its current state without driving the need for additional investment. Given the value of assets reasonably required to perform plus any capital expenditure required by these minor volumes, it should be considered that the revenue ceiling reflected in Figure 4 for the Mt Isa line is based on their volume forecast of approximately 4mtpa. This leads to the conclusion that QR could effectively price up towards \$42.81 per product tonne for Mt Isa line customers, which would ultimately lead to a more significant proportion of volumes shift to road if applied. When this is applied to other QR systems it is more significant as they are all unprofitable, and the TSC paid by the State is not considered in the calculation.

Without any substantial uplift in volumes, the Ceiling Revenue Limit currently appears irrelevant in practice for the Mt Isa Line. This is supported by end users viewing road as a viable alternative based on current road and rail regulatory regimes and pricing levels. This suggests that without additional volume on the Mt Isa Line, all things remaining equal, market forces should prevent any uplift in below rail access pricing. On this basis, the use of a Ceiling Revenue Limit for the Mount Isa Line appears redundant until such time as there is sufficient volume that uses a Ceiling Revenue Limit which in turn reduces Below Rail access pricing below current pricing levels.

The Floor Revenue Limit has no formula to support price decision making by QR. In practice it is the first adopter of a price using the Price Differentiation Rules that effectively set the price for all users on the line with similar commodities and locations.

1.5 AU1 Price differentiation

Price differentiation provisions within AU1 appear to constrain QR's ability to more efficiently price Below Rail access for customers on the Mt Isa Line. The application of AU1 price differentiation provisions appear to ensure that any new user will be subject to the same below rail access pricing as any existing user in respect of train services for the same commodity in the same geographical area.

On this basis, any consideration for the incremental cost of providing the new customer access appears (based on QR's application of AU1) to be in conflict with price differentiation provisions, as it is the previously agreed pricing (with other similar customers) that determines the level.

While Ceiling Revenue Limits could act as a trigger to reduce below rail access prices across the Network, in the case of the Mount Isa Line, the limit is set at a level that appears irrelevant based on current and forecast utilisation.

The result of this appears to be a situation whereby:

- a) New users of the Mount Isa Line are subject to the same below rail access tariffs as existing users, with no user (existing or new) benefit passed on from the relatively low incremental cost of new volume and increased utilisation; and
- b) Working on the premise that QR's costs for the Mt Isa Line are largely fixed and the incremental cost of accommodating additional volume is low, any new volume is likely to be highly profitable for QR.

In their explanatory notes to the QCA, QR note that "the drafting of the limits on pricing differentiation in AU1 has become ambiguous, particularly in the lack of recognition of the different train types"⁵.

Limitations of the AU1 price differentiation model

By considering that all commodities in the same geographic region are the same, and therefore ought to command the same pricing can create a disproportionate burden for some customers. Mineral concentrates are currently considered equitable in the price methodology applied by QR under AU1, whereas in practice each commodity's market value is different dependent on a range of factors which include the mineral type, its quality and any deleterious products contained within it. The cost to produce each commodity is also different and dependent on various factors, which include amongst other things their proximity to transport networks such as rail infrastructure. Each customer haul is uniquely different, with the current pricing structure penalising supply chains that are not connected

⁵ Queensland Rail's Draft Access Undertaking 2 (DAU2) Explanatory Document (accessed 7 October 2018)
<http://www.qca.org.au/getattachment/DCF23FEF-CBC3-4C9D-AB1A-1D15121C9355/QR-2020-DAU-Explanatory-Documents-Searchable.aspx>

directly to the rail infrastructure. With respect to the Mt Isa line, only two producers have rail infrastructure directly connected to their production facilities in the NW minerals province. All other access users have to transport their goods to a rail head by road, incurring additional costs. Price Differentiation does not consider the connectivity of the customer to the network, nor the broader cost of getting their product to the rail head. It also doesn't consider the investment made by the producer in their facility or their supply chain. It merely considers the product relative to other similar producers in the region to determine which price to apply (\$/('000) GTK).

When considering the intent of prohibitions against price discrimination between users, the AU1 methodology is further flawed due this \$/('000) GTK structure. Under this structure, only those train services that can maximise product mass versus train mass benefit from keener pricing. Customers who have their own bulk loading facilities are able to take full advantage of QR's 80t axle load limit, with all other customers reliant on some form of containerised solution. This creates an effective cost per tonne gap for customers unable to build these expensive facilities.

By way of example, consider two customers producing zinc/lead concentrates, one using a bulk tippler wagon solution, one using a containerised bulk solution (Table 2 - Bulk vs Containerised Bulk Train).

Table 2 - Bulk vs Containerised Bulk Train

	Bulk Zinc/Lead	Containerised Zinc/Lead
Return distance	1,500	1,500
Loco weight	230	230
Wagon tare	17.7	15.9
Container weight		6.8
Product weight	60.9	50
Number wagons	59	59
Gross train weight	1,274	1,569
Gross train '000 GTK's	1,911	2,354
Product tonnes per train	3,593	2,950
Train '000 GTK's	7,301	6,779
Mineral concentrates price '000 GTK	\$ 15.54	\$ 15.54
Access price per return service	113,459	105,345
Effective Price Per Tonne	\$ 31.58	\$ 35.71

If both customers produced the same concentrate volume of 400,000 tonnes per annum, the total below rail expense for the customer using a containerised solution would be \$14.2m each year, more than \$1.6m than the bulk customer. This creates a competitive advantage for the bulk rail customer over the containerised rail customer. This competitive advantage may contravene Section 168C(1) of the Queensland Competition Authority Act (QCA) Act which states; "In providing access to a declared service, an access provider must not unfairly differentiate between users of the service in a way that has a material adverse effect on the ability of 1 or more of the users to compete with other users."

QR may have an argument that pricing this way meets its obligation under Section 168A(b) of the QCA Act by price discriminating in order to aid efficiency. This is true in a strict sense as customers have the ability to consider using a more efficient service, but in practice it requires a more substantial relative investment on behalf of the customer to enjoy the benefit. It is this investment that tends to be disproportionate to the below rail savings. Using the above example of annualised below rail savings, a 25 year mine life and a rate of return of 9% the customer would need to invest \$16.2m or less in bulk loading/unloading facilities to enjoy a net benefit from the more efficient train service. When considering the cost of land, rail infrastructure and the necessary facilities at both the load and unload point this investment capacity is manifestly insufficient.

It is important to note that bulk rail facilities have not been developed in the NW Minerals Province since 1995-1997. The conditions provided by government today do not seem as favourable for producers as they were in the mid-1990's and as such investment in bulk facilities should be seen as very low likelihood. Notwithstanding increases in the cost of materials, and the changes to environmental requirements associated with the investment.

2 QR's Draft Access Undertaking 2

QR in their explanatory paper have highlighted that their primary areas of changes, outside of the West Moreton coal system, are related to:

- Renewal provisions
- Price differentiation
- Changes to the standard access agreement

As highlighted earlier, Aurizon Bulk has been engaged with QR with respect to the current limitations of AU1 since early 2018. For the most part QR has taken on board the feedback from Aurizon Bulk and other customers and stakeholders in preparing DAU2. However, DAU2 still has some limitations relative to the observations made earlier in this paper.

2.1 Changes to Pricing Differentiation Principles

As highlighted above, the existing Price Differentiation principles in AU1 are too narrow and restrictive. In addressing this issue, QR have adopted a pricing structure in DAU2 similar to that already approved by the ACCC for ARTC. This structure allows QR to consider the particular characteristics of the train service which include:

- Operating design which includes axle load, speed, train length, origin and destination, wheel characteristics; and
- Commercial impacts on QR's business from the service such as opportunity cost, commercial terms of the agreement, growth, credit risk, market value of the path; and
- Logistical impacts on QR's business that considers impact on other train services, risk of failure of rollingstock and the Operator's ability to recover, and reduced capacity and flexibility in the system.



QR in adopting the structure believe it will provide greater flexibility in setting prices for customers, particularly those that use intermodal/containerised services. This is influenced by road's relative success in capturing share from rail in key markets like the Mt Isa line and North Coast Line, particularly in the bulk minerals sector.

QR use the Mt Isa minerals province as an example where smaller mineral producer's projects are choosing intermodal logistics options in preference of bulk trains, explaining that despite the intermodal operation being less efficient on a net tonne basis, current AU1 pricing differentiation provisions prohibit QR from differentiating the train services. This issue echoes feedback to QR by Aurizon Bulk on price differentiation and QR have sought to alleviate this issue in their revised drafting for DAU2.

While Aurizon Bulk supports QR's changes to price differentiation in the context of differences to train configuration, it notes the following comments by QR:

"The DAU arrangements allow QR to differentiate between the access seekers who seek a higher quality of service, e.g. higher quality train paths, or certain access conditions unrelated to cost, e.g. departures at certain time. There is currently no meaningful way for QR to identify which access users value these attributes the most, or for access seekers to signal this."

The corresponding drafting in DAU2 to enable QR to differentiate the 'quality of service' is captured in clause 3.3 (e), which include:

- i. location
- ii. duration and quality of path
- iii. nature of the train consist
- iv. longevity of Access; and
- v. arrivals and departure times of the day and week

If the intent of these variables is to provide additional latitude for QR to differentiate a train service for pricing purposes, this would appear uncontroversial. However, if the proposed changes to DAU2 clause 3.3 (e) were to give rise 'bidding' process for paths deemed to be of 'higher quality', greater detail would be sought to understand how such a process would be managed. The loss of volume from rail to road is related to price and the market, blessed with the alternative of road for many products, will not absorb any further increases in below rail prices.

QR contend in their explanatory document that "The ARTC's pricing principles provide ARTC with considerable flexibility on how it can set charges for operators with the same end market and operating in the same region. The ACCC considered that this was appropriate because:

- it allows ARTC to apply different prices for services with different characteristics;
- it is consistent with the pricing principles of allowing price discrimination when it aids efficiency;
- that ARTC could not differentiate between applicants where the services are alike and operating in the
- same end market; and
- there was no evidence that ARTC has excessive flexibility.



The ACCC considered that ARTC’s pricing principle would promote economic efficiency, while still maintaining the appropriate price differentiation limitation controls.”

There needs to be rules within DAU2 that create greater pricing certainty for users, despite the inference that this model will provide for greater flexibility in determining price as the risk of QR developing a process that supports only the largest, or highest bidder is a natural eventuality. Given the latitude provided to QR under the Ceiling Revenue Limit model the value of this risk to users could be extreme.

2.2 Pricing Certainty

The current pricing methodology does not appear to benefit users when utilisation of the network increases. Additionally, users appear to face the risk that they will be subject to higher tariffs renegotiating below rail access in future if utilisation further reduces. In the case of the Mount Isa Line where pricing is only “marginally above the floor costs”⁶ and volumes have previously reduced by 29% in five years, this risk does not appear so remote.

If real below rail access prices were to increase in future (including due to a reduction in volume), all things remaining equal, there appears a risk that market forces would see rail volumes transition to road (with road already being used in preference of rail in some instances). This would be to the detriment of all users of Mt Isa Line, QR and the community amenity due to an increase in heavy vehicles on the Flinders and Barkley Highways. This redistribution of below rail costs would be of considerable concern to rail operators, like Aurizon creating significant stranded asset risk. This stranding risk is exacerbated by QR’s aging, inefficient narrow-gauge rail infrastructure that in many cases requires specific light-gauge rollingstock not suitable or economically efficient in other narrow-gauge rail networks. Further, one of QR’s primary shareholders, the Department of Transport and Main Roads, continues to enable the expansion of the heavy vehicle road industry in these regions by upgrading road infrastructure, increasing vehicle mass limits, whilst maintaining an environment that does not seek road charges equitable with below-rail charges. More importantly in many regions of Queensland, the road capability per axle now exceeds that of rail.

On this basis, the current regulatory regime doesn’t appear to instil confidence in the Mt Isa Line, nor support increased utilisation or promote user investment. This appears in contradiction of Part 5 of the QCA Act under which DAU2 is submitted, with Part 5 stating:

“The object of this part is to promote the economically efficient operation of, use of and investment in, significant infrastructure by which services are provided, with the effect of promoting effective competition in upstream and downstream markets”.

⁶ Mount Isa Line – Q&A (accessed 5 October 2018)
<https://www.queenslandrail.com.au/business/access/Compliance%20and%20reporting/Mount%20Isa%20Line%20-%20Questions%20and%20Answers.pdf>

QR appear to have tried with DAU2 to address these concerns in part through their drafting on price differentiation. In their commentary on the changes to price differentiation, QR note:

“The proposed new arrangements provide QR with greater ability to differentiate between different users, thereby making a Ramsey-type pricing approach possible. This will:

- encourage uptake of rail services as user groups that are more price sensitive are allocated lower proportion of fixed cost; and
- help QR recover its costs as it can allocate a higher proportion of its fixed cost to user groups that are less price sensitive”.

However, the success of the changes appear reliant on QR utilising the proposed price differentiation changes to successfully promote use of and attract greater Mount Isa Line, and other non-coal system volume. With the current Ceiling Revenue Limit set at a level that is unlikely to be achieved in the foreseeable future, and irrelevant based on the market’s capacity to pay higher prices, QR would appear to maintain the ability under the proposed DAU2 drafting to price additional volumes with little or no regard for the incremental cost of providing that access. Although QR would be incentivised to price any additional volume at levels that ensures it secures the additional volume, QR would also appear incentivised to do so at the highest possible price point so to maximise returns.

Having a more robust mechanism in DAU2 that promotes incremental pricing and reduces QR’s ability to maximise returns would promote use of the Mt Isa Line (and other systems). For example, if there was a revenue limit (Ceiling Revenue Limit or other) set at a more practical level, QR would retain less discretion to maximise returns and would be more inclined to price incrementally. All users, safe in the knowledge that if revenue exceeds a reasonable Ceiling Revenue Limit will benefit through a downward adjustment to their below rail access tariffs (for existing or new agreements), would be incentivised to increase their utilisation of QR’s rail systems rather than look to alternatives. Such a provision need not be at the expense of the existing Revenue Floor Limit, which could be retained to ensure that QR recover the “expected Incremental Cost of providing Access to the individual Train Service or combination of Train Services, as applicable”.

2.3 Pricing challenges not yet addressed

Fixed Charges

QR as it ought to, uses Fixed Charges to limit the ability for competing users to consume more theoretical capacity of the network than they require. However, the proportion of rate applied to users is not defined under either DAU2 or the Standard Access Agreement (SAA’s). In practice, QR typically apportion 60% or higher of the total estimated rate to Fixed Charges. These Fixed Charges are priced on a per path basis and linked to the Train Service Entitlements in the access agreements. Whilst there is an argument that the relative proportion of Fixed Charges ought to be lower, it is other mechanisms in the SAA’s that require change and have not been addressed in DAU2.



Relinquishment Fees

The Fixed Charges (for paths) effectively become the Take or Pay (ToP) obligation for users of the network. These paths and associated Fixed Charges are effectively set for the life of the access agreement signed by the customer. Any reduction to the number of paths consumed by customers in the access agreement, and the level of Fixed Charges payable by them are effectively set for the life of the agreement. That is, if a customer needs to reduce paths in their access agreements for whatever reason, QR requires that they pay a Relinquishment Fee for the total paths no longer required out to the end of the contract term.

This commitment required to be made by customers does not promote the most efficient use of the network, rather it merely protects a proportion of QR's estimated earnings for the life of the agreement. In a growth scenario the provisions within the SAA that provide QR or the customer the opportunity to reduce the Relinquishment Fee due to any transfer or new rights acquired in trade for the relinquished paths seem reasonable. But market conditions across most QR systems do not indicate that this scenario is practical. In most cases where a customer relinquishes paths, the most likely outcome is a net reduction in QR's revenue, which ought to lead to a relative reduction in costs for that system. However, from a network perspective relinquishment fees may not necessarily be intended to address demand risk. They may be associated with one of the following circumstances:

- underwriting investment in new capacity
- underwriting investment which is specific to a customer
- underwriting investment which would not have occurred without the contracted volume (sustaining type capex); or
- capacity is constrained and contracting the volumes produces unmet demand (an opportunity cost)

Importantly, they would generally need to be associated with costs that would otherwise have been *avoidable* if not for contracting the volumes. In light of QR's comparatively high below rail pricing (particularly for the Mt Isa line) when compared with other rail network owners and road, investment in capacity to support growth appears limited.

Consider the differences in the cost base for QR's Mt Isa system between FY16 and FY17 when Aurizon Bulk's general freight train ceased are a good example of QR's ability to quickly flex its costs base when volume shifts. Whilst in this example no relinquishment fee was payable by Aurizon Bulk due to the term of the access agreement expiring at cessation, QR reduced its cost base from \$70m to \$59m in one financial year. It holds that QR could and should do more to reduce an access holder's Relinquishment Fee where it can reasonably reduce its losses by removing costs or securing additional volume.

In practice this may be challenging to provide a framework for that is useable and understandable. It would be more reasonable to consider limiting QR to a maximum number of paths payable under a relinquishment, such as one year.

The structure of QR's current Relinquishment Fee model also appears in conflict with their contention that the risk Beta ought to be considered in their market, when in practice they



are actually passing this risk through to the Access Holder through Relinquishment Fee protection, except to the extent of expected insolvency risk of Access Holders.

The ability to relinquish pathing with a less significant financial burden would provide customers and potential customers of the network greater flexibility and encourage contracting only those paths required. This in turn would provide greater certainty for QR in planning capacity utilisation to consider other access applications, and its annual maintenance and capital works.

Contracted pathing

The SAA under AU1 and under DAU2 provide a number of pathing options for customers; contracted paths in the master train plan, and a variety of different daily train plan options. Clause 8 of the SAA provides the ability for the Access Holder to request either Additional Train Services (Clause 8.2) or Ad Hoc Train Services (Clause 8.3), which in QR has no obligation to provide. The application of both Additional and Ad Hoc Train Services is similar, with both essentially being formed from an Access Holder's additional requirements for a train path, whether for a short or long term period. The definition for each is similarly blurred in the SAA:

- “**Ad Hoc Train Service** means a train service additional to the number of Train Services permitted under this agreement and varying from the Train Service Description, but agreed to by QR.” and
- “**Additional Train Service** means the operation of a Train in accordance with this agreement that would be a Train Service but for it being in addition to the Train Service Levels set out in the Train Service Description.

For both Additional Train Services and Ad Hoc Train Services QR has no genuine obligation to provide the path. Given for the most part, QR's networks are unconstrained, there is generally a fair chance of securing the extra train service and as a rule QR in practice are accommodating and reasonable in their decision making.

Whether to request an Ad Hoc Train Service or Additional Train Service is unnecessarily confusing as both are very similar. Furthermore, only Additional Paths are used to offset any annual ToP obligation generated from the use of contracted paths in the Train Service Entitlements. The use of these extra train service by access holders is usually driven by the need to move products on a temporary basis due to short-term changes in production cycles, or recovery from failures of previous services. It is unreasonable of QR to only provide a deduction against Additional Train Services and not Ad Hoc Train Services as they fundamentally provide the same outcome to Access Holders and given the ToP benefit it is highly unlikely an Ad Hoc Train Service would be requested in most circumstance.

Aurizon Bulk proposes that the provision for extra services in the SAA be rationalised to one option that counts towards an Access Holder's annual ToP obligation. There should also be a tightening of the Clause 8 to ensure that QR provide the extra train service wherever available given network utilisation and provide evidence to support any rejection of extra train services.

2.4 Renewal Provisions

2.9.3 (b) appears to restrict renewal provisions to “coal carrying Train Services or bulk mineral carrying Train Services”.

Aurizon Bulk notes the intention to exclude Intermodal traffic as described outlined in the QCA’s 2016 QCA Final Decision comments:

“We also do not consider it necessary to extend the renewal provisions to cover intermodal services (as requested by Glencore).” (p.23)

However, Aurizon Bulk believes that the terminology “bulk mineral” may be too narrow a term and potentially unfairly prevent other Bulk rail operations to have access to the DAU2 renewal provisions. For example, fertiliser or sulphuric acid producers using rail services, also operate mines and are subject to stranding risk, but may not be considered bulk minerals by definition.

Additionally, Aurizon Bulk also notes that QR’s obligations to preserve an Access Holder’s Access Rights in 2.9.3 (b) is restricted in 2.9.3 (c)(ii) to instances where “the term of the relevant existing Access Agreement is no less than five years and no more than ten years”. Aurizon Bulk does not support restricting protections provided under 2.9.3 (b) to instances only when an Access Agreement is between 5 and 10 years, preferring to revert to AU1 drafting to ensure these provisions extend to all access agreements.

Moreover, Aurizon Bulk note that proposed changes to 2.9.3 (c) also appear to dilute protection for Renewal Access Seekers only to instances where they are seeking to renew their Access Rights for 5 year period or for a period of less than 5 years when that period equates to the end of mine life. Aurizon Bulk doesn’t support these changes. On this basis, Aurizon Bulk would prefer to revert to the AU1 drafting which provides Renewal Access Seeker’s with a greater level of protection and enables Renewal Applications to be for a term greater than 5 years.

Consistent with AU1, renewal provisions are only to apply once. While the renewal provisions provide Access Holders certainty that they can renew their Access Rights, the renewal provisions are only to apply once and any subsequent access application will see the Renewal Access Seeker treated on the same basis as any other Access Seeker (i.e. when multiple parties are competing for Access Rights at the end of an Access Agreement, if the current Access Holder has already previously renewed their Access Rights, QR will treat all applicants the same and will allocate Access Rights based on which applicant first requested those Access Rights).

While it would be beneficial to broaden the Renewal Application provisions to allow more than one (1) renewal, it appears unlikely that this will be supported by QR.



2.5 Standard Access Agreement

SAA Efficiency Improvements

QR have amended Clause 1.3 of the SAA removing an obligation on QR to negotiate in good faith for where the Access Holder or Operator propose changes to the access agreement that provide for productivity or efficiency improvements. This is unreasonable as efficiency across the network is vital to users and operators of these systems, particularly the need to continue to improve and enhance operations. When considering the performance and capability of QR's systems relative to other Australian rail networks it is even more important that an obligation remain with QR to negotiate improvements in good faith.

Liability – exclusion for failure to perform

In Clause 13.4 of the SAA QR have inserted a new exclusion for their failure to meet Performance Levels. It is unreasonable for QR to further limit their liability to Parties due to their failure to meet Performance Levels. Performance Levels on the Network are critical for Operators and Access Holders.

2.6 Operator Requirements Manual

The Operating Requirements Manual (ORM) sets out practices, standards, systems, protocols, requirements, rules, policies and other information in relation to or in connection with Network Control and the access to and use of QR's network by operators. It also includes interface management and coordination requirements, safeworking procedures, safety standards (including electrical safety requirements), emergency and investigation procedures, requirements for the management of Network Incidents and environmental requirements.

In DAU2 QR have removed the ORM from Schedule G indicating that having to submit an updated undertaking to the QCA for consideration when changes to the ORM are required is burdensome and time consuming. In removing it they have also stated that they will merely consult with Operators and Access Holders any proposed changes. Best practice would ordinarily require QR to consult with Operators and Access Holders prior to any amendment to an ORM being contemplated and submitted to the QCA for consideration. So long as this process is conducted in a way that considers the implications on Access Holders and Operators through consultation ought to lead to a smooth outcome with the QCA. Removing the oversight and adjudicatory nature of the QCA from the process is unreasonable particularly where consultation with QR is unsuccessful.

2.7 Network Management Principles

Network Possessions

The inclusion of Ad Hoc Planned Possessions is unacceptable to Aurizon Bulk. Like Aurizon Coal, Aurizon Bulk does not understand why QR would require such Possessions given the



existing processes allow for Planned Possessions (which are associated with the equivalent 3 month notification requirement for variations to the MTP) along with Emergency and Urgent Possessions for unplanned maintenance requirements.

Disputes

Aurizon Bulk notes the deletion of Clause 2.4 which provides dispute provisions that prevent a new MTP being implemented where there is a bona fide dispute between an Access Holder and QR. Rather than deleting this clause, Aurizon Bulk proposes that it is reinstated and expanded to include Operators. The impact, both in financial and operational terms to an Operator can be significant where the MTP is changed without agreement.

Network Control Principles

QR have proposed no changes to the existing Traffic Management Decision Matrix in Clause 3 of the Network Management Principles. The rules provided are relatively clear, but Network Controllers are provided with the flexibility under the “Principles for managing deviations from a DTP” that muddy the waters in the application of these decisions. Item (B) in particular allows a Network Controller to “to remedy, or to mitigate or avoid, the operation of Train Services on any part of the Network being congested, prevented or otherwise materially adversely affected”. Aurizon Bulk contends that healthy trains should always be given priority on the Network, other than for safety reasons, ahead of those that are unhealthy, consistent with the decision-making matrix.

2.8 AU1 vs DAU2 – Summary of Changes by Exception

	QR Comment	Aurizon Bulk Comment
1.1 Duration	Amend to 1 July 2020 to 30 June 2025	
1.5 Master planning and extension coordination	<p>Issues</p> <p>AU1 requires that QR prepare a Regional Network Master Plan (RNMP) for the West Moreton Network, the Mount Isa Network and the North Coast Network, within 12 months of AU1’s Approval Date, subject to industry agreement to fund the development of the RNMPs(within two months of the Approval Date). QR established each separate Regional Network Planning Group in Accordance with AU1. However, all groups declined to fund new capacity work for the RNMPs. This is mainly because QR is operating in an environment where all of its systems currently have spare capacity, resulting in little appetite by stakeholders to fund new infrastructure or the RNMPs.</p> <p>To assist industry, QR went outside of AU1’s provisions and offered to prepare plans for the Mount Isa Network and the West Moreton Network.</p> <p>Proposed Solution</p> <p>QR notes that valuable discussions arose out of the forums. Therefore, QR intends to include provisions around RNMPs in DAU2, but will design fit for purpose more practical provisions. QR intends to make the following amendments to clause 1.5 of AU1:</p> <p>The RNMP is to be prepared upon request from stakeholders, with stakeholders to fund the RNMPs.</p> <p>Timeframes to be reviewed and adjusted to be more realistic.</p> <p>The North Coast Line System (Note - in DAU2 the term “System” is used instead of “Network”) is to be excluded because funding and planning is undertaken by DTMR on this system rather than by QR. This clause will apply to the Mount Isa Line System and the West Moreton System.</p>	<p>No issue with this in principle.</p> <p>Aurizon Bulk and other stakeholders maintain the right to request a RNMP process be carried out, however QR are no longer obligated to carry out a RNMP process until such time as they receive a request.</p> <p>It should also be noted that the Central West System has excluded from the clause. However, given the low demand for this system and that Capital works are largely funded through TSC payments, this appears uncontroversial.</p>

	QR Comment	Aurizon Bulk Comment
	<p>Note – New infrastructure on the North Coast Network is largely funded by the Queensland Government (either through the TSC or capital investment) as access charges from the North Coast Network are insufficient to even cover the maintenance costs of providing the service.</p>	
<p>2.1.1 Access Applications</p>	<p>Issue 1 AU1 provides that a request for Access Rights is to be in form of an Access Application. However, the AU1 approach is rigid and can result in a process that is not always efficient or fit for purpose for Access Seekers. For example: In the past QR has received a simple extension to a contract on the same terms and conditions. However Part 2 of AU1 has a rigid process for submitting an access application, requesting further information, acknowledging an access application, providing an Indicative Access Proposal (IAP) and negotiating an access agreement, with timeframes specified for the various steps. Strictly, QR is bound go through the process of issuing an IAP, negotiation process etc. whereas it is more efficient if the parties can move straight to the finalisation of the extension, provided there is no queue.</p> <p>Issue 2 Also, AU1 does not define where an Access Application is to be submitted to QR, and can technically be submitted to anyone in the organisation. With QR being a large organisation, applications being sent to the wrong area can cause delays in the processing of the Access Application.</p> <p>QR lists the address for lodgement of Access Applications on its website and on the Access Application (i.e. Email: aarf.freight@qr.com.au Postal: QR, General Manager Access Revenue, GPO Box 1429, BRISBANE QLD 4001).</p> <p>However, from time to time, QR receives Access Applications submitted to other QR divisions which are not directly involved with the processing of the Access Application. This has caused delays in QR's Access Application response times in these instances.</p> <p>Proposed Solution DAU2 will provide flexibility for QR and the Access Seeker to agree to a different form of application. This allows for flexibility in addressing the</p>	<p>No objections.</p> <p>This is in line with previously received from QR about their preferred method of receiving requests for access.</p>

	QR Comment	Aurizon Bulk Comment
	<p>business needs of Access Seekers, while ensuring that their rights (for example, to priority in a queue) are protected.</p> <p>QR proposes to amend DUA2 to require submission of the Access Application, responses to requests for additional information, etc. to an email box on the QR website, or in writing to a formal residential QR address. This clause will result in a more efficient Access Application process.</p>	
2.1.2 Preliminary steps	<p>Issue</p> <p>Under AU1, a prospective Access Seeker may request initial meetings with QR, prior to submitting an Access Application, to discuss the proposed Access Application and to clarify any matters relating to the negotiation process including any application requirements.</p> <p>A prospective Access Seeker may also request that QR provide to it Capacity Information and Preliminary Information. Once a completed access request is received, QR will prepare an IAP.</p> <p>While AU1 states that the IAP is indicative in nature and non-binding (cl. 2.4.3), the requirement for Capacity Information and Preliminary Information doesn't clarify that this information is also non-binding (note - the Capacity Information and Preliminary Information are set out in Schedule A of AU1).</p> <p>Proposed Solution</p> <p>QR intends to clarify in DAU2 that neither party will be bound by Capacity Information, Preliminary Information, or information provided at initial meeting.</p>	<p>While QR's proposed changes could be interpreted as an attempt to exclude itself from being bound by any preliminary information provided to access seekers, the changes are more of a clarification. With Indicative Access Proposals (IAP) indicative and non-binding in nature (cl. 2.4.3), QR's proposed changes seek to confirm that this extends to information provided prior to an IAP.</p> <p>It should be noted that QR are still required to "keep the Preliminary Information to be made available to Access Seekers current and accurate (cl. 2.1.2 (c)(ii))".</p>
2.2.2 Requirement for confidentiality agreement	<p>Issue</p> <p>AU1 allows either party to require a confidentiality agreement. However, AU1 doesn't clarify that the confidential information in question may be provided to the QR Transit Authority (QRTA), QR's responsible Ministers (RMs) and the QCA.</p> <p>Proposed Solution</p>	<p>This appears uncontroversial to allow QR to disclose confidential information to the QR Transit Authority (QRTA), QR's responsible Ministers (RMs) and the QCA.</p>

	QR Comment	Aurizon Bulk Comment
	QR intends to include a requirement in DAU2 that any confidentiality agreement permit disclosure to QRTA, RMs and the QCA.	
2.8.3 Access Seekers must satisfy prudential requirements	<p>Issue</p> <p>AU1 provides that: “(ii) the Access Seeker (and any Related Party of the Access Seeker) must not be, or have been at any time in the previous two years, in Material Default of: (A) this Undertaking (or, if applicable, the 2008 Undertaking);”</p> <p>Proposed Solution</p> <p>Clause to be updated in DAU2 to include AU1 (as ‘this Undertaking’ will then refer to DAU2).</p>	No objections
2.9.3 Renewals, 3.3(e) & (f) Pricing Principles & 7.1 Definitions: Renewal. Renewal Access Seeker Renewal Application	<p>Issue</p> <p>The combination of clauses 2.9.3 (Renewals), 3.3(e) & (f) (Pricing Principles) and 7.1 (Definitions of Renewal, Renewal Access Seeker and Renewal Application) effectively results in all traffics seeking to renew access agreements a one off renewal on the same access charges, provided certain conditions are met e.g. they are for the same origin and destination, there is no increase in product etc.</p> <p>QR only intended that coal and non-coal bulk mineral traffics on QR’s network have a right to capacity and pricing renewals noting the 2016 QCA Final Decision comments: “We also do not consider it necessary to extend the renewal provisions to cover intermodal services (as requested by Glencore).” (p.23) “Summary 2.7</p> <p>The 2015 DAU must provide as follows: (a) QR should give priority to a renewing access holder for coal carrying or other bulk-mineral-carrying train services that satisfy the conditions in the undertaking (i.e. those relating to contract period, nature of access rights sought and timeframes for submitting renewal application).” (p.24) Renewals are favoured by the QCA for bulk products such as coal and non-coal bulk minerals because:</p>	<p>2.9.3 (b) appears to restrict renewal provisions to “coal carrying Train Services or bulk mineral carrying Train Services”.</p> <p>Aurizon Bulk notes the intention to exclude Intermodal traffic as described outlined in the QCA’s 2016 QCA Final Decision comments: “We also do not consider it necessary to extend the renewal provisions to cover intermodal services (as requested by Glencore).” (p.23) However, Aurizon Bulk believes that the terminology “bulk mineral” may be too narrow a term and potentially unfairly prevent other Bulk rail operations to have access to the DAU2 renewal provisions. For example, fertiliser or sulphuric acid carrying train services, who also operate mines</p>

	QR Comment	Aurizon Bulk Comment
	<p>Coal and bulk minerals have high set up costs (e.g. establishing a mine) and therefore have considerable stranding risk. The renewal provisions are intended to provide greater certainty against this stranding risk.</p> <p>The regulators consider a renewal provision will provide company boards with greater security regarding the access price and are, therefore, more likely to invest in future projects.</p> <p>However, while the QCA's Final Decision confirmed that renewals on the same access charges are only required for coal and bulk mineral freight traffics, the definitions contained in AU1 appear to extend renewal rights to all traffics, including those that are marginal traffics and don't pay all of their operating costs.</p> <p>AU1 provides for a one-off renewal (cl. 3.3(e): "Subject to clauses 3.3(f) and (g), if in respect of a Renewal Application: there has not already been a Renewal Application submitted in relation to the proposed Renewal after the Approval Date of this Undertaking;"</p> <p>Proposed Solution Access agreement renewal provisions in DAU2 (Capacity and Pricing) will be restricted to coal and non-coal bulk mineral freight. QR intends to limit renewal terms to a 10 year period or less, unless otherwise agreed with QR.</p>	<p>and have are subject to stranding risk, utilise bulk rail services.</p> <p>Additionally, Aurizon Bulk also notes that QR's obligations to preserve an Access Holder's Access Rights in 2.9.3 (b) is restricted in 2.9.3 (c)(ii) to instances where "the term of the relevant existing Access Agreement is no less than five years and no more than ten years". Aurizon Bulk does not support restricting protections provided under 2.9.3 (b) to instances only when an Access Agreement is between 5 and 10 years, preferring to revert to AU1 drafting to ensure these provisions extend to all access agreements.</p> <p>Moreover, Aurizon Bulk note that proposed changes to 2.9.3 (c) also appear to dilute protection for Renewal Access Seekers only to instances where they are seeking to renew their Access Rights for 5 year period or for a period of less than 5 years when that period equates to the end of mine life. Aurizon Bulk doesn't support these changes. On this basis, Aurizon Bulk would prefer to revert to the AU1 drafting which provides Renewal Access Seeker's with a greater level of protection and enables</p>

	QR Comment	Aurizon Bulk Comment
		<p>Renewal Applications to be for a term greater than 5 years.</p> <p>Consistent with AU1, renewal provisions are only to apply once. While the renewal provisions provide Access Holders certainty that they can renew their Access Rights, the renewal provisions are only to apply once and any subsequent access application will see the Renewal Access Seeker treated on the same basis as any other Access Seeker (i.e. when multiple parties are competing for Access Rights at the end of an Access Agreement, if the current Access Holder has already previously renewed their Access Rights, QR will treat all applicants the same and will allocate Access Rights based on which applicant first requested those Access Rights).</p> <p>While it would be beneficial to broaden the Renewal Application provisions to allow more than one (1) renewal, it appears unlikely that this will be supported by QR.</p>
3.2.2 Applying a Floor Revenue Limit	<p>Issue</p> <p>Previous access undertakings applying from 2001 to the approval of AU1 have explicitly stated that when determining the floor pricing limit for a combination of train services in a system (as opposed to an individual train service), Government Transport Service Contract (TSC) payments are to be considered. TSC revenue is an important input in calculating the system floor revenue</p>	<p>No Issue with referenced change.</p> <p>Refer to 1.1 Pricing methodology</p>

	QR Comment	Aurizon Bulk Comment
	<p>price. Many of QR's systems are only financially viable with the presence of TSC revenue, and if this revenue cannot be taken into account, achieving the system floor price would be unaffordable for much of the freight moved on the network.</p> <p>Proposed Solution Clarify that TSC payment considerations are to be considered in relation to floor price limit determinations.</p>	
3.2.3 Determination of Ceiling Revenue	No Change	Refer to 1.1 Pricing methodology
3.3 Limits on price differentiation	<p>Issue</p> <p>The drafting of the QCA Act acknowledges that price discrimination is an efficient approach for pricing in a natural monopoly situation: Section 168A(b) of the QCA Act permits the price for access to a service to allow for multi-part pricing and price discrimination when it aids efficiency Section 100 (3) provides that the limits on unfair differentiation do not prevent the access provider treating access seekers differently to the extent that the different treatment is reasonably justified because of the different circumstances relating to access to the declared service, applicable to the access provider or any of the access seekers.</p> <p>Since 2001, access undertakings for QR (and its predecessor) have developed the limits on price differentiation to prevent unfair differentiation (which would have the effect of having a material adverse effect on the ability of one or more access seekers to compete with other access seekers) but still allow for price differentiation in circumstances where this provides an efficient outcome.</p> <p>QR considers that the drafting of the limits on price differentiation in AU1 have become ambiguous, particularly in its recognition of different train types. An explicit ability to take account of different train types moving the same commodity in the same geographical region is important particular to</p>	Refer to 1.1 Pricing methodology

	QR Comment	Aurizon Bulk Comment
	<p>recognise differences (e.g. bulk and containerised minerals concentrates, grain) etc.</p> <p>There is an established set of limits on price differentiation in the ARTC Interstate Access Undertaking 2008 that have been approved by the ACCC, which set out in more detail the circumstances in which price differentiation is permitted or not.</p> <p>Proposed Solution</p> <p>QR considers that there is merit in setting out in more detail the relevant circumstances dealing with price differentiation, and proposes that the ARTC provisions be applied.</p> <p>Replace the existing provision on limits on price differentiation in AU1 with the comparable provisions in the ARTC Interstate Access Undertaking, specifically:</p> <p>3.3.1 Access Charge differentiation</p> <p>In formulating Access Charges, QR will have regard to a range of factors which impact on its business, including the following:</p> <ul style="list-style-type: none"> the initial estimate of the Access Charges for the requested Access Rights as included in an Indicative Access Proposal; the particular characteristics of the relevant Train Service which include axle load, speed, wagon type, Train length, origin and destination (including number and length of intermediate stops), departure and arrival times and days of the week; the commercial impact on QR's business, which includes factors such as: <ul style="list-style-type: none"> the terms of the Access Agreement; the potential for growth of the business; the opportunity costs to QR; the consumption of QR's resources, including Capacity; the credit risk associated with the business; the [segments of the Network] [System] relevant to the Access being sought; previously negotiated Access Charges agreed under an Access Undertaking, where relevant; logistical impacts on QR's business, including: 	

	QR Comment	Aurizon Bulk Comment
	<p>the impact on other Train Services and risk of failure of the relevant Rolling Stock Operator to perform ; reduced Capacity and system flexibility; capital or other contributions by the Access Seeker to QR's costs; and the cost of any Additional Capacity.</p> <p>3.3.2 Limits on Access Charge differentiation Subject to clause 3.3.1 and QR's Passenger Priority Obligations, in formulating Access Charges QR will not have regard to the identity of the Access Seeker Subject to clause 3.3.1, in formulating Access Charges QR will not differentiate between Access Seekers in circumstances where: the characteristics of the Train Services are alike; and the Access Seekers are operating in the same end market and same geographical region.</p>	
5.1.2 Content of quarterly report	<p>Issue 1 Clause 5.1.2 of AU1 requires that QR report on a quarterly basis on defined treatments of Train Services operating through the: West Moreton Network; Mt Isa Network; North Coast Network; and Metropolitan Network. The definitions appear to capture Citytrain, which was not the intention. Additionally, AU1 does not make clear that it is intended that long distance passenger train services be included in the reporting. QR is also seeking to amend the due date for the quarterly report, which is currently due 30 days after the subject quarter. Reporting of Planned Possessions that did not start or finish on time includes a Planned Possession that starts one second early or one second late. Including this type of information which is not material has the potential to distort the data Proposed Solution Citytrain</p>	<p>While Aurizon Bulk acknowledges that AU1 requires QR to report on immaterial data around planned possessions and is supportive of making drafting changes, it would prefer that 5.1.2 (viii) (x) captures services that start/finish outside 15 minutes of their scheduled time in the MTP (as opposed to 30 minutes as drafted by QR).</p> <p>QR's contention that Access Holders need not be concerned with parts of the Metropolitan Network that are exclusively used by Citytrain appears valid.</p>

	QR Comment	Aurizon Bulk Comment
	<p>QR Citytrain currently operates over 7800 services weekly across the Metropolitan Network. Most of the lines are not utilised by third party services. Including the large volume of Metropolitan Network Citytrain services in comparison to third party train services in the Quarterly Report would mean that the treatment of third party train services in the Metropolitan Network would not effectively be reported on, reducing the quality of output and distorting the meaningfulness of the outcomes.</p> <p>Further, the Metropolitan Network includes a number of branch lines that are not utilised by non-passenger services or long distance passenger services (such as the Shorncliffe line). Including data on the use of those branch lines would further skew data output.</p> <p>The exclusion of Citytrain provides transparency as to how third parties are treated on the Metropolitan Network. This will ensure statistically relevant data can be extracted by Access Holders on the treatment of their services in comparison to other relevant traffic types.</p> <p>QR intends to draft DAU2 to specifically exclude Citytrain services from the quarterly performance reporting.</p> <p>QR also intends to make an amendment in AU1 through a draft amending access undertaking (DAAU1) to reflect this.</p> <p>Long Distance Passenger Trains</p> <p>Consistent with the '<i>QR Network (2008) June 2010 Access Undertaking (2008AU)</i>', QR's intention was that quarterly reporting requirements were to apply to non-passenger services, and long distance passenger services. This was to ensure statistically relevant data can be extracted by Access Holders on the treatment of their services in comparison to other relevant traffic types.</p> <p>QR is proposing amendments to confirm this approach.</p> <p>QR intends to clarify that long distance passenger services are included in the reporting, and will apply an on-time threshold of 20 minutes.</p> <p>Extensive information on Citytrain on-time running and reliability, and safety and security incidents are published on QR's website.</p> <p>QR also intends to make an amendment in AU1 through a draft amending access undertaking (DAAU1) to reflect this.</p>	<p>QR's contention that Access Holders also need not be concerned with Citytrain service data on metropolitan corridors that are used by non-passenger services is more contentious. However, restricting QR's reporting to non-passenger services is more likely to impact Aurizon Coal than Aurizon Bulk.</p>

	QR Comment	Aurizon Bulk Comment
	<p>Quarterly Report Due Date Amend clause “5.1.1 Obligation to publish quarterly report” “within 30 days after the end of each Quarter in the Term” to be the last day of the month subsequent to the subject quarter or such longer time as agreed by the QCA. Reporting on Early/Late Planned Possessions QR intends to include an ‘on time’ threshold.</p>	
5.2 Annual report on negotiation process	No Change	
5.2.1 Obligation to publish annual report	<p>Issue AU1 requires that QR produce and publish audited Below Rail Financial Statements (BRFS) developed in accordance with the Cost Allocation Manual (Costing Manual) by 31 December of each year, relevant for the previous financial year of the report (clause 5.3.1). Maintenance and operating costs are included in the BRFS. Maintenance and operating costs are also included in the ‘Annual Report on the Negotiation Process’ (Annual Performance Report) in accordance with clauses 5.2.2(i) and 5.2.2(j). However, the Annual Performance Report is to be produced and published by 30 October each year (clause 5.2.1(a)) rather than 31 December. QR’s auditor is the Queensland Audit Office (QAO). The QAO first audits QR’s general financial statements (Financial Statements), and then subsequently audits the BRFS using information contained in the Financial Statements. The QAO has advised QR that it cannot audit QR’s BRFS until after it completes its audits of Queensland Government departmental financial statements, and therefore, cannot audit QR’s BRFS until after October of the relevant year. The QAO requires six months to audit both QR’s Financial Statements and the BRFS, so the audit of the BRFS cannot be finalised by 31 October. This means that the maintenance costs, operating expenditure, and application of the allocators contained in the Costing Manual will not have been audited by the end date for publication of the Annual Performance Report.</p>	<p>QR’s proposed changes raise questions around, the timeliness of receiving financial information, with information now to be received on 31 December instead of 31 October. However, the likelihood of success in requesting this process to be expedited is low, and the proposed extension is unlikely to affect any Aurizon Bulk decision making.</p>

	QR Comment	Aurizon Bulk Comment
	<p>QR will seek in DAU2 to align the publication of the Annual Performance Report and the BRFS, so that the Annual Performance Report contains audited financial information that is consistent with the BRFS at publication.</p> <p>This approach addresses comments made by New Hope in its submission on QR's 2016 draft Costing Manual, seeking that maintenance and operating information in the Annual Performance Report be both audited and consistent with the Below Rail financial Statements:</p> <p>"We therefore will have three potentially different sources of cost information for the West Moreton Network, being:</p> <p>The information contained in the QCA's final decision, and in QR's model, which is the basis of the approved Reference Tariffs.</p> <p>The information reported under clause 5.2.2(i).</p> <p>The Financial Reports prepared under clause 5.3 (using the Costing Manual).</p> <p>Our key requirement in regard to the overall package of reported information is that these three sources of information should be prepared on consistent basis, or be reconciled with each other.....</p> <p>....This will ensure that a version of the Clause 5.2.2 information regarding maintenance and operating costs is prepared which is based on allocation methodologies consistent with those used to develop reference tariffs."</p> <p>Including audited maintenance and operating cost information in the Annual Performance Report will improve the quality of and public confidence in the report, and also ensure consistency with the BRFS, as the underlying information will be subject to the QAO's independent audit process.</p> <p>QR's previous access undertaking did not require the inclusion of information on maintenance and operating expenditure in the Annual Performance Report, and so this issue did not previously arise.</p> <p>On 3 May 2017, QR wrote to the QCA asking that it extend the timeline for public release of the Annual Performance Report to 31 December each year.</p> <p>On 24 May 2017 the QCA approved extending the date for publishing QR's 2016-17 Annual Performance Report to 31 December 2017.</p> <p>Proposed Solution</p>	

	QR Comment	Aurizon Bulk Comment
	<p>It is proposed that DAU2 provide for the due date of the Annual Performance report to be 31 December, thereby, aligning with the due date of the BRFS. QR also intends to make an amendment in AU1 through a draft amending access undertaking (DAAU1) to reflect this.</p>	
6.1.2 Application of dispute and complaint resolution process	<p>Issue Cl 6.1.2(b)) of the dispute resolution requirements states: “Notwithstanding clause 1.2.1(b)(i)(B), if any dispute arises between an Access Holder and QR in relation to clause 7 of schedule D, clause 2.4 of schedule F or clause 1.2.3 of this Undertaking then clause 6.1.4(a)(ii) will apply to that dispute (as if the reference to an Access Seeker were a reference to an Access Holder).” The above mentioned cl. 7 of Schedule D relates to Adjustment Amount payments that have already been made by QR and so this reference is not applicable to DAU2.</p> <p>Proposed Solution Delete the reference to cl. 7 of Schedule D relates to Adjustment Amount payments from the dispute resolution requirements. Delete cl 7 of schedule D relating to the Adjustment Amount</p>	<p>Referencing issue: 6.1.2 (b) refers to clause 1.0.1(a) which does not exist and should instead reference 6.1.1 (a).</p>
6.1.4 Resolution by QCA	<p>Issue Clause 6.1.4(b) requires certain disputes to be referred to the Rail Safety Regulator. The Rail Safety Regulator has been replaced by national legislation.</p> <p>Proposed Solution AU1 will be updated through a draft amending access undertaking to update all relevant provisions so that they reflect the new national rail safety legislation. This legislation automatically replaced the Rail Safety Regulator etc., however, updating DAU2 through an amendment to AU1 will avoid access seeker and access holder confusion.</p>	<p>Clause reference issues: the new 6.1.4 (b) makes reference to clause 6.1.4 (c), however clause 6.1.4 which no longer exists in QR’s DAU2 drafting.</p> <p>Aurizon Bulk supports the intent of these changes, which, under the updated drafting, ensure “the QCA must seek and have regard to the opinion of a rail rail safety expert approved by QR and the party to the Dispute”.</p>

	QR Comment	Aurizon Bulk Comment
	QR also intends to make an amendment in AU1 through a draft amending access undertaking (DAAU1) to reflect this.	
6.4 Transitional provisions	<p>QR will review the Transitional Provisions Issue</p> <p>Each new access undertaking requires its transitional provisions to be updated.</p> <p>Proposed Solution</p> <p>Requires amendment appropriate to DAU2.</p>	No objections
Part 7 Definitions and interpretation		
7.1 Definitions	<p>Issue</p> <p>The definitions of '<i>Adjustment Amount</i>' and '<i>Adjustment Train Services</i>' refer to Schedule D clause 7 refer to Schedule D clause 7 which is no longer relevant.</p> <p>Proposed Solution</p> <p>Delete Definitions.</p> <p>Issue</p> <p>7.1 Definitions – Endorsed Variation Event - clause (b) QCA Levy</p> <p>This clause triggers an Endorsed variation event for coal reference tariffs when a QCA Levy has been approved by the QCA. It is only applicable to coal reference tariffs and the QCA Levy, not non-coal traffics. It is a redundant clause as clause “3.7 QCA Levy” in AU1 deals with the QCA Levy for all traffics including coal reference tariff traffics making the above redundant.</p> <p>QR relies upon clause 3.7 to seek approval of the amount of the QCA Levy and for the pass through of the QCA Fee to Access Holders.</p> <p>Proposed Solution</p> <p>Delete clause (b) of the Definition of Endorsed Variation Event relating to the QCA Levy. Continue to use AU1’s clause 3.7</p> <p>Issue</p>	QR’s nominal post-tax WACC has increased from 6.93% to 7.47%. While this will have a more material effect on the West Moreton Coal, it will have impacts on the way in which the Revenue Floor Limit and Ceiling Revenue Limit are calculated.

	QR Comment	Aurizon Bulk Comment
	<p>7.1 Definitions – Endorsed Variation Event - clause (c) contracted coal-carrying Train Services on West Moreton and Metropolitan Networks</p> <p>The QCA included a one way trigger in the Endorsed Variation Event where an Endorsed Variation Event occurs where the contracted Train Services for either an individual origin/destination, or for the entire Network, are greater than the forecast used to derive the Reference Tariff.</p> <p>“Endorsed Variation Event means the occurrence of any of the following events:....</p> <p>contracted coal-carrying Train Services, for a single origin or in aggregate, on the West Moreton Network and the Metropolitan Network are, at the Approval Date or thereafter, greater than the forecasts of coal carrying Train Services used to develop Reference Tariffs for the West Moreton Network and the Metropolitan Network;”</p> <p>When this clause is triggered there will always be a decrease in the reference tariff as the trigger doesn’t operate where contracted Train Services decrease. This trigger doesn’t consider total contract or ad hoc train paths operating on the system, and therefore can result in perverse outcomes.</p> <p>QR intends to include a trigger that is symmetrical.</p> <p>Proposed Solution</p> <p>QR to examine a new trigger that is symmetrical.</p> <p>Issue</p> <p>AU1 refers to ‘Network’ (e.g. West Moreton Network. However, both QR’s internal reporting and reporting to Government refer to ‘Systems’.</p> <p>Proposed Solution</p> <p>The Definitions Metropolitan Network, ‘Mt Isa Network, North Coast Network and West Moreton Network are to be changed to Metropolitan System, ‘Mount Isa Line System, North Coast Line System and West Moreton System. This to attain consistency with QR’s internal reporting and reporting to Government where the areas in question are defined as ‘Systems’.</p>	

	QR Comment	Aurizon Bulk Comment
Schedule D – Reference Tariffs	<p>Issues</p> <p>Currently two mines are operating on the West Moreton System, New Hope out of its New Acland Stage 2 mine, and Yancoal from Columboola. Tonnage scenarios, and therefore the required capex and opex expenditure, for the West Moreton System will be materially different depending upon whether and when New Acland Stage 3 proceeds during DAU2's Term.</p> <p>Proposed Solution</p> <p>QR will seek QCA approval for reference tariffs for scenarios “with” and “without” New Acland Stage 3 (NAS3) tonnages under the current regulatory process. This is intended to provide pricing certainty, whether NAS3 is approved prior to the final approval of AU1, or during the access undertaking period.</p> <p>To provide certainty and transparency for the West Moreton System mines, QR is developing two scenarios for submission to the QCA, one with capex and maintenance for the maximum forecast tonnages, and one with capex and maintenance for the lower tonnage profile with only one mine.</p> <p>Developing both scenarios will provide pricing points for new mines as well as demonstrating the price with the QCA build-up model for the higher and lower scenarios.</p> <p>However, in the event of the lower tonnage scenario, applying the QCA approved building block approach may result in a reference tariff that is too high with only one operational mine. In this case, the lower tonnage scenario will set an allowable ceiling revenue based upon the building block approach.</p> <p>However, in the event of the lower tonnage scenario, applying the QCA approved building block approach may result in a reference tariff that is too high with only one operational mine. In this case, the lower tonnage scenario will set an allowable ceiling revenue based upon the building block approach.</p> <p>DAU2 will include a trigger mechanism for certain tonnage points.</p> <p>QR is not applying an 87 ‘train path’ constraint through the Metropolitan region as no such constraint exists.</p>	Not relevant to Aurizon Bulk

	QR Comment	Aurizon Bulk Comment
Schedule E – Maintaining the Regulatory Asset Bases	<p>Issues</p> <p>The current drafting relating to the annual asset base roll-forward is complex and can be simplified.</p> <p>The due date of 31 October after the end of the subject year in Schedule E cl 1.3(a) doesn't allow for sufficient time for the preparation of a robust submission.</p> <p>Proposed Solution</p> <p>QR is reviewing the arrangements and will retain the intent of the current arrangements, but seek to develop a more efficient fit for purpose process.</p> <p>The due date for the Capital Expenditure Report to be amended to 31 December of each year to align with the due date for the BRFS and the proposed due date for the Annual Performance Report.</p>	Not relevant to Aurizon Bulk
Schedule F – Network Management Principles (NMP)	<p>QR is simplifying and making clearer the operation of the NMP, but will not change the intent or effect except in relation to the Dispute provisions for Planned Possessions.</p> <p>The NMP provides that QR cannot go ahead with the Planned Possession once a dispute is lodged until the dispute is resolved. A dispute can be lodged right up to the day of the Planned Possession.</p> <p>The QCA dispute resolution process is slow, often taking up to six months to resolve. QR will often have contracts for work with external contractors (e.g. Leightons) as well as on site camps set up with third party contractors.</p> <p>The NMP provides that QR cannot go ahead with the Planned Possession if a Dispute is lodged.</p> <p>Requiring QR to stop the work right up until the day of the possession is not reasonable or effective, and in many cases would result in reputational damage and financial penalties from external contractors.</p> <p>QR will often have contracts for work with external contractors with substantial work camps set up. Significant penalties are applicable if QR cancels the work, and contractors will have to be decamped etc.</p> <p>It is not reasonable that a Dispute can be lodged, for example, one day prior to a Planned Possession and QR.</p>	<p>QR's proposed deletion of 2.4 (see below) would appear an erosion of an Access Holders rights when they have a bona fide dispute in relation to changes to the MTP.</p> <p>Aurizon Bulk acknowledge the impracticalities of AU1 drafting in relation whereby disputes could be lodged, for example, one day prior to a proposed change to the MTP. However, removing any ability to remove an Access Holders to prevent an MTP change for a bona fide dispute would appear unbalanced. Noting QR's lead time to arrange sub-contractors, perhaps a notice period after being made aware of the</p>

	QR Comment	Aurizon Bulk Comment
	QR is examining options in relation the Dispute process and Planned Possessions.	<p>proposed MTP change would be more balanced.</p> <p>“2.4 Disputes Except in relation to Emergency Possessions and Urgent Possessions, if there is a bona fide dispute between an Access Holder and QR in relation to any proposed changes or modifications to the MTP, the proposed change will not take effect until the dispute has been resolved using the dispute resolution provisions of the Undertaking”</p>
Schedule G – Operating Requirements Manual (ORM)	QR is currently reviewing the ORM and whether it best sits within the access undertaking or outside.	Reject the proposition that the ORM be removed from Schedule G.
Schedule H – Standard Access Agreement (SAA)	<p>Summary</p> <p>QR has introduced only minor amendments to reflect feedback received during negotiations with stakeholders subsequent to AU1’s approval (Marked-up SAA attached).</p> <p>While Queensland has retained the current tripartite form of SAA, QR is willing to move to a split form access agreement if consultation feedback reflects that industry preference.</p> <p>In addition, QR is seeking an increase in the security QR can seek up to six months of access charges. This is consistent with the approved security requirements for Aurizon Network, and permits QR to make an assessment in each case of the appropriate security amount.</p> <p>Background</p>	<p>Clause 1.3 (a) ‘productivity and efficiency variations’ has been narrowed to only consider instances that benefit the Supply Chain and all Parties. Under the broader AU1 drafting, clause 1.3 (a) also captured efficiency gains relating under an individual access agreement (i.e. it need not extend to broader supply chain participants).</p>

	QR Comment	Aurizon Bulk Comment
	<p>QR proposed a tripartite access agreement with the operator as access holder. The QCA required that the end user hold access rights. The current SAA includes an execution process which may not result in a legally effective contract.</p> <p>Issue 1 The current tripartite form of SAA is unnecessarily complex. The execution process drafted by the QCA may not result in a legally effective contract.</p> <p>Proposed Solution To date, stakeholders have agreed a number of amendments to the mechanism for execution of the standard tripartite SAA, to ensure that an effective contract is formed where an Access Holder nominates more than one rail operator. If there is no preference to move to a split form access agreement, the tripartite SAA will be resubmitted with those amendments.</p> <p>Issue 2 Schedule 1 (11) Security in the SAA in AU1 includes the following security requirements: [the Security Amount for the Operator is to be equal to the deductible for any one Loss as specified in clause 16] or [the Security Amount for the Access Holder is to be an amount equal to 12 weeks' Access Charges] This differs from the security requirements applicable in the Aurizon Network UT4 access undertaking which requires at least 6 months of access charges for Access Holder</p> <p>The change in the security requirements reflects QR's greater level of risk than Aurizon Network, and the changing circumstances where the Access Holder is not always an established rail operator.</p> <p>Proposed Action</p>	<p>Clause 3.3 'Nomination of Subsequent Operators'. Minor changes to the provisions enabling an Access Holder to nominate some or all of its Access Rights to another operator.</p> <p>QR have removed the reciprocal obligations on QR and the Operator to notify each other of potential breaches of the agreement. Obligations in relation to advice on safety related issues are dealt with adequately elsewhere. (Clauses 7.3(f) and 8.4(d)).</p> <p>Clause 13.4 Liability excluded for failure to meet agreed Performance Levels; reject changes</p> <p>Clause 15 Default and termination Clause 6.7 (c), 8.8 (b), 1 of Schedule 3 and any other instance where QR have removed references to "good faith".</p> <p>QR have removed clause 19.4 which, despite anything in the Access Agreement, enable either Party to refer a dispute to the rail safety regulator. Expert determination is still permitted under other clause 19 provisions.</p>

	QR Comment	Aurizon Bulk Comment
	<p>DAU2 to reflect security requirements requiring at least 6 months of access charges for Access Holder. Alternatively a right for QR to set the quantum based on the credit assessment.</p> <p>Other amendments</p> <p>Expand on relevant factors when considering variations for productivity and efficiency variations, which should (ideally) benefit the whole of the supply chain and result in realisable gains for all parties to the agreement (clause 1.3). Representations and warranties to be granted by each party in favour of the others (clause 4.6)</p> <p>Notices and accreditation conditions to be provided to the extent relevant (clause 5(c))</p> <p>Removed the reciprocal obligations on QR and the Operator to notify each other of potential breaches of the agreement. Obligations in relation to advice on safety related issues are dealt with adequately elsewhere. (Clauses 7.3(f) and 8.4(d))</p> <p>Clause 8.8(b) – remove obligation to consult ‘in good faith’ when considering variation to interface statements. This is a term the legal meaning of which may change over time.</p> <p>Clause 8.12(a) – included an obligation for the Operator to make QR aware of potential risks caused by adverse weather events. This is consistent with relevant network operational procedures, reflecting the fact that rail traffic crew have first hand knowledge of potential risks caused by flooding etc. on the network.</p> <p>Liability excluded for failure to meet agreed Performance Levels (clause 13.4). Ipso Facto Amendments addressed (clause 15).</p>	<p>In instances where QR request security under clause 17, QR have sought to change the security amount under Item 11 of Schedule 1 from:</p> <p>“the Security Amount for the Operator is to be equal to the deductible for any one Loss as specified in clause 16] or [the Security Amount for the Access Holder is to be an amount equal to 12 Access Charges” to “the Security Amount for the Access Holder is to be an amount equal at least six months’ Access Charges”</p> <p>Aurizon Bulk doesn’t deem these changes necessary or warranted.</p>